

Appendix 7-1 to Amended & Restated OSA

FUEL MANAGEMENT AGREEMENT

BETWEEN

**LONG ISLAND POWER AUTHORITY
ACTING ON BEHALF OF ITSELF AND ITS OPERATING SUBSIDIARY
LONG ISLAND LIGHTING COMPANY D/B/A LIPA**

AND

PSEG ENERGY RESOURCES & TRADE LLC

NOVEMBER 26, 2013

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SUPPLEMENTS

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FUEL MANAGEMENT AGREEMENT

This Fuel Management Agreement (the “Agreement”) is made as of November 26, 2013, by and between PSEG Energy Resources & Trade LLC, a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 80 Park Plaza, T-19, Newark, New Jersey 07102 (the “Fuel Manager”), and the Long Island Power Authority (“Authority”) which is a corporate municipal instrumentality and political subdivision of the State of New York, acting on behalf of itself and its operating subsidiary, the Long Island Lighting Company d/b/a LIPA (“LIPA”), a New York corporation and a wholly owned subsidiary of the Authority, both with its headquarters at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553 (the Authority and LIPA are collectively referred to herein as, the “Buyer”). The Fuel Manager and Buyer are sometimes referred to in this Agreement as a “Party” and collectively as “Parties”.

RECITALS

WHEREAS, Fuel Manager is engaged in the business of providing fuel management services; and

WHEREAS, Buyer is engaged in the distribution and sale of electricity to the public in Nassau County, Suffolk County, and the portion of Queens County known as the Rockaway Peninsula in the State of New York; and

WHEREAS, Buyer provides such electricity to the public from a number of sources, including certain power purchase agreements with on-Island generating units under which it is responsible for providing fuel to produce electricity; and

WHEREAS, Buyer and PSEG Long Island LLC (also referred to herein as the “Service Provider”), an Affiliate of Fuel Manager, are parties to that certain Amended and Restated Operations Services Agreement, as dated therein (“Amended and Restated OSA”) pursuant to which PSEG Long Island LLC has established Fuel Manager as its designated Affiliate (as defined therein) and has assigned its rights and obligations to provide Fuel Management Services to LIPA to Fuel Manager and LIPA has consented to such assignment pursuant to, and in accordance with, the Amended and Restated OSA; and

WHEREAS, Buyer desires Fuel Manager to provide Fuel Management Services (as defined herein) for the LIPA Generating Facilities (as defined herein); and

WHEREAS, Buyer has agreed to purchase from the Fuel Manager, and the Fuel Manager has agreed to sell to Buyer, the Fuel Management Services in accordance with the provisions of this Agreement.

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 Fuel Manager, each intending to be legally bound, agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 Definitions

Defined Terms. In addition to the initially capitalized terms and phrases defined in the Preamble of this Agreement, the following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meanings set forth below:

“Additional Services” has the meaning set forth in Section 6.9(iii).

“Additional Services IP” has the meaning set forth in Section 17.8.

“Affiliate” means any Person directly or indirectly controlling, controlled by or under direct or indirect common control with the Person in question. For purposes of this definition “control” means the power to direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms “controlling” and “controlled” have the meanings correlative to the foregoing. A voting interest of ten percent (10%) or more in a Person shall create a rebuttable presumption of control.

“Agreement” has the meaning set forth in the Preamble, including all appendices and supplements attached hereto and amendments hereto that may be made from time to time in accordance herewith.

“Alternate Employer Endorsement” means an endorsement added to a Workers’ Compensation policy that provides an entity scheduled as an alternate employer with primary Workers’ Compensation and Employer’s Liability coverage as if it were an insured under the policy. This endorsement is commonly used when the insured is required by its customer (the alternate employer) to protect the alternate employer from claims brought by the insured’s employees.

“Applicable Buyer Sub-license Terms” has the meaning set forth in Section 17.4(vii).

“Applicable FM Sub-license Terms” has the meaning set forth in Section 17.2(ix).

“Arbitrators” has the meaning set forth in Section 13.3.

“Authority” has the meaning set forth in the Preamble.

“Automobile Liability Insurance” means the insurance coverage for collision, fire, theft, and other perils for owning or leasing an automobile.

“Base Term” has the meaning set forth in Section 2.1(ii).

“Business Day” means any Day except a Saturday, Sunday, or Buyer designated holiday. A Business Day shall open at 0800 and close at 1700 local time for the relevant Party’s principal place of business.

“Buyer Equipment” means those machines, equipment, and associated attachments, features, accessories and peripheral devices owned or leased by, or on behalf of Buyer or any of Buyer’s Related Parties.

“Buyer Fault” means any breach, failure, failure of compliance, or nonperformance by the Buyer with its obligations hereunder or any negligent, gross negligent or willful misconduct by Buyer under this Agreement (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier, or independent contractor of Buyer other than the Fuel Manager) that materially and adversely affects the Fuel Manager’s performance or the Fuel Manager’s rights or obligations under this Agreement.

“Buyer Licensed Intellectual Property” means all Intellectual Property Rights licensed by Buyer or any of Buyer’s Related Parties from any third party except Fuel Manager or Fuel Manager’s Related Parties.

“Buyer Owned Deliverables” has the meaning set forth in Section 17.1(i)(b).

“Buyer Owned Property” has the meaning set forth in Section 17.1.

“Buyer Owned Resources” means those generating units and transmission resources existing and added over the Term that are owned by Buyer.

“Buyer Related Data” means any and all information and data related to and/or created or owned by, or on behalf of, Buyer or any of Buyer’s Related Parties, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, including without limitation FM Confidential Information, Non-Technical Information, Technical Information and any such other information and data about Buyer and/or any Buyer’s Related Parties, including without limitation information and data about the Buyer’s or any of Buyer’s Related Parties’ business, the Buyer’s or any of Buyer’s Related Parties’ customers (current, former, and prospective), and any other Buyer data or data of Buyer’s Related Parties about Buyer’s or any of Buyer’s Related Parties’ facilities and systems, operations, purchases, consumption, products, services, markets, marketing, business plans, assets or finances.

“Buyer Related Parties” has the meaning set forth in Section 17.1(ii).

“Buyer Related Technology” means any and all Software, related to, and/or created or owned by, or on behalf of, Buyer or any of Buyer’s Related Parties and any and all Intellectual Property Rights in any such Software but excluding any Fuel Manager Related Technology.

“Buyer Related Work Product” means any and all Work Product related to, and/or created or owned by, or on behalf of, Buyer or any of Buyer’s Related Parties, but excluding any Fuel Manager Work Product.

“Buyer Sub-license Agreement” has the meaning set forth in Section 17.4(vii).

“Buyer Sub-licensee” has the meaning set forth in Section 17.4.

“Buyer Payment Option” has the meaning set forth in Section 3.6(i).

“Buyer’s Personnel” is defined in Section 17.1.

“Claiming Party” has the meaning set forth in Section 10.3.

“Claims Made” means an insurance policy written under a “claims-made” basis that will cover claims made (reported or filed) during the year that the policy is in force for any incidents which may occur that year or during any previous period that the policyholder was insured under the “claims-made” contract. This form of coverage is in contrast to an “occurrence” insurance policy which covers today’s incident regardless of when a claim is filed.

“Commercial Insurance” means insurance policy purchased in the insurance market.

“Comprehensive (Coverage) Insurance” means a method of insuring the objects under a boiler and machinery policy where all boiler and machinery type objects are insured except those specifically excluded. Deductibles are used to eliminate low value objects.

“Confidential Information” has the meaning set forth in Section 16.1.

“Confidential Parties” has the meaning set forth in Section 16.1.

“Contract Year” means each calendar year during the Term, except for the first Contract Year, which shall commence on the FM Services Target Date and end on the last Day of the calendar year in which the FM Services Target Date occurs.

“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, Fitch or any other rating agency agreed by the Parties.

“Credit Requirements” means, with respect to any Person, that such Person has at least two of the following Credit Ratings: (a) “Baa3” or higher from Moody’s; (b) “BBB-” or higher from S&P; and (c) “BBB-” or higher from Fitch.

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

“Derivatives” has the meaning set forth in Section 17.1(v). For the avoidance of doubt and purpose of clarity, this term as used herein does not refer to financial hedging derivative contracts.

“Disclosing Party” has the meaning set forth in Section 16.2(i).

“Electricity” means the electrical energy, capacity, and ancillary services available from the LIPA Generating Facilities.

“Employer’s Liability Insurance” means coverage that is provided by Part 2 of the basic Workers’ Compensation policy and pays on behalf of the insured (employer) all sums which the insured shall become legally obligated to pay as damages because of bodily injury by accident or disease sustained by an employee of the insured arising out of and in the course of the employee’s employment by the insured.

“Escalation Rate” has the meaning set forth in Appendix 2.

“ETRM” has the meaning set forth in Appendix 1.

“Event of Default” means an event described in Section 11.1 for the Fuel Manager and in Section 11.2 for Buyer.

“Excused Delay” has the meaning set forth in Section 3.1.

“Extended Term” has the meaning set forth in Section 2.1(iii).

“Feedback” has the meaning set forth in Section 17.7.

“FERC” means the Federal Regulatory Energy Commission or any Governmental Body succeeding to the powers and functions thereof under the Federal Power Act.

“Fitch” means Fitch Inc., Fitch Ratings Ltd. and its subsidiaries.

“FMA Effective Date” has the meaning set forth in Section 2.1(i).

“FM Confidential Information” has the meaning set forth in Section 16.1.

“FM Services Fee” has the meaning set forth in Section 4.2(ii), and as further described in Appendix 2.

“FM Services Information” has the meaning set forth in Section 6.6.

“FM Services LDs” has the meaning set forth in Section 3.3(i).

“FM Services Target Date” has the meaning set forth in Section 2.1(ii).

“FM Sub-licensee” has the meaning set forth in Section 17.2(ii).

“FM Sub-license Agreement” has the meaning set forth in Section 17.2(ix).

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Force Majeure Remedy Plan” has the meaning set forth in Section 10.5.

“Freedom of Information Law” or “FOIL” means New York State Public Officers Law, Article 6, Sections 84-90, and as described in Section 16.3.

“Front-End Transition Period” has the meaning set forth in Section 3.1.

“Front-End Transition Plan” means that plan set forth in Appendix 1 for Front End Transition Services.

“Front-End Transition Services” means those services set forth in Appendix 1 that Fuel Manager must perform in order to facilitate a transition from the current fuel manager Consolidated Edison Energy, Inc., and to demonstrate readiness to carry out its responsibilities on the Fuel Management Services Target Date.

“Front-End Transition Date” has the meaning set forth in Section 3.1.

“Fuel” means the natural gas, Liquid Fuel, or other fuel used by the LIPA Generating Facilities.

“Fuel Manager Payment Option” has the meaning set forth in Section 3.6(ii).

“Fuel Management Performance Penalty” means the penalty incurred by Fuel Manager calculated in accordance with Appendix 2 hereto.

“Fuel Management Services” or “FM Services” means those services set forth in Section 3.4, or as further described in this Agreement.

“Fuel Manager” has the meaning set forth in the Preamble.

“Fuel Manager Equipment” means those machines, equipment, and associated attachments, features, accessories and peripheral devices owned or leased by, or on behalf of, the Fuel Manager and used by the Fuel Manager or any of Fuel Manager’s Related Parties solely to perform its obligations pursuant to this Agreement, other than Buyer Equipment.

“Fuel Manager Owned Property” has the meaning set forth in Section 17.3.

“Fuel Manager Personnel” has the meaning set forth in Section 17.1(i)(a).

“Fuel Manager Related Data” means any and all information and data related to and/or created or owned by, or on behalf of, the Fuel Manager or any of the Fuel Manager’s Related Parties, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronic ally, graphically, photographically, or in writing, including, without limitation, FM Confidential Information, Technical Information, Non-Technical Information, and any such other information and data about the Fuel Manager, including without limitation information and data about the Fuel Manager’s business, the Fuel Manager’s customers (current, former, and prospective), and any other Fuel Manager data about Fuel Manager’s facilities and systems, operations, purchases, consumption, products, services, markets, marketing, business plans, assets or finances, but excluding any Buyer Related Data.

“Fuel Manager Related Technology” means any and all Software created or acquired by, or on behalf of, Fuel Manager or any of Fuel Manager’s Related Parties, in each instance owned by or on behalf of Fuel Manager or any of Fuel Manager’s Related Parties prior to the commencement of services under this Agreement or created of acquired outside the scope of this

Agreement, and any and all Intellectual Property Rights in any such Software, but excluding any Buyer Related Technology.

“Fuel Manager Related Work Product” means any and all Work Product created or acquired by, or on behalf of, Fuel Manager or any of Fuel Manager’s Related Parties, in each instance owned by or on behalf of Fuel Manager or any of Fuel Manager’s Related Parties prior to the commencement of services under this Agreement or created or acquired outside the scope of this Agreement, and any and all Intellectual Property Rights in any such Work Product, but excluding any Buyer Related Work Product.

“Fuel Manager Security” has the meaning set forth in Section 8.1.

“Fuel Manager’s Related Parties” has the meaning set forth in Section 17.1(i)(a).

“Fuel Manager’s Representative” has the meaning set forth in Section 7.2.

“Fuel Specifications” has the meaning set forth in Section 3.4(iii)(e).

“Governmental Body” 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, and (iii) any court or governmental tribunal; provided that the Authority shall not be included in such definition when acting as Buyer pursuant to this Agreement and any related agreement between the parties hereto.

“Guarantor” means a Person, if any, providing a Guaranty hereunder that at all times (i) satisfies the Credit Requirements, and (ii) has tangible net assets of not less than five hundred million dollars (US \$500 Million).

“Guaranty” means the instrument obligating the Guarantor to unconditionally guarantee the payment obligations of Fuel Manager, which shall be in the form substantially similar to the form in Appendix 4.

“HE” is defined as hour ending.

“Indemnified Party” has the meaning set forth in Section 15.13.

“Indemnifying Party” has the meaning set forth in Section 15.13.

“Intellectual Property Rights” means all intellectual property rights, including without limitation, all patents, industrial designs, trademarks, trade names, copyrights, trade secrets, know-how, all rights of whatsoever nature and all intangible rights or privileges of a nature similar to any of the foregoing, including in every case in any part of the world and whether or not registered, and shall include all rights in any applications and granted registrations for any of the foregoing.

“Interest Rate” means for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under

“Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus one and one-half percent (1.5%) and (b) the maximum rate permitted by applicable Legal Requirements.

“Inventions” means any and all discoveries, improvements, inventions and methods and any updates, enhancements, corrections and modifications thereto, whether patentable or not.

“Invoice Payment Account” has the meaning set forth in Section 4.2(iii).

“Legal Requirements” means any law, code, statute, regulation, rule, ordinance, judgment, injunction, order or other requirement of a Governmental Body (including all regulatory and environmental requirements) having jurisdiction over the matter in question that is valid and applicable to the matter in question at the time of the execution of this Agreement or any time thereafter during the Term.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit governed by the International Standby Practices 1998 (ISP 98) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having at all times (i) net assets of not less than one billion dollars (US\$1 Billion), and (ii) not less than the following Credit Rating from two of the three specified rating agencies: “A-” from S&P, “A-” from Fitch, and “A3” from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued, which may be drawn at a location in the City of New York, New York. A Letter of Credit will be in an acceptable form if substantially similar to the form attached as Appendix 3 hereto.

“LIPA” has the meaning set forth in the Preamble.

“LIPA Generating Facilities” means any and all generating facilities for which Buyer is contractually obligated to provide Fuel during the Term, including those generating facilities listed in Appendix 5, which may be updated from time to time.

“LIPA Representative” has the meaning set forth in Section 7.1.

“Liquid Fuel” means any of the grades of petroleum that the LIPA Generating Facilities may burn, including residual oil, kerosene and diesel fuel.

“Loss” has the meaning set forth in Section 15.13.

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

“Moody’s” means the Moody’s Investor Service, Inc. and its subsidiaries.

“NAESB” means a standard form or agreement for natural gas Fuel utilized by the North American Energy Standards Board.

“National Grid LDC” means KeySpan Gas East Corporation d/b/a National Grid Energy Delivery Long Island, which is the entity that owns and operates the natural gas distribution system and related facilities and interests in gas transmission facilities formerly owned and

operated by the Long Island Lighting Company, or any successor, assign or other entity performing similar services.

“NERC” means the National Electric Reliability Corporation.

“No Claims Bonuses” means in insurance, particularly vehicle insurance, a bonus-malus system is a system that adjusts the premium paid by a customer according to its claim history. Bonus usually is a discount in the premium which is given on the renewal of the policy if no claim was made in the previous year. Malus is an increase in the premium if there was a claim in the previous year.

“Non-Claiming Party” has the meaning set forth in Section 10.3.

“Non-Technical Information” means any and all (a) spreadsheets, reports, memoranda, notes, notebooks, work books, outlines, models, prototypes, specimens, and other tangible material, whether or how stored, compiled, or memorialized, physically, electronically, graphically, photographically, or in writing.

“Notice of Default” has the meaning set forth in Section 11.3.

“Party” or “Parties” means either Buyer or Fuel Manager, or both, as identified in the Preamble.

“Permitted Purposes” has the meaning set forth in Section 16.2(iii).

“Person” means, unless otherwise specified, any individual person, corporation, firms, companies, trusts, business trusts, legal entities, limited liability company, general partnership, limited partnership, firm, joint venture, association, joint-stock company, unincorporated organization, government or other political subdivision thereof or other entity, including a Governmental Body.

“Prudent Utility Practices” means, any of the practices, methods and acts engaged in or approved by a significant portion of the electric and Fuel industries in the United States at the time in question, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a delineation of acceptable practices, methods or acts expected within the electric and Fuel industries to accomplish the desired results, having due regard for, among other things, the preservation of manufacturers’ warranties, operating instructions, the requirements of Governmental Bodies of competent jurisdiction and the requirements of this Agreement.

“PSM Service Provider(s)” shall mean Buyer’s day-to-day power supply management functions, which are provided by the PSMFB Provider for front- and back office power supply management services and the PSMMO Provider for the mid-office services.

“PSMFB Provider” means PSEG Energy Resources & Trade LLC or any successor, assignee or other entity performing similar services.

“PSMMO Provider” means the entity performing PSMMO Services under the agreement with PSMFB Provider..

“Receiving Party” has the meaning set forth in Section 16.2(i).

“Related Parties” means with respect to a Party, a Party’s Affiliates and such Party and its Affiliates’ officers, directors, trustees, and employees.

“Representatives” has the meaning set forth in Section 16.2(ii).

“Residuals” has the meaning set forth in Section 17.6.

“Service Provider” has the meaning set forth in the fourth Whereas Clause.

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

“Software” means any and all (a) computer software, (b) any and all Inventions related to such computer software in (a) above and (c) any and all writings, works of authorship and other copyrightable or non-copyrightable subject matter of any kind, including without limitation, derivative works, to the extent containing or embodying any portion of the items in (a) or (b) above. Except as otherwise specified or granted hereunder, Software shall include both source code and object code.

“Technical Information” means any and all (a) drawings, schematics, formulae, specifications, designs, concepts, diagrams, processes, procedures, protocols, parameters, engineering details, functional descriptions, layouts, architectural models, invention disclosures, data and database content, or other technical or scientific documentation, including manuals and other information, whether or how stored, compiled, or memorialized, physically, electronically, graphically, photographically, or in writing, (b) any and all Inventions solely to the extent related to such items in (a) above, and (c) any and all writings, works of authorship and other copyrightable or non-copyrightable subject matter of any kind, including without limitation, derivative works, to the extent containing or embodying any portion of the items in (a) or (b) above.

“Term” means the Base Term of this Agreement, or if applicable, the Extended Term.

“Termination Date” has the meaning set forth in Section 11.6(i).

“Termination Notice Period” has the meaning set forth in Section 11.6(ii).

“Third Party Liability Insurance” means insurance that protects the insured against liability arising out of bodily injury to others or damage to the property of others.

“Umbrella or Excess Liability Insurance” means (i) a policy or bond covering the insured against certain hazards, and applying only to loss or damage in excess of stated amount, or

specified primary of self-insurance; or (ii) that portion of the amount insured that exceeds the amount retained by an entity for its own account.

“Work Product” means any and all (a) (i) Inventions, (ii) writings, works of authorship and other copyrightable or non-copyrightable subject matter of any kind, including without limitation, derivative works, (iii) Technical Information, Non-Technical Information and other ideas not generally known to the public, (iv) Software and (v) other Intellectual Property Rights, whether or how stored, compiled, or memorialized, physically, electronically, graphically, photographically, or in writing, containing or embodying any of the foregoing, (b) any and all Inventions related to the items in (a) above, and (c) any and all writings, works of authorship and other copyrightable or non-copyrightable subject matter of any kind, including without limitation, derivative works, to the extent containing or embodying any portion of the items in (a) or (b) above.

“Workers’ Compensation” means a system whereby no-fault statutory benefits (or through self-insurance if the employer files with the state for approval to self-insure the risk) prescribed in state law are provided by an employer to an employee or the employee’s family due to a job-related injury (including death) resulting from an accident or occupational disease.

“Writing” has the meaning set forth in Section 17.1(iv).

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

(i) References. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before the FMA Effective Date. Whenever any of the words “include”, “includes” and “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” or equivalent words.

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

(iii) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability companies, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals, and their respective successors.

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

ARTICLE 2 - TERM

2.1 Term

(i) This Agreement shall become effective on the date on which it is executed by both Parties (“FMA Effective Date”) and shall remain in effect for its Term subject to: (x) the occurrence of the “Effective Date” of the Amended and Restated OSA as defined therein; and (y) pursuant to Section 4.2(A)(6)(a) of the Amended and Restated OSA, Service Provider providing Buyer with written notice of its election to provide the Fuel Management Services hereunder (and to assign such obligation to Fuel Manager) by not later than ten (10) Business Days following the Effective Date of the Amended and Restated OSA (as such term is defined therein). In the event that the Effective Date of the Amended and Restated OSA does not occur by June 30, 2014, or such later date as the parties to the Amended and Restated OSA may mutually agree in writing or Service Provider does not provide Buyer of its election to proceed with the Fuel Management Services, as provided for in this Section 2.1, then this Agreement shall terminate and neither Party shall have any further obligation to the other hereunder except for those obligations set forth in Section 3.1. If for any reason the FMA Effective Date does not occur by December 1, 2013 (“FMA Effective Date Delay”), Fuel Manager agrees to use commercially reasonable efforts to achieve the FM Services Target Date and Buyer agrees (i) to increase the Milestone Payments set forth in Table 2-1 of Appendix 2 by 20% to compensate for the FMA Effective Date Delay, and pay them as they are achieved, and (ii) to waive its right to collect FM Services LDs pursuant to Section 3.3 herein. If despite Fuel Manager’s commercially reasonable efforts Fuel Manager fails to commence the FM Services on the FM Services Target Date, Buyer shall not terminate this Agreement in accordance with Section 2.2(b).

(ii) Subject to Section 2.1(i), the Fuel Management Services hereunder shall commence on January 1, 2015 (“FM Services Target Date”) and shall continue until December 31, 2025, unless this Agreement is terminated earlier in accordance with the terms hereof (“Base Term”) or extended pursuant to Section 2.1(iii) below. The Base Term shall be subject to the termination provisions of Section 2.2, Section 3.1, Article 11 and Supplement 1 and provided that the Amended and Restated OSA has not been terminated in accordance with its terms. In the event that the Amended and Restated OSA has been terminated, the Parties may agree to continue to perform under this Agreement through the Term.

(iii) This Agreement shall automatically be extended until December 31, 2033, if there is an extension of the Term of the Amended and Restated OSA pursuant to Section 2.1(B) thereof (“Extended Term”), provided, however, that no Event of Default by Fuel Manager shall have occurred during the Base Term. However, if during the Base Term Fuel Manager has incurred a Fuel Management Performance Penalty in three (3) or more Contract Years, the Parties will meet at least six (6) months prior to the end of the Base Term to formulate a plan, satisfactory to both parties, designed to improve the performance of Fuel Manager during the Extended Term.

2.2 **Early Termination by Buyer**

(i) In addition to the rights that Buyer has pursuant to Section 3.1 and Article 11 of this Agreement, Buyer shall have the right to terminate this Agreement by providing written notice to the Fuel Manager:

(a) in the event Fuel Manager fails to post and maintain Fuel Manager Security in accordance with the provisions of Section 8.1 within five (5) Business Days of written notice;

(b) in the event the Fuel Manager fails to commence the Fuel Management Services by the FM Services Target Date and Buyer elects termination of the Agreement as its remedy in Section 3.3(i) for such failure;

(c) in the event Fuel Manager fails to undertake the activities relating to a Force Majeure Event as set forth in Section 10.6; or

(d) beginning in Contract Year 6 in the event Fuel Manager demonstrates Unfavorable Performance on each of Metrics #1-5 in each of the preceding five consecutive Contract Years.

(ii) Such termination shall be effective on the date on which the notice period specified in Section 2.1(i) expires, or if no notice period is specified in Section 2.2(i), on the date specified in such notice which shall be no less than five (5) Days following the date of said notice. Except as set forth in Section 11.13 of this Agreement, in the event of termination pursuant to this Section 2.2, Buyer shall pay the Fuel Manager for its actual, reasonable and verifiable costs for services provided pursuant to this Agreement, if any, up to the date of termination specified in the written termination notice by Buyer to the Fuel Manager.

2.3 **Survival**

The rights and obligations of the Parties pursuant to Section 4.2, Article 5, Sections 6.6, 6.8, 6.10, 11.7, 11.8, 11.10, 11.11, 11.12, 16.7, Article 13, Article 15, Article 17 and the Set Off Rights and Records provisions set forth in Supplement 1, as well as any obligations to the extent necessary to provide for final billings, payments, and adjustments related to the period prior to such expiration or earlier termination shall survive the expiration or earlier termination of this Agreement, and no such expiration or termination shall limit or otherwise affect the respective rights or obligations of the Parties accrued prior to the date of such expiration or termination. Otherwise, at the conclusion of the Term, all other obligations of the Parties shall terminate unless extended or otherwise survive to the extent specifically expressed in this Agreement.

ARTICLE 3 - FUEL MANAGEMENT SERVICES

3.1 Front-End Transition Period

The Fuel Manager shall commence Front-End Transition Services on the FMA Effective Date (the “Front-End Transition Date”) and shall continue performing such services through the Day before the FM Services Target Date (the “Front-End Transition Period”). In the event that the Effective Date of the Amended and Restated OSA has not occurred by June 30, 2014 or such other date as may be agreed to by the parties to the Amended and Restated OSA and the Amended and Restated OSA is terminated, then this Agreement, following reimbursement by Buyer of all Milestones Payments for completed items and all transition expenses and costs incurred by Fuel Manager associated with any partially completed items between FMA Effective Date and the date on which this Agreement terminates pursuant to this Section 3.1, shall terminate on the termination date of the Amended and Restated OSA. The Fuel Manager shall perform Front-End Transition Services consistent with this Agreement, and as more fully set forth in the Front-End Transition Plan set forth in Appendix 1. The Fuel Manager shall be paid for such Front-End Transition Services in accordance with Section 4.1 and as more fully set forth in Appendix 2. If Fuel Manager’s provision of Front End Transition Services is prevented or delayed by a Force Majeure Event or by Buyer’s failure or inability to perform any of its obligations under this Agreement on a timely basis (each an “Excused Delay”), the Milestone Payments set forth in Table 2-1 of Appendix 2 shall be increased by 0.5 % for each Day that such delay event continues.

3.2 Conditions for Start of Fuel Management Services

The Fuel Manager shall commence Fuel Management Services on the FM Services Target Date. No later than thirty (30) Days (or such other date that the Parties agree to) before the FM Services Target Date, the Fuel Manager shall provide the following, which conditions Fuel Manager must satisfy in order to commence Fuel Management Services; provided, however, that if an Excused Delay has occurred, such thirty (30)-Day period shall be reduced by one (1) Day for each Day that such delay event continues:

- (i) Delivery of written certificate or notice from an officer of Fuel Manager to Buyer, in form and substance reasonably satisfactory to Buyer, that Fuel Manager has all of the necessary systems and processes in place for the Fuel Manager to provide Fuel Management Services as set forth in this Agreement;
- (ii) Delivery by Fuel Manager to Buyer of certificates of insurance coverage or proof of insurance policies, as required pursuant to Section 9.2 of this Agreement; and
- (iii) Delivery by Fuel Manager to Buyer of Fuel Manager Security that meets the requirements of Article 8 of this Agreement.

3.3 Consequences for Delay in Commencing Services

If the Fuel Manager fails to achieve Parallel Operations by November 1, 2014 (as provided in Appendix 2, Part I, Table 2-1 or as may be modified pursuant to Section 3.1) and such failure is not excused due to Force Majeure or LIPA Fault or subject to an FMA Effective

Date Delay, then Buyer shall provide written notice of its election to assess liquidated damages (“FM Services LDs”) in the amount of five hundred thousand dollars and zero cents (\$500,000.00). In the event that Fuel Manager commences Fuel Management Services by FM Services Target Date, the Buyer shall immediately refund to the Fuel Manager the FM Services LDs paid. If Fuel Manager does not commence Fuel Management Services by the FM Target Date, Buyer may, in addition to assessing FM Services LDs, at that time exercise its option to terminate this Agreement as set forth in Section 2.2.

(i) FM Services LDs owed pursuant to Section 3.3(i) shall be paid by Fuel Manager to Buyer in accordance with Section 5.2, and shall be limited to five hundred thousand dollars and zero cents (\$500,000.00).

(ii) For breach of any provision for which liquidated damages are provided in this Article 3.3, such damages are the sole and exclusive remedy of Buyer and Fuel Manager’s liability will be limited as set forth herein.

3.4 **Fuel Management Services**

(i) The Fuel Manager shall sell and provide, and Buyer shall purchase and receive, the Fuel Management Services for the LIPA Generating Facilities, as set forth in this Agreement commencing on the FM Services Target Date and continuing throughout the Term.

(ii) Commencing on the FMA Effective Date and during the Term, LIPA will use commercially reasonable efforts to cause third parties with whom it is in privity of contract to cooperate with Fuel Manager in the discharge of Fuel Manager’s obligations hereunder.

(iii) Fuel Manager shall discharge its services in a manner consistent with Prudent Utility Practices and Buyer’s policies and procedures, including such procedures that the Parties shall mutually develop and maintain to implement this Agreement. In discharging all such functions, the Fuel Manager shall use commercially reasonable efforts to obtain lowest reasonable-cost fuel for the benefit of Buyer’s customers, with such efforts being consistent with Prudent Utility Practices, including any Legal Requirements and all applicable operating parameters and power purchase agreements or other agreements for the Fuel delivery to the LIPA Generating Facilities. Fuel Manager shall exert commercially reasonable efforts in its performance under this Agreement by using the same good faith and diligent level of effort consistent with the standard of care used to provide services to its own Affiliates; provided that such standard of care is consistent with, and not less than Prudent Utility Practices.

(iv) Fuel Manager, as Buyer’s designated agent, shall manage all aspects of the Fuel supply for the LIPA Generating Facilities, including determinations regarding the type of Fuel used for operating such facilities and the source of such Fuel supply. In its capacity as the Fuel Manager as described in subparagraphs (i) and (ii) above, the Fuel Manager’s responsibilities, as Buyer’s designated agent, shall include:

(a) Nominating, scheduling, and coordinating the movement and use of all Fuels, in the appropriate volumes, as required to operate the LIPA Generating Facilities, according to Buyer’s dispatch and reliability requirements. The Fuel Manager shall assure that sufficient quantities of natural gas are nominated for delivery on interstate

pipelines, with corresponding quantities nominated for local transportation on the National Grid LDC system, as applicable, to comply with Buyer's obligations under the respective transporters' gas tariffs;

(b) Use commercially reasonable efforts to procure Fuel at the lowest reasonable cost and in a timely manner for the LIPA Generating Facilities;

(c) Providing and maintaining standard operating procedures, protocols and instructions for Fuel Management Services as reasonably requested by Buyer. Coordinate with Buyer's PSM Service Provider(s) in order to facilitate the efficient and reliable dispatch of LIPA's Generating Facilities, as well as cooperating and coordinating with the monitoring and reporting activities;

(d) Maintaining and providing Buyer with daily reports and/or summaries of the Fuel activity, including Fuel procured, price and volume, unit settlement data as required by Buyer, emissions tracking data during the previous month for each Buyer Generating Facility, as well as any additional reports as required in the format requested by Buyer;

(e) Acquiring Fuel supplies in accordance with the specifications set forth in the power purchase agreements for the LIPA Generating Facilities ("Fuel Specifications") or as otherwise directed by Buyer for dispatch of the LIPA Generating Facilities. To the extent that such Fuel is not commercially available, the Fuel Manager shall identify and inform Buyer of alternative Fuel products that are substantially compliant with the Fuel Specifications. The Fuel Manager shall facilitate discussions with Buyer and the LIPA Generating Facilities regarding alternative Fuels. The Fuel Manager's procurement and delivery obligations shall be only limited to commercially available products that are acceptable to both Buyer and the LIPA Generating Facilities.

(f) Negotiating and administering as Buyer's designated agent Fuel contracts with entities capable of meeting the Fuel supply needs for the LIPA Generating Facilities utilizing its own in-house or outside legal counsel and/or contract managers, using a standard NAESB contract (or other agreement acceptable to Buyer) for natural gas and an approved contract or agreement acceptable to Buyer for Liquid Fuel. The Fuel Manager shall present copies of all contracts to Buyer for execution by Buyer;

(g) Arranging for delivery, receipt, fuel analysis, handling, storage, transportation and use of Liquid Fuel for the LIPA Generating Facilities, including facilitation of Liquid Fuel tank maintenance activity, which shall include pump outs, relocation of Liquid Fuel and refill tanks with Liquid Fuel;

(h) Optimizing Buyer's natural gas deliveries to minimize Buyer's overall costs, including minimizing natural gas balancing costs and other charges;

(i) Monitor and verify the quantity of Liquid Fuel stored on-site at the LIPA Generating Facilities, maintain records of the price and quantity of Liquid Fuel in inventory and report such inventory information to Buyer on a regular basis as established by Buyer;

(j) Making recommendations to Buyer, as appropriate, regarding the economic feasibility of Buyer obtaining dedicated or leased off-site Liquid Fuel storage capacity and tank trucks, as well as any other value-added concepts;

(k) Ensuring that Fuel deliveries are received at the delivery points and review all confirmations for accuracy;

(l) Reviewing all Fuel and Fuel-related invoices, verifying each invoice, and providing Buyer with all such invoices along with documentation of its review and verification reasonably satisfactory to Buyer no less than three (3) Business Days prior to the date each such payment is due; and

(m) Validating all counterparty charges related to Fuel purchase and sales transactions (including preparing invoices for sales transactions and collecting revenues that shall be returned to Buyer), reconciling and resolving invoice disputes, and providing at least monthly (or more frequently, as reasonably requested by Buyer) a detailed accounting of all open Fuel settlement issues to Buyer, as well as final settlement data for all transactions.

(v) Fuel Measurement. Installation, maintenance and operation of all Fuel metering and telemetering equipment shall be undertaken by the owners of the LIPA Generating Facilities in accordance with the respective power purchase agreements. The Fuel Manager shall assist Buyer in Buyer's verification of the accuracy of all measurements of Fuel made by the owners of the LIPA Generating Facilities and Buyer shall have access to all records of the Fuel Manager necessary for such purpose.

(vi) Minimization of Costs. In providing the Fuel, the Fuel Manager shall use commercially reasonable efforts to minimize Fuel costs for the LIPA Generating Facilities, such efforts being consistent with (a) all applicable prudent industry practices and standards, including Prudent Utility Practices, (b) all applicable operating and contract constraints for Fuel delivery, and (c) Legal Requirements.

(vii) Accounting Controls. Fuel Manager on a quarterly basis (or more frequently as reasonably requested by Buyer) shall provide, or cause to be provided, all accounting, bookkeeping, and administrative services in connection with the Fuel costs, such accounting to be consistent with the FERC Uniform System of Accounts and Generally Accepted Accounting Principles consistently applied. In areas of conflict, FERC accounting principles shall control. All records relating to such services shall be subject to review and audit in accordance with Sections 5.3 and 6.6.

3.5 Reporting Requirements

(i) In addition to any other reporting requirements identified in this Agreement, the Fuel Manager shall provide the following reports:

(ii) Monthly Reports. The Fuel Manager shall provide Buyer and any designees with monthly reports no later than twenty (20) Days after the end of each Month, including such data relating to the Fuel Management Services as may reasonably be requested to be furnished by

Buyer, including but not limited to the Fuel burned during that Month and such other information as the Parties may mutually agree.

(iii) Annual Reports. The Fuel Manager shall furnish Buyer and its designees within sixty (60) Days after the end of each Contract Year, an annual summary of the statistical data provided in the Monthly reports, certified by the Fuel Manager, as well as such other data relating to the services provided hereunder as may be reasonably requested to be furnished by Buyer, along with appropriate supporting documentation. Buyer or its designees shall have access to the Fuel Manager's books and records as may reasonably be required.

3.6 Invoice Payment Options

(i) Buyer shall have the option to pay directly all Fuel and Fuel-related invoices itself ("Buyer Payment Option"), in which case Fuel Manager shall have no obligation to pay such invoices unless and until Buyer shall elect the Fuel Manager Payment Option for a subsequent Contract Year. If Buyer chooses either the Buyer Payment Option or fails to pre-fund the Invoice Payment Account in accordance with the requirements of the Fuel Manager Payment Option, then any and all payments for Fuel-related invoices and credit support, including, but not limited to payments of collateral, to third parties pursuant to Buyer Fuel or fuel-related contracts and associated transactions and/or transaction confirmations that have been entered into by Fuel Manager on behalf of, and as agent for, Buyer shall be paid or provided, as the case may be, directly by Buyer to the third parties. Fuel Manager shall have no obligation to make any such payments and such payment shall be the sole responsibility of Buyer. For the avoidance of doubt and the purpose of clarity, the Fuel Manager shall not be responsible for processing, reconciling, monitoring or paying with Fuel Manager's own funds any margin or collateral requirements with regard to Buyer contracts. Buyer shall have the option to advance funds to Fuel Manager, from which Fuel Manager shall timely pay the undisputed portion of Fuel and Fuel-related invoices, as agent for Buyer ("Fuel Manager Payment Option"), and shall, to the extent the Buyer pre-funds the Invoice Payment Account, assure to the extent within Fuel Manager's reasonable control subject to Section 3.6(iv) that no liens are filed against the assets or revenues of Buyer. In no event shall Fuel Manager be required to advance its own funds if Buyer fails to pre-fund the Invoice Payment Account.

(ii) Buyer may elect the Buyer Payment Option or the Fuel Manager Payment Option by giving Fuel Manager written notice no less than sixty (60) Days prior to the start of any applicable Contract Year. If Buyer does not make an election, then the Buyer Payment Option shall be applicable to such Contract Year. The payment option selected shall apply to the entire Contract Year.

(iii) For the avoidance of doubt, in the event that Buyer fails to make any payments required hereunder to Fuel Manager accounts or third parties, Buyer shall defend and indemnify and hold the Fuel Manager harmless from any claims by third parties pursuant to Buyer Fuel or fuel-related contracts and associated transactions and/or transaction confirmations that have been entered into by Fuel Manager on behalf of, and as agent for, Buyer.

(iv) Fuel Manager shall notify Buyer on a periodic basis (e.g., weekly) as to the total amounts due for any Fuel and Fuel-related invoices in the next such time interval. Such notice

may precede Fuel Manager's submission of invoices to Buyer pursuant to Section 3.4(iv)(l). In the event the Fuel Manager or Buyer finds any material defect in an invoice or disputes the amount due (whether before or after such invoice is paid), the discovering Party shall promptly notify the other of same and Fuel Manager shall pursue all commercially reasonable measures to remedy all such discrepancies on behalf of Buyer.

ARTICLE 4 - FUEL MANAGEMENT SERVICES COMPENSATION

4.1 Payments during Front-End Transition Period

The Fuel Manager shall be paid for Front-End Transition Services in accordance with the payment schedule in Appendix 2 and in accordance with Section 5.1.

4.2 Monthly FM Services Payments

(i) Except as otherwise provided in this Agreement, Buyer will make monthly payments to Fuel Manager consisting of an amount equal to the FM Services Fee.

(ii) FM Services Fee. Except as otherwise provided in this Agreement, the Fuel Manager shall be paid a monthly fuel management fee (the "FM Services Fee") as set forth in Appendix 2 as consideration for performing the Fuel Management Services contemplated in this Agreement. Buyer shall pay the FM Services Fee to Fuel Manager in accordance with Section 5.1.

(iii) If Buyer has elected Fuel Manager Payment Option, Fuel Manager shall maintain a non-interest bearing account that shall be used solely for the purpose of paying Fuel and Fuel-related invoices ("Invoice Payment Account"). Buyer will use commercially reasonable efforts to deposit such funds no later than two (2) Business Days prior to any payment due date of Fuel and Fuel-related invoices. In the event there remains a balance in the Invoice Payment Account after payment of all invoices during a time interval, such balance will be carried as an offset to funds required during the next time interval, unless Buyer requests that such balance be refunded to Buyer.

(iv) In the event that Buyer fails to comply with Section 4.2(iii) resulting in any late payments and/or non-payments being made to third party suppliers by Fuel Manager as agent for Buyer during any Contract Year, provided further that Fuel Manager has complied with its obligations in Sections 3.4(iv)(l) and 3.6(iv), then the FM Services Fee shall be increased for the next Contract Year by \$10,000.00 for each such event of non-compliance (which such increase shall not be considered in computing the FM Services Fee for subsequent Contract Years thereafter).

(v) In the event that the Fuel Manager fails to pay any invoice on a timely basis and such failure is not due in whole or in part to lack of sufficient funds in the Invoice Payment Account, the Buyer shall have the right, but not the obligation, to pay such bill and to recover from Fuel Manager any financing costs incurred by Buyer related to this Agreement.

(vi) Account Records. The Fuel Manager shall maintain such records as Buyer reasonably requests setting forth in accurate and reasonable detail the information relating to the purchase and sale of Fuel hereunder requested by Buyer. At a minimum, the Fuel Manager shall maintain and provide the records in a manner such that data by various supplier classifications can readily be reported on a monthly basis for current and historical billing information concerning Fuel transaction costs to Buyer in such form as reasonably requested by the Buyer. The Fuel Manager shall retain any records that it is required to maintain pursuant to this subparagraph for the term of this Agreement, as well as for any record retention period specified in this Agreement, and shall deliver such records to Buyer upon Buyer's request.

(vii) Collection of Monies. All monies collected by the Fuel Manager in its capacity as LIPA's designated agent pursuant to this Agreement shall be the property of Buyer and shall be deposited by the Fuel Manager daily into such accounts and in the manner as Buyer may from time to time designate. In collecting such monies on behalf of Buyer, the Fuel Manager shall have no right or claim to such moneys and, without limiting the generality of the foregoing, shall have no right to assert a claim of set-off, recoupment, abatement, counterclaim or deduction for any amounts which may be owed to the Fuel Manager hereunder or with respect to any other matter in dispute hereunder or otherwise. The Fuel Manager is unconditionally and absolutely obligated to pay or deposit such moneys as directed by Buyer.

4.3 **Fuel Management Performance Penalty**

In the event that Fuel Manager's performance in any Contract Year fails to meet the performance metrics established by the Parties pursuant to Appendix 2, Fuel Manager shall pay to Buyer a Fuel Management Performance Penalty calculated in accordance with Appendix 2. Fuel Manager's performance will be measured at such intervals as are appropriate for each particular performance metric specified in Appendix 2 and any penalties will be assessed within ninety (90) Days after the end of each Contract Year, with such amounts reflected in equal Monthly deductions from the Fuel Management Fee during the remaining Months of the subsequent Contract Year. The total Fuel Management Performance Penalty for each Contract Year shall not exceed ten percent (10%) of the FM Services Fee for such Year.

ARTICLE 5 - BILLING AND COLLECTIONS

5.1 **Billing by Fuel Manager**

(i) On or about the twentieth (20th) Day of each Month during the Term (and the Month immediately following the end of the Term), the Fuel Manager shall send Buyer a Monthly invoice for the FM Services Fee for the preceding Month calculated pursuant to Appendix 2, less any amount owed by Fuel Manager to Buyer for a Fuel Management Performance Penalty; and

(ii) Buyer shall be obligated to pay to Fuel Manager, within thirty (30) Days of the receipt of each invoice satisfying the conditions set forth in paragraph (i) above, any undisputed amounts owed to Fuel Manager.

5.2 **Billing by Buyer**

(i) Commencing at the end of the first (1st) Month after any FM Services LDs or other charges are owed by Fuel Manager, Buyer shall send Fuel Manager an invoice for any applicable FM Services LDs or other charges for the preceding Month.

(ii) Buyer shall deliver each invoice to Fuel Manager's billing address as set forth in Section 15.2 herein. Such invoice shall include the basis of the calculation of the payment amounts, the applicable rates and any interest charges or other adjustments to the amounts owed.

(iii) Fuel Manager shall be obligated to pay to Buyer, within thirty (30) Days of the receipt of any invoice, any undisputed amounts owed to Buyer.

5.3 **Billing and Final Accounting**

(i) In the event Buyer contests in good faith the correctness of any calculations made by Fuel Manager in developing a Monthly invoice, Buyer shall provide Fuel Manager with written notice of such dispute and the basis for Buyer's contest. Fuel Manager shall promptly review the contested Monthly invoice and shall notify Buyer of any error in Fuel Manager's determination of the Monthly invoice amounts and issue an amended Monthly invoice in conjunction with any payment to, or request for payment from, the Buyer, as the case may be, in light of the redetermination. If Buyer disputes in good faith Fuel Manager's amended Monthly invoice amount, then Buyer may submit the matter for dispute resolution pursuant to the procedure set forth in Article 13. To the extent Fuel Manager disagrees with Buyer's basis for contesting the original Monthly invoice, Fuel Manager shall provide a written explanation of its position.

(ii) The Fuel Manager shall have two (2) years after the delivery of a Monthly invoice to correct the calculations made by Fuel Manager in developing the Monthly invoice and deliver a revised Monthly invoice to Buyer. Buyer shall have two (2) years after its receipt of any Monthly invoice to contest the correctness of any Monthly invoice. If payment already has been made by either Fuel Manager or Buyer within two (2) year period pursuant to contested Monthly invoice and a Party thereafter questions or contests the correctness of such previously reconciled Monthly invoice, neither Party shall be required to refund any payment received pursuant to the contested Monthly invoice and not subsequent Monthly invoices nor make any additional payment thereto until such time as it is finally determined that the contested Monthly invoice was in error.

5.4 **Interest**

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

5.5 Billing and Payment Records

In accordance with Supplement 1, after the receipt of any Monthly invoice, Buyer shall have the right to audit such books and Records of Fuel Manager as are reasonably necessary for Buyer to verify the calculation of the Fuel Management Services payments as well as all other information provided to Buyer pursuant to Article 6.

ARTICLE 6 - ADMINISTRATIVE ISSUES

6.1 Staffing and Labor Issues

The Fuel Manager shall employ, supervise, and monitor its employees and/or contractors in sufficient numbers and possessing sufficient skills to perform the services required of the Fuel Manager under this Agreement consistent with Prudent Utility Practices. The Fuel Manager shall provide proper training for its employees and/or contractors in the performance of their work under this Agreement. The Fuel Manager shall assure that the Fuel Manager's employees are qualified to perform their work and the services contemplated by this Agreement in accordance with Prudent Utility Practices, and the Fuel Manager shall give due consideration to any comments of Buyer with respect to the performance of specific employees and/or contractors. At all times, the Fuel Manager shall comply with Prudent Utility Practices, Legal Requirements, Buyer's Standards of Conduct and Fuel Manager's Standards of Conduct with respect to performing its Fuel Manager's obligations under this Agreement. In the event of a conflict in such standards with respect to the Fuel Management Services, the more restrictive standards of conduct shall control. In addition to the foregoing, the Fuel Manager will certify that its employees and contractors engaged in Fuel Management Services on Buyer's behalf shall not disclose to any Person not authorized under this Agreement or by the specific, prior written consent of Buyer, or use information about Buyer, including, without limitation, information regarding Buyer's Fuel purchase or trading activities, or for any reason with respect to Fuel Manager, its Affiliates, any other client of Fuel Manager and/or any other third party. Nothing in this Agreement shall create a co-employment relationship between Fuel Manager and LIPA. Employees of Fuel Manager providing services under this Agreement remain exclusively employed by Fuel Manager. Employees of LIPA providing services under this Agreement remain exclusively employed by LIPA. Each party will be responsible for managing its employees, for providing wages and benefits, and for making appropriate withholdings and deductions from wages.

6.2 Availability of Fuel Manager Representatives

(i) Availability of Representatives: The Fuel Manager shall designate qualified representatives who shall be available at the Fuel Manager's office(s) during Buyer's normal business hours between the hours of 8:00 am to 5:00 pm (EPT), on a Business Day for communication with Buyer and Buyer's designated representatives or with suppliers of Fuel.

(ii) 24 Hour Availability: The Fuel Manager shall maintain telephone number(s) for use by Buyer and Buyer's designated representatives or suppliers of Fuel on a 365 day/24 hour

basis. During other than normal business hours, the Fuel Manager will make available responsible personnel who have access to information used to provide Fuel Management Services and who have the authority to call in additional Fuel Manager personnel as necessary to perform Fuel Management Services.

6.3 Compliance with Legal Requirements

The Fuel Manager shall perform all of its obligations hereunder in accordance with Legal Requirements. In the event that the Fuel Manager fails at any time to comply with Legal Requirements, then the Fuel Manager shall immediately remedy such failure at its sole cost and expense and bear all loss-and-expense of either Party and pay any resulting damages, fines, assessments or other charges resulting there from to the extent provided in Section 6.10 hereof. Any such damage, fine, assessment or other charge paid by the Fuel Manager due to a violation of Legal Requirements for which Buyer is responsible under Section 6.10 shall be the responsibility of, and paid for directly by, Buyer.

6.4 Hedging Activities

The Fuel Manager will not engage in any financial hedging activities as agent for Buyer without express written approval from Buyer prior to implementing such activities.

6.5 Information System

The Fuel Manager shall establish and maintain during the Term an information system to provide storage and real time retrieval for Buyer review and copying of settlement quality operating data relating to (i) cost and quantities of Fuel purchases, (ii) cost and quantities of Fuel Transportation purchases, and (iii) the performance by the Fuel Manager of its obligations hereunder, including, but not limited to, all information necessary to verify calculations made pursuant to this Agreement. In the event that Buyer installs a new system for the collection and use of operating and cost data pertaining to the LIPA Generating Facilities with respect to Fuel services, at Buyer's request, Fuel Manager will be responsible to provide requested fuel data in a format compatible with Buyer's data systems.

6.6 Books and Records

(i) The Fuel Manager shall prepare and maintain proper, accurate and complete records of accounts as Buyer reasonably requests setting forth in accurate and reasonable detail the FM Services Information. Without limiting the generality of the foregoing, the FM Services Information shall include by way of example the following:

- (a) Volumes of Fuel purchases;
- (b) Volumes of Fuel sales;
- (c) Monthly Fuel costs;
- (d) Forecast of next month's cash requirements;

(e) Information required for any applicable U.S. Department of Energy reports; and

(f) Information required for Buyer's official statements accompanying its bond financings.

(ii) The Fuel Manager shall prepare and maintain proper, accurate and complete books, records and accounts regarding Fuel to the extent necessary (a) to enable Buyer or the Authority to prepare the Authority's financial statements in accordance with generally accepted accounting principles, (b) to verify data with respect to any operations or transactions in which the Authority has a financial or other material interest hereunder, (c) to prepare periodic performance reports and statements relating to the purchase of Fuel, which shall be submitted by the Fuel Manager to the Authority, and (d) to enable the Authority to administer any fuel adjustment clause or similar provision applicable to electricity sales. The Fuel Manager shall, upon notice and demand from the Authority, produce for examination and copying at the Fuel Manager's office or at Buyer's office, by representatives of the Authority, all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of this Agreement, any subcontract or any transactions in which the Authority has or may have a financial or other material interest hereunder, and shall produce such operation books and records for examination and copying in connection with the costs for which the Authority may be responsible hereunder. The provisions of this subsection 6.6 shall survive the termination of this Agreement for a period of six (6) years from the date on which this Agreement terminates.

6.7 Fiscal Affairs, Accounting, and Record Keeping

(i) General. The Fuel Manager shall maintain possession of equipment, materials and supplies, maps, plans and specifications, and FM Service Information during the Term of this Agreement.

(ii) Bank Deposits. All money collected by the Fuel Manager in accordance with Section 4.2(vii) for the account of Buyer shall be deposited on each Business Day in the Invoice Payment Account or such other bank accounts in such bank(s) as Buyer may direct and upon such terms and conditions as may be specified by Buyer.

6.8 Litigation; Permit Lapses

Promptly upon obtaining knowledge thereof, each Party shall submit to the other Party written notice of (and, upon request, copies of any relevant non-privileged documents in the Party's possession relating to): (i) any material litigation, claims, disputes or actions actually filed, or any material litigation, claims, disputes or actions which are threatened, concerning in each case, the Fuel Management Services or Buyer's obligations relating thereto; (ii) any actual refusal to grant, renew or extend, or any action pending or any action filed with respect to, the granting, renewal or extension of any permit relating to the Fuel Management Services or Buyer's obligations relating thereto or any material threatened action regarding the same; (iii)

any dispute with any Governmental Body relating to the Fuel Management Services or Buyer's obligations relating thereto; and (iv) without regard to their materiality, all penalties or notices of violation issued by any Governmental Body relating to Fuel Management Services or Buyer's obligations relating thereto.

6.9 **Other Services**

(i) **Attendance at Meetings.** The Fuel Manager's Representative shall attend meetings scheduled by Buyer in connection with Fuel Management Services.

(ii) **Operational Advice.** As requested by Buyer, the Fuel Manager shall advise Buyer as to the costs and benefits of fuel supply, transportation or storage arrangements that may be available to Buyer.

(iii) **Additional Services.** Upon the Parties' mutual agreement, Fuel Manager shall perform additional Fuel Management related services for Buyer at the hourly rates set forth in Appendix 2, however, Buyer and Fuel Manager may mutually agree in writing to alternative terms and conditions for such Additional Services.

6.10 **Responsibility for Losses or Expense Incurred by Fuel Manager**

Except to the extent due to Buyer Fault and solely to the extent due to a third party claim and circumstance described in subsections (a), (b) or (c) below, in each case as determined by either a final non-appealable order or judgment of a court of competent jurisdiction (including administrative tribunals), the Fuel Manager shall be responsible and liable for, and shall not be entitled to reimbursement from the Buyer for, any loss or expense incurred by the Fuel Manager relating to its obligations hereunder to the extent:

(a) due to any negligence or willful misconduct by the Fuel Manager during the period commencing from the FMA Effective Date, and during the Term in carrying out its obligations hereunder;

(b) due to any violation of, or failure of compliance with, Legal Requirements by the Fuel Manager during the period commencing from the FMA Effective Date, and during the Term, and until such time as the Agreement expires or is terminated in accordance with its terms and conditions; or

(c) due to any criminal violation of Legal Requirements by the Fuel Manager.

6.11 **Conflicts of Interest**

All conflicts of interest will be resolved in a manner consistent with the requirements of Section 4.18 of Amended and Restated OSA.

ARTICLE 7 - DESIGNATION OF REPRESENTATIVES

7.1 LIPA's Representative

Not later than thirty (30) Days after the execution and delivery of this Agreement, Buyer shall select representatives who shall be authorized by Buyer to act, and who shall act, for and on behalf of Buyer in all matters concerning this Agreement to the extent so authorized (the "LIPA Representative(s)"). In all such matters, Buyer shall be bound by the written communications, directions, requests and decisions made by the LIPA Representative(s) acting within the scope of his or her authority. Buyer shall promptly notify Fuel Manager in writing of LIPA's Representative selection and any subsequent replacement(s) and of the telephone numbers or other means by which such persons and their designees may be contacted at all times.

7.2 Fuel Manager's Representative

Not later than thirty (30) Days after the execution and delivery of this Agreement, Fuel Manager will select a representative (the "Fuel Manager's Representative") who shall be authorized by Fuel Manager to act, and who shall act, for and on behalf of Fuel Manager in all matters concerning this Agreement. In all such matters, Fuel Manager shall be bound by the written communications, directions, requests and decisions made by the Fuel Manager Representative. Fuel Manager shall promptly notify Buyer in writing of Fuel Manager's Representative selection and any subsequent replacement(s). The Fuel Manager Representative shall have appropriate experience with respect to the supervision and management of services of the type contemplated by this Agreement and who shall be responsible for the day-to-day supervision of the Fuel Manager's performance of this Agreement. The Fuel Manager shall inform the Buyer of the identity of the person serving from time to time as Fuel Manager Representative, and of the telephone numbers or other means by which such person and his or her designee may be contacted at all times. Recognizing the need for an amicable working relationship between the Buyer and the Fuel Manager, the Buyer shall have the right to approve the appointment of the Fuel Manager Representative and any successors thereto, such approval not to be unreasonably withheld. The Fuel Manager's Representative or a pre-approved designee shall attend monthly meetings (or more frequently as appropriate) to discuss such matters as Buyer deems appropriate.

ARTICLE 8 - FUEL MANAGER SECURITY

8.1 Fuel Manager Security Amount

As security for Fuel Manager's payment and performance obligations under this Agreement, and the payment of FM Services LDs, the Fuel Manager shall deliver to Buyer, within five (5) Business Days of date on which Front-End Transaction Services commence, at Fuel Manager's sole cost and expense, a Guaranty or Letter(s) of Credit prior to the FM Services Target Date and maintain same throughout the Term in an amount equal to two (\$2,000,000) million dollars and zero cents ("Fuel Manager Security").

8.2 **Replacement of Fuel Manager Security**

(i) Any Guaranty or Letter of Credit provided as Fuel Manager Security shall be issued by an issuer meeting the requirements contained in the definition of “Guarantor” or “Letter of Credit”, and if at any time such provider of a Guaranty or issuer of a Letter of Credit fails to meet such requirements or becomes Bankrupt, the Fuel Manager shall promptly replace such Guaranty or Letter of Credit within five (5) Business Days of such event. Notwithstanding the foregoing, if no Event of Default by the Fuel Manager has occurred that is continuing, and no Event of Default by the Fuel Manager will occur upon the giving of notice, the passage of time or both, the Fuel Manager shall have the right to replace any Guaranty or Letter of Credit with another Guaranty or Letter of Credit; provided, that any such replacement meets the terms and conditions of Fuel Manager Security under this Agreement; and provided further that there is no lapse in Fuel Manager Security.

(ii) In the event the Letter of Credit is being replaced, Buyer shall promptly mark such Letter of Credit as “cancelled” and return the original of same to the Fuel Manager and shall take such other actions as reasonably may be requested by the issuer of such Letter of Credit to evidence the cancellation thereof; provided, that there is not lapse in Fuel Manager Security, and at Fuel Manager’s sole cost and expense.

(iii) If the applicable substitute Fuel Manager Security shall be replacing a Guaranty, then Buyer shall execute such release documentation as may be reasonably requested by Fuel Manager, at Fuel Manager’s sole cost and expense.

8.3 **Draw on Fuel Manager Security**

Any amounts owed by the Fuel Manager to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of written notice by LIPA to Fuel Manager of same becoming due and owing may be satisfied by Buyer on a draw on Fuel Manager Security. Buyer may also draw on Fuel Manager Security as provided in Section 8.5. Prior to termination, Buyer shall have the right to draw upon Fuel Manager Security in the event of an Event of Default for any undisputed amounts owed to Buyer under this Agreement.

8.4 **Replenishment**

In the event Buyer draws upon the Fuel Manager Security, as provided for in Section 8.3, the Fuel Manager shall replenish the amount of security required by Section 8.1 within ten (10) Days.

8.5 **Draw on Letter of Credit if Fuel Manager Becomes Bankrupt**

If Fuel Manager becomes bankrupt and LIPA is due money from Fuel Manager, Buyer is entitled to make a draw or draws upon any Letter of Credit constituting Fuel Manager Security up to two (2) times the amount that is due and owing to LIPA by Fuel Manager. With respect to those amounts drawn that are not used to satisfy any amount owed by Fuel Manager to Buyer hereunder, Buyer shall hold such amounts separate and apart from all other funds of Buyer in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid with respect to Fuel Manager’s obligations to Buyer prior to

Fuel Manager becoming Bankrupt are not subject to being recovered from Buyer pursuant to Sections 544, 547, 548, 549 or 550 of the U.S. Bankruptcy Code (or pursuant to any successor or similar provisions of law) in any proceeding instituted under the U.S Bankruptcy Code, or any comparable provision of any applicable state or federal bankruptcy or creditors' rights law, by or against Fuel Manager. To the extent permitted by law, if such a final determination is made, Buyer shall pay Fuel Manager the funds drawn under the Letter of Credit pursuant to the first sentence of this Section 8.4, net of any amounts that have been applied in regard to amounts owed by Fuel Manager to Buyer, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Buyer, Buyer shall retain the funds drawn under the Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Fuel Manager.

8.6 Expiration of Letter of Credit

If a Letter of Credit is serving as Fuel Manager Security, Fuel Manager shall replace such Letter of Credit with another Letter of Credit more than five (5) Business Days before the expiration of the Letter of Credit. If Fuel Manager fails to provide such substitute Fuel Manager Security more than five (5) Business Days before the expiration of the Letter of Credit, Buyer, following two (2) Days prior written notice to Fuel Manager, may draw the full amount of the Letter of Credit and hold the proceeds until Fuel Manager Security satisfying the requirements of this Agreement is provided to Buyer (and Buyer may at any time apply such proceeds to any amount due and owing from Fuel Manager to Buyer).

ARTICLE 9 - INSURANCE

9.1 Insurance Required

The Fuel Manager shall, at its sole cost and expense, acquire and maintain in full force and affect the types and amounts of insurance coverage described in this Article 9 for the full term of this Agreement. Such insurance shall include coverage for Buyer and such other person's or interests as Buyer may reasonably designate as insured parties. Such insurance shall be in place with responsible and reputable insurance companies that comply with Legal Requirements and have an A.M. Best rating of a least "A-,VII".

9.2 Certificates of Insurance

Pursuant to the timing set forth in Section 3.2, the Fuel Manager will provide Buyer with certificate(s) of insurance evidencing the required coverage set forth in Article 9. Failure by Fuel Manager to obtain the insurance coverage or certificate(s) of insurance required by this Article 9 shall not relieve Fuel Manager of the insurance requirements set forth herein or therein or in any way relieve or limit Fuel Manager's obligations and liabilities under any other provision of this Agreement.

9.3 Insurance Notice to Buyer

The Fuel Manager shall send Buyer a written notice of cancellation or termination of Fuel Manager's insurance coverage required under this Article.

9.4 Summary of Insurance Policies, Limits and Requirements

(i) Throughout the term of the Agreement, the Fuel Manager shall, at its own cost, maintain or, if qualified, shall self-insure, the following insurance requirements:

(a) 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 \$10,000,000 each accident.

(b) Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles with a combined single limit for bodily injury property damage liability in an amount of \$10,000,000 each accident.

(c) Third Party Liability: Third Party Liability insurance on a Commercial, Comprehensive, or similar general liability insurance policy using a "Claims Made" form, including operations of independent contractors; with a combined single limit for bodily injury, personal injury and property damage liability in amounts of \$10,000,000 each occurrence and in the aggregate each policy year.

(d) Business Property and Business Interruption: Insurance against all risks of loss of or damage to, and for the full replacement value of, all property and equipment of the Fuel Manager utilized for or in connection with the Services rendered under this Agreement. Such insurance shall be extended to cover 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.

(e) Umbrella or Excess Liability. The limits of insurance specified in Sections 9.4(i)(a) through 9.4(i)(d) may be satisfied: (1) by the purchase of the specified limits in the separate policies, or (2) with the purchase of Umbrella or Excess Liability insurance which in combination with the limits of the separate policies or deductibles and self-insured retentions providing the total limit required by each type of insurance. Self-insurance includes all risk coverage's typically available to be insured but which are not insured. These include, but are not limited to, state-approved, self-insurance programs for otherwise legally required Employer's Liability or automobile liability (also known as self-insurance permits), deductibles/self-insured retentions within or below insured policies, and risks excluded by insured policies.

(ii) In addition to the insurance coverages to be procured and maintained by Fuel Manager under this Article 9, Buyer may also require Fuel Manager to procure and maintain other forms and/or types of insurance, which Fuel Manager agrees to procure and maintain, as long as the insurance is available at commercially reasonable terms and conditions; provided that Buyer shall reimburse Fuel Manager pursuant to Section 5.1(i)(b) for the insurance premium for such other insurance that Buyer requires Fuel Manager to procure and maintain.

9.5 General Provisions

(i) Additional Insured. With the exception of Workers' Compensation and Employer's Liability, Buyer shall be included as an additional insured, and any other party(ies) reasonably requested by Buyer shall be named as additional insured for occurrences arising out of or in connection with Fuel Manager's performance of this Agreement except for claims arising from Buyer's sole negligence or willful misconduct. With respect to Worker's Compensation and Employer's Liability, Buyer and any other party reasonably requested by Buyer shall be named as Alternate Employer.

(ii) With respect to the Alternate Employer Endorsement, Fuel Manager agrees to obtain such Alternate Employer Endorsement only for so long as (a) such endorsement is available from Fuel Manager's insurers and (b) Fuel Manager can procure such endorsement at a reasonable premium, as reasonably determined by Fuel Manager. In the event, that Fuel Manager is unable to procure the Alternate Employer Endorsement at a reasonable premium as reasonably determined by Fuel Manager, Fuel Manager shall notify Buyer and, if Buyer so agrees, shall procure the Alternate Employer Endorsement, provided Buyer agrees to pay the actual and verifiable amount of the premium that is in excess of the reasonable premium as reasonably determined by the Fuel Manager for such Alternate Employer Endorsement for so long as Buyer requires Fuel Manager to maintain such endorsement.

(iii) Waiver of Subrogation. Buyer and any other party reasonably requested by Buyer shall be granted waivers of subrogation by insurers providing coverage as required by this Section.

(iv) Severability of Insured. All policies required in this Section shall provide that:

(a) 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

(b) 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.

(v) Notice of Cancellation. Notices of cancellation or material changes to any insurance policy terms and conditions will be provided in accordance with the insurance policy documents. Fuel Manager shall not request or acquiesce to any material change to any of the insurance coverage's required to be maintained by the Fuel Manager under this contract without the approval of LIPA, which shall not be unreasonably withheld. Additionally, the Fuel Manager shall give LIPA prompt notice of any cancellation of or material change to any such insurance coverage's, but in no event later than five (5) Days after it learns of such cancellation or material change.

(vi) Deductibles. Any and all deductible amounts under policies provided by Fuel Manager pursuant to this Section shall be assumed by, for the account of, and at the sole risk of Fuel Manager.

(vii) Claims Made. When coverage(s) are written on a “claims made” or “first made” form, the Fuel Manager agrees to maintain comparable claims made coverage in effect for a period of five (5) years after expiration of the Agreement, with a retroactive date no later than the initial FMA Effective Date of the Agreement.

9.6 **Fuel Manager Disclosure and Cooperation**

Where Fuel Manager is providing insurance coverage for the benefit of Buyer, procuring insurance at request of Buyer, and/or securing coverage at the expense of Buyer, Fuel Manager shall make complete and timely disclosure of all information as may be requested from time to time by Buyer and provide full cooperation in securing such coverages as may be requested by Buyer. Such disclosure and cooperation shall include, without limit, an exact copy of the applicable insurance policy wording, premium calculation, rating structure, disclosure of No Claims Bonuses and/or profit sharing, information regarding cargo shipments and related surveys, fees or commissions paid to brokers or consultants, and/or other fees or expenses which may be incurred by Buyer in conjunction with the procurement of said insurance.

ARTICLE 10 - FORCE MAJEURE

10.1 **Definition**

(i) The term “Force Majeure Event” means an event that was not within the control of the Party claiming its occurrence, including without limitation, acts of God and public enemies, war, terrorism, civil disobedience, floods, fires, strikes, explosions or other catastrophes, failure of utilities, sabotage, failure of communication facilities, including but not limited to third party Internet service provider facilities and could not have been prevented, avoided, or minimized by such Party through the exercise of due diligence, which includes the development of reasonable contingency plans consistent with Prudent Utility Practices. No Party shall be required to settle any labor disputes against its will.

(ii) The economic hardship of a Party shall not be a Force Majeure Event, and a Force Majeure Event shall not excuse the payment of money. In addition, a Force Majeure Event does not, and shall not include the Fuel Manager’s negligence or intentional misconduct, which has materially contributed to the Fuel Manager’s delay in carrying out, or is its failure to perform, or failure to carry out its duties and obligations under this Agreement.

10.2 **Force Majeure Event**

If due to a Force Majeure Event either Party is wholly or partially unable to perform its obligations under this Agreement so long as such Party is in compliance with this Article 10, such Party shall (i) be excused from performance solely for the duration of, and solely to the extent that, such Force Majeure Event prevents such Party from performing its obligations under this Agreement, and (ii) shall not be in default in respect of the obligation hereunder.

10.3 **Notice and Due Diligence**

A Party claiming the existence of an event of Force Majeure Event (the “Claiming Party”) shall (i) provide prompt notice of such Force Majeure Event to the other Party (the “Non-Claiming Party”), (ii) within two (2) Business Days after providing prompt notice, provide to 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, (iii) use commercially reasonable efforts in accordance with Prudent Utility Practices to continue to perform its obligations under this Agreement and to remedy the condition that prevents performance and mitigate the effects of the same, and (iv) keep the Non-Claiming Party informed in writing of all efforts to mitigate and remedy the Force Majeure Event, including periodic updates to the duration estimate and, if applicable, notice of the Force Majeure Event’s cure. Any delay in furnishing such notice shall not delay the effective time of a suspension under this Section. The Claiming Party asserting the occurrence of a Force Majeure Event shall use its commercially reasonable efforts to restore full performance by removing the Force Majeure Event or providing alternative performance.

10.4 **Suspension of Performance**

The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event.

10.5 **Extended Force Majeure Event**

(i) If the Claiming Party has reason to believe that an event of Force Majeure Event will prevent it from performing its obligations required by this Agreement for one (1) Month or longer, it shall so notify the Non-Claiming Party in writing within one (1) Day of the Claiming Party determining that such event of Force Majeure Event may continue for one (1) Month or longer and shall submit a written plan to the Non-Claiming Party within five (5) Days after such notification which shall set forth the actions the Claiming Party plans to take that will mitigate or cure the event of Force Majeure Event (“Force Majeure Remedy Plan”).

(ii) While the Force Majeure Event Remedy Plan is in effect, the Claiming Party shall provide bi-weekly status reports notifying the Non-Claiming Party of the steps taken to remedy the effects of the Force Majeure Event and the expected remaining duration of the Claiming Party’s inability to perform its obligations.

10.6 **Right to Terminate**

The Non-Claiming Party may at any time terminate this Agreement upon thirty (30) Days prior written notice if the Claiming Party: (i) fails to provide a Force Majeure Remedy Plan as provided for in this Article 10; (ii) fails to commence implementation of, and diligently pursue, the Force Majeure Remedy Plan; provided, however, that the Claiming Party shall have five (5) Days from receipt of Non-Claiming Party’s notice to cure its failure to commence and diligently pursue its Force Majeure Remedy Plan (unless a cure of such failure is not reasonably capable of being effected within five (5) Days, in which case the Claiming Party shall have an additional five (5) Days in which to commence such cure provided that the Claiming Party is thereafter

diligently pursuing efforts to perform such cure); or (iii) fails to remedy the effects of the Force Majeure Event within thirty (30) Days following the date on which the Force Majeure Remedy Plan was required to be submitted.

ARTICLE 11 - DEFAULT, TERMINATION, & REMEDIES

11.1 Default by Fuel Manager

The occurrence of one or more of the following events shall constitute an “Event of Default” by Fuel Manager unless it results from Buyer Fault, an FMA Effective Date Delay or is otherwise excused pursuant to the terms of this Agreement:

(i) Fuel Manager fails to perform or observe any material obligation or series of obligations of Fuel Manager under this Agreement, other than those obligations specifically addressed in this Section for which a remedy is expressly provided in this Agreement, which failure has a material and adverse effect on the ability of Fuel Manager or of Buyer to perform its respective material obligations under this Agreement and such failure continues without cure for a period of ten (10) Days after written notice thereof from Buyer, unless a cure is reasonably not capable of being made or implemented within such ten(10) Day period, in which case the Fuel Manager shall have an additional ten (10) Day period in which to cure.

(ii) Any representation or warranty made by Fuel Manager herein or in any certificate delivered to Buyer pursuant hereto which proves to be incorrect in any material respect when made and such error has a material and adverse effect on the ability of Fuel Manager or Buyer to perform its respective material obligations under this Agreement, unless Fuel Manager is able to promptly commence and diligently pursue action to cause the facts or circumstances which are the subject of such representation or warranty to become true in all material respects and does so within ten (10) Business Days after written notice thereof has been given to Fuel Manager by Buyer and provided that such actions remove any material adverse effect on Buyer as a result of such representation or warranty having been incorrect, unless such action is reasonably not capable of being undertaken or completed within such ten (10) Business Day period, in which case, Fuel Manager shall have an additional ten (10) Business Day period in which to take and complete such action.

(iii) Fuel Manager fails to pay any amount payable by Fuel Manager to Buyer (other than amounts in dispute that are not expressly required by this Agreement to be paid, and other than amounts for which draw-downs are made under Fuel Manager Security); provided, however, that such security is renewed or replaced in accordance with Article 8 below) pursuant to this Agreement after the same shall have become due and payable and such failure continues for a period of thirty (30) Days after receipt of written demand therefore from Buyer.

(iv) A court having jurisdiction shall enter:

(a) a decree or order for relief in respect of Fuel Manager in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law regarding all of Fuel Manager’s assets; or

(b) a decree or order adjudicating Fuel Manager bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Fuel Manager under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, trustee, sequestrator or other similar official for Fuel Manager (“Bankrupt”).

(v) Fuel Manager shall:

(a) commence a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated bankrupt or insolvent;

(b) consent to the entry of a decree or order for relief in respect of Fuel Manager in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it;

(c) file any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law;

(d) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, trustee, sequestrator or similar official for Fuel Manager; and

(e) make an assignment for the benefit of creditors (other than to its Lenders);
or

(f) admit in writing its general inability to pay its debts as they become due.

(vi) The failure of Fuel Manager to provide, renew, maintain, extend or replace the Fuel Manager Security pursuant to Article 8 and such failure is not cured within thirty (30) Days after notice thereof has been given to Fuel Manager.

11.2 **Default by Buyer**

The occurrence of any of the following events shall constitute an Event of Default by Buyer unless it results from a breach of this Agreement by Fuel Manager or is otherwise excused pursuant to the terms of this Agreement:

(i) Buyer fails to pay any amount payable by Buyer to Fuel Manager (other than amounts in dispute that are not expressly required by this Agreement to be paid) pursuant to this Agreement after the same shall have become due and payable and such failure continues for a period of ten (10) Days after receipt of written demand therefore from Fuel Manager.

(ii) Buyer fails to perform or observe any material obligation or series of obligations of Buyer under this Agreement, other than those obligations specifically addressed in this Section or for which a remedy is expressly provided in this Agreement, which failure has a material and adverse effect on the ability of Fuel Manager or of Buyer to perform its respective

material obligations under this Agreement and such failure continues without cure for a period of ten (10) Days after written notice thereof from Fuel Manager, unless such a cure is reasonably not capable of being made or implemented within such ten (10) Day period, in which case Buyer shall have an additional ten (10) Day period in which to cure.

(iii) Any representation or warranty made by Buyer herein or in any certificate delivered to Fuel Manager pursuant hereto which proves to be incorrect in any material respect when made and such error has a material and adverse effect on the ability of Fuel Manager or Buyer to perform its respective material obligations under this Agreement, unless Buyer is able to promptly commence and diligently pursue action to cause the facts or circumstances which are the subject of such representation or warranty to become true in all material respects and does so within ten (10) Business after written notice thereof has been given to Buyer by Fuel Manager and provided that such actions remove any material adverse effect on Fuel Manager as a result of such representation or warranty having been incorrect, unless such action is reasonably not capable of being undertaken or completed within such ten (10) Business Day period, in which case, Buyer shall have an additional ten (10) Business Day period in which to perform, take and complete such action.

(iv) A court having jurisdiction shall enter:

(a) a decree or order for relief in respect of Buyer in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law regarding all of Buyer's assets; or

(b) a decree or order adjudicating Buyer bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Buyer under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, trustee, sequestrator or other similar official for Buyer.

(v) Buyer shall:

(a) commence a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated bankrupt or insolvent;

(b) consent to the entry of a decree or order for relief in respect of Buyer in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it;

(c) file any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law;

(d) consent to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, trustee, sequestrator or similar official for Buyer;

- (e) make an assignment for the benefit of creditors (other than to its Lenders);
or
- (f) admit in writing its general inability to pay its debts as they become due.

11.3 **Notice of and Event of Default**

Upon actual discovery of an Event of Default, a non-defaulting Party claiming the occurrence of such Event of Default shall promptly provide the alleged defaulting Party with written notice detailing the Event Default and any remedy sought (“Notice of Default”).

11.4 **Dispute of Claim of Event of Default**

If, within three (3) Days of the service of a Notice of Default pursuant to Section 11.3 (provided that the Event of Default is not pursuant to Section 11.1(iv), 11.1(v), or 11.2(i), 11.2(iv) and 11.2(v)), the Party alleged to be in default disputes in writing that an Event of Default has occurred, either Party may seek resolution of such dispute pursuant to the terms of Article 13 and this Agreement shall not be terminated by the Party claiming the occurrence of the Event of Default prior to such resolution.

11.5 **Remedies**

(i) If an Event of Default has occurred, which is not cured as provided herein, then the non-defaulting Party may, at its discretion, takes any or all of the following actions:

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

(b) provided that the non-defaulting Party is not seeking specific performance by the defaulting Party of its obligations hereunder, terminate this Agreement by giving written notice thereof to the defaulting Party.

(ii) Buyer shall also be entitled to draw upon any Fuel Manager Security established pursuant to Article 8 to satisfy in whole or in part any Fuel Manager obligations under this Agreement, provided that Buyer is not the defaulting Party, and provided further that such draw down of such security shall not relieve the Fuel Manager of its liability for amounts due and owing or for damages in excess of such Fuel Manager Security.

(iii) Fuel Manager acknowledges that, if it were to breach its obligations to provide Buyer with Fuel Management Services, Buyer would be irreparably harmed. In such circumstances, Buyer (provided Buyer is not the defaulting Party) shall be entitled to proceed directly to a court of competent jurisdiction and seek injunctive, declaratory or other injunctive relief as may be reasonably necessary to prevent such breach, without the requirement of posting any bond and without any additional findings or irreparable injury or other conditions to injunctive relief.

11.6 Procedure For Termination For Cause

(i) **Three (3) Day Notice.** If any Party shall have a right of termination for cause in accordance with Sections 2.2 or this Article 11 after allowing for any applicable cure period, the same may be exercised by notice of termination given to the Party in default at least three (3) Days prior to (or, in the case of a bankruptcy or insolvency default or Section 2.2 simultaneously with) the date of termination specified in such notice (the “**Termination Date**”).

(ii) **Termination by Buyer/Buyer Access.** In the event an Event of Default of the Fuel Manager occurs and Buyer issues a termination notice described herein or the Fuel Manager is terminated in accordance with Section 2.2 hereof, from the date of such issuance until the Termination Date, the Buyer shall have reasonable access to all information, data and Records concerning the Fuel Management Services in order to monitor the performance of the Fuel Manager and to ensure that the Fuel Manager complies with the provisions of this Agreement during such time period (the “**Termination Notice Period**”).

11.7 No Consequential Damages

Notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, neither Buyer nor Fuel Manager nor any of their Affiliates (nor any of their trustees, agents, employees, officers, directors, successors and assigns) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or non-performance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise. For purposes or clarity, damages based upon payment of the FM Services Fee shall not be deemed to be consequential damages pursuant to this Section 11.7.

11.8 Damages

To the extent any damages required to be paid under this Agreement are liquidated, the Parties agree that the damages are difficult or impossible to determine, otherwise obtaining an adequate remedy is inconvenient and the liquidated damages set forth in this Agreement constitute a reasonable approximation of the harm or loss.

11.9 Suspension of Performance

In addition to the remedies set forth above and, notwithstanding other provisions herein, whenever any Event of Default shall have occurred and is continuing, the non-defaulting Party, to the extent permitted by law and to the extent of such default, shall be entitled to suspend immediately its performance under this Agreement until such Event of Default is cured.

11.10 Limitations of Liability; Remedies and Damages

Each Party acknowledges and agrees that in no event shall any of the Party’s Affiliates or the partners, trustees, members, shareholders, owners, officers, managers, directors or employees of the Party or its Affiliates be liable to the other Party for any payments, obligations or performance due under this Agreement or any breach or failure of performance of either Party; and the sole recourse for payment or performance of the obligations under this Agreement shall

be against Fuel Manager or Buyer and each of their respective assets and not against any other Person. The total cumulative liability of Buyer and Fuel Manager to each other arising from or related to this Agreement, including, but not limited to any liability for liquidated damages or penalties (inclusive of liability arising out of third party claims for death, personal injury, or property damages, including real property, tangible personal property and intellectual property), whether the claims are based in contract, in tort, (including negligence or strict liability) or otherwise, shall not exceed three million dollars and zero cents (US\$3,000,000.00). The limitations set forth in this Section 11.10 shall not apply with respect to losses arising from a Party's gross negligence or willful misconduct.

11.11 Termination

For the avoidance of doubt, nothing in this Article 11 shall in any manner limit or modify Buyer's rights of termination set forth in Sections 2.2.

11.12 Certain Obligations of the Fuel Manager upon Termination or Expiration of This Agreement

Upon notice of early termination of the Agreement or prior to the expiration of this Agreement in accordance with the terms hereof and other than in the case of a termination resulting from a Default by Buyer, the Fuel Manager shall cooperate in the orderly transition to the new service provider and, without limiting the generality of the foregoing, shall:

(i) transfer all FM Services Information and all records, supplier lists and account information, operations and training manuals for all Fuel Management Services;

(ii) cease providing Fuel Management Services on the date or dates and to the extent specified by Buyer, provided that in so doing the Fuel Manager shall cooperate and coordinate with Buyer and any successor service provider so as to permit Buyer to maintain uninterrupted Fuel Management Services;

(iii) promptly deliver to Buyer or the successor fuel service provider, as Buyer shall direct, copies of all contracts and/or agreements, together with a summary statement of:

(a) any Fuel purchased but not yet scheduled for delivery to Buyer pursuant to each agreement;

(b) the expected delivery date of such Fuel and the related invoice;

(c) the monthly costs, as well as the total costs to be paid pursuant to each agreement and the terms of payment;

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

(e) a listing of any remaining obligations that survive the Agreement.

(iv) advise Buyer promptly of any special circumstances or provisions which might limit or prohibit cancellation of any agreement;

(v) as Buyer directs, notify the successor service provider or Buyer of all agreements, contracts or subcontracts, or hedging instruments (if applicable) entered into or utilized by the Fuel Manager in performance of this Agreement (including, but not limited to, any contracts for gas pipeline capacity (or portions thereof in the case of contracts entered into for multiple purposes) entered into to serve the LIPA Generating Facilities) and negotiate no additional agreements, contracts or subcontracts hereunder without the prior approval of Buyer;

(vi) furnish to Buyer all information in the possession of the Fuel Manager and any subcontractor on how the Fuel Manager or subcontractor obtained Fuel during the Term of this Agreement that would be helpful to Buyer (or any successor service provider) in performing these services in the future;

(vii) notify Buyer promptly in writing of any legal proceedings against the Fuel Manager by any contractor or subcontractor relating to the termination of the Fuel Management Services; and

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

11.13 Buyer Emergency Assumption of Fuel Management Services

In the event that the Fuel Manager, due to a Force Majeure Event or any other reason whatsoever (except in the event of a Buyer Event of Default or a good faith dispute between the Parties or Buyer Fault) fails, refuses or is unable to provide any or all Fuel Management Services contemplated hereby and Buyer or any Governmental Body reasonably determines that such failure endangers or menaces the public health, safety or welfare, then in the event and only to the extent of such failure, Buyer shall have the right, upon written notice to the Fuel Manager, during the period of such emergency, to perform the services which the Fuel Manager would otherwise be obligated to perform hereunder. The Fuel Manager agrees that in such event it will in good faith respond to Buyer's commercially reasonable requests for information and will cooperate during such period by providing FM Services Information and all records, supplier lists and account information, operations and training manuals, as well as provide access to databases to enable Buyer (or its third parties) to perform the Fuel Management Services during such period. The Fuel Manager agrees that, in such event, LIPA may direct the use of any or all of the Operating Assets of the Fuel Manager that are in use by Fuel Manager to provide Fuel Management Services hereunder at the time of such event for the above-mentioned purposes without paying the Fuel Manager or any other Person the FM Services Fee for such possession and use; provided, however, LIPA shall reimburse the Fuel Manager for its substantiated costs incurred due to such possession and use of the Operating Assets. The Parties acknowledge that if Buyer assumes the Fuel Management Services in accordance with this Section 11.13, any applicable cure period provided for in this Agreement for the Fuel Manager's benefit shall be tolled until such time as the Fuel Manager resumes performance of its obligations hereunder. Buyer's rights to perform the services anticipated to be performed by the Fuel Manager hereunder shall terminate at the time when such services can in the reasonable judgment of Buyer, be and are resumed by the Fuel Manager. It is further agreed that Buyer may at any time,

at its discretion, relinquish its performance of the Fuel Management Services thereupon demand that the Fuel Manager resume such services as provided in this Agreement. "Operating Assets" for purposes of this Section 11.13 shall mean those employees and subcontractors who at the time of such event are being used by Fuel Manager to provide FM Services hereunder.

ARTICLE 12 - ASSIGNMENT

12.1 Fuel Manager's Right to Assign

In accordance with Section 138 of the State Finance Law, this Agreement may not be assigned by Fuel Manager or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of Buyer and any attempts to assign this Agreement without Buyer's written consent are null and void. Any such permitted assignee must meet the Credit Requirements and must agree in writing to be bound by this Agreement. Fuel Manager may, however, assign its right to receive payment without Buyer's prior written consent unless this Agreement concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law. Fuel Manager may also assign this Agreement without Buyer's prior written consent to an Affiliate of Fuel Manager which is a wholly-owned direct or indirect subsidiary of its direct or indirect parent who assumes in writing all of Fuel Manager's obligations hereunder. The Affiliate of Fuel Manager as assignee shall have a level of experience of performing Fuel Management Services that is comparable to that of Fuel Manager.

12.2 Buyer's Right to Assign

Buyer may assign this Agreement and its rights and obligations hereunder without the consent of Fuel Manager to (i) an Affiliate, or (ii) a third party (or Affiliate thereof); provided that any such assignee is at least as creditworthy as LIPA as of the FMA Effective Date of this Agreement and agrees in writing to be bound by this Agreement.

ARTICLE 13 - DISPUTE RESOLUTION

13.1 General

Any dispute arising out of or relating to this Agreement shall be resolved in accordance with the procedures specified in this Article 13 which shall constitute the sole and exclusive procedures for the resolution of such disputes.

13.2 Negotiation and Non-Binding Mediation

The Parties agree to use their commercially reasonable efforts to settle promptly any disputes or claims arising out of or relating to this Agreement through negotiation conducted in good faith between representatives having authority to reach such a settlement. The Parties may mutually agree to, refer any such dispute or claim for advice or resolution by non-binding mediation to a suitable mediator. The mediator shall be chosen by the mutual agreement of the Parties. If the Parties are unable to agree, each shall designate a qualified mediator, who, together, shall choose a single mediator for the particular dispute or claim. If the mediator chosen

is unable, within fifteen (15) Days of such referral, to reach a determination that is acceptable to the Parties, the matter shall be referred to arbitration as set forth below. All negotiations and mediation discussions pursuant to this Section 13.2 shall be confidential, subject to Legal Requirements, and shall be treated as a compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and applicable New York State rules of evidence.

13.3 **Arbitration**

Any dispute subject to resolution under this Section Article 13 and which has not been resolved by discussion or mediation within thirty (30) Days from the date that either negotiations or mediation have commenced shall be settled by arbitration before three independent and impartial arbitrators (the “Arbitrators”) in accordance with the then current commercial arbitration rules of the American Arbitration Association, except to the extent that such rules are inconsistent with any provision of this Agreement, in which case the provisions of this Agreement shall be followed, and except that the arbitration under this Agreement shall not be administered by the American Arbitration Association without the express written agreement of the Parties. The Arbitrators shall be (i) independent of the Parties and disinterested in the outcome of the dispute, (ii) persons otherwise experts in the electric and Fuel industries, and (iii) qualified in the subject area of the issue in dispute. The Parties shall choose the Arbitrators within ten (10) Days. Judgment on the award rendered by the Arbitrators may be entered in any court in the State of New York having jurisdiction thereof. If either Party refuses to participate in good faith in the negotiations or mediation proceeding described in Section 13.2, the other Party may initiate arbitration at any time after such refusal without waiting for the expiration of the applicable time period. Except as provided in Section 13.4 relating to provisional remedies, the Arbitrators shall decide all aspects of any dispute brought to them including attorney disqualification and the timeliness of the making of any claim.

13.4 **Provisional Relief**

Either Party may, without prejudice to any negotiation, mediation or arbitration procedures, proceed in the courts of the State of New York to obtain provisional judicial relief if, in such Party’s sole discretion, such action is necessary to protect public safety, avoid imminent irreparable harm, provide uninterrupted electrical and other services, or preserve the status quo pending the conclusion of any dispute resolution procedures employed by the Parties or pendency of any action at law or in equity.

13.5 **Awards**

The Arbitrators shall have no authority to award damages excluded under this Agreement or any other damages aside from the prevailing Party’s actual, direct damages plus interest at the Interest Rate for each Day commencing on the date such damages were incurred through date of payment. The Arbitrators shall not have the authority to make any ruling, finding, or award that does not conform to the terms and conditions of this Agreement. The Arbitrators’ award shall be in writing and shall set forth the factual and legal bases for the award. The Parties to the arbitration shall each bear their own litigation expenses for the arbitration and shall evenly divide the common costs of the arbitration.

13.6 **Information Exchange**

The Arbitrators shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, the production of requested documents, the exchange of summaries of testimony of proposed witnesses, and the examination of the Parties by deposition. The Parties hereby agree to produce all such information as ordered by the Arbitrators and shall certify that they have provided all applicable information and that such information was true, accurate and complete.

13.7 **Site of Arbitration**

The site of any arbitration brought pursuant to this Agreement shall be in a location in Nassau County, New York.

13.8 **Precondition to Litigation**

Except for provisional relief under Section 13.4, neither Party shall bring any action at law or in equity to enforce, interpret, or remedy any breach or default of this Agreement without first complying with the provisions of this Article 13; provided, however, that if the Arbitrators fail to issue a decision within sixty (60) Days after the commencement of arbitration under Section 13.3, then either Party may bring any action at law or in equity to seek enforcement, interpretation or remedy of any breach of this Agreement.

13.9 **Continuity of Services**

Unless otherwise agreed to in writing or prohibited by Legal Requirements, the Parties shall continue to provide service, honor all commitments under this Agreement, and continue to make payments in accordance with this Agreement during the course of any dispute resolution under this Article 13 and during the pendency of any action at law or in equity or any arbitration proceeding relating hereto.

13.10 **Tolling of 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 procedures 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.

ARTICLE 14 - REPRESENTATIONS, WARRANTIES AND INDEMNITIES

14.1 Fuel Manager's Representation and Warranties

Fuel Manager represents and warrants to Buyer that as of the date of execution of this Agreement:

(i) Fuel Manager is a limited liability company duly organized and validly existing under the laws of the State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Fuel Manager is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

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

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

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

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

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

(vii) Fuel Manager represents and warrants that it is in compliance in all material respects with all Legal Requirements, judicial and administrative orders, rules and regulations, and permits to the extent compliance is required as of such date (A) which govern Fuel

Manager's ability to perform its obligations under this Agreement, or (B) the noncompliance with which would have a material adverse effect on Fuel Manager's ability to perform its obligations under this Agreement.

14.2 **Buyer's Representation and Warranties**

Buyer represents and warrants to Fuel Manager that as of the date of execution of this Agreement:

(i) (a) the Authority is a corporate municipal instrumentality of the State of New York, is duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and the Authority is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary, (b) LIPA is a corporation duly organized and validly existing under the laws of the State of New York, is duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and the Authority is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary, and (c) the Authority, acting on behalf of itself and LIPA, jointly and severally hereby undertakes, assumes and agrees to perform the Buyer's obligations under this Agreement;

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

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

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

(v) This Agreement has been duly and validly executed and delivered by Buyer and as of the FMA Effective Date constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity and no authorization, approval, exemption or consent by any governmental or public body or authority is required in connection with the authorization, execution, delivery and carrying out of the terms of this Agreement by Buyer, which has not yet been obtained by Buyer;

(vi) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Body, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations

under this Agreement and Buyer has no knowledge of any violation or default by Buyer or its Affiliates with respect to any order, writ, injunction or decree of any court or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality which is reasonably likely to have such a materially adverse effect or to result in such impairment; and

(vii) Buyer represents and warrants that it is in compliance in all material respects with all Legal Requirements, judicial and administrative orders, rules and regulations, and permits (a) which govern Buyer's ability to perform its obligations under this Agreement, or (b) the non-compliance with which would have a material adverse effect on Buyer's ability to perform its obligations under this Agreement.

ARTICLE 15 - MISCELLANEOUS

15.1 Reserved.

15.2 Notices

Unless otherwise specified, where notice is required by this Agreement, such notice shall be in writing and shall be deemed given: (i) upon receipt, when mailed by United States registered or certified mail, postage prepaid, return receipt requested; (ii) upon the next Business Day, when sent by overnight delivery, postage prepaid using a recognized courier service; or (iii) upon receipt, when sent by electronic or facsimile transmission, provided receipt of such electronic or facsimile transmission is confirmed before 5:00 P.M. EPT and written confirmation of such notice is sent on the same Day in accordance with either subsection (i) or (ii) above. In all instances, notice to the respective Parties should be directed as follows:

To Fuel Manager: PSEG Energy Resources & Trade LLC

80 Park Plaza, T19, Newark, NJ 07102
Attention: John P. Scarlata, VP Gas Supply
Fax: 973-643-8385
E-Mail: John.Scarlata@pseg.com

with a copy to: Contracts Department
Energy Contracts Manager
80 Park Plaza, T19, Newark, NJ 07102
Fax: 973-643-3882
E-Mail: ER&TContracts@pseg.com

To Buyer: Long Island Power Authority
333 Earle Ovington Boulevard, Suite 403
Uniondale, New York 11553
Attention: Vice President, Power Markets
Fax: (516) 222-9137
E-Mail: pdecotis@lipower.org

with a copy to: Long Island Power Authority
333 Earle Ovington Boulevard, Suite 403
Uniondale, New York 11553
Attention: General Counsel
Fax: (516) 222-9137
E-Mail: lnicolino@lipower.org

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

15.3 **Amendments**

No amendment, modification or waiver of any term or provision of this Agreement shall be effective unless in writing and signed on behalf of both Parties by their authorized representatives, and approved by the State Comptroller.

15.4 **Headings**

Headings used in this Agreement are for convenience only and shall not be considered a part of the terms and conditions of this Agreement.

15.5 **Non-Waiver**

Except as provided for in Section 11.14 of this Agreement, no action of either Party pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act shall constitute a waiver by either Party of the other Party's compliance with any term of provision of this Agreement. No course of dealing or delay by Buyer or the Fuel Manager in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such Party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of Buyer or the Fuel Manager under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

15.6 **Choice of Law, Venue, and Jurisdiction**

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without regard to principles of conflicts of law. 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, 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.

15.7 **Relationship**

This Agreement is not intended to create a partnership or joint venture agreement or a lease. Nothing in this Agreement shall be deemed to constitute either Party a partner or joint venture.

15.8 **Counterparts**

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterparts.

15.9 **Provisions Required by Law**

Certain provisions required by law (Standard Clauses for NYS Contracts) and certain forms required by the Comptroller are attached to this Agreement as Supplement 1 and Supplement 2, respectively, and are hereby incorporated as part of this Agreement with the same force and effect as if herein set forth at length and may be modified from time to time as required.

15.10 **No Third Party Beneficiaries**

The rights and obligations created under this Agreement are solely for the benefit of the Parties hereto, and no person or entity not a Party to this Agreement (other than successors and properly authorized assigns) shall have any rights under or by virtue of this Agreement.

15.11 **Successors and Assigns**

This Agreement shall be binding upon and shall inure to the benefit of the successors and properly authorized assigns of the Parties hereto.

15.12 **Indemnification for Third Party Claims**

Subject to the limits in Section 11.10 ("Limitations of Liability; Remedies and Damages"), each Party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other Party (the "Indemnified Party") and its Affiliates and each of their trustees, shareholders, owners, managers, directors, officers, partners, members, agents and employees, from and against any and all claims, liability, costs or expenses for loss, damage, or injury, including damage and liability for bodily injury to or death of third Persons or damage to property of third Persons, brought by any third Person (collectively, "Loss"), to the extent arising out of, in connection with, or resulting from, the Indemnifying Party's breach of this Agreement, including any of the representations or warranties made in this Agreement, or the Indemnifying Party's negligent action, which it takes or fails to take related to this Agreement, which is inconsistent with its obligations under this Agreement; provided, however, that neither Party shall have any indemnification obligations hereunder in respect of any Loss to the extent caused by the other Party's negligence or willful misconduct. Each Party hereto shall furnish the other Party with notice promptly (but in no event later than ten (10) Days prior to the time any response is required by law) of any event or circumstances, or the threat thereof, which might

give rise to such indemnification. Such notice shall be given as soon as reasonably practicable after the Party obligated to give such notice becomes aware of such claim or proceeding and shall include a complete copy of all notices, pleadings and other papers related thereto. Failure to give such notice shall not excuse an indemnification obligation. Fuel Manager shall not, however, be required to reimburse, defend, or indemnify any LIPA Indemnified Party for any Loss to the extent such Loss is due to (a) Fuel Manager being directed by LIPA to take or refrain from taking any action which is contrary to Fuel Manager's advice; (b) any act or omission of any LIPA Indemnified Party determined to be responsible for or contributing to the Loss; or (c) any customer claim brought by a retail or wholesale electric customer of LIPA that is not directly related to a breach by Fuel Manager of its obligations under this Agreement; or (d) Buyer's failure to make payments to third Persons pursuant to Section 3.6 of this Agreement.

15.13 Change In Legal Requirements

In the event that a change in Legal Requirements should prevent the Fuel Manager from performing any of the FM Services ("Legal Restriction"), then such Legal Restriction shall be treated as a Force Majeure Event and the Parties shall comply with the procedures set forth in Section 10. If there is a change in Legal Requirements that has a material adverse effect upon Fuel Manager's ability to perform the FM Services at the compensation rates as provided herein the Fuel Manager shall have the right on and after the first day of Contract Year six (6) to notify the Buyer of same ("Notice of Change in Legal Requirements"). Thereafter, the Parties shall, in good faith negotiate an equitable adjustment to the Agreement, to address the change in Legal Requirements. If after ninety (90) Days from the date that the Buyer receives Fuel Manager's Notice of Change in Legal Requirements, the Buyer and Fuel Manager have not reached agreement on an equitable adjustment to this Agreement, then Fuel Manager, upon written notice to Buyer seek resolve any disputes related to the Notice of Change In Legal Requirements in accordance with Article 13 ("Dispute Resolution"). In such dispute resolution proceeding that is not resolved by mediation pursuant to Section 13.2, then the Arbitrators shall determine (a) if there is a change in Legal Requirements and if so (b) does the change in Legal Requirements have a material adverse effect upon Fuel Manager's ability to perform the FM Services. If the Arbitrators determine that (a) and (b) in Fuel Manager's favor, then the Arbitrators will determine what equitable adjustments should be made to the Agreement. No change in any Legal Requirement after the FMA Effective Date shall obligate (i) the Fuel Manager to refund any money paid by Buyer for FM Services rendered prior to such change or (ii) Buyer to pay the Fuel Manager any additional money for FM Services rendered prior to such change, other than monies due to an uncontested Monthly invoice submitted by the Fuel Manager to Buyer pursuant to Section 5.1 pertaining to FM Services rendered during the time period prior to such change period. The Fuel Manager shall not be responsible to Buyer for any losses suffered or increased costs incurred by Buyer as a result of any change in Legal Requirements.

15.14 Taxes

The Parties acknowledge that Fuel Manager shall not have title to any of the commodities purchased or sold by Buyer hereunder and shall not be responsible for any taxes related to Buyer-owned, leased or licensed assets or revenues, or transactions conducted under this Agreement, including any taxes imposed on Buyer's fuel and fuel-related transactions conducted

hereunder and any sales taxes and similar taxes imposed on payments made by Fuel Manager on behalf of Buyer.

ARTICLE 16 - CONFIDENTIALITY

16.1 Confidential Articles and Sections

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 Fuel Manager:

- (i) Sections: 8.1 and 11.10;
- (ii) Article: 4; and
- (ii) Appendices: 2 and 5.

16.2 Claim of Confidentiality

(i) “FM Confidential Information” means with respect to a Party, all non-public information disclosed (whether in writing, orally or by another means) by or through such Party or its Related Parties (such Party and its Related Parties, collectively, the “Disclosing Party”), or its auditors, accountants, examiners or attorneys, to the other Party or its Related Parties (such other Party and its Related Parties, collectively the (“Receiving Party”), its auditors, accountants, examiners, attorneys or other agents or contractors by reason of, or otherwise as a result of, the relationship established by this Agreement as well as all non-public information which is otherwise learned by such other Party or its Related Parties, or its auditors, accountants, examiners, attorneys or other agents or contractors by reason of, or otherwise as a result of, such relationship. Such information includes: (a) with respect to Buyer, all non-public Buyer Owned Property; (b) with respect to the Fuel Manager all non-public Fuel Manager Owned Property; and (c) with respect to each of the Parties, all non-public (1) information expressly or implicitly marked or disclosed as confidential to the Disclosing Party, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, (2) information traditionally recognized as proprietary trade secrets, (3) all other trade secret, confidential or proprietary information and documentation of (x) the Disclosing Party, (y) to the extent provided to a Disclosing Party, entities with which a Disclosing Party contracts or such entities’ or Disclosing Party’s customers or prospective customers, or (z) the Disclosing Party’s employees, directors, outside directors, trustees, consultants, retirees and their respective spouses and families (whether or not it is designated as such), including information which is not permitted to be disclosed to third parties under Legal Requirements and (4) all copies of any of the foregoing or any materials to the extent they contain any of the foregoing.

(ii) The Receiving Party shall hold the FM Confidential Information of the Disclosing Party in confidence and shall protect the FM Confidential Information from disclosure to third parties consistent with the definition of FM Confidential Information and the provisions of this Article and subject to applicable Legal Requirements, provided, however, that a Party may disclose FM Confidential Information to its Affiliates, lenders and potential lenders, and potential and actual equity investors, as well as to trustees, directors, employees, consultants,

agents or representatives of such Party, its Affiliates or lenders (“Representatives”) provided that any such Representatives is (i) obligated by Legal Requirements, professional rules of conduct or a legally binding obligation, to maintain the confidentiality, and restrict the use, of such FM Confidential Information in a manner at least as restrictive as set forth in the provisions of this Article 16 and the other obligations of limited use and non-disclosure set forth in this Agreement, and (ii) has a need to know such FM Confidential Information in order to fulfill its obligations to the Receiving Party with respect to (x) the Receiving Party’s exercise of the rights granted to the Receiving Party to use such FM Confidential Information, or (y) with respect to the Fuel Manager as the Receiving Party, assisting Receiving Party to perform the FM Services under this Agreement; and, with respect to the Buyer as the Receiving Party, assisting Receiving Party to fulfill its obligations under this Agreement or to use the FM Services. Further, the Parties acknowledge and agree that the Receiving Party will be responsible to the Disclosing Party for all acts and omissions of any Representatives that cause a breach of any of the provisions of this Article 16 and/or any other obligations of limited use and non-disclosure set forth in this Agreement, to the same extent as if such acts or omissions were the acts or omissions of the Receiving Party.

(iii) Except with the Disclosing Party’s prior written consent, the Receiving Party shall not at any time: (a) use the FM Confidential Information for any purpose other than to (1) exercise the rights granted to it to with respect to the FM Confidential Information or (2) with respect to the Fuel Manager as the Receiving Party, perform the FM Services; and, with respect to Buyer as the Receiving Party, to fulfill its obligations under this Agreement or to use the FM Services (subsections (a) (1) and (2) being the “Permitted Purposes”) or (b) publish, disclose or otherwise divulge the FM Confidential Information to any person or entity, except as set forth in this Agreement.

(iv) The Receiving Party shall employ every reasonable procedure available to prevent the unauthorized disclosure or use of the FM Confidential Information. At a minimum, these procedures will be no less restrictive than procedures currently being used by Receiving Party to protect its own confidential information and data of similar import. In the event that a Receiving Party shall have knowledge of any breach of the confidentiality of, or the misappropriation of, any FM Confidential Information of the Disclosing Party, that such Receiving Party shall promptly give notice thereof to the Disclosing Party.

16.3 **Compliance with the Freedom of Information Law**

Fuel Manager expressly acknowledges that Buyer is subject to the requirements of New York’s Freedom of Information Law (“FOIL”) and must comply therewith. If Buyer is requested by a third party to disclose the Confidential Information that it has received from Fuel Manager, Buyer will, to the extent consistent with the requirements in Article 6 of the New York State Public Officers Law (i) notify Fuel Manager of the request, (ii) provide Fuel Manager the opportunity to provide information regarding the need for confidential treatment, including pursuant to NYS Public Officers’ Law §87, (iii) evaluate Fuel Manager’s request for confidential treatment, and (iv) determine if the FM Confidential Information is subject to disclosure under FOIL. If Buyer determines that the FM Confidential Information is subject to disclosure, it will provide prompt written notice of such determination to Fuel Manager so that Fuel Manager may seek to appeal Buyer’s determination or seek another appropriate remedy, or both and the Parties

may pursue their respective rights and remedies pursuant to New York State Public Officers' Law §89(5), including Buyer disclosing such information with no liability or further obligation to Fuel Manager.

16.4 **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 to the extent that it:

- (i) becomes publicly available other than through the recipient;
- (ii) is required to be disclosed by a governmental or judicial order, rule or regulation, subject to the remaining provisions of this Section 16.3;
- (ii) is independently developed by the Receiving Party without use or knowledge of the Disclosing Party's FM Confidential Information; or
- (iv) becomes available to the Receiving Party without restriction from a third party.

In the event that a Receiving Party or any Representative of a Receiving Party is requested pursuant to, or required by, applicable law, regulation or by a legal or regulatory process to disclose any of the FM Confidential Information of the Disclosing Party, the Receiving Party shall (except to the extent prohibited by law) (i) provide the Disclosing Party with prompt written notice prior to any such disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy and (ii) reasonably cooperate with the Disclosing Party's attempts to assure confidential handling of such information. In the event that no protective order or other remedy is obtained, the Receiving Party shall only disclose that portion of the FM Confidential Information that it is advised by counsel is legally required and use its reasonable efforts to cause the applicable governmental entity to treat such information in a confidential manner and to prevent such FM Confidential Information from becoming part of the public domain.

16.5 **Remedies**

The Parties agree that the FM Confidential Information furnished hereunder is of a special and unique nature, of extraordinary value and of such a character that any unauthorized use or disclosure thereof by the Receiving Party or any Representative of the Receiving Party will cause injury to the Disclosing Party for which the Disclosing Party will not have an adequate remedy at law. Accordingly, in such event, the Disclosing Party shall have the right to have the provisions of this Article 16 and the obligations of limited use otherwise set forth in this Agreement specifically enforced by any court having equity jurisdiction and to obtain a temporary or permanent injunction or order prohibiting the Receiving Party or its Representatives from such unauthorized use or disclosure of any FM Confidential Information. In any proceeding by the Disclosing Party to obtain injunctive or other equitable relief to enforce the provisions hereof, the Receiving Party's ability to answer in damages shall not be a bar or interposed as a defense to the granting of such relief and the Disclosing Party shall not be required to post a bond or other undertaking in such proceeding. Except as specifically stated,

the provisions of this Section 18.6 shall not otherwise limit any of the Disclosing Party's remedies at law or equity.

16.6 Return of FM Confidential Information

Any tangible FM Confidential Information of the Disclosing Party which is made available to the Receiving Party by the Disclosing Party or to which the Receiving Party may have access shall not be copied, reproduced or duplicated in any form or manner for any purpose other than the Permitted Purposes. Upon the written request of the Disclosing Party, and except as otherwise provided below, the Receiving Party shall, at the Disclosing Party's election, either (i) promptly deliver to the Disclosing Party all copies of any and all FM Confidential Information and promptly destroy all copies of, any and all analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party or its Representatives based on the use of FM Confidential Information (and confirm such destruction to the Disclosing Party in writing), or (ii) promptly destroy all copies of any and all written FM Confidential Information and all copies of any and all analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party or its Representatives based on the use of FM Confidential Information (and confirm such destruction to the Disclosing Party in writing), in each case at the Receiving Party's expense and regardless of whether such FM Confidential Information, analyses, compilations, forecasts, studies or other documents are in the possession of the Receiving Party or in the possession of any of its Representatives. Notwithstanding the foregoing, the Receiving Party may retain any documents (such analysis, compilations, forecasts, studies or other documents) submitted to its or its Affiliates' board of directors or board of trustees or screening or investment committee in connection with, or related to, this Agreement that contain or are based on the use of FM Confidential Information to the extent required by applicable law or regulation, but the Receiving Party shall keep all such documents and FM Confidential Information confidential in accordance with this Agreement. Moreover, neither the Receiving Party, nor its Representatives, shall be obligated to erase FM Confidential Information contained in an archived computer system backup in accordance with its security and/or disaster recovery procedures, provided that the Receiving Party and its Representatives shall not cause or permit access to or recovery of FM Confidential Information from such computer system backup and the Receiving Party and its Representatives shall keep all such documents and FM Confidential Information confidential and restrict the use thereof in accordance with this Agreement. Regardless of any return or destruction of FM Confidential Information or analyses, compilations, forecasts, studies or other documents based on the use of FM Confidential Information, all FM Confidential Information, including, without limitation, any and all oral FM Confidential Information, shall continue to be subject to the terms of this provisions of this Article 16 and the other obligations of limited use and non-disclosure set forth in this Agreement.

16.7 No Licenses

It is agreed that, except as otherwise expressly set forth in this Agreement, no right or license under any patents, copyrights, or other rights of the Disclosing Party and any of its subsidiaries or Affiliates, licensors or suppliers is granted to the Receiving Party by this Agreement or by any disclosure of FM Confidential Information hereunder.

16.8 **Term of Confidentiality**

Without limiting the survival of the obligations set forth in Section 2.3, the obligations set forth in this Article 16 shall survive expiration or termination of this Agreement for a period of two (2) years thereafter.

ARTICLE 17 - OWNERSHIP OF INTELLECTUAL PROPERTY

17.1 **Buyer Owned Property**

The Parties hereby acknowledge and agree that as between them and whether or not specifically recognized or perfected under any Legal Requirements, Buyer is, and shall at all times be, the sole and exclusive owner of the following, as well as of all right, title and interest in under and to, any and all of the following (collectively, the “Buyer Owned Property”):

(i) Buyer Related Data, Buyer Related Technology, Buyer Related Work Product and Buyer Equipment, in each instance to the extent obtained, created, generated, collected, designed, or developed, licensed, leased, owned or provided under this Agreement, but only to the extent relating solely to Buyer, and/or any of Buyer’s Related Parties (even if it later has potential use elsewhere):

(a) by the Fuel Manager or its Affiliates or any of their employees, directors and officers (“Fuel Manager’s Related Parties”), by itself or jointly with Buyer, any of Buyer’s Related Parties (as defined in Section 17.1 (ii) below) or others, and/or

(b) by agents, consultants, subcontractors and/or suppliers of the Fuel Manager or Fuel Manager’s Related Parties, by itself or jointly with Buyer, any of Buyer’s Related Parties (as defined in 17.1(ii) below) or others, (collectively, the “Buyer Owned Deliverables”);

provided that, notwithstanding the foregoing, (1) to the extent any of the foregoing are obtained, collected, licensed or leased from Buyer or Buyer’s Related Parties, or any applicable agent, consultant, subcontractor and/or supplier of the Buyer and/or the Buyer’s Related Parties (collectively, the “Buyer’s Personnel”) it shall be deemed Buyer Owned Property regardless of whether or not it relates solely to Buyer and/or any of Buyer’s Related Parties, and (2) to the extent any of the foregoing were owned prior to the commencement of services under this Agreement, or acquired, obtained, created generated collected, designed, developed, licensed or leased outside the scope of this Agreement, by Fuel Manager and/or Fuel Manager’s Related Parties, it shall be deemed Fuel Manager Owned Property.

To the extent any of the Buyer Owned Deliverables are not deemed a “work for hire” by operation of law, Fuel Manager hereby irrevocably assigns to Buyer, and will cause the Fuel Manager’s Related Parties and each applicable agent, consultant, subcontractor and supplier of the Fuel Manager and/or the Fuel Manager’s Related Parties (collectively, the “Fuel Manager Personnel”) to assign to Buyer, all of its and their right, title and interest in and to such Buyer Owned Deliverables, including all Intellectual Property Rights in and to such Buyer Owned Deliverables. The Fuel Manager agrees to execute, and shall cause the applicable Fuel

Manager's Related Parties and other Fuel Manager Personnel to execute, any documents or take any other actions as may reasonably be necessary, or as Buyer may reasonably request, to evidence, perfect, maintain and enforce Buyer's ownership of any such Buyer Owned Deliverables, whether during the Term of this Agreement or thereafter.

(ii) Buyer Related Data, Buyer Related Technology, Buyer Equipment and Buyer Related Work Product obtained, created, generated, collected, designed, developed, licensed, leased, owned by (or provided to Fuel Manager, and/or any Fuel Manager Personnel by) Buyer or its Affiliates or any of their employees, directors, trustees and officers ("Buyer's Related Parties") or agents, consultants, contractors and/or suppliers of Buyer and/or Buyer's Related Parties, including any information, data or other materials provided to Fuel Manager and/or Fuel Manager Personnel under this Agreement, in each instance by itself, or jointly with others (other than Fuel Manager or any Fuel Manager's Related Parties) and all of the Intellectual Property Rights therein.

(iii) Inventions to the extent relating to, and based upon, items in subparagraphs (i) and (ii) above, whether or not obtained, created, generated, collected, designed, developed or discovered by the Fuel Manager or Fuel Manager's Related Parties under, pursuant to, or as a result of, this Agreement, or by Buyer or Buyer's Related Parties in each instance by itself or jointly with Fuel Manager, any Fuel Manager's Related Parties or others, and other than those Inventions created or developed by the Fuel Manager or Fuel Manager's Related Parties which are not relating solely to Buyer and/or Buyer's Related Parties;

(iv) Writings, works of authorship, and other copyrightable or non-copyrightable subject matter of any kind ("Writings"), including without limitation, derivative works, to the extent containing any portion of the items described in subparagraphs (i), (ii) and (iii) above, whether or not obtained, created, generated, collected, designed, developed or fixed by the Fuel Manager or Fuel Manager's Related Parties under, pursuant to, or as a result of, this Agreement but excluding all Fuel Manager Owned Property contained therein, and other than those Writings created or developed by the Fuel Manager or Fuel Manager's Related Parties which are not relating solely to Buyer and/or Buyer's Related Parties; and

(v) all improvements, enhancements, modifications, and/or derivative works ("Derivatives") to or of any of the items described in subparagraphs (a), (b), (c) and/or (d) above created pursuant to this Agreement or otherwise, other than those Derivatives created or developed by the Fuel Manager or Fuel Manager's Related Parties which are not relating solely to Buyer and/or Buyer's Related Parties, and all Intellectual Property Rights in and to the foregoing items described in this subparagraph (e) and all items described in subparagraphs (i), (ii), (iii) and/or (iv).

To the extent that the Fuel Manager or Fuel Manager's Related Parties or any permitted FM Sub-licensee (as defined in Section 17.2, below) creates any Derivatives to, or of, any Buyer Owned Property which are owned by Buyer as set forth in Section 17.1(v) above or Buyer Licensed Intellectual Property, the Fuel Manager hereby assigns, and will cause the Fuel Manager's Related Parties and each applicable FM Sub-licensee to assign, to Buyer all right, title and interest in and to such Derivatives and all Intellectual Property Rights in the foregoing.

17.2 **Buyer License Grant**

Subject to the terms and conditions of this Agreement, Buyer hereby grants and shall cause Buyer's Related Parties to grant to the Fuel Manager and Fuel Manager's Related Parties:

(i) a fully paid-up, royalty-free, non-exclusive, non-transferable (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the "Assignment" section of Article 12) and sub-licensable limited license during the Term, for the sole purpose of performing and solely to the extent necessary to perform, the Fuel Manager under this Agreement, to use, copy, modify and create derivative works of, as applicable, the Buyer Owned Property which is not Buyer Licensed Intellectual Property, and, to the extent sub-licensable, Buyer Licensed Intellectual Property (which, for avoidance of doubt, includes the Buyer Owned Deliverables whether or not, when used, such Buyer Owned Deliverables will result in a competitive disadvantage to Buyer and/or any of the Buyer's Related Parties), solely for use by, or on behalf of, the Fuel Manager and/or the Fuel Manager's Related Parties, including by their respective sub-licensees in performing Fuel Manager pursuant to this Agreement; and

(ii) a fully paid-up, royalty-free, non-exclusive, non-transferable (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the "Assignment" section of Article 12 below) perpetual and non-sub-licensable limited license, to use, copy, modify and create derivative works of, as applicable, those of the Buyer Owned Deliverables (except to the extent that it contains Buyer Owned Property which is information and data which is solely related to Buyer and/or Buyer's Related Parties and/or information and data of third parties) which, when used, will not result in a competitive disadvantage to Buyer and/or any of the Buyer's Related Parties, solely for use by the Fuel Manager and/or the Fuel Manager's Related Parties in its/their business for the sole purpose of performing (and solely to the extent necessary to perform) services to its/their customers. With respect to the license granted in subsection (b), in the event the Fuel Manager and/or Fuel Manager's Related Parties needs to grant a sub-license for the use of the materials for its customers or Fuel Manager Related Parties' customers in order to perform services for such customers, Fuel Manager shall request that Buyer give its prior written approval, which approval shall not be unreasonably withheld. Fuel Manager shall not grant a Sub-license without Buyer's prior written approval. For the avoidance of doubt and purpose of clarity, Buyer disapproval is deemed reasonable if Buyer determines, in its sole discretion, that such sub-license would create a competitive disadvantage to Buyer and/or Buyer's Related Parties.

In addition, during the Term, the Parties shall fully evaluate and shall jointly approve the need for, and the expenditures to be made to any third parties associated with, any sub-license of Buyer Licensed Intellectual Property to the Fuel Manager, Fuel Manager's Related Parties or any other Person to whom a sub-license is granted pursuant to this Section 17.2 (each, a "FM Sub-licensee"), such approval not to be unreasonably withheld.

Such licenses shall be subject to the following:

(iii) If the Buyer Owned Property or Buyer Licensed Intellectual Property contains property or other Intellectual Property Rights owned by third parties, the Fuel Manager and Fuel

Manager's Related Parties' use, and use by any FM Sub-licensee, of such third party property or other Intellectual Property Rights shall be subject to the license terms governing such third party Intellectual Property Rights. Buyer shall notify the Fuel Manager of all such license terms.

(iv) Neither the Fuel Manager, any Fuel Manager's Related Parties, nor any FM Sub-licensee shall acquire any rights in, or take any action that jeopardizes Buyer's proprietary rights with respect to, the Buyer Owned Property or Buyer Licensed Intellectual Property (including any translations or updates or other Derivatives thereof), except the limited use rights specified in the license grant. The Fuel Manager and Fuel Manager's Related Parties shall not, and the Fuel Manager and Fuel Manager's Related Parties shall contractually provide in its agreement with each FM Sub-licensee that such FM Sub-licensee shall not, remove, change, or obliterate any copyright, confidential, or proprietary notices incorporated in, marked on, or fixed to the Buyer Owned Property or Buyer Licensed Intellectual Property.

(v) Except as otherwise expressly permitted pursuant to the first paragraph of this Section 17.2, or as otherwise agreed by the Parties in writing, the Fuel Manager and Fuel Manager's Related Parties shall not sell, sub-license, rent, lease, distribute or otherwise permit the use of the Buyer Owned Property or Buyer Licensed Intellectual Property.

(vi) The Fuel Manager and Fuel Manager's Related Parties shall not copy, translate, modify, adapt, decompile, disassemble, or reverse engineer any portion(s) of the Buyer Owned Property or Buyer Licensed Intellectual Property except as necessary to perform its obligations hereunder. Buyer shall own all right, title and interest in, to and under any copy, translation, modification, adaptation, or other results of the decompilation, disassembly or reverse engineering, of the Buyer Owned Property or Buyer Licensed Intellectual Property, whether or not authorized, and all Intellectual Property Rights in and to the foregoing, and the Fuel Manager hereby assigns, and shall cause Fuel Manager's Related Parties and each applicable FM Sub-licensee to assign, all right, title and interest in and to them and all Intellectual Property Rights in and to them (including moral rights) to Buyer.

(vii) The Fuel Manager shall be responsible for compliance by all Fuel Manager's Related Parties and FM Sub-licensees with the terms and conditions of this Section 17.2 and Fuel Manager fully and unconditionally guarantees such compliance by Fuel Manager's Related Parties and the FM Sub-licensees with the terms of this Section 17.2.

(viii) Fuel Manager shall ensure, and shall cause all Fuel Manager's Related Parties and FM Sub-licensees to ensure, that each permitted FM Sub-licensee agrees in writing to terms and conditions at least as restrictive as the terms of this Article 17 and Article 16 prior to being given access to any of the Buyer Owned Property or Buyer Licensed Intellectual Property.

(ix) The Fuel Manager agrees to enforce, and shall cause all Fuel Manager's Related Parties to enforce, the terms of the sub-license or other agreement agreed to by the applicable Fuel Manager's Related Parties and/or FM Sub-licensee(s) affecting Buyer's or any Buyer's Related Party's rights (the "Applicable FM Sub-license Terms") against the applicable Fuel Manager's Related Parties and/or FM Sub-licensee(s) at the Fuel Manager's own expense. It is understood and agreed, however, (and each sub-license or other agreement agreed to with respect to use of the Buyer Owned Property and/or the Buyer Licensed Intellectual Property (each, a

“FM Sub-license Agreement”) shall provide) that Buyer shall be a third party beneficiary of all FM Sub-license Agreements agreed to by the applicable Fuel Manager’s Related Parties and/or FM Sub-licensee(s) relating to Buyer Owned Property and/or Buyer Licensed Intellectual Property, with the power to enforce the terms of this Section 17.2 and/or Article 16 and the Applicable FM Sub-license terms directly against any applicable Fuel Manager’s Related Parties and/or FM Sub-licensee(s).

(x) If the Fuel Manager or any of Fuel Manager’s Related Parties learns of any infringement or unauthorized use of the Buyer Owned Property or Buyer Licensed Intellectual Property, then the Fuel Manager will promptly notify Buyer thereof in writing and will provide reasonable assistance and cooperation as may be requested by Buyer, but at Buyer’s sole cost and expense.

17.3 **Fuel Manager Owned Property**

The Parties hereby acknowledge and agree that as between them, and whether or not specifically recognized or perfected under any Legal Requirement, the Fuel Manager is, and shall at all times be, the sole and exclusive owner of the following, as well as of all right, title and interest in, under and to any and all of the following (collectively, the “Fuel Manager Owned Property”):

(i) Fuel Manager Related Data, Fuel Manager Related Technology, Fuel Manager Related Work Product and Fuel Manager Equipment, but excluding any and all Buyer Owned Property.

(ii) Buyer Related Data, Buyer Related Technology and Buyer Related Work Product (in each case, to the extent it does not relate solely to Buyer, or Buyer’s Related Parties), obtained, or created, or generated, or collected, designed, or developed, or licensed, or leased, or owned, or provided: (a) by Fuel Manager or any of Fuel Manager’s Related Parties, by itself or jointly with Buyer, any of Buyer’s Related Parties or others, and/or (b) by Fuel Manager Personnel by itself or jointly with Buyer, any of Buyer’s Related Parties or others, except to the extent any of the foregoing are obtained, collected, licensed or leased from Buyer, any of the Buyer’s Related Parties and/or any Buyer’s Personnel (collectively, the “Fuel Manager Owned Deliverables”);

(iii) Inventions to the extent relating to and based upon the Fuel Manager Owned Property described in subparagraphs (i) and (ii) above, obtained, created, generated, collected, designed, developed or discovered by the Fuel Manager or Fuel Manager’s Related Parties, but excluding all Buyer Owned Property contained therein;

(iv) Writings including, without limitation, derivative works, relating to the Fuel Manager Owned Property described in (i) (ii) or (iii) above, obtained, created, generated, collected, designed, developed or fixed by the Fuel Manager or Fuel Manager’s Related Parties, but excluding all Buyer Owned Property contained therein; and

(v) all Derivatives to or of any of the Fuel Manager Owned Property described in subparagraphs (i), (ii), (iii) and/or (iv) above created pursuant to this Agreement or otherwise

(excluding any Buyer Owned Property), and all Intellectual Property Rights in and to the foregoing items described in this subparagraph (v) and all items described in subparagraphs (i), (ii), (iii) and/or (iv).

(vi) To the extent that the Buyer or Buyer's Related Parties or any permitted Buyer Sub-licensee creates any Derivatives to, or of, any Fuel Manager Owned Property which are owned by Fuel Manager as set forth in Section 17.3(v) above or Fuel Manager Licensed Intellectual Property, Buyer hereby assigns, and will cause Buyer's Related Parties and each applicable Buyer Sub-licensee to assign, to Fuel Manager all right, title and interest in and to such Derivatives and all Intellectual Property Rights in the foregoing.

17.4 Fuel Manager License Grant

Subject to the terms and conditions of this Agreement, the Fuel Manager hereby grants, and shall cause its Affiliates to grant, to Buyer and Buyer's Related Parties a fully paid-up, royalty-free, non-exclusive, non-transferable, (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the "Assignment" section of Article 12) perpetual sub-licensable limited license to use, copy, and modify and create derivative works of, as applicable, the Fuel Manager Owned Property and Fuel Manager Licensed Intellectual Property (if it can be sub-licensed) solely for use in conducting the business of Buyer and/or Buyer's Related Parties, by, or on behalf of, Buyer or Buyer's Related Parties, including by its and their respective sub-licensees, which, for the avoidance of doubt, includes, but is not limited to, the PSMMO Provider. In addition, during the Term, the Parties shall fully evaluate and shall jointly approve the need for, and the expenditures to be made to any third parties associated with, any sub-license of Fuel Manager Licensed Intellectual Property to the Buyer, the Buyer's Related Parties, or any other Person to whom a sub-license is granted pursuant to this Section 17.4 (each, a "Buyer Sub-licensee"), such approval not to be unreasonably withheld. Such licenses shall be subject to the following:

(i) If the Fuel Manager Owned Property or Fuel Manager Licensed Intellectual Property contains property or other Intellectual Property Rights owned by third parties, Buyer and Buyer's Related Parties' use, and use by any Buyer Sub-licensee, of such third party property or other Intellectual Property Rights shall be subject to the license terms governing such third party Intellectual Property Rights. The Fuel Manager shall notify Buyer of all such license terms.

(ii) Neither Buyer, any Buyer's Related Parties, nor any Buyer Sub-licensee(s) shall acquire any rights in, or take any action that jeopardizes the Fuel Manager's proprietary rights with respect to, the Fuel Manager Owned Property or Fuel Manager Licensed Intellectual Property (including any translations, or updates, or other Derivatives thereof), except the limited use rights specified in the license grant. Buyer and Buyer's Related Parties shall not, and Buyer and Buyer's Related Parties shall contractually provide in its agreement with each Buyer Sub-licensee that such Buyer Sub-licensee shall not, remove, change, or obliterate any copyright, confidential, or proprietary notices incorporated in, marked on, or fixed to the Fuel Manager Owned Property or Fuel Manager Licensed Intellectual Property.

(iii) Except as expressly permitted pursuant to the first paragraph of this Section 17.4, or as otherwise agreed by the Parties in writing, Buyer and Buyer's Related Parties shall not sell, sub-license, rent, lease, distribute or otherwise permit the use of the Fuel Manager Owned Property or Fuel Manager Licensed Intellectual Property.

(iv) Buyer and Buyer's Related Parties shall not copy, translate, modify, adapt, decompile, disassemble, or reverse engineer the Fuel Manager Owned Property or Fuel Manager Licensed Intellectual Property except as necessary to exercise the rights granted pursuant to this Section 17.4. The Fuel Manager shall own all rights in any copy, translation, modification, adaptation, or other results of the decompilation, disassembly or reverse engineering, of the Fuel Manager Owned Property or Fuel Manager Licensed Intellectual Property, whether or not authorized, and all Intellectual Property Rights in and to the foregoing, and Buyer hereby assigns, and shall cause Buyer's Related Parties and each applicable Buyer Sub-licensee to assign, all right, title and interest in and to them and all Intellectual Property Rights in and to them (including moral rights) to the Fuel Manager.

(v) Buyer shall be responsible for compliance by all Buyer's Related Parties and Buyer Sub-licensees with the terms and conditions of this Section 17.4 and Buyer fully and unconditionally guarantees such compliance by Buyer's Related Parties and the Buyer Sub-licensees under this Section 17.4.

(vi) Buyer shall ensure, and shall cause all Buyer's Related Parties and Buyer Sub-licensees to ensure, that each permitted Buyer Sub-licensees agrees in writing to terms and conditions at least as restrictive as the terms of this Article 17 and Article 16 prior to being given access to any of the Fuel Manager Owned Property or Fuel Manager Licensed Intellectual Property.

(vii) Buyer agrees to enforce, and shall cause all Buyer's Related Parties to enforce, the terms of the sub-license or other agreement agreed to by the applicable Buyer's Related Parties and/or Buyer Sub-licensee(s) affecting Fuel Manager's or any Fuel Manager's Related Party's rights (the "Applicable Buyer Sub-license Terms") against the applicable Buyer's Related Parties and/or Buyer Sub-licensee(s) at Buyer's own expense. It is understood and agreed, however, (and each sub-license or other agreement agreed to with respect to use of the Fuel Manager Owned Property and/or Fuel Manager Licensed Intellectual Property (each, a "Buyer Sub-license Agreement") shall provide) that the Fuel Manager shall be a third party beneficiary of all Buyer Sub-license Agreements agreed to by the applicable Buyer's Related Parties and/or Buyer Sub-licensee(s) relating to Fuel Manager Owned Property and/or Fuel Manager Licensed Intellectual Property, with the power to enforce the terms of this Section 17.4 and/or Article 16 and any Applicable Buyer Sub-license Terms directly against any applicable Buyer's Related Parties and/or Buyer Sub-licensee(s).

(viii) If Buyer or any of Buyer's Related Parties learns of any infringement or unauthorized use of the Fuel Manager Owned Property or Fuel Manager Licensed Intellectual Property, then Buyer will promptly notify Fuel Manager thereof in writing and will provide reasonable assistance and cooperation as may be requested by the Fuel Manager, but at the Fuel Manager's sole cost and expense.

17.5 **Reservation of Rights**

Except for the license rights expressly granted in this Agreement, (i) neither Party grants to the other Party, by implication, estoppel or otherwise, any license or other right to any of its property; (ii) no right, title or interest in, to or under the property of a Party is transferred or granted to the other Party; and (iii) each Party hereby reserves for itself and retains all rights in and to its property, and any and all Intellectual Property Rights inherent therein or appurtenant thereto.

17.6 **Independent Development; Residuals**

The obligations of confidentiality and limited use under this Agreement shall not be construed to limit a Party's right to independently develop or acquire products without use of the other Party's FM Confidential Information. Further, each Party shall be free to use for any purpose the "Residuals" (as defined below) resulting from access to or work with such FM Confidential Information, provided that such Party shall maintain the confidentiality of such FM Confidential Information as provided in this Agreement and otherwise comply with the provisions of Article 16 and any other obligations of limited use and non-disclosure set forth in this Agreement. The term "Residuals" means information in non-tangible form, which is retained in unaided memory by persons who have had access to the FM Confidential Information, including generalized ideas, concepts, know-how or techniques contained therein. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either Party a license under the other Party's copyrights, patents or other Intellectual Property Rights. In addition, in no event shall either Party be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables provided by the Fuel Manager to the Buyer, provided that, with respect to the same, such Party at all times (a) maintains the confidentiality of the FM Confidential Information as provided in this Agreement and (b) otherwise complies with the provisions of Article 16 and all other obligations of limited use and non-disclosure set forth in this Agreement.

17.7 **Feedback Rights**

In the event that a Party and/or its Related Parties provides the other Party with any suggestions or recommendations concerning the Fuel Manager Owned Property or Buyer Owned Property, as applicable, owned by the other Party (collectively "Feedback"); the Party providing such Feedback hereby grants the other Party, without any obligation to pay the providing Party for such use, unless otherwise agreed to in writing by the Parties prior to such Feedback being given to the other Party, a paid-up worldwide right and license to use and incorporate such Feedback into the Fuel Manager Owned Property or Buyer Owned Property, as applicable, owned by such other Party, in "as is" condition and with all faults, and to modify all or any portion of such Fuel Manager Owned Property or Buyer Owned Property, as applicable, regardless of the medium (now or hereafter known) into which such Feedback may be modified and regardless of the effect of such modifications on the integrity of such the Fuel Manager Owned Property or Buyer Owned Property, as applicable. The providing Party and/or its Related Parties, as applicable, further waive any "moral" rights, or other rights with respect to attribution

of authorship or integrity of such Feedback, such Party or its Related Parties may have under any applicable law, whether under copyright, trademark, unfair competition, defamation, right of privacy, contract, tort or other legal theory. The Party receiving and using such Feedback shall retain all responsibility and liability for such Feedback and its use thereof. For the avoidance of doubt and the purpose of clarity, except as otherwise expressly set forth in this Section 17.7, nothing contained in this Section shall in any way alter the ownership rights and restrictions on use set forth in this Agreement.

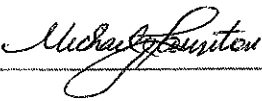
17.8 Ownership of Additional Services Intellectual Property

The Parties acknowledge and agree that (a) this Agreement provides for the ability of the Parties to agree to Additional Services to be provided hereunder by the Fuel Manager as described and provided in Section 6.9 and (b) notwithstanding the other provisions of this Article 17 (Ownership of Intellectual Property), that would otherwise apply to Buyer Related Data, Buyer Related Technology, Buyer Related Work Product and/or Buyer Equipment obtained, created, generated, collected, designed, developed, licensed, leased, owned or provided pursuant to this Agreement as a result of Additional Services (collectively, the “Additional Services IP”), the Parties may agree in writing to ownership, license and/or payment provisions or use limitations with respect to such Additional Services IP which are different than the provisions of the preceding sections of this Article 17. In the event the agreement of the Parties is silent with respect to the ownership of the Additional Services IP, such ownership shall be allocated in accordance with the terms set forth in this Article 17.


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IN WITNESS WHEREOF, the Parties have executed this agreement as of the Day and year first above written.

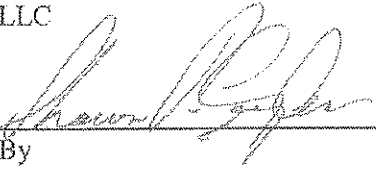
LONG ISLAND POWER AUTHORITY


By
MICHAEL J. DAWSON
Name
CFO
Title

LONG ISLAND LIGHTING COMPANY
d/b/a LIPA



By
MICHAEL J. DAWSON
Name
CFO
Title

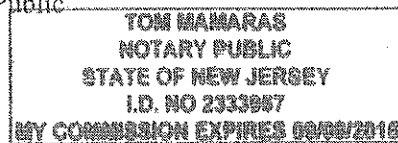
PSEG ENERGY RESOURCES & TRADE
LLC


By
Shawn P. Leyden
Name
Vice President - Commercial Law
Title

STATE OF NEW JERSEY)
)
COUNTY OF ESSEX)

On the 26 day of November, 2013, before me personally came Shawn P. Lyster to me known to be the individual described in the foregoing instrument in his/her capacity as an authorized signatory of FUEL MANAGER, the corporation described in and which executed the foregoing instrument, who being duly sworn did acknowledge that he/she executed same on behalf of FUEL MANAGER and that he/she was authorized to execute same on behalf of FUEL MANAGER.


(Notary Public



STATE OF NEW YORK)
)
COUNTY OF NASSAU)

On the 27 day of November, 2013, before me personally came Michael Taunton, to me known to be the individual described in the foregoing instrument in his/her capacity CFD, of the Long Island Power Authority, the corporate municipal instrumentality 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 the Long Island Power Authority and that he/she was authorized to execute same on behalf of the Long Island Power Authority.


(Notary Public

Lynda Nicolino
Notary Public, State of New York
County of Suffolk
No. 02NI4977085
Commission Expires Jan. 22, 2015

STATE OF NEW YORK)
)
COUNTY OF NASSAU)

On the 27 day of November, 2013, before me personally came Michael Taunton, to me known to be the individual described in the foregoing instrument in his/her capacity CFD, of the Long Island Lighting Company d/b/a LIPA, the corporation described in and which executed the foregoing instrument, who being duly sworn did acknowledge that he/she executed same on behalf of the Long Island Lighting Company d/b/a LIPA and that he/she was authorized to execute same on behalf of the Long Island Lighting Company d/b/a LIPA.


(Notary Public

Lynda Nicolino
Notary Public, State of New York
County of Suffolk
No. 02NI4977085
Commission Expires Jan. 22, 2015

APPENDIX 1

FRONT-END TRANSITION SERVICES

Front-End Transition Plan - Front & Back Office

Fuel Manager will commence the Front-End Transition Services as set forth in Section 3.1. In order to facilitate a smooth transition from the incumbent service provider, and to demonstrate readiness to carry out its responsibilities on FM Services Target Date, Fuel Manager will perform the following during the Front-End Transition Period:

- Coordinate and meet with all the interested parties on a regular basis in order to:
 - document existing protocols and procedures and the desired end-state for Buyer;
 - monitor and report on progress.
- Implement staffing and training plans for existing and new personnel to assume the Fuel Management Services responsibilities.
- Define operational and management reporting requirements. Build and test relevant reports and data transfers, including communication with Buyer's Enterprise Data Management.
- Develop standard operating procedures, protocols, and instructions for Fuel Management Services.
- Obtain and review all fuel-related specifications for Buyer's generating facilities.
- Obtain and review all applicable fuel supply contracts that Fuel Manager will be transacting under as agent for Buyer and take actions, if any, to provide notice of Fuel Manager's role as agent for Buyer.
- Evaluate adequacy of existing oil and gas contracts and storage capability from a logistics, reliability, and economic perspective. Initiate contract negotiation with additional suppliers if required.
- Obtain relevant fuel management information including historical market, inventory and accounting data in order to integrate into Fuel Manager's business processes and systems.
- Leverage Fuel Manager's existing relationship with Buyer and incumbent service provider to ensure a smooth transition through parallel operations into full transfer of fuel management services responsibilities by FM Services Target Date.

Transition Services – IT

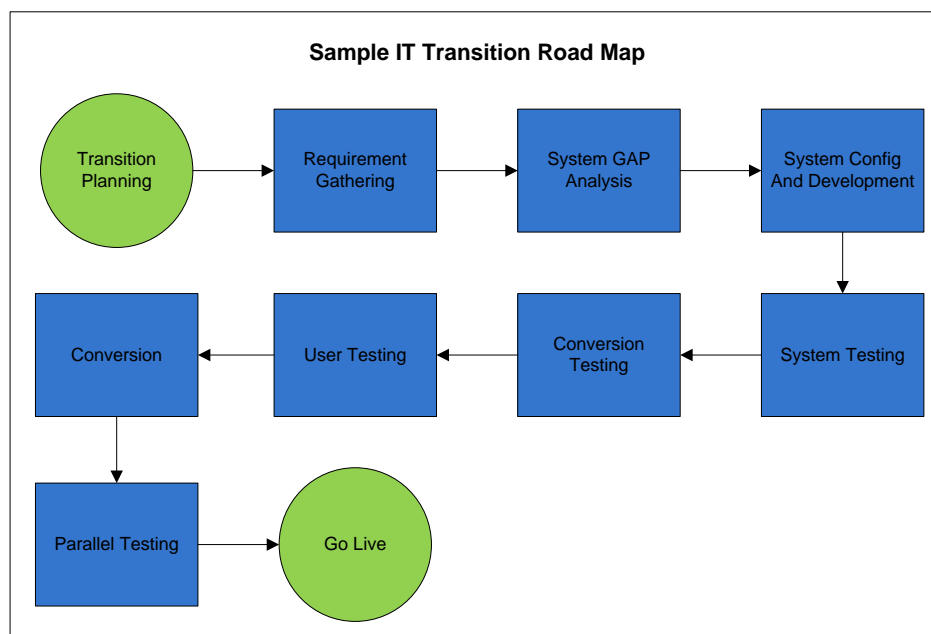
Fuel Manager's Information Technology team, which has experience in managing small to large scale service transitions, will play an integral role during the transition period to ensure

that the appropriate Information Technology, including hardware, software, system interfaces and customizations, are identified, documented, and in place for the start of the contract.

Fuel Manager will work to understand Buyer's short term and long term business goals for the Fuel Management function. Fuel Manager will provide a comprehensive system implementation road map to provide transparency and ensure a seamless transition for Buyer and its business partners. The implementation road map will also include details for:

- Change Control
- Issue Management
- System Testing
- User Validation
- Data Conversion
- Business Continuity

Fuel Manager will perform a gap analysis to evaluate the adequacy of systems and interfaces in order to identify required enhancements and customizations to support Fuel Management Services. This analysis will address system capabilities spanning Energy Trading and Risk Management (“ETRM”), scheduling, inventory management, settlement and invoicing.



APPENDIX 2

FRONT-END TRANSITION SERVICE PAYMENT; FM SERVICES FEE; FUEL MANAGEMENT PERFORMANCE PENALTY

PART 1 **Front-End Transition Service Payment**

The Front-End Transition Service payment shall total \$920,000.00 and payments shall be made upon achieving each milestone set forth in Table 2-1, as may be adjusted pursuant to Section 3.1. If the FMA Effective Date occurs after December 1, 2013, then the Milestone Payments shall increase by 20% as provided in Section 2.1(i).

Table 2-1: Front-End Transition Services Payment Schedule

Item	Target Milestone Date	Milestone Payment
<u>Staffing/Training</u>		
• Begin Staffing/Training	July 1, 2014	\$135,000
• Complete Staffing/Training	August 15, 2014	\$135,000
Completion of Operating Procedures/Instructions	September 1, 2014	\$40,000
Completion of Performance Monitoring Process	September 15, 2014	\$40,000
Completion of Reporting Requirements – Design & Setup	October 15, 2014	\$40,000
<u>Parallel Operations</u>	November 1, 2014	\$150,000
• Front Office Gas		
• Front Office Oil		
• Back Office		
Hardware Purchased	August 1, 2014	\$150,000
IT Systems Completion (Trade Capture)	October 3, 2014	\$40,000
IT Systems Completion (Accounting)	October 3, 2014	\$40,000
Complete IT System Testing	October, 17, 2014	\$150,000
Total Milestone Payments		\$920,000

The Parties may mutually agree in writing to adjust any of the target milestone dates and milestone payments depending on actual circumstances that exist at the time including but not limited to progress towards completion, brief delays or schedule acceleration.

PART 2 **FM Services Fee**

Service Type Based on Buyer's Election	Contract Year 2015 (payable in 12 equal Monthly installments)
Buyer Payment Option	\$3,800,000
Fuel Manager Payment Option	\$4,300,000

Beginning in 2016, the FM Services Fee will escalate at the New York State CPI in each Calendar Year at the beginning of such Year. The New York State CPI is the Bureau of Labor Statistics CPI Index for "All Urban Consumers of New York-Northern New Jersey-Long Island, NY-NJ-CT-PA: Series ID CUURA101SA0" (the "Escalation Rate").

The Parties acknowledge that the dispatch of the LIPA Generating Facilities shall not affect the fees otherwise due to Fuel Manager.

PART 3 **Performance Metrics / Determination of Performance Penalties**

Metric No.	Performance Metric	Description	Weighting
1	Gas Price Forecasting	Compares actual procurement prices of Next Day and Intra Day purchases vs. appropriate FM forecasts. To be calculated daily, but reported monthly based on the average YTD performance for each Contract Year.	10%
2	Gas Purchase Price	Compares actual procurement prices of Next Day and Intra Day purchase vs. appropriate published indices. To be calculated daily, but reported monthly and applied based on the average YTD performance for each Contract Year.	15%

3	Gas Balancing Cost	Gas Balancing Cost is a measure of the net gain or loss attributed to Fuel Manager's management of gas transactions to meet daily generation requirements and avoid uneconomic gas balancing charges to Buyer. The metric shall be calculated monthly based on the average YTD performance for each Contract Year.	15%
4	Enterprise Data Management	This Performance Metric will measure, on a daily basis, the percentage of data that is posted accurately and timely by the Fuel Manager into the Staging Area with such data being ready for download to the Buyer. This metric shall be reported monthly based on the cumulative YTD performance for each Contract Year.	10%
5	Oil Inventory Management	Evaluates the effectiveness of Fuel Manager's oil inventory management and reporting. Fuel Manager will produce a monthly report for each oil storage facility reconciling the difference in actual readings with all injections and withdrawals. On a quarterly basis, Fuel Manager will provide recommendations for addressing any deviations outside a defined range. Performance will be measured monthly on a cumulative YTD basis for each Contract Year.	15%
6	Invoice Processing Effectiveness	For the Fuel Manager Payment Option, this will measure the timeliness of Fuel Manager's invoice payment, for the Buyer Payment Option, this will measure the timeliness of Fuel Manager's review and submittal to Buyer for approval of invoices. Fuel Manager's performance will be measured monthly and evaluated on the cumulative YTD basis (% of invoices paid by the due date / timely reviewed and submitted to Buyer for approval) for each Contract Year.	15%
7	Overall Satisfaction	This Performance Metric is designed to measure Buyer's overall satisfaction with the Fuel Manager's performance. Factors such as effective communication with Buyer and other service providers, accuracy and availability of market information, responsiveness, sound business judgment, value-added recommendations, and any other factors deemed relevant by Buyer will be considered. This metric shall be applied for each Contract Year.	20%

100%

Notes:

- For each metric, the Parties shall establish a minimum standard of performance ("Standard") and a measurement scale to determine rating points.
- Favorable Performance = when actual performance is better than the Standard resulting in positive rating points

- Unfavorable Performance = when actual performance is worse than the Standard resulting in negative rating points
- A weighted sum of rating points will be divided by the maximum possible rating points for all metrics to determine the overall performance ratio. The annual penalty, if any, will equal the performance ratio (if negative) multiplied by the maximum penalty (i.e., 10% of the FM Services Fee).

The Parties shall establish the computational details of the performance metrics for Contract Year 2015 no later than the FM Services Target Date. The Parties may mutually agree to modify the metrics (provided they are not completely eliminated), weighting, and computational details for any subsequent Contract Year.

PART 4 Additional Services

The Parties may agree in writing that the Fuel Manager shall perform Additional Services as set forth in Section 6.9(iii).

Unless otherwise agreed to by the Parties in writing, Fuel Manager shall be compensated for its actual, reasonable and verifiable costs incurred in procuring materials, subcontractors, IT services, software license, and other similar items in preparation for and in performing such Additional Services, plus an adder of 10%. Fuel Manager shall also be compensated for the time of its own personnel in preparing for and performing Additional Services at the following hourly rates, which rates shall escalate as set forth below:

FM Services Contract Year 1 Hourly Rates

<u>Contract Year 1</u>	<u>Hourly Rates</u>
Officer	\$450/hour
Director	\$250/hour
Manager	\$150/hour
Analyst	\$100/hour
Administrative Support	\$ 50/hour

The Contract Year 1 Hourly Rates shall apply to Contract Year 1 for Additional Services and shall be escalated thereafter at the applicable multi-year Escalation Rate for each year after Contract Year 1. For example, if Additional Services are requested in Contract Year 3 requiring the use of a Manager and the Escalation Rate for Year 2 is 1% and the Escalation Rate for Contract Year 3 is 2%, then the hourly rate for that Manager in Contract Year 3 is \$154.53 and such rate shall escalate thereafter at the Escalation Rate.

The charges for Additional Services shall be in addition to the FM Services Fee. The charges for Additional Services shall not be included in the calculation of any penalties hereunder, including, but not limited to the Fuel Management Performance Penalty. The charges for Additional Services shall be separately stated on the Fuel Manager's Monthly invoice prepared and sent to Buyer pursuant to Section 5.1.

APPENDIX 3

FORM OF LETTER OF CREDIT

[ISSUING BANK NAME]

IRREVOCABLE STANDBY

LETTER OF CREDIT No. _____

DATE:

BENEFICIARIES:

Long Island Power Authority

And

Long Island Lighting Company d/b/a/ LIPA

c/o Long Island Power Authority

333 Earle Ovington Boulevard, Suite 403

Uniondale, New York 11553

Attn: Vice President, Power Markets

APPLICANT:

[_____]

INITIAL AMOUNT: USD \$

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

PLACE OF EXPIRY: At our Counters

We hereby issue in your favor our Irrevocable Standby Letter of Credit No. (this "Letter of Credit") for the account of [_____] (the "Applicant"), on behalf of [_____] ("Fuel Manager"), 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 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 ten (10) 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) Beneficiaries' 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 Beneficiaries; or
 - (ii) Beneficiaries' Certificate issued in the form of Annex II attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

Drafts drawn under this Letter of Credit must contain the clause: "Drawn under [Issuing Bank Name] Irrevocable Standby Letter of Credit No. _____, dated , ____."

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

TRANSFERABLE BY US, BUT ONLY IN ITS ENTIRETY, AND MAY BE SUCCESSIVELY TRANSFERRED, TRANSFER OF THIS LETTER OF CREDIT SHALL BE EFFECTED BY US UPON SUBMISSION OF THIS ORIGINAL LETTER OF CREDIT, INCLUDING ALL AMENDMENTS, IF ANY ACCOMPANIES BY THE ATTACHED TRANSFER REQUEST FORM DULY COMPLETED AND SIGNED, WITH THE SIGNATURE THEREON AUTHENTICATED BY YOUR BANK, WE MUST COMPLY WITH ALL SANCTIONS, EMBARGO AND OTHER LAWS AND REGULATIONS OF THE U.S. AND OF OTHER APPLICABLE JURISDICTIONS TO THE EXTENT THEY DO NOT CONFLICT WITH SUCH U.S. LAWS AND REGULATIONS ("APPLICABLE RESTRICTIONS"). THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON OR ENTITY LISTED IN OR OTHERWISE SUBJECT TO ANY APPLICABLE RESTRICTIONS,

CHARGES AND FEES RELATED TO SUCH TRANSFER WILL BE FOR THE ACCOUNT OF THE APPLICANT

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

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

Except so far as otherwise stated, this Letter of Credit is subject to the “International Standby Practices ISP98” of the International Chamber of Commerce as in effect on the date of issuance thereof (the “ISP98”), excluding Section 3.12(a), and provided Issuer shall furnish a replacement for a lost original credit upon Beneficiaries’ execution of indemnification and other reasonable requirements of Issuer. As to matters not covered by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereunder.

This Letter of Credit may not be amended, changed or modified without the express written consent of Beneficiaries and Issuer.

[ISSUING BANK NAME]

By:

Authorized Signature

Address: []
 []
 []

ANNEX I TO [Issuing Bank Name]
IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

[Issuing Bank Name]

Date: _____, ____

[
[
[

Ladies and Gentlemen:

The undersigned [], the duly elected and acting [] of the LONG ISLAND POWER AUTHORITY acting on behalf of itself and its operating subsidiary LONG ISLAND LIGHTING COMPANY d/b/a LIPA (collectively, the “Beneficiary”), hereby certifies to [Issuing Bank Name] (the “Bank”), _____, (the “Applicant”), and _____ (“Fuel Manager”), with reference to Irrevocable Standby Letter of Credit No. _____, dated [], [] (the “Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Fuel Management Agreement dated as of [DATE] (as amended from time to time, the “Agreement”), between the Beneficiary and Fuel Manager.
2. The Beneficiary has not heretofore disposed of its right, title or interest in or to the Agreement.
3. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$, because [indicate applicable reason]:

[] The amount drawn hereunder constitute undisputed amounts that are owed to Beneficiary by Fuel Manager under the Agreement and that remain unsatisfied for at least ten (10) days of becoming due and payable.

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

[] The Fuel Manager is Bankrupt (as defined in the Agreement), permitting Beneficiary to draw the entire amount of the Letter of Credit.

[] The Letter of Credit is to expire in five (5) Business Days (as defined in the Agreement) or less and Beneficiary has not been provided substitute Fuel Manager 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 LIGHTING COMPANY
d/b/a LIPA

AND

LONG ISLAND POWER AUTHORITY

By: _____

Name:

Title:

ANNEX II TO [Issuing Bank Name]
IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

[Issuing Bank Name]

Date: _____, ____

[
[
[

Ladies and Gentlemen:

The undersigned[____], the duly elected and acting [____] of LONG ISLAND POWER AUTHORITY acting on behalf of itself and its operating subsidiary LONG ISLAND LIGHTING COMPANY d/b/a LIPA (collectively, the “Beneficiary”), hereby certifies to [Issuing Bank Name] (the “Bank”), _____ [and _____] ([collectively,] the “Applicant”), and [_____, a _____ (“Fuel Manager”)], with reference to Irrevocable Standby Letter of Credit No. _____, dated [____], ____ (the “Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is a party to that certain Fuel Management Agreement dated as of [DATE] (as amended from time to time, the “Agreement”), between the Beneficiary and Fuel Manager.
2. The Beneficiary has not heretofore disposed of its right, title or interest in or to the Agreement.
3. The Beneficiary has provided at least thirty (30) days’ prior written notice to the Applicant of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date or any New Expiration Date.
4. The Applicant have failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the thirty (30) day period referred to in Paragraph 4 above.
5. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS & /100ths (U.S. \$).
6. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 5 above, which amount does not exceed the Available Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date or any New Expiration Date.
7. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

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

Beneficiary:

LONG ISLAND LIGHTING COMPANY
d/b/a LIPA

AND

LONG ISLAND POWER AUTHORITY

By: _____
Name:
Title:

APPENDIX 4

FORM OF PAYMENT GUARANTEE

Date

To: Long Island Power Authority and
Long Island Lighting Company d/b/a/ LIPA
c/o Long Island Power Authority
333 Earle Ovington Blvd., Suite 403
Uniondale, NY 11553

Ladies and Gentlemen:

PSEG Energy Resources & Trade LLC, a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 80 Park Plaza, T-19, Newark, New Jersey 07102 ("ER&T") and the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, acting on behalf of itself and its operating subsidiary, the Long Island Lighting Company d/b/a LIPA, with its headquarters at 333 Earle Ovington Boulevard, Uniondale, New York 11553 (collectively, the "Counterparty") have entered into that certain _____ **dated** _____ (the "Agreement").

In consideration of Counterparty entering into the Agreement with ER&T and in accordance with Section _____ of such Agreement, PSEG Power LLC a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 80 Park Plaza, T-25, Newark, New Jersey 07102 ("Guarantor"), to the extent of \$ _____ (**DOLLARS**) (the "Guarantee Limit"), and subject to the terms and conditions hereof, hereby absolutely, irrevocably and unconditionally guarantees to Counterparty, with effect from the date hereof, the full and prompt payment of all present and future amounts payable by ER&T under the Agreement when the same shall become due and payable, whether on scheduled payment dates, upon oral or written demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace or cure period. Upon failure of ER&T promptly to pay any such amounts, and upon written demand by Counterparty to Guarantor to the address set forth herein (or to such other address as Guarantor may specify in writing to Counterparty), Guarantor, subject to the Guarantee Limit, agrees promptly to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Payment Guarantee. This is a guarantee of payment and not of collection. Guarantor will be liable for direct damages only and to the extent provided for herein. In no event shall Guarantor be liable hereunder for consequential, incidental, punitive, exemplary or indirect damages, lost profits or revenues by statute, in tort or contract, under any indemnification provision or otherwise.

Guarantor hereby agrees that its obligations hereunder shall not be affected by the Agreement's validity, enforceability or the lack of authority of ER&T to execute or deliver the Agreement, or any change in, or amendment to, the Agreement.

Guarantor hereby waives acceptance of this Payment Guarantee, notice of dishonor, diligence, presentment, and demand on ER&T for payment or otherwise (except as provided hereinabove), filing of claims, the requirement of a prior proceeding against ER&T or any third party, protest or notice of any amendment, modification or waiver of or under the Agreement, and all other notices or demands not specified hereunder, and without the necessity of enforcing any remedy available under the terms of the Agreement.

If at any time payment by ER&T to Counterparty under the Agreement is rescinded or must be otherwise restored or returned by Counterparty to ER&T due to the insolvency, bankruptcy or reorganization of ER&T or otherwise, Guarantor's obligations hereunder with respect to such payment shall continue to be effective or shall be reinstated upon such rescission, or upon such restoration or return to ER&T being made by Counterparty.

Guarantor represents to Counterparty that:

1. it is a limited liability company duly organized and validly existing under the laws of the jurisdiction of its organization and has full power and legal right to execute, deliver and perform this Payment Guarantee;
2. its execution, delivery and performance of this Payment Guarantee have been and remain duly authorized by all necessary action and do not contravene any provision of its organizational documents or any law, regulation or contractual restriction binding on it or its assets;
3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Payment Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to, or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
4. this Payment Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms subject, as to enforcement, by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

In the event of any default by ER&T under the Agreement, Counterparty shall have the right to proceed first and directly against Guarantor under this Payment Guarantee without proceeding against any other person or entity or exhausting any other remedies which it may have and without resorting to any other security held by it.

By accepting this Payment Guarantee and entering into the Agreement, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against ER&T in respect of any amounts paid by Guarantor pursuant to this Payment Guarantee, provided that Guarantor shall be entitled to enforce or to receive any payment arising out of or based upon such right of

subrogation only to the extent that, and only after, it has paid all amounts payable by ER&T under the Agreement in full that are payable pursuant to this Payment Guarantee.

All notices or other communications to the Guarantor and Counterparty shall be in writing and shall be sent by hand delivery, mail (return receipt requested), facsimile (provided a copy is also sent by overnight courier) or overnight courier. Notices sent by hand-delivery shall be deemed received on the date delivered, provided that if is delivered after the close of the business day, it shall be deemed received on the next business day, notices sent by mail shall be deemed received on the date stamped on the return receipt, notices sent by facsimile (provided a copy is also sent by overnight courier) shall be deemed received on the date stated on the facsimile confirmation unless sent or transmitted after the close of the business day, in which case it shall be deemed received on the next business day, and notices sent by overnight courier shall be deemed received on the next business day. Notices shall be sent to:

If to Guarantor:

PSEG Energy Resources & Trade LLC
80 Park Plaza, T-4
Newark, New Jersey 07102
Attention: Corporate Secretary

If to Counterparty:

Long Island Lighting Company
Long Island Lighting Company d/b/a LIPA
c/o Long Island Power Authority
333 Earle Ovington Boulevard
Suite 403
Uniondale, NY 11553
Attention: Vice President, Power Markets

This Payment Guarantee shall be binding upon Guarantor and upon its successors and assigns and shall be for the benefit of Counterparty and its successors and assigns.

This Guarantor's guarantee of payment up to the Guarantee Limit, is a continuing guarantee from the date hereof for the term of this Payment Guarantee. This Payment Guarantee shall expire on _____, 2014 (the "Expiration Date").**[note to LIPA: this guarantee shall be issued for one (1) year terms]** Notwithstanding the foregoing, this Payment Guarantee may be terminated upon at least 10 days' prior written notice to that effect being actually received by Counterparty; provided, however, that such termination by Guarantor shall not be effective unless replacement Acceptable Credit Support (as defined in the Agreement), if any, has been provided to Counterparty prior thereto. Such expiration or termination shall not, however, affect or reduce Guarantor's obligation hereunder for any liability of ER&T pursuant to the Agreement incurred prior to such expiration or termination.

In case any clause, provision, or section of this Payment Guarantee, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder thereof or any other clause, provision, or section, and each such clause, provision, or section shall be deemed to be effective and operative in the manner and to the full extent permitted by law.

This Payment Guarantee shall not be binding and shall be null and void and without any force and effect unless and until it is fully executed and delivered by each of Guarantor and Counterparty

This Payment Guarantee may not be modified or amended except in a writing signed by all the parties, provided, however that the Guarantor may increase the Guarantee Limit and/or extend the Expiration Date in writing without the consent or signature of Counterparty.

Subject to the Guarantee Limit, Guarantor shall reimburse Counterparty for its reasonable costs and expenses, including but not limited to reasonable attorney fees, incurred in an action to collect or enforce any of the obligations under this Payment Guarantee, provided Counterparty is ultimately successful in such enforcement action.

No failure on the part of the Counterparty to exercise, and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Counterparty of any right, remedy or power hereunder preclude any other future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to the Counterparty or allowed to it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Counterparty from time to time.

This Payment Guarantee shall be governed by and construed in accordance with the laws in force in the State of New Jersey without regard to principles of conflicts of law. Guarantor accepts service of process in the courts of the United States within the State of New Jersey. Guarantor represents and warrants that it is capable of suing and being sued in the United States, but in the event that such courts refuse to exercise jurisdiction or venue over the Guarantor and the Counterparty or any claims made pursuant to this Guaranty or the Agreement, then the Guarantor and Counterparty shall submit to the exclusive jurisdiction of the state courts of New Jersey.

This Payment Guarantee constitutes the entire agreement of the Guarantor and the Counterparty and supersedes all prior written or oral agreements and understandings between the Guarantor and the Counterparty with respect to the subject matter hereof. Any provision contained in this Payment Guarantee, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Nothing herein is intended to deny to Guarantor, and it is expressly agreed that Guarantor shall have and may assert, any and all of the defenses, set-offs, counterclaims and other rights

which ER&T is or may be entitled arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of ER&T.

PSEG POWER LLC

By: _____
Name: Bradford D. Huntington
Title: Vice President and Treasurer

Accepted and Agreed:

Long Island Power Authority

By: _____
Name:
Title:

Long Island Lighting Company d/b/a LIPA

By: _____
Name:
Title:

APPENDIX 5

LIPA GENERATING FACILITIES

Genco Generating Facilities - Power Supply Agreement

PSA Units:	Capacity (MW)	Contract Expiration	Type Facility ¹	Fuel
E.F. Barrett 1,2	385	April 30, 2028	ST	Gas, Residual Oil
Northport 1,2,3,4	1,552	April 30, 2028	ST	Gas, Residual Oil
Port Jefferson 3,4	383	April 30, 2028	ST	Gas, Residual Oil
E.F. Barrett 1-12	305	April 30, 2028	CT	Gas, Distillate
Wading River 1-3	241	April 30, 2028	CT	Distillate Oil
East Hampton 1	18	April 30, 2028	CT	Distillate Oil
Glenwood 1-3	115	April 30, 2028	CT	Distillate Oil
Holtsville 1-10	524	April 30, 2028	CT	Distillate Oil
Northport GT-1	13	April 30, 2028	CT	Distillate Oil
Port Jefferson GT	12	April 30, 2028	CT	Distillate Oil
Shoreham 1-2	64	April 30, 2028	CT	Distillate Oil
Southampton 1	7	April 30, 2028	CT	Distillate Oil
Southhold 1	12	April 30, 2028	CT	Distillate Oil
West Babylon 4	49	April 30, 2028	CT	Distillate Oil
East Hampton 2-4	6	April 30, 2028	IC	Distillate Oil

1 - ST – Steam Turbine, IC – Internal Combustion, CT –Combustion Turbine

PPA Generating Facilities - Purchase Power Agreements (PPAs)¹

PPA Units	Capacity (MW)	Contract Expiration	Type Facility²	Fuel
Bethpage Energy Center 3	77	2025	CC	Gas, Distillate Oil
Equus	47	2017	CT	Gas, Distillate Oil
Bayswater	54	2020	CT	Gas
Jamaica Bay	55	2018	CT	Distillate Oil
Pinelawn	75	2025	CC	Gas, Distillate Oil
Shoreham	76	2017	CT	Distillate Oil
Edgewood	79	2018	CT	Gas, Distillate Oil
Greenport	48	2018	CT	Distillate Oil
Caithness³	286	2029	CC	Gas, Distillate Oil
Glenwood	79.9	2027	CT	Gas, Distillate Oil
Port Jefferson GT 2-3	79.9	2027	CT	Gas, Distillate Oil

1 - Any new generating facilities selected in the 2010 G&T RFP, or any subsequent procurement for capacity and/or energy resources are considered to be included in the “PPA Generating Facilities” and shall be added to Appendix 5 at Buyer’s sole discretion.

2 - CC – Combined Cycle, ST – Steam, IC – Internal Combustion, CT –Combustion Turbine

3 - Buyer’s share is 286 MW, however the total capacity of the Caithness Plant is 326 MW.

SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA'S CONTRACTS

Attachment A

For the purposes of this Supplement 1, (a) Buyer is hereinafter referred to as "LIPA," and (b) Fuel Manager is hereinafter referred to as "Contractor."

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

NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, 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, and except in accordance with Article 12 of this Agreement. 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.

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

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

WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law and shall comply with all requirements set forth in Article 8 or Article 9 of the Labor Law whichever Article applies. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, Contractor agrees, as a material condition of the contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

RECORDS. Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for six (6) years following the expiration or earlier termination of the contract. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the

purposes of inspection, auditing and copying. LIPA shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) Contractor shall timely inform LIPA in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

DISCLOSURE OF LIPA RECORDS OR INFORMATION. If any third party requests that Contractor disclose LIPA records or information, as defined in subdivision 4 of section 86 of the Public Officers Law, Contractor shall notify LIPA of such request and LIPA shall determine, in accordance with Chapter 39 of the Laws of 2010, whether such LIPA records or information may be disclosed.

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

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

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

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

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

bidder certifications, proof of qualification for exemption will be the responsibility of Contractor to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St – 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl St – 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

- (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. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), LIPA shall not purchase any apparel from any Contractor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) Contractor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with LIPA), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

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

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

COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

I. General Provisions

A. The Long Island Power Authority (“LIPA”) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to LIPA to fully comply and cooperate with LIPA in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

A. For purposes of this procurement, LIPA hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 0% for Minority-Owned Business Enterprises (“MBE”) participation and 0% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to LIPA for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to LIPA within seventy two (72) hours after the date of the notice by LIPA to award the Contract to the Contractor.

3. If Contractor or Subcontractor does not have an existing EEO policy statement, LIPA may provide the Contractor or Subcontractor a model statement (see Form 102 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement below).

4. The Contractor’s EEO policy statement shall include the following language:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form 101 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form 103 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to LIPA of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.

B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, LIPA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

A. For Waiver Requests, Contractor should use Form 104 – Waiver Request.

B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, LIPA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

C. If LIPA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, LIPA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 105) to LIPA by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

A. Where LIPA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to LIPA liquidated damages.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by LIPA, Contractor shall pay such liquidated damages to LIPA within sixty (60) days after they are assessed by LIPA unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of LIPA.

FORM 102

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to
adopt the following policies with respect to the project being developed or services rendered at

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By: _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise
Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal
Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____ 20% Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women's Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

_____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

SUPPLEMENT 2

REQUIRED FORMS

Attached, are the following required procurement forms that should be provided with the Respondent's proposal:

- Non-Collusive Bidding Certification
- Nondiscrimination In Employment In Northern Ireland
- Contractor Disclosure of Contacts Form
- Contractor Disclosure of Prior Non-Responsibility Determinations
- Responsibility Questionnaire
- Standards of Conduct

Appendix 7-2 to Amended & Restated OSA

**CONTRACT FOR PROVIDING
POWER SUPPLY MANAGEMENT
SERVICES
TO
LONG ISLAND POWER AUTHORITY
BY
PSEG ENERGY RESOURCES & TRADE LLC**

NOVEMBER 26, 2013

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**CONTRACT TO PROVIDE
POWER SUPPLY MANAGEMENT
SERVICES
TO
LONG ISLAND POWER AUTHORITY
BY
PSEG ENERGY RESOURCES & TRADE LLC**

This “Contract to Provide Power Supply Management Services to Long Island Power Authority by PSEG Energy Resources & Trade LLC”, dated as of November 26, 2013 is between the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, acting on behalf of itself and its operating subsidiary, the Long Island Lighting Company d/b/a LIPA, with its headquarters at 333 Earle Ovington Boulevard, Uniondale, New York 11553 (collectively, “Buyer”) and PSEG Energy Resources & Trade LLC, a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 80 Park Plaza, T-19, Newark, New Jersey 07102 (“PSMFB Service Provider”).

WITNESSETH:

WHEREAS, the PSMFB Service Provider is engaged in the business of providing PSMFB Services and PSMMO Services;

WHEREAS, Buyer is engaged in the distribution and sale of electricity to the public in Nassau County, Suffolk County, and the portion of Queens County known as the Rockaways in the State of New York;

WHEREAS, Buyer provides such electricity to the public from a number of generating units and over transmission facilities that it either owns, or has rights to, under existing contracts, and plans to procure additional generation and transmission resources during the Base Term, and Extended Term, if applicable, to meet the growing electricity needs of the public;

WHEREAS, Buyer and PSEG Long Island LLC (also referred to herein as the “Service Provider”), an Affiliate of PSMFB Service Provider, are parties to that certain Amended and

Restated Operations Services Agreement, as dated therein (“Amended and Restated OSA”) pursuant to which PSEG Long Island LLC has established PSMFB Service Provider as its designated Affiliate (as defined therein) and has assigned its right and obligation to provide PSMFB Services and PSMMO Services to Buyer to PSMFB Service Provider and Buyer has consented to such assignment pursuant to, and in accordance with, the Amended and Restated OSA; and

WHEREAS, Buyer desires PSMFB Service Provider to provide PSMFB Services and PSMMO Services on behalf of Buyer; and

WHEREAS, Buyer has agreed to purchase from the PSMFB Service Provider and the PSMFB Service Provider has agreed to sell to Buyer PSMFB Services and PSMMO Services, all in accordance with the provisions of this Agreement; and

WHEREAS, the Parties have set forth in this Agreement the terms and conditions for the PSMFB Service Provider to provide PSMFB Services and PSMMO Services to Buyer.

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 the PSMFB Service Provider, each intending to be legally bound, agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 Definitions:

In addition to the initially capitalized terms and phrases defined in the preamble of this Agreement, the following initially capitalized terms and phrases as and when used in this Agreement shall have the respective meanings set forth below. If a term is not defined in this Section 1.1, it shall have the meaning as set forth in the applicable Appendix.

Acceptable Credit Support – means (a) a performance bond from an entity with an investment grade rating satisfactory to Buyer, (b) a letter of credit from an entity with an

investment grade rating satisfactory to Buyer, (c) a Guaranty substantially in the form set forth in Appendix XIII provided by a Guarantor satisfactory to Buyer, or (d) an escrow arrangement satisfactory to Buyer.

Additional Services – has the meaning set forth in Part 3 of Appendix IV.

Administrative Protocols and Procedures – is defined in Section 4.11.

Affiliate – means any Person directly or indirectly controlling, controlled by or under direct or indirect common control with the Person in question. For purposes of this definition “control” means the power to direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms “controlling” and “controlled” have the meanings correlative to the foregoing. A voting interest of ten percent (10%) or more in a Person shall create a rebuttable presumption of control.

Agent – means an entity that acts on Buyer’s behalf to procure or provide goods or services.

Aggrieved Party – is defined in Section 15.1.

Agreement – means this “Contract to Provide Power Supply Management Services to Long Island Power Authority by PSEG Energy Resources & Trade LLC” dated October [3], 2013 between Buyer and the PSMFB Service Provider, including all Appendices attached hereto and amendments hereto that may be made from time to time in accordance herewith.

Ancillary Services – means those services designated by the applicable ISO/RTO that includes reactive supply and voltage support service, black start, regulation and frequency response and operating reserves.

Annual Fee – is defined in Appendix IV Part 2.

Annual Penalty – is defined in Appendix V.

Appendix – means an appendix of the Agreement.

Applicable Buyer Sub-license Terms – is defined in Section 8.4(g).

Applicable PSMFB Sub-license Terms – is defined in Section 8.2(i).

Back-End Transition Payment – is defined in Appendix IV Part 4 as to PSMFB Services and is defined in Appendix XIV as to PSMMO Services.

Back-End Transition Period – is defined in Section 3.1.

Back-End Transition Period Payment – is defined in Appendix XIV.

Back-End Transition Plan – means the plan set forth in Appendix III Part 2 as to PSMFB Services and is defined in Appendix XIV as to PSMMO Services.

Back-End Transition Services– is defined in Appendix III Part 2 as to PSMFB Services and is defined in Appendix XIV as to PSMMO Services.

Back-Office Services – means those PSMFB Services described in Appendix II Part 2 as to PSMFB Services and is defined in Appendix XIV as to PSMMO Services.

Base Term – is defined in Section 2.1.

Benchmark – has the meaning set forth in Part 1 of Appendix V.

Btu – means British thermal unit.

Business Continuity – means the PSMFB Service Provider’s obligation to ensure the continued performance of PSMFB Services.

Business Continuity Plan – means that plan, as described in Appendix VIII, which the PSMFB Service Provider shall implement to satisfy its Business Continuity obligations.

Business Day – means any Day, excluding Saturday, Sunday and NERC-defined holidays commencing at 8:00 A.M. EPT and ending at 5:00 P.M. EPT.

Buyer Contracts - is defined in Section 7.8(a).

Buyer Data Transfer Services – is defined in Section 2.4(d).

Buyer's Control Center – means the authority established by Buyer that directs the operation of Buyer's Electric System, which includes at times providing Dispatch instructions for Generating Facilities.

Buyer's Electric System – means all equipment and facilities now or hereafter comprising Buyer's system for transmission and/or distribution of electricity, as modified or expanded from time to time.

Buyer Equipment – means those machines, equipment, and associated attachments, features, accessories and peripheral devices owned or leased by, or on behalf of Buyer or any of Buyer's Related Parties.

Buyer Fault – means any breach, failure, failure of compliance, or nonperformance by the Buyer of its obligations hereunder or any negligence, grossly negligent conduct, or willful misconduct by Buyer under this Agreement (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier, or independent contractor of Buyer other than the PSMFB Service Provider) that materially and adversely affects the PSMFB Service Provider's performance, or the PSMFB Service Provider's rights or obligations, under this Agreement.

Buyer Licensed Intellectual Property – means all Intellectual Property Rights licensed by Buyer or any of Buyer’s Related Parties from any third party except PSMFB Service Provider or PSMFB Service Provider Related Parties.

Buyer Owned Property – is defined in Section 8.1.

Buyer Owned Resources – means those generating units and transmission resources listed in Table II-1d existing and added over the Base Term, and Extended Term, if applicable, that are owned by Buyer.

Buyer’s Personnel – is defined in Section 8.1(a)(ii).

Buyer Related Data – means any and all information and data related to and/or created or owned by, or on behalf of, Buyer or any of Buyer’s Related Parties, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, including without limitation PSM Confidential Information, Non-Technical Information, Technical Information and any such other information and data about Buyer and/or any Buyer’s Related Parties, including without limitation information and data about the Buyer’s or any of Buyer’s Related Parties’ business, the Buyer’s or any of Buyer’s Related Parties’ customers (current, former, and prospective), and any other Buyer data or data of Buyer’s Related Parties about Buyer’s or any of Buyer’s Related Parties’ facilities and systems, operations, purchases, consumption, products, services, markets, marketing, business plans, assets or finances.

Buyer Related Parties – is defined in Section 8.1(b).

Buyer Related Technology – means any and all Software, related to, and/or created or owned by, or on behalf of, Buyer or any of Buyer’s Related Parties and any and all Intellectual

Property Rights in any such Software but excluding any PSMFB Service Provider Related Technology.

Buyer Related Work Product – means any and all Work Product related to, and/or created or owned by, or on behalf of, Buyer or any of Buyer's Related Parties, but excluding any PSMFB Service Provider Work Product.

Buyer's Representatives – is defined in Section 9.1.

Buyer's Standards of Conduct – means that Buyer's document filed with FERC entitled "Standards of Conduct For Transmission Providers" under 18 C.F.R Section Number 358 as promulgated by Order No.2004 and 2004-A, as Modified by Order No.2004-B and as amended from time to time that is available on Buyer's website at www.lipower.org, as amended from time to time.

Buyer Sub-licensee – is defined in Section 8.4(g).

Buyer Sub-license Agreement – is defined in Section 8.4.

Cable Resources — means the Cross Sound Cable, the Neptune Cable and the 1385 Cable (also known as the Northport-Norwalk Cable) listed in Table II-1e.

Capacity – means the capability to generate electrical power.

CEE PSMFB Service Provider – means Consolidated Edison Energy Inc.

Change in Legal Requirements – means the adoption, enactment, promulgation or issuance of, or a change in, any Legal Requirement after the date this Agreement is executed.

Commercially Reasonable Efforts – is defined in Section 4.8(b).

Consolidated Edison Energy, Inc. Contract to Provide Power Supply Management Front and Back Office Services or CEE PSMFB Agreement – means that agreement entitled “Contract to Provide Power Supply Management Front and Back Office Services to Long Island Power Authority by Consolidated Edison Energy, Inc. dated as of December 1, 2008” and all amendments thereto, entered into between the Long Island Power Authority, a corporate municipality of the State of New York, acting on its behalf and its operating subsidiary, the Long Island Lighting Company d/b/a/ LIPA and Consolidated Edison Energy, Inc.

Contract Off-Hours Staffing – means the Front Office staffing during Off-Hours as set forth in Part 2 of Appendix IV.

Contract Year – means the annual period from the PSMFB Services Start Date through the date immediately prior to the one year anniversary of the PSMFB Services Start Date and each successive annual period thereafter.

CPLR – is defined in Section 17.8.

Day – means twenty-four (24) consecutive hours commencing with the HE 0100 through HE 2400 EPT on any calendar day.

Day Ahead Market – has the meaning set forth in the applicable ISO/RTO Rules.

Denominator – has the meaning set forth in Part 1 of Appendix V.

Derivatives – is defined in Section 8.1(e). For the avoidance of doubt and purpose of clarity, this term as used herein does not refer to financial hedging derivative contracts.

DOE – means the United States Department of Energy.

Disclosing Party – is defined in the definition of PSM Confidential Information.

Dispatch – means an instruction given to a Power Supply Resource by the PSMFB Service Provider (based on directions from the applicable operating authority (for example, ESO or ISO/RTO)) to generate and/or deliver Energy, Capacity, or Ancillary Services to the Buyer's Electric System, in each case complying with the operating limits of the resource and ISO/RTO Rules.

Early Termination – means termination of this Agreement before the expiration of the Base Term or Extended Term, if applicable.

Energy – means three-phase, 60-cycle alternating current electric energy.

EPT – means Eastern Prevailing Time.

ESO – means the functional area overseen by Service Provider that operates Buyer's Control Center.

Event of Default – means an event described in Section 13.1 for the PSMFB Service Provider and in Section 13.2 for Buyer.

Existing Buyer Contracts – is defined in Section 7.8(a).

Extended Term – is defined in Section 2.1.

Favorable Performance – has the meaning set forth in Part 1 of Appendix V.

Federal Power Act – means the Federal Power Act, as such Act may be amended from time to time, and any successor statute of similar import.

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

Final Back-End Transition Plan – is defined in Section 3.1(b).

FM Service Provider – means Fuel Management Service Provider.

Force Majeure Event – is defined in Section 11.1.

Freedom of Information Law or FOIL – is defined in Section 18.4.

Front-End Transition Period – is defined in Section 3.1.

Front-End Transition Period Payments – is defined in Appendix XIV.

Front-End Transition Plan – is defined in Appendix III Part 1 as to PSMFB Services and is defined in Appendix XIV as to PSMMO Services.

Front-End Transition Services – means those services set forth in Appendix III Part 1 as to PSMFB Services and is defined in Appendix XIV as to PSMMO Services.

Front-End Transition Start Date – is defined in Section 3.1(a)(i).

Front-Office Off-Hours Work - means those Front-Office Services, required in the exercise of Prudent Utility Practice, to be performed during Off-Hours, including, but not limited to: monitoring and managing Power Supply Resources in the Real Time Market, or other appropriate market; Off-System Sales and Purchases; updates to load forecast and load bids, generation outage reporting to NYISO; and monitoring fuel prices.

Front-Office Services – means those PSMFB Services described in Appendix II Part 1.

FTE – means one full time equivalent member of the PSMFB Service Provider's staff.

Fuel Management Service Provider or FM Service Provider – means the entity(ies) providing fuel management services for Buyer under a separate agreement(s).

Generating Facilities – means the PSA Units, PPA Units, IPP Units, and Buyer Owned Resources, as listed in Appendix II herein, and other generating units added to the Other Resources over the Base Term, and Extended Term, if applicable.

Governmental Authority – means any local, state, regional or federal administrative, legal, judicial or executive agency, court, commission, department or other such entity, but excluding Buyer.

Guarantor – means the entity providing the Guaranty, if applicable. The Guarantor shall be required to maintain an investment grade credit rating of BBB- or greater by Standard and Poor's or Baa3 by Moody's (or comparable rating from another nationally recognized rating service), if such entity is rated by both S&P and Moody's, or BBB- or greater by Standard and Poor's or Baa3 by Moody's (or comparable rating from another nationally recognized rating service), if such entity is rated by either S&P or Moody's but not both.

Guaranty – means the instrument obligating the Guarantor to unconditionally guarantee the payment obligations of the PSMFB Service Provider.

Guidelines – has the meaning set forth in Metric No. 4 of Table V-1 of Appendix V.

Heat Rate – means the number of Btus consumed by a Generating Facility to produce one kilowatt-hour of Energy.

HE – means Hour Ending.

Holidays – means NERC defined holidays commencing with the HE 0100 through HE 2400 EPT.

Holding Company Act – means the Public Utility Holding Company Act of 2005, as such Act may be amended from time to time, and any successor statute of similar import.

Independent System Operator(s) or ISO(s) – means the NYISO, ISO-NE, and/or PJM.

Intellectual Property Rights – means all intellectual property rights, including without limitation, all patents, industrial designs, trademarks, trade names, copyrights, trade secrets, know-how, all rights of whatsoever nature and all intangible rights or privileges of a nature similar to any of the foregoing, including in every case in any part of the world and whether or not registered, and shall include all rights in any applications and granted registrations for any of the foregoing.

Installed Capacity or ICAP – has the meaning as set forth in the various ISO/RTO Rules.

Interest Rate – means for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus one and one-half percent (1.5%) and (b) the maximum rate permitted by applicable law.

Interim Period – means the time between one Party’s receipt of the other Party’s notice of its intent to terminate and the Termination Date.

Inventions – means any and all discoveries, improvements, inventions and methods and any updates, enhancements, corrections and modifications thereto, whether patentable or not.

IPP – means independent power producer.

IPP Agreements – means Buyer’s agreements with independent power producers listed in Table II-1c.

IPP Units – means those generating units listed in Table II-1c and those independent power producer units that are added as Other Resources over the Base Term, and Extended Term, if applicable.

ISO/RTO Installed Capacity Market – means the market that is administered by the applicable ISO in which Capacity is sold and/or purchased pursuant to the ISO/RTO's Rules applicable to such market.

ISO/RTO Markets – means markets administered by the applicable ISO/RTO that include, but are not limited to, the Day Ahead Market, Real-Time Market, and ISO/RTO Installed Capacity Markets.

ISO-NE – means the ISO of New England, Inc.

ISO/RTO – means any of the NYISO, ISO-NE, and/or PJM.

ISO/RTO Rules – means the applicable ISO/RTO Tariff and all ISO/RTO manuals, rules, procedures, agreements or other documents, as in effect from time to time, relating to the sale of Capacity, Energy and Ancillary Services as such govern the participation of market participants with respect thereto in the applicable ISO/RTO Markets.

ISO/RTO Tariff – means the applicable ISO/RTO Open Access Transmission Tariff and/or the applicable ISO/RTO Market Administration and Control Area Services Tariff or any other tariff applicable to such ISO/RTO.

IT – means information technology.

IT System – is defined in Appendix VI.

Legal Requirement – means any law, code, statute, regulation, rule, ordinance, judgment, injunction, order or other requirement (including all regulatory and environmental requirements) having valid and applicable jurisdiction over the matter in question that is valid and applicable to the matter in question at the time of the execution of this Agreement or any time thereafter during the Base Term, and Extended Term, if applicable.

Liquidated Damages – means PSMFB Transition Date Liquidated Damages.

Load Requirements – is defined in Appendix II Front Office Service No. 1.

Long Island Electric Utility Servco LLC – is the wholly-owned subsidiary of PSEG Long Island LLC that will provide operational services to support PSEG Long Island LLC's management of the Buyer's electric distribution system and house the operating personnel for the Buyer's distribution system.

Maximum Aggregate Penalty – is defined in Appendix V.

Mid Office Services – means those PSMMO Services generally described in Appendix XIV.

MMBtu – means one million Btus.

Modified Back-End Transition Services - is defined in Section 2.4(a).

Modified Off-Hours Staffing – has the meaning set forth in Part 2 of Appendix IV.

Monitoring Outage – has the meaning set forth in Part 1 of Appendix V.

Month or Monthly – means a period commencing with HE 0100 EPT on the first Day of a calendar Month and closing at HE 2400 EPT on the last day of that calendar Month.

NERC – means the North American Electric Reliability Council, including any successor thereto and subdivisions thereof.

New Buyer Contracts - is defined in Section 7.8(b).

No Back-End Transition Services – means the Buyer does not require any Back-End Transition Services from PSMFB Service Provider.

Non-Technical Information – means any and all (a) spreadsheets, reports, memoranda, notes, notebooks, work books, outlines, models, prototypes, specimens, and other tangible material, whether or how stored, compiled, or memorialized, physically, electronically, graphically, photographically, or in writing.

NYISO – means New York Independent System Operator, Inc.

Off-Hours – means all hours excluding those included in a Business Day.

Off-Hours Staffing Option – means any of the following staffing options: Contract Off-Hours Staffing, Modified Off-Hours Staffing, One Person Off-Hours Staffing, or Two Person Off-Hours Staffing.

Offset Trigger – has the meaning set forth in Part 1 of Appendix V.

Off-System Purchases – means physical or financial purchases of Energy, Capacity, and/or Ancillary Services from third parties.

Off-System Sales – means physical or financial sales of Energy, Capacity, and/or Ancillary Services to third parties.

One-Person Off-Hours Staffing – means one (1) PSMFB Service Provider Front-Office employee being assigned to perform Front-Office Off-Hours Work in the PSMFB Service Provider’s business office during Off-Hours.

Operations Services Agreement – means that certain operations and services agreement, as it may be amended from time to time, entered into between PSEG Long Island LLC and Buyer as dated therein under which PSEG Long Island LLC undertakes to manage and operate the Long Island Power Authority’s electric transmission and distribution system pursuant thereto.

Other Resources – means those resources which (i) are added to Buyer’s Power Supply Resources during the Base Term, and Extended Term, if applicable, and (ii) Buyer notifies the PSMFB Service Provider in writing are to be included in PSMFB Services.

Party or Parties – means either Buyer or the PSMFB Service Provider, or both, as applicable.

Penalty Trigger – has the meaning set forth in Part 1 of Appendix V.

Performance Metrics – has the meaning set forth in Part 1 of Appendix V as to PSMFB Services and as set forth in Appendix XIV as to PSMMO Services.

Performance Standards – means those standards set forth in Appendix V as to PSMFB Services and as set forth in Appendix XIV as to PSMMO Services, which are the basis for (i) Buyer’s evaluation of the PSMFB Service Provider’s performance with respect to each Contract Year hereunder (except as otherwise provided in this Agreement), and (ii) the assessment of the Annual Penalty, if any.

Person – means any individual, entity, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

PJM – means PJM Interconnection, L.L.C.

Power Asset Management – means the functional area overseen by Service Provider that currently administers Buyer’s PPAs, IPP Agreements, agreements with owners of Cable Resources, and other agreements with third parties and ensures that third parties interconnecting with Buyer’s Electric System adhere to Buyer’s interconnection standards.

Power Supply Management Front and Back Office Services or PSMFB Services – means those services described in Appendix II.

Power Supply Resources – means those resources of the types set forth in Appendix II Tables II-1a-e in existence as of the PSMFB Effective Date, and those power supply resources that are added as Other Resources during the Base Term, and Extended Term, if applicable used to serve Load Requirements.

PPAs – means Buyer’s power purchase agreements with third parties as listed in Appendix II Table II-1b in existence as of the PSMFB Effective Date, and those power purchase agreements that are added during the Base Term, and Extended Term, if applicable, which do not use industry master agreements and which are not IPP Agreements.

PPA Units – means those units listed in Appendix II Table II-1b in existence as of the PSMFB Effective Date and that are added as Other Resources during the Base Term, and Extended Term, if applicable.

Product – means Capacity, Energy, and/or Ancillary Services.

Prudent Utility Practices – means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility energy industry in the United States at the time in question, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to be a delineation of acceptable practices, methods or acts expected within the electric utility industry to accomplish the desired results, having due regard for, among other things, the preservation of manufacturers' warranties and operating instructions, the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement.

PSA - means the Power Supply Agreement dated June 26, 1997 between Buyer and the Long Island Lighting Company, as may be amended from time to time.

PSA Units – means those units in Appendix II Table II-1a in existence as of the PSMFB Effective Date and that are added as Other Resources during the Base Term, and Extended Term, if applicable.

PSEG Long Island LLC – is the business entity that will manage and operate Buyer's electric transmission and distribution system pursuant to the Amended & Restated Operations Services Agreement.

PSM – means Power Supply Management.

PSM Confidential Information – means with respect to a Party: All non-public information disclosed (whether in writing, orally or by another means) by or through such Party

or its Related Parties (such Party and its Related Parties, collectively, the “Disclosing Party”), or its auditors, accountants, examiners or attorneys, to the other Party or its Related Parties (such other Party and its Related Parties, collectively the (“Receiving Party”), its auditors, accountants, examiners, attorneys or other agents or contractors by reason of, or otherwise as a result of, the relationship established by this Agreement as well as all non-public information which is otherwise learned by such other Party or its Related Parties, or its auditors, accountants, examiners, attorneys or other agents or contractors by reason of, or otherwise as a result of, such relationship. Such information includes: (a) with respect to Buyer, all non-public Buyer Owned Property; (b) with respect to the PSMFB Service Provider all non-public PSMFB Service Provider Owned Property; and (c) with respect to each of the Parties, all non-public (i) information expressly or implicitly marked or disclosed as confidential to the Disclosing Party, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, (ii) information traditionally recognized as proprietary trade secrets, (iii) all other trade secret, confidential or proprietary information and documentation of (a) the Disclosing Party, (b) to the extent provided to a Disclosing Party, entities with which a Disclosing Party contracts or such entities’ or Disclosing Party’s customers or prospective customers, or (c) the Disclosing Party's employees, directors, outside directors, trustees, consultants, retirees and their respective spouses and families (whether or not it is designated as such), including information which is not permitted to be disclosed to third parties under Legal Requirements and (iv) all copies of any of the foregoing or any materials to the extent they contain any of the foregoing.

PSM EDM – is defined in Appendix IX.

PSMFB Effective Date – means the date specified in Section 2.1.

PSMFB Effective Date Delay – is defined in Section 2.1.

PSMFB Service Provider-is defined in the Preamble and includes the entities performing PSMFB and PSMMO Services as applicable to the context of its use.

PSMFB Service Provider Equipment– means those machines, equipment, and associated attachments, features, accessories and peripheral devices owned or leased by, or on behalf of, the PSMFB Service Provider and used by the PSMFB Service Provider or any of PSMFB Service Provider's Related Parties solely to perform its obligations pursuant to this Agreement, other than Buyer Equipment.

PSMFB Service Provider Fault – means any breach, failure, failure of compliance, or nonperformance by the PSMFB Service Provider of its obligations hereunder or any grossly negligent conduct, or willful misconduct by the PSMFB Service Provider under this Agreement (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier, or independent contractor of the PSMFB Service Provider other than Buyer) that materially and adversely affects Buyer's performance, or Buyer's rights or obligations, under this Agreement.

PSMFB Service Provider Owned Property – is defined in Section 8.3.

PSMFB Service Provider Related Data – means any and all information and data related to and/or created or owned by, or on behalf of, the PSMFB Service Provider or any of the PSMFB Service Provider's Related Parties, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, including, without limitation, PSM Confidential Information, Technical Information, Non-Technical Information, and any such other information and data about the PSMFB Service

Provider, including without limitation information and data about the PSMFB Service Provider's business, the PSMFB Service Provider's customers (current, former, and prospective), and any other PSMFB Service Provider data about PSMFB Service Provider's facilities and systems, operations, purchases, consumption, products, services, markets, marketing, business plans, assets or finances, but excluding any Buyer Related Data.

PSMFB Service Provider Related Technology – means any and all Software created or acquired by, or on behalf of, PSMFB Service Provider or any of PSMFB Service Provider's Related Parties, in each instance owned by or on behalf of PSMFB Service Provider or any of PSMFB Service Provider's Related Parties prior to the commencement of services under this Agreement or created or acquired outside the scope of this Agreement, and any and all Intellectual Property Rights in any such Software, but excluding any Buyer Related Technology.

PSMFB Service Provider Related Work Product – means any and all Work Product created or acquired by, or on behalf of, PSMFB Service Provider or any of PSMFB Service Provider's Related Parties, in each instance owned by or on behalf of PSMFB Service Provider or any of PSMFB Service Provider's Related Parties prior to the commencement of services under this Agreement or created or acquired outside the scope of this Agreement, and any and all Intellectual Property Rights in any such Work Product, but excluding any Buyer Related Work Product.

PSMFB Service Provider's Related Parties – is defined in Section 8.1(a)(i).

PSMFB Service Provider's Representative – is defined in Section 9.2.

PSMFB Service Provider's Standards of Conduct – is defined in Appendix II Part 6.

PSMFB Service Provider Security – means the Acceptable Credit Support to be provided by the PSMFB Service Provider pursuant to Article 10.

PSMFB Services – means collectively, or individually, as the case may be, Power Supply Management Front Office Services, and Back Office Services, and Mid Office Services.

PSMFB Services Information – is defined in Section 7.4.

PSMFB Services Management Fee – is defined in Appendix IV Part 2.

PSMFB Services Start Date – means the date on which the PSMFB Service Provider commences performance of PSMFB Services.

PSMFB Sub-license Agreement – is defined in Section 8.2(i).

PSMMO Service Provider – means the entity designated by PSM Service Provider to perform the PSMMO Services , pursuant to Section 4.12.

PSMMO Services Management Fee – is defined Appendix XIV.

PSMMO Services – means those services generally described in Appendix XIV.

PSMFB Transition Date Liquidated Damages – is defined in Section 4.5(a)(i).

QA/QC Services – means a Front-Office Service included in Front Office Service No. 1(c)(iii) that involves assisting the primary on-call person, reviewing events and validating actions taken.

Real Time Market – is defined in the applicable ISO/RTO Rules.

Receiving Party – is defined in the definition of PSM Confidential Information.

Records – is defined in Section 17.16(d).

Related Parties – means with respect to a Party, a Party’s Affiliates and such Party and its Affiliates’ officers, directors, trustees, and employees.

Required Data – is defined in Appendix II Front Office Service No.1.

RTO – means regional transmission organization.

ServCo – means Long Island Electric Utility ServCo LLC.

Severance Costs – means the PSMFB Service Provider’s actual, reasonable, and verifiable costs incurred in terminating this Agreement, including but not limited to, employee severance costs, software license breakage fees, office rental termination fees, and point-to-point communication circuit early termination fees.

Software – means any and all (a) computer software, (b) any and all Inventions related to such computer software in (a) above and (c) any and all writings, works of authorship and other copyrightable or non-copyrightable subject matter of any kind, including without limitation, derivative works, to the extent containing or embodying any portion of the items in (a) or (b) above. Except as otherwise specified or granted hereunder, Software shall include both source code and object code.

State Finance Law – is defined in Section 17.16(a).

Statute – is defined in Section 17.16(d).

Target PSMFB Services Start Date – has the meaning set forth in Section 2.1.

Technical Information – means any and all (a) drawings, schematics, formulae, specifications, designs, concepts, diagrams, processes, procedures, protocols, parameters, engineering details, functional descriptions, layouts, architectural models, invention disclosures,

data and database content, or other technical or scientific documentation, including manuals and other information, whether or how stored, compiled, or memorialized, physically, electronically, graphically, photographically, or in writing, (b) any and all Inventions solely to the extent related to such items in (a) above, and (c) any and all writings, works of authorship and other copyrightable or non-copyrightable subject matter of any kind, including without limitation, derivative works, to the extent containing or embodying any portion of the items in (a) or (b) above.

Termination Date – is defined in Section 2.3.

Transition Period(s) – is defined in Section 3.1, the Front-End Transition Period or the Back-End Transition Period, or both.

Trigger Event – has the meaning set forth in Part 1 of Appendix V.

Two-Person Off-Hours Staffing – means two (2) PSMFB Service Provider Front-Office employees being assigned to perform Front-Office Off-Hours Work in the PSMFB Service Provider’s business office during Off-Hours.

UCAP – means unforced capacity by which generating facilities are rated in accordance with the formulas set forth in the applicable ISO/RTO Rules.

Unfavorable Performance – has the meaning set forth in Part 1 of Appendix V .

VaR – means Value at Risk analysis.

Weekend Day – means Saturdays and Sundays commencing with the hour ending (“HE”) 0100 through (HE) 2400 EPT.

Weighting Factor – has the meaning set forth in Part 1 of Appendix V.

Weighting Points – has the meaning set forth in Part 1 of Appendix V.

Work Product – means any and all (a) (i) Inventions, (ii) writings, works of authorship and other copyrightable or non-copyrightable subject matter of any kind, including without limitation, derivative works, (iii) Technical Information, Non-Technical Information and other ideas not generally known to the public, (iv) Software and (v) other Intellectual Property Rights, whether or how stored, compiled, or memorialized, physically, electronically, graphically, photographically, or in writing, containing or embodying any of the foregoing, (b) any and all Inventions related to the items in (a) above, and (c) any and all writings, works of authorship and other copyrightable or non-copyrightable subject matter of any kind, including without limitation, derivative works, to the extent containing or embodying any portion of the items in (a) or (b) above.

1.2 Construction:

Unless otherwise indicated (a) defined terms include the plural as well as the singular; (b) any agreement defined or referred to herein includes each amendment, modification and supplement thereto and waiver, approval and consent in respect thereof as may become effective from time to time and includes references to all appendices, exhibits, schedules and other attachments thereto and instruments, agreements or other documents incorporated therein; (c) any term defined by reference to any instrument, agreement or other document has such meaning set forth in such document as of the date hereof and such meaning shall remain in effect whether or not such document is subsequently amended, modified or terminated; (d) a reference to any law or Legal Requirement includes any amendment, modification or successor thereto; (e) a reference to any Person includes its permitted successors and assigns; (f) all references to appendices, sections, schedules and exhibits shall mean and refer to the respective appendices,

sections, schedules and exhibits in or attached to the agreement or document in which such reference appears; (g) the words “include,” “includes” and “including” are not limiting and shall be deemed to be followed by the words “without limitation” whether or not in fact followed by such words or words of like import; and (h) the terms “hereof,” “herein,” “hereunder” and comparable terms refer to this entire Agreement with respect to which such terms are used and not to any particular article, Section or subdivision hereof.

ARTICLE 2 - TERM OF AGREEMENT

2.1 Base Term; Extended Term:

(a) This Agreement shall become effective on the date on which it is executed by both Parties (“PSMFB Effective Date”) and shall remain in effect for its Term subject to: (x) the occurrence of the “Effective Date” of the Amended and Restated OSA as defined therein; and (y) pursuant to Section 4.2(A)(6)(a) of the Amended and Restated OSA, Service Provider providing Buyer with written notice of its election to provide the PSMFB Services hereunder (and assigning such obligation to PSMFB Service Provider) by not later than ten (10) Business Days following the Effective Date of the Amended and Restated OSA (as such term is defined therein). In the event that the Effective Date of the Amended and Restated OSA does not occur by June 30, 2014, or such later date as the parties to the Amended and Restated OSA may mutually agree in writing or Service Provider does not provide Buyer of its election to proceed with the PSMFB Services, as provided for in this Section 2.1, then this Agreement shall terminate and neither Party shall have any further obligation to the other hereunder, except for those obligations set forth in Section 3.1(a)(i). If for any reason the PSMFB Effective Date does not occur by December 1, 2013 (“PSMFB Effective Date Delay”), PSMFB Service Provider agrees to use commercially reasonable efforts to achieve the Target PSMFB Services Start Date

and Buyer agrees (i) to increase the Milestone Payments set forth in Table IV of Appendix IV by 20% to compensate for the PSMFB Effective Date Delay, and pay them as they are achieved, and (ii) to waive its right to collect PSMFB Transition Date Liquidated Damages pursuant to Section 4.5 herein. If despite PSMFB Service Provider's Commercially Reasonable Efforts PSMFB Service Provider fails to commence the PSMFB Services on the Target PSMFB Services Start Date, Buyer shall not terminate this Agreement in accordance with Section 2.3(b).

(i) Subject to Section 2.1 (i), the PSMFB Services hereunder shall commence on January 1, 2015 or such other date as the Parties may mutually agree in writing ("Target PSMFB Services Start Date") and shall continue until December 31, 2025, unless this Agreement is terminated earlier in accordance with the terms hereof ("Base Term") or extended pursuant to Section 2.1(iii) below. The Base Term shall be subject to the termination provisions of Section 2.3, Section 3.1 and Article 13 and provided that the Amended and Restated OSA has not been terminated in accordance with its terms. In the event that the Amended OSA has been terminated, the Parties may agree to continue to perform under this Agreement through the Term.

(ii) This Agreement shall automatically be extended until December 31, 2033, if there is an extension of the Term of the Amended and Restated OSA pursuant to Section 2.1(B) thereof ("Extended Term"). The Base Term and the Extended Term shall hereinafter together be referred to as the "Term." However, if during the Base Term PSMFB Service Provider scores an Unfavorable Performance in three (3) or more Contract Years, such that the actual performance is worse than the Performance Standards resulting in negative Weighting Points, as determined in PART 1 of Appendix V, the Parties will meet at least six (6) months prior to the end of the Base

Term to formulate a plan, satisfactory to both parties, designed to improve the performance of PSMFB Service Provider during the Extended Term.

(iii) This Agreement shall automatically be extended until December 31, 2033, if there is an extension of the Term of the Amended and Restated OSA pursuant to Section 2.1(B) thereof (“Extended Term”); provided, however, that no event of an Event of Default by PSMFB Service Provider shall have occurred during the Base Term. The PSMFB Management Fee and Annual Fee applicable for the services rendered during such Extended Term shall be calculated in accordance with Appendix IV and the PSMMO Services Management Fee shall be calculated in accordance with Appendix XIV.

2.2 Intentionally Omitted

2.3 Early Termination: Buyer shall have the right to terminate this Agreement by providing written notice to the PSMFB Service Provider in accordance with Section 2.4 specifying the date of termination or the proposed date of termination, as the case may be, in accordance with this Agreement, which date shall not be sooner than the notice period specified in Section 2.1(i) expires, or if no notice period is specified in Section 2.1(i), on the date specified in such notice which shall be no less than five (5) Days following the date of said notice, or as such date may be otherwise set or extended by mutual agreement of the Parties (the “Termination Date”):

(a) in the event (i) the PSMFB Service Provider fails to achieve the PSMFB Services Start Date by the Target PSMFB Services Start Date, except to the extent such failure is due to a Buyer Fault, Force Majeure Event or PSMFB Effective Date Delay; or

(b) in the event of a Default by the PSMFB Service Provider pursuant to Section 13.1 of this Agreement; or

(c) beginning in Contract Year 6 in the event that PSMFB Service Provider demonstrates Unfavorable Performance in seven (7) of each of Metrics 1-10 in Table V-1 in each of the preceding five (5) consecutive Contract Years.

(d) In the event of termination pursuant to this Section 2.3, Buyer shall pay the PSMFB Service Provider for all services provided pursuant to this Agreement, if any, up to the Termination Date; provided however that Buyer has not already paid PSMFB Service Provider for such services.

2.4 Early Termination and Back-End Transition:

(a) In the event of Early Termination by either Party for any reason specified in Section 2.3, Section 11.6, or Article 13 of this Agreement, the Parties agree that, subject to Section 13.12, if applicable, Buyer may require (i) Back-End Transition Services pursuant to Section 3.1(b), (ii) a modified form of Back-End Transition Services (“Modified Back-End Transition Services”), (iii) Buyer Data Transfer Services or (iv) No Back-End Transition Services. During the Interim Period, the Parties shall agree in writing to the specific details of such services and the date that shall be the Termination Date. For the avoidance of doubt and the purpose of clarity, the options of Modified Back End Transition Services, Buyer Data Transfer Services, and/or No Back-End Transition Services shall only be available for an Early Termination, and shall not be available upon the expiration of this Agreement at either the end of the Base Term, or the Extended Term, as applicable, in which case only Back-End Transition Services shall be available.

(b) If Buyer requires Back-End Transition Services, then Buyer shall, in all cases, provide PSMFB Service Provider with at least twelve (12) months prior written notice of the Termination Date. Buyer shall pay PSMFB Service Provider the Back-End Transition

Payment for such services in accordance with Appendix IV Part 4 as to PSMFB Services and for the Back-End Transition Payment for such services in accordance with Appendix XIV as to PSMMO Services.

(c) If Buyer requires Modified Back-End Transition Services, then Buyer shall send PSMFB Service Provider written notice of its intent to terminate, which notice shall set forth Buyer's proposed Termination Date in accordance with Section 13.6. During the Interim Period, Buyer and PSMFB Service Provider shall negotiate in good faith and agree in writing on the scope of, and schedule for Modified Back-End Transition Services to be provided, and PSMFB Service Provider shall be compensated for its performance of such Modified Back-End Transition Services and for its termination costs in accordance with Appendix IV Part 5.

(d) If Buyer does not require Back-End Transition Services or Modified Back-End Transition Services, Buyer may require that PSMFB Service Provider transfer to Buyer or Buyer's designated Agent all existing Buyer Related Data in PSMFB Service Provider's control which has not been previously transferred to Buyer or Buyer's Representatives ("Buyer Data Transfer Services") in which case, then, Buyer shall send PSMFB Service Provider written notice of its intent to terminate, which notice shall set forth Buyer's proposed Termination Date in accordance with Section 13.6. During the Interim Period, Buyer and PSMFB Service Provider shall negotiate in good faith and agree in writing on the schedule for Buyer Data Transfer Services, and PSMFB Service Provider shall be compensated for its performance of such Buyer Data Transfer Services and for its Severance Costs in accordance with Appendix IV Part 5 as to PSMFB Services.

(e) If Buyer terminates this Agreement pursuant to Section 2.3, Section 11.6, or Article 13, and Buyer chooses No Back-End Transition Services, Buyer shall reimburse

PSMFB Service Provider for its Severance Costs in accordance with Appendix IV Part 5 as to PSMFB Services.

(f) Buyer and PSMFB Service Provider may mutually agree in writing to extend the Termination Date in order to allow for the completion of (i) Back-End Transition Services, (ii) Modified Back-End Transition Services, or (iii) Buyer Data Transfer Services.

(g) PSMFB Service Provider acknowledges that, if it were to breach its obligation to provide the Buyer with (i) Back-End Transition Services, (ii) Modified Back-End Transition Services or (iii) Buyer Data Transfer Services, the Buyer would be irreparably harmed. In such circumstances, the Buyer shall be entitled to proceed directly to a court of competent jurisdiction and seek such injunctive, declaratory or other injunctive relief as may be reasonably necessary to prevent such breach, without the requirement of posting any bond and without any additional findings of irreparable injury or other conditions to injunctive relief. Notwithstanding anything herein to the contrary, PSMFB Service Provider's obligation to provide any services during any Interim Period, including, but not limited to transition services, pursuant to this Agreement, shall terminate if Buyer fails to pay for such services in accordance with Appendix IV and Article 6, or fails to provide appropriate security in accordance with Section 13.12, if applicable. In the event of such failure to pay or to provide such security, if applicable, by Buyer, PSMFB Service Provider may advance the Termination Date by providing Buyer at least three (3) Days prior written notice of the new Termination Date.

2.5 Buyer's Rights During Interim Period:

(a) During the Interim Period, the Buyer shall on reasonable notice and during normal business hours have access to information, data and Records concerning the PSMFB Services in order to monitor the performance of the PSMFB Service Provider and to ensure that

the PSMFB Service Provider complies with the provisions of this Agreement during such Interim Period.

(b) In the event that PSMFB Service Provider is the defaulting Party, Buyer, at its sole option, may elect at any time during the Interim Period to direct in writing the PSMFB Service Provider and its employees in the day-to-day performance of the PSMFB Service Provider's obligations under this Agreement. In addition to the Total Annual Fee as provided in Appendix IV Part 2, the Buyer shall reimburse the PSMFB Service Provider for its resulting actual, reasonable and verifiable incremental costs, if any, incurred in the performances of such services during the Interim Period.

ARTICLE 3 - PSMFB SERVICES DURING TRANSITION PERIODS

3.1 Services During Transition Periods:

This Agreement covers two transition periods: (i) a period prior to the PSMFB Services Start Date (“Front-End Transition Period”) and (ii) a period preceding the end of the Base Term or Extended Term, if applicable, (“Back-End Transition Period”) (jointly referred to as “Transition Periods”).

(a) Front-End Transition Period:

(i) The PSMFB Service Provider shall commence Front-End Transition Services on the PSFMB Effective Date (the “Front-End Transition Date”) and shall continue performing such services through the Day before the PSFMB Services Target Date (the “Front-End Transition Period”). In the event that the Effective Date of the Amended and Restated OSA has not occurred by June 30, 2014 or such other date as may be agreed to by the parties to the Amended and Restated OSA and the Amended and

Restated OSA is terminated, then this Agreement, following reimbursement by LIPA of all Milestone Payments for completed items and all transition expenses and costs incurred by PSFMB Service Provider associated with any partially completed items between PSMFB Effective Date and the date on which this Agreement terminates pursuant to this Section 3.1, shall terminate on the termination date of the Amended and Restated OSA. The PSMFB Service Provider shall perform Front-End Transition Services consistent with this Agreement, and as more fully set forth in the Front-End Transition Plan set forth in Appendix III. The PSMFB Service Provider shall be paid in accordance with Appendix IV Part 1 for such Front-End Transition Services upon completion of the milestones set forth in Appendix IV Table IV-1 and in accordance with Appendix XIV.

In addition to PSMFB Service Provider's rights hereunder, if PSMFB Service Provider's provision of Front End Transition Services is prevented or delayed by a Force Majeure Event or by Buyer's failure or inability to perform any of its obligations under this Agreement on a timely basis (each an "Excused Delay"), the Milestone Payments set forth in Table IV-1 of Appendix IV as to PSMFB Services the Milestone Payments set forth in Appendix XIV as to PSMMO Services shall be increased by 0.5% for each Day that such delay event continues.

(ii) The PSMFB Service Provider and Buyer shall mutually develop a draft final Back-End Transition Plan during the Front-End Transition Period based on the Back-End Transition Plan set forth in Appendix III Part 2 as to PSMFB Services and set forth in Appendix XIV as to PSMMO Services. The draft final Back-End Transition Plan shall be set forth in the Administrative Protocols and Procedures.

(b) Back-End Transition Period: Buyer shall provide the PSMFB Service Provider at least twelve (12)-Months' notice in writing prior (i) to the end of the Base Term, or the Extended Term, if applicable or (ii) to the Termination Date in accordance with Section 2.4(b). Following the provision of such notice, Buyer's Representatives shall contact the PSMFB Services Provider's Representatives to review the transition of PSMFB Services to Buyer or its contractor. After receipt of notice, in accordance with this paragraph, PSMFB Service Provider shall update the draft final Back-End Transition Plan contained in the Administrative Protocols and Procedures, for review by Buyer. Buyer may make reasonable changes to such draft final Back-End Transition Plan consistent with Prudent Utility Practices in order to ensure an orderly transition of responsibilities to Buyer or its contractors by providing PSMFB Service Provider with written notice of such changes within ten (10) Business Days of receiving the final draft Back-End Transition Plan. Provided any such changes are consistent with Prudent Utility Practices, such changes shall be deemed to be mutually agreed upon. The updated draft final Back-End Transition Plan with Buyer's changes, if any, shall be the final Back-End Transition Plan ("Final Back-End Transition Plan"). If the cost for performing the Final Back-End Transition Plan, including Severance Costs, exceeds the Back-End Transition Payment, as set forth in Appendix IV as to PSMFB Services and set forth in Appendix XIV as to PSMMO Services, respectively, then Buyer shall pay for such requested changes as an Additional Service. The PSMFB Service Provider shall be paid for such Back-End Transition Services upon satisfactory completion of the milestones set forth in the Final Back-End Transition Plan. The Parties agree that in the interest of successfully completing the Final Back-End Transition Plan in a manner that provides for a smooth transition from

the PSMFB Service Provider to Buyer or to another service provider, the milestones may be modified by their mutual written agreement.

3.2 Intentionally Omitted

3.3 Obligations Upon Termination or Expiration of Agreement:

(a) Upon the termination or expiration of the Agreement including, without limitation, by Buyer under Section 2.3, under Section 11.6, or for a breach by Buyer as provided in Section 13.2(a), 13.2(d), or 13.2(e) (subject, in each case, to Section 13.12) hereof, Buyer shall advise PSMFB Service Provider whether Buyer requires Back-End Transition Services, Modified Back End Transition Services or Buyer Data Transfer Services, and, if required, the terms and conditions for the provision of such services shall be negotiated and such services shall be provided in accordance with Section 2.4. Whether Back-End Transition Services, Modified Back End Transition Services or Buyer Data Transfer Services are provided, the Parties shall cooperate, in good faith and consistent with Prudent Utility Practices, in accomplishing the smooth transition of PSMFB Service responsibilities, to a new service provider or to Buyer, as directed by Buyer.

(b) In the event of the termination or expiration of this Agreement, and by no later than the effective date of such termination or expiration:

(i) PSMFB Service Provider shall provide, or shall cause PSMFB Service Provider Related Parties and/or PSMFB Service Provider Personnel to provide, Buyer, or Buyer's Representatives, with a copy of all PSMFB Service Provider Owned Property (as defined in Section 8.3) to which Buyer has a license under Section 8.4 of this Agreement, which are not in the possession of Buyer.

(ii) Buyer shall provide, or shall cause Buyer Related Parties and/or Buyer Personnel to provide, PSMFB Service Provider, or PSMFB Service Provider's Representatives, with a copy of all Buyer Owned Deliverables (as defined in Section 8.1) to which PSMFB Service Provider has a license under Article 8.2(b) of this Agreement, which are not in the possession of PSMFB Service Provider.

(c) In the event of the termination or expiration of this Agreement, and by no later than the effective date of such termination or expiration, PSMFB Service Provider shall provide, or shall cause PSMFB Service Provider Related Parties and/or PSMFB Service Provider Personnel to provide, Buyer, or Buyer's Representatives, with a copy of all of Buyer Owned Property, (as defined in Section 8.1) (other than the Buyer Owned Deliverables to which PSMFB Service Provider has a license under Section 8.2(b) of this Agreement, which extends beyond such termination or expiration, and which shall be provided to Buyer or Buyer's Representatives promptly after any termination of such license), which is in the possession of PSMFB Service Provider, its PSMFB Service Provider Related Parties and/or its PSMFB Service Provider Personnel and that has not been previously provided to Buyer, and such property shall be returned to Buyer by PSMFB Service Provider, or shall at Buyer's request be destroyed by the PSMFB Service Provider (including without limitation, with respect to any hard copy, cross-shredded). Subject to the same limitations set forth in the penultimate and ultimate sentences of Section 18.7 hereof with respect to the erasing or deleting of PSM Confidential Information from a Party's computer system, all electronic copies of the Buyer Owned Property in PSMFB Service Provider's or its agents' or contractors' possession or control shall be deleted in a manner that makes the Buyer Owned Property non-readable and non-retrievable. PSMFB Service Provider

shall certify to Buyer in writing that PSMFB Service Provider has complied with its obligations under this Section 3.3.

(d) Subject to Section 2.4, and, in the case of a termination for a breach by Buyer as provided in Section 13.2(a), 13.2(d) or 13.2(e), (subject, in each case, to Section 13.12) hereof, the PSMFB Service Provider shall cease providing PSMFB Services on the established or agreed upon Termination Date.

(e) The PSMFB Service Provider shall promptly after receipt of notice of termination (but no later than fifteen (15) Days prior to the Termination Date or thirty (30) Days prior to expiration, as applicable), deliver to Buyer copies of all Buyer Contracts and other third party agreements to which Buyer is a party or which were entered into on behalf of Buyer in accordance with this Agreement, that were developed and executed while performing PSMFB Services that have not previously been provided to Buyer, together with a summary statement of:

- (i) any Product purchased but not yet scheduled for delivery to Buyer pursuant to each agreement;
- (ii) the expected date when Product would be scheduled for delivery to Buyer;
- (iii) the Monthly costs to be paid pursuant to each agreement and the terms of payment;
- (iv) with respect to Tables II-1a-e in Appendix II, PSR Item Nos. 6 - 10, a listing of any remaining obligations that survive this Agreement.

(f) The PSMFB Service Provider shall advise the Buyer promptly after receipt of notice of termination (but no later than fifteen (15) Days prior to the Termination Date or thirty (30) Days prior to the expiration, as applicable), in writing of any disputes or legal proceedings against the PSMFB Service Provider by any contractor, subcontractor, or other third party relating to the PSMFB Services, including the termination thereof; of which PSMFB Service Provider has actual knowledge.

(g) In the event of the termination or expiration of this Agreement, the Parties may mutually agree in writing to transfer ownership of any PSMFB Service Provider Equipment owned by PSMFB Service Provider and used by PSMFB Service Provider solely to provide the PSMFB Services under this Agreement. The purchase price for any PSMFB Service Provider Equipment purchased by the Buyer shall be as agreed to by the Parties. The Buyer shall pay the purchase price to PSMFB Service Provider concurrently with PSMFB Service Provider's delivery to the Buyer of the PSMFB Service Provider Equipment and a bill of sale acceptable to the Buyer. In addition, the Parties may mutually agree to assign any lease of PSMFB Service Provider Equipment leased by PSMFB Service Provider and used by PSMFB Service Provider primarily to provide the PSMFB Services; provided that third parties with lease agreements with PSMFB Service Provider consent to the assignment or assumption of the lease by the Buyer, and provided further that such parties consent to the release of PSMFB Service Provider of all of its lease obligations arising on and after the effective date of the assignment. PSMFB Service Provider Equipment purchased by Buyer or assigned to Buyer under Section 3.3(g) shall be free and clear of all liens, security interests or other encumbrances as of the date of the closing of such purchase and/or assignment, and PSMFB Service Provider shall be released from any and

all obligations and liabilities with respect to PSMFB Service Provider Equipment from and after the effective date of the purchase and/or assignment.

(h) In consultation with Buyer and with Buyer's prior written consent, the PSMFB Service Provider shall take such other actions, and execute such other documents, as may be necessary to effectuate and confirm the foregoing matters.

ARTICLE 4 - PSMFB SERVICES

The PSMFB Service Provider shall sell and provide, and Buyer shall purchase and receive, the PSMFB Services set forth in Sections 4.2 through 4.4 below commencing on the PSMFB Services Start Date until the end of the Base Term, or Extended Term, if applicable, or until the Termination Date, as applicable. Notwithstanding its designation of the PSMMO Service Provider pursuant to Section 4.12, the PSMFB Service Provider shall remain responsible for the performance and obligations of the PSMFB Service Provider and PSMMO Service Provider throughout the Term.

4.1 Conditions to Achieving the PSMFB Services Start Date:

(a) The PSMFB Services Start Date shall occur on the Target PSMFB Services Start Date, provided that (A) PSMFB Service Provider has completed all milestones set forth in the Front-End Transition Plan as referenced in Appendix III Part 1 as to PSMFB Services and as referenced in Appendix XIV as to PSMMO Services, and (B) all the necessary systems and processes are in place for the PSMFB Service Provider to provide PSMFB Services as agreed to by the Parties in the Front End Transition Plan that is set forth in Appendix III Part 1 as to PSMFB Services and as set forth in Appendix XIV as to PSMMO Services.

(b) The PSMFB Service Provider shall give written notice to Buyer when the PSMFB Service Provider has met the conditions in Section 4.1(a) above.

4.2 Front - Office Services:

Front-Office Services are those services specified in Appendix II Part 1. Beginning on the PSMFB Services Start date, and throughout the Base Term, or Extended Term, if applicable, the PSMFB Service Provider shall perform those services specified in Appendix II Part 1.

4.3 Mid Office Services:

Mid Office Services are those services specified in Appendix XIV. Beginning on the PSMFB Services Start date, and throughout the Base Term, or Extended Term, if applicable, the PSMMO Service Provider shall perform those services specified in Appendix XIV.

4.4 Back - Office Services:

Back Office Services are those services specified in Appendix II Part 2. Beginning on the PSMFB Services Start Date, and throughout the Base Term or Extended Term, if applicable, the PSMFB Service Provider shall perform those services specified in Appendix II Part 2.

4.5 Consequences for Delay in PSMFB Services:

(a) If the PSMFB Services Provider does not commence the Live System and Simultaneous Operations with CEE PSMFB Service Provider (as provided in Table IV-1) by October 17, 2014 and such delay is not caused by an Excused Delay or PSMFB Effective Date Delay, then the PSMFB Service Provider shall pay Buyer Liquidated Damages in the amount of \$500,000 ("PSMFB Transition Date Liquidated Damages"). In the event that PSMFB Service Provider commences PSMFB Services by the Target PSMFB Services Start Date, the Buyer shall immediately refund to the PSMFB Service Provider the PSMFB Transition Date Liquidated

Damages paid. If PSMFB Service Provider does not commence PSMFB Services by the Target PSMFB Services Start Date, Buyer may at that time exercise its option to terminate this Agreement, subject to the limitations set forth in Section 2.3.

(b) PSMFB Transition Date Liquidated Damages owed pursuant to Section 4.5(a) shall be paid by PSMFB Service Provider to Buyer in accordance with Section 6.2, and shall be limited to five hundred thousand dollars and zero cents (\$500,000.00).

(c) For breach of any provision for which PSMFB Transition Date Liquidated Damages are provided in this Article 4.5, such damages are the sole and exclusive remedy of Buyer and PSMFB Service Provider's liability will be limited as set forth herein.

(d) PSMFB Transition Date Liquidated Damages owed pursuant to this Section 4.5 shall be due and payable in accordance with Article 6.

4.6 Use of Information Technology Systems:

(a) A description of the IT System that will be used to provide PSMFB Services is set forth in Appendix VI.

(b) The IT System shall be compatible with the PSM EDM as generally described in Appendix IX. In addition, the PSMFB Service Provider shall provide the IT System as necessary for the performance of PSMFB Services for the Base Term, and Extended Term, if applicable. The PSMFB Service Provider shall ensure that during the Base Term, or Extended Term, if applicable, each component of the IT System is: (i) functionally current to meet the needs of the PSMFB Service Provider business processes, (ii) technically supported by the manufacturer or its designee, and (iii) compatible with the specifications of the PSM EDM as

generally described in Appendix IX and as shall be set forth in additional detail in the Administrative Protocols and Procedures.

(c) The PSMFB Service Provider shall establish during the Front-End Transition Period, and maintain during the Base Term, and Extended Term, if applicable, an IT System as described in Appendix VI in order to provide data processing, storage and retrieval of information for (i) itself, in order to (1) perform the PSMFB Services hereunder, including, but not limited to, processing, storage and retrieval of all information necessary to verify calculations made pursuant to this Agreement, (2) comply with all the requirements of Appendix II, and (3) provide uploads to PSM EDM as set forth in Appendix IX; and (ii) Buyer's use, review and copying of settlement quality data regarding all aspects of Buyer's business operations for which the PSMFB Service Provider is responsible hereunder.

(d) In the event that Buyer requires PSMFB Service Provider to procure additional or substitute components with respect to the IT System identified in Appendix VI, Buyer shall reimburse PSMFB Service Provider its actual, reasonable and verifiable cost and expenses of procuring such components and training personnel in the use of such additional or substitute IT System components.

(e) For the avoidance of doubt and the purpose of clarity, the PSMFB Service Provider's IT System is intended to be compatible and to interface with Buyer's PSM EDM for the purposes of PSMFB Service Provider performing the PSMFB Services hereunder. PSMFB Service Provider's IT System is not intended to replace and/or perform the functions of the PSM EDM.

4.7 Business Continuity:

Subject to the provisions of Article 11, the PSMFB Service Provider is responsible during the Base Term, and Extended Term, if applicable, for maintaining and shall maintain continuity of its PSMFB Services through the development and implementation of the Business Continuity Plan as described in and in accordance with Appendix VIII.

4.8 Performance Standards:

(a) Without limiting PSMFB Service Provider's specific obligations under this Agreement, including the performance of all of the PSMFB Services hereunder, the PSMFB Service Provider's performance will be evaluated on a regular basis using Performance Standards as described in and in accordance with Appendix V and as may be further detailed in the Administrative Protocols and Procedures.

The Annual Penalty due, if any, for a Contract Year shall be calculated following the last Day of the applicable Contract Year as described in and in accordance with Appendix V.

If the PSMFB Service Provider's performance for a Contract Year results in an Annual Penalty pursuant to Appendix V, Buyer shall provide written notice to PSMFB Service Provider, and following receipt of such notice, the PSMFB Service Provider shall reduce its next Monthly invoice to Buyer by the amount of such Annual Penalty. In the event that the next Monthly invoice is less than the Annual Penalty, PSMFB Service Provider shall continue to reduce its monthly invoices until Buyer has been fully credited with the amount of the applicable Annual Penalty. In no event shall the Annual Penalty for any Contract Year exceed the Maximum Aggregate Penalty for the applicable Contract Year.

(b) The PSMFB Service Provider shall exert commercially reasonable efforts in its performance under this Agreement by using the same good faith and diligent level of effort consistent with the standard of care used to provide services to its own Affiliates; provided that such standard of care is consistent with, and not less than Prudent Utility Practices (“Commercially Reasonable Efforts”).

Notwithstanding the foregoing and, except for any Annual Penalty, which may be applicable pursuant to Appendix V and which Annual Penalty shall not exceed the applicable Maximum Aggregate Penalty, the PSMFB Service Provider shall not be responsible and/or liable for any other costs, damages, claims or liabilities arising, directly or indirectly from its failure to meet the Performance Standards.

4.9 Manage Payment and Collection Process:

As part of the Back-Office Services, the PSMFB Service Provider shall use its Commercially Reasonable Efforts to (i) notify Buyer of payments owing from Buyer to third parties in connection with ISO/RTO transactions, transactions with trading counterparties and other PSMFB Services as described in Appendix II so that Buyer can make timely payments and (ii) ensure the timely collection by Buyer of all amounts due to Buyer from third parties in connection with ISO/RTO transactions, transactions with trading counterparties and other PSMFB Services as described in Appendix II. The PSMFB Service Provider shall provide current and historical billing information concerning the PSMFB Services to Buyer on a Monthly basis in such form as reasonably requested by the Buyer.

In the event the PSMFB Service Provider receives any monies from third parties in connection with the performance of PSMFB Services, such amounts, shall be promptly returned to the third parties with instructions to remit such monies to Buyer. In the event PSMFB Service

Provider inadvertently collects such monies, the PSMFB Service Provider shall promptly notify Buyer and deposit such monies as directed by Buyer.

4.10 Staffing:

The PSMFB Service Provider shall employ or contract for personnel in sufficient numbers to provide the PSMFB Services as required by this Agreement. Prior to the PSMFB Start Date, PSMFB Service Provider shall supply a Front Office Manager who shall oversee the Front Office Services and shall be the Buyer's primary point of contact during Business Days.

4.11 Administrative Protocols and Procedures:

Sixty (60) Days prior to the Target PSMFB Services Start Date, the Parties shall compile and/or develop, to the extent not already developed by the Parties, mutually acceptable written administrative protocols and procedures for performing PSMFB Services on those topics including, without limitation, those set forth in Appendix XI ("Administrative Protocols and Procedures").

The policies and procedures included in the Administrative Protocols and Procedures, which shall include the operating procedures pertaining to PSMFB Services, shall be designed to assure that the PSMFB Service Provider's responsibilities hereunder are performed without consideration of the ownership of, or economic return to, the PSMFB Service Provider or its Affiliates. The Parties shall comply with the Administrative Protocols and Procedures during the Base Term, and Extended Term, if applicable.

4.12 Designation of PSMMO Service Provider:

As of the PSMFB Effective Date, PSM Service Provider designates as PSMMO Service Provider, PSEG Services Corporation, an Affiliate of PSM Service Provider that provides similar

services to PSMFB Service Provider with respect to its other business activities (“Internal Mid-Office Services”). In the event that another entity shall become the provider of Internal Mid-Office Services to PSMFB Service Provider, PSMFB Service Provider may designate such entity to be the PSMMO Service Provider, provided that the entity and PSMFB Service Provider comply with the procedures set forth in Appendix II, Part 3.

ARTICLE 5 – PSMFB SERVICES AND TRANSITION PERIOD PAYMENTS

The PSMFB Service Provider payments pursuant to this Agreement shall be calculated as set forth below.

5.1 Management Fee and Annual Fee for PSMFB Services:

Commencing upon the PSMFB Services Start Date and continuing during the Base Term, and Extended Term, if applicable, unless terminated earlier by either Party in accordance with the terms of this Agreement. Buyer shall, on a Monthly basis, in accordance with Article 6, pay the PSMFB Service Provider one-twelfth (1/12) of the PSMFB Services Management Fee and Annual Fee set forth in Table IV–3 of Appendix IV Part 2 as to the PSMFB Services and one-twelfth (1/12) of the PSMMO Services Management Fee as set forth in Appendix XIV as to PSMMO Services as consideration for performing the PSMFB Services and PSMMO Services hereunder, as more specifically described and set forth in Appendix II and Appendix XIV, respectively.

5.2 Payments during Transition Periods:

(a) Front-End Transition Period: During the Front-End Transition Period, PSMFB Service Provider shall be paid for performing Front-End Transition Services as described in Appendix III. Payments shall be made pursuant to the transition plan milestones set

forth in Table IV-1 of Appendix IV as to the PSMFB Services and the transition plan milestones to be agreed upon as set forth in Appendix XIV as to the PSMMO Services, as applicable, as such milestones may be mutually modified in writing by the Parties.

(b) Back-End Transition Period: During the Back-End Transition Period, the PSMFB Service Provider shall be paid pursuant to the transition plan milestones set forth in the Final Back-End Transition Plan, for performing Back-End Transition Services in accordance with Appendix IV Part 4 as to the PSMFB Services and for performing Back-End Transition Services in accordance with Appendix XIV as to the PSMMO Services, as such milestones may be mutually modified in writing by the Parties.

(c) Early Termination: In the event of Early Termination, the PSMFB Service Provider shall be paid for performing Modified Back-End Transition Services, Buyer Data Transfer Services, or No Back-End Transition Services, in accordance with the payment provisions of Appendix IV Part 5 as to the PSMFB Services and for performing Modified Back-End Transition Services, Buyer Data Transfer Services, or No Back-End Transition Services, in accordance with the payment provisions of Appendix XIV as to PSMMO Services, as such provisions may be mutually modified in writing by the Parties. If no payment schedule is agreed to by the Parties, PSMFB Service Provider shall be paid in accordance with Section 6.1(c), hereof.

(i) No Back-End Transition Services: In the event of Early Termination, if Buyer does not require any transition services, the PSMFB Service Provider shall be paid its Severance Costs, if any, in accordance with Appendix IV Part 5 and Appendix XIV. If no payment schedule is agreed to by the Parties, PSMFB Service Provider shall be paid in accordance with Section 6.1(c), hereof.

5.3 Additional Services:

(a) PSMFB Service Provider shall be paid for performing Additional Services in accordance with Article 6 at the rates set forth in Appendix IV Part 3 as to PSMFB Services and at the rates set forth Appendix XIV as to PSMMO Services, or as otherwise agreed to by the Parties in writing.

ARTICLE 6 - BILLING AND COLLECTIONS

6.1 Billing By PSMFB Service Provider:

(a) Front-End Transition Payments: On or about the tenth (10th) Day of each Month following the Month in which the Front-End Transition Start Date occurs, PSMFB Service Provider shall send Buyer a Monthly invoice for the Front-End Transition Payments, if applicable, for the previous Month determined pursuant to Appendix IV Part 1 for PSFMB Services, and Appendix XIV for PSMMO Services.

(b) Intentionally Omitted.

(c) Base Term and Extended Term Payments: On or about the tenth (10th) Day of each Month following the Month in which the PSMFB Services Start Date occurs through the Base Term, and Extended Term, if applicable, the PSMFB Service Provider shall send Buyer a Monthly invoice containing:

(i) the amount of the Monthly PSMFB Services Management Fee and Annual Fee for the preceding Month (and any unpaid Front-End Transition Payments and Delay Payments, if applicable for previous Months in the case of the first invoice in the Base Term) determined pursuant to Table IV–3 of Appendix IV Part 2 as to PSMFB Services and pursuant to Appendix XIV as to PSMMO Services; and

(ii) charges for Additional Services, additional IT System components, or additional insurance, if any, which charges shall be in accordance with Appendix IV Part 3 as to PSMFB Services and in accordance with Appendix XIV as to PSMMO Services, and shall be separately stated on the PSMFB Service Provider's Monthly invoice prepared and sent to Buyer pursuant to this Article 6.

(d) Back-End Transition Payments: On or about the tenth (10th) Day of each Month following the Month in which the Back-End Transition Period Start Date occurs, PSMFB Service Provider shall include, in Buyer's Monthly invoice, charges for the Back-End Transition Services, Modified Back-End Transition Services, Buyer Data Transfer Services or No Back-End Transition Services, for the previous Month determined pursuant to Appendix IV Part 4 or Part 5 as to PSMFB Services and determined pursuant to Appendix XIV as to PSMMO Services, as applicable.

(e) Buyer shall be obligated to pay to PSMFB Service Provider, within thirty (30) Days of the receipt of each invoice, any undisputed amounts owed to PSMFB Service Provider.

(f) PSMFB Service Provider shall deliver each invoice to Buyer's billing address as set forth in Section 17.5 herein. Such Monthly invoice shall include the basis of the calculation of the payment amounts, the applicable rates, and any interest charges pursuant to Section 6.4 below, or other adjustments, if any, to the amounts due.

6.2 Billing by Buyer:

(a) Commencing at the end of the first (1st) Month after any PSMFB Transition Date Liquidated Damages or other charges are owed by PSMFB Service Provider to

Buyer, Buyer shall send PSMFB Service Provider an invoice for any applicable PSMFB Transition Date Liquidated Damages or other charges for the preceding Month.

(b) PSMFB Service Provider shall be obligated to pay Buyer, within thirty (30) Days of the receipt of any invoice for PSMFB Transition Date Liquidated Damages, or other charges, if any, any undisputed amounts owed to Buyer.

(c) Buyer shall deliver each invoice to PSMFB Service Provider's billing address as set forth in Section 17.5 herein. Such invoice shall include the basis of the calculation of the payment amounts, the applicable rates and any interest charges pursuant to Section 6.4 below, or other adjustments, if any, to the amounts due.

6.3 Billing and Final Accounting:

(a) If either Party contests the amount or propriety of any amount claimed by the other Party to be due and owing pursuant to this Agreement, the contesting Party shall be entitled to withhold payment of such disputed amount.

(b) In the event either Party contests the correctness of any calculations made by the other Party in developing a Monthly invoice, including, but not limited to, the calculation of the Annual Penalty, if any, the contesting Party shall provide the invoicing Party with written notice of such dispute, the basis for the contesting Party's dispute and supporting documentation regarding such dispute by the due date for payment of said invoice. The invoicing Party shall promptly review the contested invoice and shall notify the contesting Party of any error in the invoicing Party's calculations of the relevant invoice amounts and, in the event of an error, shall issue an amended invoice together with either (i) any payment owed to, or (ii) a request for payment of any amount owed by, the contesting Party, as the case may be, in light of the review and/or recalculation. To the extent the invoicing Party disagrees with the contesting Party's

basis for contesting the original invoice, the invoicing Party shall provide a written explanation of its position. If the Parties cannot resolve such matter, either Party may submit the matter for dispute resolution pursuant to the procedure set forth in Article 15.

(c) Either Party shall have two (2) years after its delivery of an invoice to correct the calculations made by the invoicing Party in developing the invoice and deliver a revised invoice to the other Party. Either Party shall have two (2) years after its receipt of any invoice from the other Party to contest the correctness of such invoice. If payment already has been made on an invoice, which is disputed within the two (2) year period, and if, as a result of such dispute the contested invoice is corrected but the correction is, itself, contested, neither Party shall be required to refund or pay the contested amount, as the case may be, until there is a final determination regarding such matters either as a result of the invoice reconciliation process set forth in this Section 6.3 or the dispute resolution process pursuant to Article 15 hereof.

6.4 Interest:

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

6.5 Billing and Payment Records:

Until the end of six (6) years after the receipt of any Monthly invoice, Buyer shall have the right to audit such books and Records of PSMFB Service Provider as are reasonably necessary for Buyer to verify the calculation of the amounts charged and payments required under this Agreement as set forth in such Monthly invoice as well as all other information provided to Buyer pursuant to this Article 6. Such audit shall be on at least seven (7) Days' prior written notice. Audits should be conducted during normal business hours.

ARTICLE 7 – ADMINISTRATIVE ISSUES

7.1 Sufficient Resources:

The PSMFB Service Provider shall employ or contract for personnel in sufficient numbers and possessing sufficient skills, and supervise and monitor its personnel on an on-going basis, in order for the PSMFB Service Provider to perform as required under this Agreement consistent with Prudent Utility Practices. The PSMFB Service Provider shall provide proper training for the PSMFB Service Provider's personnel in the performance of PSMFB Services. The PSMFB Service Provider shall assure that its personnel are qualified to perform PSMFB Services, and that the services contemplated by this Agreement are performed by its personnel in accordance with Prudent Utility Practices. The PSMFB Service Provider shall also give due consideration to any comments of Buyer with respect to the performance of specific PSMFB Service Provider personnel. At all times, the PSMFB Service Provider shall comply, and cause its personnel to comply, with Prudent Utility Practices, Legal Requirements and Buyer's and, as referred to elsewhere in this Agreement, PSMFB Service Provider's Standards of Conduct with respect to performing its obligations under this Agreement. Notwithstanding the foregoing, the

employees of the PSMFB Service Provider providing services to Buyer under this Agreement will remain employees of the PSMFB Service Provider only. This Agreement does not create a co-employment relationship between the PSMFB Service Provider and Buyer. All employment decisions regarding these individuals, including compensation and discipline, shall be made exclusively by the PSMFB Service Provider.

7.2 Availability of PSMFB Service Provider's Representatives:

(a) The PSMFB Service Provider's Representatives shall be made available at the PSMFB Service Provider's office(s) during Buyer's normal business hours between the hours of 8:00 am to 5:00 pm (EPT), on Business Days for communication with Buyer's Representatives.

(b) The PSMFB Service Provider shall provide certain PSMFB Services, as agreed to by the Parties, on a 24 x 7 basis. PSMFB Service Provider shall maintain telephone number(s) for use by Buyer's Representatives on a 24 x 7 basis.

7.3 Compliance with Legal Requirements:

The PSMFB Service Provider and Buyer shall each perform all of its obligations hereunder in accordance with Legal Requirements. Subject to Section 13.10 ("Limitation of Liability, Remedies and Damages"), in the event that the PSMFB Service Provider or Buyer, as the case may be, fails at any time to comply with Legal Requirements, then the PSMFB Service Provider or Buyer, as the case may be, shall immediately remedy such failure at its sole cost and expense and shall bear all loss and expense of either Party and shall pay any resulting damages, fines, assessments or other charges resulting therefrom to the extent provided in Section 7.7 hereof. Any such damage, fine, assessment or other charge paid by the PSMFB Service Provider

or Buyer, as the case may be, due to a violation of Legal Requirements for which the other Party is responsible under Section 7.7 shall be reimbursed to the paying Party.

7.4 Books and Records:

The PSMFB Service Provider shall prepare and maintain proper, accurate and complete books, Records and accounts as the Buyer reasonably requests setting forth in accurate and reasonable detail the information regarding PSMFB Services in accordance with the requirements of Appendix II (“PSMFB Services Information”). Without limiting the generality of the foregoing, the PSMFB Services Information shall include, by way of example, the following:

- (a) Sales for resale;
- (b) Off-System sales;
- (c) Fuel costs and volumes of fuel consumed;
- (d) Power purchases; and
- (e) NYISO ICAP/Ancillary Services sales;

The PSMFB Service Provider shall maintain by Month the PSMFB Services Information applicable to each Month of each Contract Year and cumulatively for each Contract Year and for past Contract Years, and shall provide copies thereof to the Buyer within four (4) Business Days of each Month end to allow the Buyer to verify the propriety of any request for payment or charge hereunder. Upon the termination of the Agreement, the PSMFB Service Provider shall promptly provide the PSMFB Services Information to Buyer’s Representatives in accordance with the Final Back-End Transition Plan or as otherwise instructed by Buyer.

All such PSMFB Services Information is subject to the confidentiality provisions of Article 18.

7.5 Cash Deposits:

All cash, if any, held or collected by the PSMFB Service Provider, which is not returned by PSMFB Service Provider to the third party payee from which it was received, with directions for such third party to remit directly to Buyer, shall be deposited promptly in bank accounts in such bank or banks as the Buyer may direct.

7.6 Litigation; Permit Lapses:

Promptly upon obtaining knowledge thereof, each Party shall submit to the other Party written notice of (and, upon request, copies of any relevant non-privileged documents in the Party's possession relating to): (a) any litigation, claims, disputes or actions actually filed, or any litigation, claims, disputes or actions which are threatened, concerning in each case, the PSMFB Services, or the Buyer's or PSMFB Service Provider's obligations relating thereto; (b) any actual refusal to grant, renew or extend, or any action pending or any action filed with respect to, the granting, renewal or extension of any permit or any threatened action regarding the same; (c) any dispute with any Governmental Authority relating to the PSMFB Services, or the Buyer's or PSMFB Service Provider's obligations relating thereto; and (d) without regard to their materiality, all penalties or notices of violation issued by any Governmental Authority relating to PSMFB Services, or the Buyer's or PSMFB Service Provider's obligations relating thereto.

7.7 Other Services:

(a) The PSMFB Service Provider' representatives shall provide billing services as set forth in Appendix II Tables II-1a-e and Appendix II Back Office Service No. 4

and shall forward in a timely manner to Buyer those bills which are proper and appropriate for payment.

(b) The PSMFB Service Provider's Representative shall attend and participate in meetings scheduled by the Buyer, in connection with providing PSMFB Services.

7.8 Responsibility for Losses or Expenses Incurred by PSMFB Service Provider or Buyer:

Except to the extent due to or PSEMFB Service Provider Fault or Buyer Fault, as the case may be, and solely to the extent due to a circumstance described in subsections (a), (b) or (c) below, in each case as determined by either a final non-appealable order or judgment of a court of competent jurisdiction (including administrative tribunals), and subject to Section 13.10, each Party shall be responsible and liable for, and shall not be entitled to reimbursement from the other Party for, any loss or expense incurred by such Party:

(a) due to any negligence or willful misconduct by such Party during the period commencing from the PSMFB Effective Date, and during the Base Term, and Extended Term, if applicable, in carrying out its obligations hereunder, including without limitation violations of the Administrative Protocols and Procedures;

(b) due to any violation of, or failure of compliance with, Legal Requirement by such Party during the period commencing from the PSMFB Effective Date, during the Base Term, and Extended Term, if applicable, and until such time as the Agreement is terminated in accordance with its terms and conditions; or

(c) due to any criminal violation of Legal Requirements by such Party.

7.9 Third Party Contracts:

(a) The PSMFB Service Provider shall provide the PSMFB Services set forth in this Section 7.8 and Appendix II for Buyer's (i) contracts existing as of the PSMFB Effective Date and (ii) new contracts entered into after the PSMFB Effective Date with third parties for the purchase and sale of Products, including, but not limited to, financial agreements for the purposes of hedging the price of Products (contracts in clause (i) being "Existing Buyer Contracts", contracts in clause (ii) being "New Buyer Contracts", and contracts in clauses (i) and (ii) collectively referred to as "Buyer Contracts"). For avoidance of doubt and the purpose of clarity, Buyer Contracts are those Buyer agreements related to Power Supply Resources.

(b) New Buyer Contracts: In its performance of PSMFB Services, at Buyer's request, the PSMFB Service Provider shall as an Additional Service negotiate New Buyer Contracts including, but not limited to financial agreements and physical agreements for the purposes of hedging the price of Products which shall be of a type listed in PSR Item No. 6, as set forth in Tables II-1a-e Appendix II. New Buyer Contracts shall be in Buyer's name acting through the PSMFB Service Provider its agent and shall be executed by Buyer. Any and all expenses incurred in connection with the negotiation and execution of New Buyer Contracts, including, but not limited to, any and all legal fees shall be the responsibility of, and shall be paid directly by, Buyer. The PSMFB Service Provider shall in no event provide any legal services or credit management services (other than those credit management services described in Appendix XIV) in connection with New Buyer Contracts and/or the negotiation of such agreements.

(c) Transaction Confirmations: In connection with managing Buyer Contracts, PSMFB Service Provider may, in accordance with the procedures to be developed and agreed to by the Parties and set forth in writing by the Parties or Buyer's specific written request,

negotiate transactions pursuant to such Buyer Contracts. Unless otherwise agreed to by the Parties, such transactions and/or transaction confirmations shall be in Buyer's name and shall be executed either by Buyer, or by PSMFB Service Provider as Buyer's Agent, in accordance with Appendix II Front-Office Services and any process that may be agreed to by the Parties in writing. The costs for negotiating such transactions are included in the Total Annual Fee in Appendix IV Table IV-3.

(d) No Credit Management Services: Any and all payments and credit support, including, but not limited to payments of collateral, due to third parties pursuant to Buyer Contracts and associated transactions shall be paid or provided, as the case may be, directly by Buyer to the third parties. Except as provided in Appendix XIV, the PSMFB Service Provider is not responsible for providing any credit support, including margin, to any third party and that this is the sole responsibility of Buyer. The PSMFB Service Provider is acting solely as agent for Buyer. The PSMFB Service Provider shall administer such Buyer Contracts in accordance with Appendix II, and as agreed to by the Parties. For the avoidance of doubt and the purpose of clarity except as provided in Appendix XIV, PSMFB Service Provider shall not be responsible for processing, reconciling, or monitoring any margin or collateral requirements with regard to Buyer Contracts.

(e) Additional Billing Services: Upon Buyer's written request, the parties shall negotiate in good faith to develop the terms, conditions, fixed annual payment, and schedule for the PSMFB Service Provider to perform Billing Services for some or all of the PPA Units and/or Cable Resources (listed as PSR Type Nos. 2 and 4 of the Power Supply Resources column of Table II-1d of Appendix II).

ARTICLE 8 – OWNERSHIP OF INTELLECTUAL PROPERTY

8.1 Buyer Owned Property:

The Parties hereby acknowledge and agree that as between them and whether or not specifically recognized or perfected under any Legal Requirement, Buyer is, and shall at all times be, the sole and exclusive owner of the following, as well as of all right, title and interest in under and to, any and all of the following (collectively, the “Buyer Owned Property”):

(a) Buyer Related Data, Buyer Related Technology, Buyer Related Work Product and Buyer Equipment, in each instance to the extent obtained, created, generated, collected, designed, or developed, licensed, leased, owned or provided under this Agreement, but only to the extent relating solely to Buyer, and/or any of Buyer’s Related Parties (even if it later has potential use elsewhere):

(i) by the PSMFB Service Provider or its Affiliates or any of their employees, directors and officers (“PSMFB Service Provider’s Related Parties”), by itself or jointly with Buyer, any of Buyer’s Related Parties (as defined in Section 8.1 (b) below) or others, and/or

(ii) by agents, consultants, subcontractors and/or suppliers of the PSMFB Service Provider or PSMFB Service Provider’s Related Parties, by itself or jointly with Buyer, any of Buyer’s Related Parties (as defined in 8.1(b) below) or others, (collectively, the “Buyer Owned Deliverables”);

provided that, notwithstanding the foregoing, (1) to the extent any of the foregoing are obtained, collected, licensed or leased from Buyer or Buyer’s Related Parties, or any applicable agent, consultant, subcontractor and/or supplier of the Buyer

and/or the Buyer's Related Parties (collectively, the "Buyer's Personnel") it shall be deemed Buyer Owned Property regardless of whether or not it relates solely to Buyer and/or any of Buyer's Related Parties, and (2) to the extent any of the foregoing were owned prior to the commencement of services under this Agreement, or acquired, obtained, created generated collected, designed, developed, licensed or leased outside the scope of this Agreement, by PSMFB Service Provider and/or PSMFB Service Provider Related Parties, it shall be deemed PSMFB Service Provider Property.

To the extent any of the Buyer Owned Deliverables are not deemed a "work for hire" by operation of law, PSMFB Service Provider hereby irrevocably assigns to Buyer, and will cause the PSMFB Service Provider's Related Parties and each applicable agent, consultant, subcontractor and supplier of the PSMFB Service Provider and/or the PSMFB Service Provider's Related Parties (collectively, the "PSMFB Service Provider Personnel") to assign to Buyer, all of its and their right, title and interest in and to such Buyer Owned Deliverables, including all Intellectual Property Rights in and to such Buyer Owned Deliverables. The PSMFB Service Provider agrees to execute, and shall cause the applicable PSMFB Service Provider's Related Parties and other PSMFB Service Provider Personnel to execute, any documents or take any other actions as may reasonably be necessary, or as Buyer may reasonably request, to evidence, perfect, maintain and enforce Buyer's ownership of any such Buyer Owned Deliverables, whether during the Base Term, and Extended Term, if applicable of this Agreement or thereafter.

(b) Buyer Related Data, Buyer Related Technology, Buyer Equipment and Buyer Related Work Product obtained, created, generated, collected, designed, developed, licensed, leased, owned by (or provided to PSMFB Service Provider, and/or any PSMFB Service

Provider Personnel by) Buyer or its Affiliates or any of their employees, directors, trustees and officers (“Buyer’s Related Parties”) or agents, consultants, contractors and/or suppliers of Buyer and/or Buyer’s Related Parties, including any information, data or other materials provided to PSMFB Service Provider and/or PSMFB Service Provider Personnel under this Agreement, in each instance by itself, or jointly with others (other than PSMFB Service Provider or any PSMFB Service Provider’s Related Parties) and all of the Intellectual Property Rights therein.

(c) Inventions to the extent relating to, and based upon, items in subparagraphs (a) and (b) above, whether or not obtained, created, generated, collected, designed, developed or discovered by the PSMFB Service Provider or PSMFB Service Provider’s Related Parties under, pursuant to, or as a result of, this Agreement, or by Buyer or Buyer’s Related Parties in each instance by itself or jointly with PSMFB Service Provider, any PSMFB Service Provider’s Related Parties or others, and other than those Inventions created or developed by the PSMFB Service Provider or PSMFB Service Provider’s Related Parties which are not relating solely to Buyer and/or Buyer’s Related Parties;

(d) Writings, works of authorship, and other copyrightable or non-copyrightable subject matter of any kind (“Writings”), including without limitation, derivative works, to the extent containing any portion of the items described in subparagraphs (a), (b) and (c) above, whether or not obtained, created, generated, collected, designed, developed or fixed by the PSMFB Service Provider or PSMFB Service Provider’s Related Parties under, pursuant to, or as a result of, this Agreement but excluding all PSMFB Service Provider Owned Property contained therein, and other than those Writings created or developed by the PSMFB Service Provider or PSMFB Service Provider’s Related Parties which are not relating solely to Buyer and/or Buyer’s Related Parties; and

(e) all improvements, enhancements, modifications, and/or derivative works (“Derivatives”) to or of any of the items described in subparagraphs (a), (b), (c) and/or (d) above created pursuant to this Agreement or otherwise, other than those Derivatives created or developed by the PSMFB Service Provider or PSMFB Service Provider’s Related Parties which are not relating solely to Buyer and/or Buyer’s Related Parties, and all Intellectual Property Rights in and to the foregoing items described in this subparagraph (e) and all items described in subparagraphs (a), (b), (c) and/or (d).

To the extent that the PSMFB Service Provider or PSMFB Service Provider’s Related Parties or any permitted PSMFB Sub-licensee (as defined in Section 8.2, below) creates any Derivatives to, or of, any Buyer Owned Property which are owned by Buyer as set forth in Section 8.1(e) above or Buyer Licensed Intellectual Property, the PSMFB Service Provider hereby assigns, and will cause the PSMFB Service Provider’s Related Parties and each applicable PSMFB Sub-licensee to assign, to Buyer all right, title and interest in and to such Derivatives and all Intellectual Property Rights in the foregoing.

8.2 Buyer License Grant:

Subject to the terms and conditions of this Agreement, Buyer hereby grants and shall cause Buyer’s Related Parties to grant to the PSMFB Service Provider and PSMFB Service Provider’s Related Parties:

(a) a fully paid-up, royalty-free, non-exclusive, non-transferable (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the “Assignment” section of Article 14 below) and sub-licensable limited license during the Base Term, and Extended Term, if applicable, for the sole purpose of performing and solely to the extent necessary to perform, the PSMFB Services under this

Agreement, to use, copy, modify and create derivative works of, as applicable, the Buyer Owned Property which is not Buyer Licensed Intellectual Property, and, to the extent sub-licensable, Buyer Licensed Intellectual Property (which, for avoidance of doubt, includes the Buyer Owned Deliverables whether or not, when used, such Buyer Owned Deliverables will result in a competitive disadvantage to Buyer and/or any of the Buyer's Related Parties), solely for use by, or on behalf of, the PSMFB Service Provider and/or the PSMFB Service Provider's Related Parties, including by their respective sub-licensees in performing PSMFB Services pursuant to this Agreement; and

(b) a fully paid-up, royalty-free, non-exclusive, non-transferable (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the "Assignment" section of Article 14 below) perpetual and non-sub-licensable limited license, to use, copy, modify and create derivative works of, as applicable, those of the Buyer Owned Deliverables (except to the extent that it contains Buyer Owned Property which is information and data which is solely related to Buyer and/or Buyer's Related Parties and/or information and data of third parties) which, when used, will not result in a competitive disadvantage to Buyer and/or any of the Buyer's Related Parties, solely for use by the PSMFB Service Provider and/or the PSMFB Service Provider's Related Parties in its/their business for the sole purpose of performing (and solely to the extent necessary to perform) services to its/their customers. With respect to the license granted in subsection (b), in the event the PSMFB Service Provider and/or PSMFB Service Provider's Related Parties needs to grant a sub-license for the use of the materials for its customers or its PSMFB Service Provider Related Parties' customers in order to perform services for such customers, PSMFB Service Provider shall request that Buyer give its prior written approval, which approval shall not be unreasonably

withheld. PSMFB Service Provider shall not grant a Sub-license without Buyer's prior written approval. For the avoidance of doubt and purpose of clarity, Buyer disapproval is deemed reasonable if Buyer determines, in its sole discretion, that such sub-license would create a competitive disadvantage to Buyer and/or Buyer's Related Parties.

In addition, during the Base Term, and the Extended Term, if applicable, the Parties shall fully evaluate and shall jointly approve the need for, and the expenditures to be made to any third parties associated with, any sub-license of Buyer Licensed Intellectual Property to the PSMFB Service Provider, PSMFB Service Provider's Related Parties or any other Person to whom a sub-license is granted pursuant to this Section 8.2 (each, a "PSMFB Sub-licensee"), such approval not to be unreasonably withheld.

Such licenses shall be subject to the following:

(c) If the Buyer Owned Property or Buyer Licensed Intellectual Property contains property or other Intellectual Property Rights owned by third parties, the PSMFB Service Provider and PSMFB Service Provider's Related Parties' use, and use by any PSMFB Sub-licensee, of such third party property or other Intellectual Property Rights shall be subject to the license terms governing such third party Intellectual Property Rights. Buyer shall notify the PSMFB Service Provider of all such license terms.

(d) Neither the PSMFB Service Provider, any PSMFB Service Provider's Related Parties, nor any PSMFB Sub-licensee shall acquire any rights in, or take any action that jeopardizes Buyer's proprietary rights with respect to, the Buyer Owned Property or Buyer Licensed Intellectual Property (including any translations or updates or other Derivatives thereof), except the limited use rights specified in the license grant. The PSMFB Service

Provider and PSMFB Service Provider's Related Parties shall not, and the PSMFB Service Provider and PSMFB Service Provider's Related Parties shall contractually provide in its agreement with each PSMFB Sub-licensee that such PSMFB Sub-licensee shall not, remove, change, or obliterate any copyright, confidential, or proprietary notices incorporated in, marked on, or fixed to the Buyer Owned Property or Buyer Licensed Intellectual Property.

(e) Except as otherwise expressly permitted pursuant to the first paragraph of this Section 8.2, or as otherwise agreed by the Parties in writing, the PSMFB Service Provider and PSMFB Service Provider's Related Parties shall not sell, sub-license, rent, lease, distribute or otherwise permit the use of the Buyer Owned Property or Buyer Licensed Intellectual Property.

(f) The PSMFB Service Provider and PSMFB Service Provider's Related Parties shall not copy, translate, modify, adapt, decompile, disassemble, or reverse engineer any portion(s) of the Buyer Owned Property or Buyer Licensed Intellectual Property except as necessary to perform its obligations hereunder. Buyer shall own all right, title and interest in, to and under any copy, translation, modification, adaptation, or other results of the decompilation, disassembly or reverse engineering, of the Buyer Owned Property or Buyer Licensed Intellectual Property, whether or not authorized, and all Intellectual Property Rights in and to the foregoing, and the PSMFB Service Provider hereby assigns, and shall cause PSMFB Service Provider's Related Parties and each applicable PSMFB Sub-licensee to assign, all right, title and interest in and to them and all Intellectual Property Rights in and to them (including moral rights) to Buyer.

(g) The PSMFB Service Provider shall be responsible for compliance by all PSMFB Service Provider's Related Parties and PSMFB Sub-licensees with the terms and

conditions of this Section 8.2 and PSMFB Service Provider fully and unconditionally guarantees such compliance by PSMFB Service Provider's Related Parties and the PSMFB Sub-licensees with the terms of this Section 8.2.

(h) PSMFB Service Provider shall ensure, and shall cause all PSMFB Service Provider's Related Parties and PSMFB Sub-licensees to ensure, that each permitted PSMFB Sub-licensee agrees in writing to terms and conditions at least as restrictive as the terms of this Article 8 and Article 18 prior to being given access to any of the Buyer Owned Property or Buyer Licensed Intellectual Property.

(i) The PSMFB Service Provider agrees to enforce, and shall cause all PSMFB Service Provider's Related Parties to enforce, the terms of the sub-license or other agreement agreed to by the applicable PSMFB Service Provider's Related Parties and/or PSMFB Sub-licensee(s) affecting Buyer's or any Buyer's Related Party's rights (the "Applicable PSMFB Sub-license Terms") against the applicable PSMFB Service Provider's Related Parties and/or PSMFB Sub-licensee(s) at the PSMFB Service Provider's own expense. It is understood and agreed, however, (and each sub-license or other agreement agreed to with respect to use of the Buyer Owned Property and/or the Buyer Licensed Intellectual Property (each, a "PSMFB Sub-license Agreement") shall provide) that Buyer shall be a third party beneficiary of all PSMFB Sub-license Agreements agreed to by the applicable PSMFB Service Provider's Related Parties and/or PSMFB Sub-licensee(s) relating to Buyer Owned Property and/or Buyer Licensed Intellectual Property, with the power to enforce the terms of this Section 8.2 and/or Section 18 and the Applicable PSMFB Sub-license Terms directly against any applicable PSMFB Service Provider's Related Parties and/or PSMFB Sub-licensee(s).

(j) If the PSMFB Service Provider or any of PSMFB Service Provider's Related Parties learns of any infringement or unauthorized use of the Buyer Owned Property or Buyer Licensed Intellectual Property, then the PSMFB Service Provider will promptly notify Buyer thereof in writing and will provide reasonable assistance and cooperation as may be requested by Buyer, but at Buyer's sole cost and expense.

8.3 PSMFB Service Provider Owned Property:

The Parties hereby acknowledge and agree that as between them, and whether or not specifically recognized or perfected under any Legal Requirement, the PSMFB Service Provider is, and shall at all times be, the sole and exclusive owner of the following, as well as of all right, title and interest in, under and to any and all of the following (collectively, the "PSMFB Service Provider Owned Property"):

(a) PSMFB Service Provider Related Data, PSMFB Service Provider Related Technology, PSMFB Service Provider Related Work Product and PSMFB Service Provider Equipment, but excluding any and all Buyer Owned Property.

(b) Buyer Related Data, Buyer Related Technology and Buyer Related Work Product (in each case, to the extent it does not relate solely to Buyer, or Buyer's Related Parties), obtained, or created, or generated, or collected, designed, or developed, or licensed, or leased, or owned, or provided: (i) by PSMFB Service Provider or any of PSMFB Service Provider's Related Parties, by itself or jointly with Buyer, any of Buyer's Related Parties or others, and/or (ii) by PSMFB Service Provider Personnel by itself or jointly with Buyer, any of Buyer's Related Parties or others, except to the extent any of the foregoing are obtained, collected, licensed or

leased from Buyer, any of the Buyer's Related Parties and/or any Buyer's Personnel (collectively, the "PSMFB Service Provider Owned Deliverables");

(c) Inventions to the extent relating to and based upon the PSMFB Service Provider Owned Property described in subparagraphs (a) and (b) above, obtained, created, generated, collected, designed, developed or discovered by the PSMFB Service Provider or PSMFB Service Provider's Related Parties, but excluding all Buyer Owned Property contained therein;

(d) Writings including, without limitation, derivative works, relating to the PSMFB Service Provider Owned Property described in (a) (b) or (c) above, obtained, created, generated, collected, designed, developed or fixed by the PSMFB Service Provider or PSMFB Service Provider's Related Parties, but excluding all Buyer Owned Property contained therein, and

(e) all Derivatives to or of any of the PSMFB Service Provider Owned Property described in subparagraphs (a), (b), (c) and/or (d) above created pursuant to this Agreement or otherwise (excluding any Buyer Owned Property), and all Intellectual Property Rights in and to the foregoing items described in this subparagraph (e) and all items described in subparagraphs (a), (b), (c) and/or (d).

(i) To the extent that the Buyer or Buyer's Related Parties or any permitted Buyer Sub-licensee creates any Derivatives to, or of, any PSMFB Service Provider Owned Property which are owned by PSMFB Service Provider as set forth in Section 8.3(e) above or PSMFB Service Provider Licensed Intellectual Property, Buyer hereby assigns, and will cause Buyer's Related Parties and each applicable Buyer Sub-

licensee to assign, to PSMFB Service Provider all right, title and interest in and to such Derivatives and all Intellectual Property Rights in the foregoing.

8.4 PSMFB Service Provider License Grant:

Subject to the terms and conditions of this Agreement, the PSMFB Service Provider hereby grants, and shall cause its Affiliates to grant, to Buyer and Buyer's Related Parties a fully paid-up, royalty-free, non-exclusive, non-transferable, (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the "Assignment" section of Article 14 below) perpetual sub-licensable limited license to use, copy, and modify and create derivative works of, as applicable, the PSMFB Service Provider Owned Property and PSMFB Service Provider Licensed Intellectual Property (if it can be sub-licensed) solely for use in conducting the business of Buyer and/or Buyer's Related Parties, by, or on behalf of, Buyer or Buyer's Related Parties, including by its and their respective sub-licensees. In addition, during the Base Term and the Extended Term, if applicable, the Parties shall fully evaluate and shall jointly approve the need for, and the expenditures to be made to any third parties associated with, any sub-license of PSMFB Service Provider Licensed Intellectual Property to the Buyer, the Buyer's Related Parties, or any other Person to whom a sub-license is granted pursuant to this Section 8.4 (each, a "Buyer Sub-licensee"), such approval not to be unreasonably withheld. Such licenses shall be subject to the following:

(a) If the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property contains property or other Intellectual Property Rights owned by third parties, Buyer and Buyer's Related Parties' use, and use by any Buyer Sub-licensee, of such third party property or other Intellectual Property Rights shall be subject to the

license terms governing such third party Intellectual Property Rights. The PSMFB Service Provider shall notify Buyer of all such license terms.

(b) Neither Buyer, any Buyer's Related Parties, nor any Buyer Sub-licensee(s) shall acquire any rights in, or take any action that jeopardizes the PSMFB Service Provider's proprietary rights with respect to, the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property (including any translations, or updates, or other Derivatives thereof), except the limited use rights specified in the license grant. Buyer and Buyer's Related Parties shall not, and Buyer and Buyer's Related Parties shall contractually provide in its agreement with each Buyer Sub-licensee that such Buyer Sub-licensee shall not, remove, change, or obliterate any copyright, confidential, or proprietary notices incorporated in, marked on, or fixed to the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property.

(c) Except as expressly permitted pursuant to the first paragraph of this subsection 8.4, or as otherwise agreed by the Parties in writing, Buyer and Buyer's Related Parties shall not sell, sub-license, rent, lease, distribute or otherwise permit the use of the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property.

(d) Buyer and Buyer's Related Parties shall not copy, translate, modify, adapt, decompile, disassemble, or reverse engineer the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property except as necessary to exercise the rights granted pursuant to this Section 8.4. The PSMFB Service Provider shall own all rights in any copy, translation, modification, adaptation, or other results of the decompilation,

disassembly or reverse engineering, of the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property, whether or not authorized, and all Intellectual Property Rights in and to the foregoing, and Buyer hereby assigns, and shall cause Buyer's Related Parties and each applicable Buyer Sub-licensee to assign, all right, title and interest in and to them and all Intellectual Property Rights in and to them (including moral rights) to the PSMFB Service Provider.

(e) Buyer shall be responsible for compliance by all Buyer's Related Parties and Buyer Sub-licensees with the terms and conditions of this Section 8.4 and Buyer fully and unconditionally guarantees such compliance by Buyer's Related Parties and the Buyer Sub-licensees under this Section 8.4.

(f) Buyer shall ensure, and shall cause all Buyer's Related Parties and Buyer Sub-licensees to ensure, that each permitted Buyer Sub-licensees agrees in writing to terms and conditions at least as restrictive as the terms of this Article 8 and Article 18 prior to being given access to any of the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property.

(g) Buyer agrees to enforce, and shall cause all Buyer's Related Parties to enforce, the terms of the sub-license or other agreement agreed to by the applicable Buyer's Related Parties and/or Buyer Sub-licensee(s) affecting PSMFB Service Provider's or any PSMFB Service Provider's Related Party's rights (the "Applicable Buyer Sub-license Terms") against the applicable Buyer's Related Parties and/or Buyer Sub-licensee(s) at Buyer's own expense. It is understood and agreed, however, (and each sub-license or other agreement agreed to with respect to use of the PSMFB Service Provider Owned Property and/or PSMFB Service

Provider Licensed Intellectual Property (each, a “Buyer Sub-license Agreement”) shall provide) that the PSMFB Service Provider shall be a third party beneficiary of all Buyer Sub-license Agreements agreed to by the applicable Buyer’s Related Parties and/or Buyer Sub-licensee(s) relating to PSMFB Service Provider Owned Property and/or PSMFB Service Provider Licensed Intellectual Property, with the power to enforce the terms of this Section 8.4 and/or Article 18 and any Applicable Buyer Sub-license Terms directly against any applicable Buyer’s Related Parties and/or Buyer Sub-licensee(s).

(h) If Buyer or any of Buyer’s Related Parties learns of any infringement or unauthorized use of the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property, then Buyer will promptly notify PSMFB Service Provider thereof in writing and will provide reasonable assistance and cooperation as may be requested by the PSMFB Service Provider, but at the PSMFB Service Provider’s sole cost and expense.

8.5 Reservation of Rights:

Except for the license rights expressly granted in this Agreement, (a) neither Party grants to the other Party, by implication, estoppel or otherwise, any license or other right to any of its property; (b) no right, title or interest in, to or under the property of a Party is transferred or granted to the other Party; and (c) each Party hereby reserves for itself and retains all rights in and to its property, and any and all Intellectual Property Rights inherent therein or appurtenant thereto.

8.6 Independent Development; Residuals:

The obligations of confidentiality and limited use under this Agreement shall not be construed to limit a Party’s right to independently develop or acquire products without use of the

other Party's PSM Confidential Information. Further, each Party shall be free to use for any purpose the "residuals" (as defined below) resulting from access to or work with such PSM Confidential Information, provided that such party shall maintain the confidentiality of such PSM Confidential Information as provided in this Agreement and otherwise comply with the provisions of Article 18 and any other obligations of limited use and non-disclosure set forth in this Agreement. The term "residuals" means information in non-tangible form, which is retained in unaided memory by persons who have had access to the PSM Confidential Information, including generalized ideas, concepts, know-how or techniques contained therein. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either Party a license under the other Party's copyrights, patents or other Intellectual Property Rights. In addition, in no event shall either party be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables provided by the PSMFB Service Provider to the Buyer, provided that, with respect to the same, such party at all times (a) maintains the confidentiality of the PSM Confidential Information as provided in this Agreement and (b) otherwise complies with the provisions of Article 18 and all other obligations of limited use and non-disclosure set forth in this Agreement.

8.7 Feedback Rights:

In the event that a Party and/or its Related Parties provides the other Party with any suggestions or recommendations concerning the PSMFB Service Provider Owned Property or Buyer Owned Property, as applicable, owned by the other Party (collectively "Feedback"); the Party providing such Feedback hereby grants the other Party, without any obligation to pay the

providing Party for such use, unless otherwise agreed to in writing by the Parties prior to such Feedback being given to the other Party, a paid-up worldwide right and license to use and incorporate such Feedback into the PSMFB Service Provider Owned Property or Buyer Owned Property, as applicable, owned by such other Party, in “as is” condition and with all faults, and to modify all or any portion of such PSMFB Service Provider Owned Property or Buyer Owned Property, as applicable, regardless of the medium (now or hereafter known) into which such Feedback may be modified and regardless of the effect of such modifications on the integrity of such the PSMFB Service Provider Owned Property or Buyer Owned Property, as applicable. The providing Party and/or its Related Parties, as applicable, further waive any "moral" rights, or other rights with respect to attribution of authorship or integrity of such Feedback, such Party or its Related Parties may have under any applicable law, whether under copyright, trademark, unfair competition, defamation, right of privacy, contract, tort or other legal theory. The Party receiving and using such Feedback shall retain all responsibility and liability for such Feedback and its use thereof. For the avoidance of doubt and the purpose of clarity, except as otherwise expressly set forth in this Section 8.7, nothing contained in this section shall in any way alter the ownership rights and restrictions on use set forth in this Agreement.

8.8 Intellectual Property and Administrative Protocols and Procedures:

Examples of the Parties intent with respect to this Article 8 shall be set forth in the Administrative Protocols and Procedures.

8.9 Ownership of Additional Services Intellectual Property:

The Parties acknowledge and agree that (a) this Agreement provides for the ability of the Parties to agree to Additional Services to be provided hereunder by the PSMFB Service Provider

as described and provided in Appendix IV Part 3 and as shall be further described in the Administrative Protocols and Procedures (b) notwithstanding the other provisions of this Article 8 (Ownership of Intellectual Property), with respect to Buyer Related Data, Buyer Related Technology, Buyer Related Work Product and/or Buyer Equipment obtained, created, generated, collected, designed, developed, licensed, leased, owned or provided pursuant to this Agreement as a result of Additional Services (collectively, the “Additional Services IP”), the Parties may agree in writing to ownership, license and/or payment provisions or use limitations with respect to such Additional Services IP which are different than the provisions of the preceding sections of this Article 8. The types of provisions to which the Parties may agree include, without limitation, provisions pursuant to which (regardless of whether such Additional Services IP relates solely to Buyer and/or any Buyer’s Related Parties):

(a) Buyer shall be the sole and exclusive owner of such Additional Services IP, and such Additional Services IP shall be Buyer Owned Property for the purposes of this Article 8 and subject to the license provisions of Section 8.2, and the other provisions of Article 8;

(b) the PSMFB Service Provider shall be the sole and exclusive owner of such Additional Services IP, and such Additional Services IP shall be PSMFB Service Provider Owned Property for the purposes of this Article 8 and subject to the license provisions of Section 8.4 and the other provisions of Section 8;

(c) Buyer shall be the sole and exclusive owner of such Additional Services IP, and such Additional Services IP shall be Buyer Owned Property for the purposes of this Article 8 but subject to mutually agreed license provisions which provide for a license which is broader than the license provisions of Section 8.2;

(d) the PSMFB Service Provider shall be the sole and exclusive owner of such Additional Services IP, and such Additional Services IP shall be PSMFB Service Provider Owned Property for the purposes of this Article 8, but subject to certain mutually agreed upon use limitations, such as an agreement that the license granted to Buyer and Buyer's Related Parties with respect to such Additional Services IP will be exclusive for a mutually agreed period of time and/or that the PSMFB Service Provider will not, for a mutually agreed period of time, use the Additional Services IP for the benefit of any competitor of Buyer or any Buyer's Related Parties (each, a "Buyer Competitor") or allow a Buyer Competitor to use the Additional Services IP; and/or

(e) the Additional Services IP is subject to other mutually agreed ownership, license and/or payment provisions or use limitations.

In the event the agreement of the Parties is silent with respect to the ownership of the Additional Services IP, such ownership shall be allocated in accordance with the terms set forth in this Article 8.

8.10 Specific IP Ownership:

For the avoidance of doubt, the PSM EDM is Buyer Owned Property. Any data links or IT Systems from and to the PSM EDM that PSMFB Services Provider establishes are PSMFB Service Provider Property. All IT Systems and Intellectual Property Rights developed, purchased or licensed by PSFMB Service Provider are PSFMB Service Provider Owned Property.

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ARTICLE 9 - DESIGNATION OF REPRESENTATIVES

9.1 Buyer's Representatives:

Not later than thirty (30) days after the execution and delivery of this Agreement, Buyer shall select representatives who shall be authorized by Buyer, who shall be listed in the Administrative Protocols and Procedures, to act, and who shall act, for and on behalf of Buyer concerning all matters to the extent so authorized (the "Buyer's Representatives"). In all such matters, Buyer shall be bound by the communications, directions, requests and decisions made by the Buyer's Representatives acting within the scope of their authority. Buyer shall promptly notify PSMFB Service Provider in writing of the selection of Buyer's Representatives and any subsequent replacement(s) and of the telephone numbers or other means by which such persons and their designees may be contacted at all times.

9.2 PSMFB Service Provider's Representatives:

Not later than thirty (30) days after the execution and delivery of this Agreement, PSMFB Service Provider shall select representatives who shall be authorized by PSMFB Service Provider who shall be listed in the Administrative Protocols and Procedures to act and who shall act for and on behalf of PSMFB Service Provider concerning all matters to the extent authorized (the "PSMFB Service Provider's Representatives"). In all such matters, PSMFB Service Provider shall be bound by the communications, directions, requests and decisions made by the PSMFB Service Provider's Representatives acting within the scope of their authority. PSMFB Service Provider shall promptly notify Buyer's Representatives in writing of PSMFB Service Provider's Representatives selection and any subsequent replacement(s) and of the telephone numbers or other means by which such persons and their designees may be contacted at all times. The PSMFB Service Provider's Representatives shall have appropriate experience with

respect to the supervision and management of services of the type contemplated by this Agreement and shall be responsible for the day-to-day supervision of the PSMFB Service Provider's performance of this Agreement as set forth in more detail in the Administrative Protocols and Procedures. Recognizing the need for an amicable working relationship between the Buyer and the PSMFB Service Provider, the Buyer shall have the right to approve the appointment of the PSMFB Service Provider Representatives and any successors thereto, such approval not to be unreasonably withheld. The PSMFB Service Provider's Representatives or pre-approved designees shall attend Monthly meetings with the Buyer, following Buyer's receipt and review of the Monthly reports delivered pursuant to Appendix II hereof, to discuss such matters as the Buyer deems appropriate.

ARTICLE 10 - PSMFB SERVICE PROVIDER SECURITY

10.1 Base Term and Extended Term Security Amount:

As security for the PSMFB Service Provider to meet (a) its PSMFB Transition Date Liquidated Damages payment obligations as set forth in Section 4.5(a)(i), (b) its other payment obligations, including its obligations to pay the Annual Penalty, if any, associated with any Contract Year, during the Base Term, and Extended Term, if applicable, and (c) its obligations in an Event of Default under Article 13, the PSMFB Service Provider shall post PSMFB Service Provider Security commencing thirty (30) days prior to the Target PSMFB Services Start Date and maintain same throughout the Base Term, and Extended Term, if applicable, in the amount of \$2,000,000. PSMFB Service Provider shall have the right to replace such PSMFB Service Provider Security with a renewed or substitute PSMFB Service Provider Security conforming to the requirements of this Agreement in the required amount subject to the PSMFB Service Provider providing ten (10) Days prior notification to Buyer describing such replacement and

confirming that Buyer is satisfied that such replacement conforms to the requirements of this Agreement. For the avoidance of doubt and the purpose of clarity, the aforesaid ten (10) Day notice is not required when PSMFB Service Provider is amending the Guaranty to extend the expiration date of the Guaranty.

10.2 Replenishment and Reinstatement:

Within ten (10) Days after a draw by Buyer on any PSMFB Service Provider Security, PSMFB Service Provider shall cause the PSMFB Service Provider Security to be replenished or reinstated to the applicable amount as set forth above; provided, however, that the obligation to reinstate the PSMFB Service Provider Security described in Section 10.1 shall terminate upon the termination or expiration of this Agreement. Buyer shall return such PSMFB Service Provider Security to PSMFB Service Provider within ten (10) Business Days of the termination or expiration of this Agreement; provided, however, that, in the event an assessment of performance for the then current Contract Year under Section 4.8 and Appendix V hereof, if applicable, has not been completed as of the date of termination or expiration of this Agreement, then Buyer shall not return such PSMFB Service Provider Security to PSMFB Service Provider until within three (3) Days of (i) the completion of the assessment, if no Annual Penalty is required by PSMFB Service Provider as a result of such assessment, or, (ii) payment of such Annual Penalty by PSMFB Service Provider to Buyer (if an Annual Penalty payment is due as a result of the assessment); provided, further, however, that the outstanding assessment of performance shall be completed by Buyer in a time frame consistent with the average length of time for similar annual performance assessments over the prior three (3) Contract Years.

ARTICLE 11 – FORCE MAJEURE

11.1 Definition:

The term “Force Majeure Event” means an event that was not within the control of the Party claiming its occurrence, including without limitation, acts of God and public enemies, war, terrorism, civil disobedience, floods, fires, strikes, explosions or other catastrophes, failure of utilities, sabotage, failure of communication facilities, including, but not limited to Party internet service provider facilities and could not have been prevented, avoided, or minimized by such Party through the exercise of due diligence, which includes the development of reasonable contingency plans consistent with Prudent Utility Practices. The Parties agree that the Business Continuity Plan described in Appendix VIII of this Agreement, which shall be set forth in the Administrative Protocols and Procedures, once developed and implemented (and provided it is maintained and implemented consistent with Prudent Utility Practices), shall be deemed a reasonable contingency plan.

For the avoidance of doubt and the purpose of clarity, the PSMFB Service Provider’s performance hereunder shall be excused by a Force Majeure Event if the PSMFB Service Provider has (1) implemented the Business Continuity Plan, but such implementation has not been successful with respect to a Force Majeure Event despite its exercise of Prudent Utility Practices, or (2) not implemented the Business Continuity Plan at the time of such Force Majeure Event, in whole or in part, because of (i) the applicability of Section 2.4, (ii) Buyer’s, CEE PSMFB Service Provider’s or Servco’s failure to provide Buyer Related Data, which is reasonably necessary for PSMFB Services Provider to implement the Business Continuity Plan or (iii) a separate Force Majeure Event.

The economic hardship of a Party shall not be a Force Majeure Event, and a Force Majeure Event shall not excuse the payment of money. In addition, a Force Majeure Event does not, and shall not, include: (a) PSMFB Services Provider's negligence or intentional misconduct, which has materially contributed to the PSMFB Services Provider's delay in carrying out, or its failure to perform, or failure to carry out its duties and obligations under this Agreement.

11.2 Force Majeure Event:

If due to a Force Majeure Event either Party is wholly or partially unable to perform its obligations under this Agreement so long as such Party is in compliance with this Article 11, such Party (i) shall be excused from performance solely for the duration of, and solely to the extent that, such Force Majeure Event prevents such Party from performing its obligations under this Agreement, and (ii) shall not be in default in respect of any obligation hereunder.

11.3 Due Diligence:

A Party claiming a Force Majeure Event ("Claiming Party") shall: (i) provide prompt notice of such Force Majeure Event to the other Party ("Non-Claiming Party"); (ii) within two (2) Business Days after providing the prompt notice, provide to 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; (iii) use Commercially Reasonable Efforts in accordance with Prudent Utility Practices and the Business Continuity Plan to continue to perform its obligations under this Agreement and to remedy the condition that prevents performance and mitigate the effects of same; and (iv) keep the Non-Claiming Party informed in writing of all efforts to mitigate and remedy the Force Majeure Event, including periodic updates to the duration estimate and, if applicable, notice of the Force Majeure Event's cure.

11.4 Suspension of Performance:

The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event.

11.5 Extended Force Majeure Events:

(a) If the Claiming Party has reason to believe that a Force Majeure Event will prevent it from performing its obligations required by this Agreement for one (1) Month or longer, it shall so notify the Non-Claiming Party in writing within one (1) Day of the Claiming Party determining that such Force Majeure Event may continue for one (1) Month or longer and shall submit a written plan to the Non-Claiming Party within five (5) Days after such notification which shall set forth the actions the Claiming Party plans to take that will mitigate or cure the Force Majeure Event (“Force Majeure Remedy Plan”).

(b) While the Force Majeure Remedy Plan is in effect, the Claiming Party shall provide bi-weekly status reports notifying the Non-Claiming Party of the steps taken to remedy the effects of the Force Majeure Event and the expected remaining duration of the Claiming Party’s inability to perform its obligations.

11.6 Right to Terminate:

The Non-Claiming Party may at any time terminate this Agreement upon thirty (30) Days prior written notice if the Claiming Party: (a) fails to provide a Force Majeure Remedy Plan as provided for in this Article 11; (b) fails to commence implementation of, and diligently pursue, the Force Majeure Remedy Plan; provided, however, that the Claiming Party shall have five (5) Days from receipt of Non-Claiming Party’s notice to cure its failure to commence and diligently pursue its Force Majeure Remedy Plan (unless a cure of such failure is not reasonably capable of

being effected within five (5) Days, in which case the Claiming Party shall have an additional five (5) Days in which to commence such cure provided that the Claiming Party is thereafter diligently pursuing efforts to perform such cure); or (iii) fails to remedy the effects of the Force Majeure Event within thirty (30) Days following the date on which the Force Majeure Remedy Plan was required to be submitted.

ARTICLE 12 - INSURANCE

12.1 Insurance Required:

The PSMFB Service Provider shall, at its sole cost and expense, procure and maintain in full force and effect the types and amounts of insurance coverage described in this Article 12 and Appendix VII for the full term of this Agreement. Such insurance shall be in place with responsible and reputable insurance companies that comply with applicable laws and have an A.M. Best rating of at least “A-”. The PSMFB Service Provider shall give Buyer prompt notice of any material change to any such insurance coverages, but in no event later than ten (10) days after it learns of such material change.

12.2 Certificates of Insurance:

Within five (5) days of the PSMFB Effective Date, the PSMFB Service Provider shall provide Buyer with certificate(s) of insurance evidencing the required coverage as set forth in this Article 12. Such certificate(s) shall provide for a minimum of thirty (30) days advance notice to Buyer of cancellation, but ten (10) days advance notice to Buyer in the event of cancellation for non-payment of premium. Failure by the PSMFB Service Provider to obtain the insurance coverage or certificates of insurance required by this Article 12 shall not relieve the PSMFB Service Provider of the insurance requirements set forth herein or in any way relieve or

limit PSMFB Service Provider's obligations and liabilities under any other provision of this Agreement. A form of the certificate of insurance is set forth in Appendix VII.

12.3 Summary of Insurance Policies, Limits and Requirements:

Throughout the Base Term, and Extended Term, if applicable, the PSMFB Service Provider shall, at its own cost, maintain the following insurance:

(a) **Workers' Compensation and Employer's Liability:** Workers' Compensation, including coverage for occupational disease, covering all employees in compliance with all applicable state and federal laws, and Employer's Liability not less than \$10,000,000 each accident/\$10,000,000 disease-policy limit/\$10,000,000 disease-each employee.

(b) **Automobile Liability:** Automobile Liability covering all owned, non-owned and hired vehicles with a Combined Single Limit for Bodily Injury and Property Damage not less than \$10,000,000 each accident or occurrence and in the aggregate for each policy year.

(c) **Third Party Liability:** Commercial General Liability including operations of independent contractors and contractual liability coverages with a Combined Single Limit for Bodily Injury, Personal Injury and Property Damage not less than \$10,000,000 each occurrence and in the aggregate for each policy year.

(d) **Umbrella or Excess Liability:** The limits of insurance specified in Sections 12.3(a) through 12.3(c) may be satisfied: (i) by the purchase of the specified limits in the separate policies, or (ii) with the purchase of Umbrella or Excess Liability insurance which, in combination with the limits of the separate policies, provides the total limit required by each type of insurance.

(e) In addition to the insurance coverages required to be procured and maintained by PSMFB Service Provider under this Article 12, Buyer may also require PSMFB Service Provider to procure and maintain other forms and/or types of insurance, which PSMFB Service Provider agrees to procure and maintain, as long as the insurance is available at commercially reasonable terms and conditions; provided that Buyer shall pay the insurance premium for such other insurance as it requires PSMFB Service Provider to procure and maintain.

12.4 General Provisions:

(a) Additional Insured: With the exception of PSMFB Service Provider's Workers' Compensation and Employer's Liability insurance policies, Buyer shall be included as an additional insured on all other insurance policies required hereunder for occurrences arising out of, or in connection with, this Agreement. With respect to PSMFB Service Provider's Worker's Compensation and Employer's Liability insurance policies, Buyer shall be named an Alternate Employer. With respect to the Alternate Employer Endorsement, PSMFB Service Provider agrees to obtain such Alternate Employer endorsement only for so long as (i) such endorsement is available from PSMFB Service Provider's insurers and (ii) PSMFB Service Provider can procure such endorsement at a reasonable premium, as reasonably determined by PSMFB Service Provider. In the event, that PSMFB Service Provider is unable to procure the Alternate Employer endorsement at a reasonable premium as reasonably determined by PSMFB Service Provider, PSMFB Service Provider shall notify Buyer and, if Buyer so agrees, shall procure the Alternate Employer endorsement, provided Buyer agrees to pay the actual and verifiable amount of the premium that is in excess of the reasonable premium as reasonably

determined by the PSMFB Service Provider for such Alternate Employer endorsement for so long as Buyer requires PSMFB Service Provider to maintain such endorsement.

(b) PSMFB Service Provider shall procure all insurance, that is required to be procured and maintained hereunder, in the name of PSMFB Service Provider and shall not be required to procure and/or maintain any insurance in the name of Buyer, except for PSMFB Service Provider's obligations hereunder to include Buyer as an Additional Insured or as an Alternate Employer, as applicable.

(c) Waiver of Subrogation: Buyer shall be granted waivers of subrogation by PSMFB Service Provider's insurers providing coverage as required by this Section.

(d) Severability of Insureds: Except with respect to applicable limits of insurance, all insurance policies required in this Article 12, except for the Workers Compensation and Employer's Liability policy, shall provide that the coverage afforded under each such policy shall apply separately to each insured, including any additional insured who is seeking coverage or against whom a claim is brought.

(e) Deductibles: Any and all deductible amounts due under insurance policies provided by the PSMFB Service Provider pursuant to this Article 12 shall be assumed by, for the account of, and at the sole expense of the PSMFB Service Provider.

(f) Claims Made: When coverage(s) are written on a "claims made" or "first made" form, the "claims made" coverage must be maintained for three (3) years after the expiration or earlier termination of this Agreement.

12.5 PSMFB Service Provider Disclosure and Cooperation:

Where PSMFB Service Provider is (i) providing insurance coverage, which includes Buyer as an additional insured or, (ii) procuring insurance at request of Buyer, which insurance policies shall be procured and maintained by PSMFB Service Provider's sole cost and expense, PSMFB Service Provider shall make complete and timely disclosure of all information related to such insurance coverage as Buyer may reasonably request, including an exact copy of the applicable insurance policy wording. Where PSMFB Service Provider is securing coverage at the expense of Buyer, PSMFB Service Provider shall make complete and timely disclosure of all information related to such insurance coverage as Buyer may request and shall provide full cooperation in securing such coverages as Buyer may request. Such disclosure and cooperation shall include, without limitation, an exact copy of the applicable insurance policy wording, premium calculation and/or other fees or expenses which may be incurred in conjunction with the procurement of said insurance.

ARTICLE 13 - DEFAULT AND REMEDIES

13.1 Default by PSMFB Service Provider:

The occurrence of one or more of the following events shall constitute an Event of Default by PSMFB Service Provider unless it results from a breach of this Agreement by Buyer, a PSMFB Effective Date Delay or is otherwise excused pursuant to the terms of this Agreement:

(a) PSMFB Service Provider fails to perform or observe any material obligation or series of obligations of PSMFB Service Provider under this Agreement, other than those obligations specifically addressed in this Section for which a remedy is expressly provided in this Agreement, which failure has a material and adverse effect on the ability of PSMFB Service Provider or of Buyer to perform its respective material obligations under this Agreement

and such failure continues without cure for a period of ten (10) Days after written notice thereof from Buyer, unless a cure is reasonably not capable of being made or implemented within such ten (10) Day period, in which case the PSMFB Service Provider shall have an additional ten (10) Day period in which to cure.

(b) Any representation or warranty made by PSMFB Service Provider herein or in any certificate delivered to Buyer pursuant hereto which proves to be incorrect in any material respect when made and such error has a material and adverse effect on the ability of PSMFB Service Provider or Buyer to perform its respective material obligations under this Agreement, unless PSMFB Service Provider is able to promptly commence and diligently pursue action to cause the facts or circumstances which are the subject of such representation or warranty to become true in all material respects and does so within ten (10) Days after written notice thereof has been given to PSMFB Service Provider by Buyer and provided that such actions remove any material adverse effect on Buyer as a result of such representation or warranty having been incorrect, unless such action is reasonably not capable of being undertaken or completed within such ten (10) Day period, in which case, PSMFB Service Provider shall have an additional ten (10) Day period in which to take and complete such action.

(c) PSMFB Service Provider fails to pay any amount payable by PSMFB Service Provider to Buyer (other than amounts in dispute that are not expressly required by this Agreement to be paid, and other than amounts for which draw-downs are made under PSMFB Service Provider Security; provided however, that such security is renewed or replaced in accordance with Section 13.1(f) below) pursuant to this Agreement after the same shall have become due and payable and such failure continues for a period of thirty (30) Days after receipt of written demand therefore from Buyer.

(d) A court having jurisdiction enters:

(i) a decree or order for relief in respect of PSMFB Service Provider in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law regarding all of PSMFB Service Provider's assets; or

(ii) a decree or order adjudicating PSMFB Service Provider bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of, or in respect of, PSMFB Service Provider under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, trustee, sequestrator or other similar official for PSMFB Service Provider.

(e) PSMFB Service Provider:

(i) commences a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated bankrupt or insolvent;

(ii) consents to the entry of a decree or order for relief in respect of PSMFB Service Provider in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it;

(iii) files any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law;

(iv) consents to the filing of any petition or to the appointment of, or taking possession by, a custodian, receiver, liquidator, trustee, sequestrator or similar official for PSMFB Service Provider;

(v) makes an assignment for the benefit of creditors (other than to its Lenders); or

(vi) admits in writing its general inability to pay its debts as they become due.

(f) The failure of PSMFB Service Provider to provide, renew, maintain, extend or replace the PSMFB Service Provider Security pursuant to Article 10 at least thirty (30) Days prior to the expiration of such security, and such failure is not cured within thirty (30) Days after written notice thereof has been given to PSMFB Service Provider.

13.2 Default by Buyer:

The occurrence of any of the following events shall constitute an Event of Default by Buyer unless it results from a breach of this Agreement by PSMFB Service Provider or is otherwise excused.

(a) Buyer fails to pay any amount payable by Buyer to PSMFB Service Provider (other than amounts in dispute that are not expressly required by this Agreement to be paid) pursuant to this Agreement after the same shall have become due and payable and such failure continues for a period of ten (10) Days after receipt of written demand therefore from PSMFB Service Provider.

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

this Section or for which a remedy is expressly provided in this Agreement, which failure has a material and adverse effect on the ability of PSMFB Service Provider or of Buyer to perform its respective material obligations under this Agreement and such failure continues without cure for a period of ten (10) Days after written notice thereof from PSMFB Service Provider, unless such a cure is reasonably not capable of being made or implemented within such ten (10) Day period, in which case Buyer shall have an additional ten (10) Day period in which to cure.

(c) Any representation or warranty made by Buyer herein or in any certificate delivered to PSMFB Service Provider pursuant hereto which proves to be incorrect in any material respect when made and such error has a material and adverse effect on the ability of PSMFB Service Provider or Buyer to perform its respective material obligations under this Agreement, unless Buyer is able to promptly commence and diligently pursue action to cause the facts or circumstances which are the subject of such representation or warranty to become true in all material respects and does so within ten (10) Days after written notice thereof has been given to Buyer by PSMFB Service Provider and provided that such actions remove any material adverse effect on PSMFB Service Provider as a result of such representation or warranty having been incorrect, unless such action is reasonably not capable of being undertaken or completed within such ten (10) Day period, in which case, Buyer shall have an additional ten (10) Day period in which to perform, take and complete such action.

(d) A court having jurisdiction enters:

(i) a decree or order for relief in respect of Buyer in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law regarding all of Buyer's assets; or

(ii) a decree or order adjudicating Buyer bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Buyer under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, trustee, sequestrator or other similar official for Buyer.

(e) Buyer:

(i) commences a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated bankrupt or insolvent;

(ii) consents to the entry of a decree or order for relief in respect of Buyer in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it;

(iii) files any petition, answer or consent seeking reorganization or relief under any applicable Federal or state law;

(iv) consents to the filing of any petition or to the appointment of or taking possession by a custodian, receiver, liquidator, trustee, sequestrator or similar official for Buyer;

(v) makes an assignment for the benefit of creditors (other than to its Lenders); or

(vi) admits in writing its general inability to pay its debts as they become due.

13.3 Notice of an Event of Default:

Upon actual discovery of an Event of Default, a non-defaulting Party claiming the occurrence of such Event of Default shall promptly provide the alleged defaulting Party with written notice of the Event of Default and any remedy sought (“Notice of Default”).

13.4 Dispute of Claim of Event of Default:

If, within three (3) Days of the service of a Notice of Default pursuant to Section 13.3, (provided that the Event of Default is not pursuant to Sections 13.1(c), 13.1(d), 13.1(e) or 13.2(a), 13.2 (d) and 13.2(e)), the Party alleged to be in default provides written notice to the other Party of a dispute as to whether an Event of Default has occurred, either Party may seek resolution of such dispute pursuant to the terms of Article 15, and this Agreement shall not be terminated with respect to the event for which such Notice of Default was given prior to conclusion of the procedures set forth in Article 15.

13.5 Remedies:

(a) If an Event of Default has occurred, which is not cured as provided herein, then the non-defaulting Party may take, at its discretion, any or all of the following actions (unless a specific, other remedy is expressly provided in this Agreement as the sole and exclusive remedy for the breach of a particular obligation):

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

(ii) provided that the non-defaulting Party is not seeking specific performance by the defaulting Party of its obligations hereunder, terminate this Agreement by giving written notice thereof to the defaulting Party.

(b) Buyer shall also be entitled to draw upon any PSMFB Service Provider Security established pursuant to Article 10 to satisfy in whole or in part any PSMFB Service Provider obligations under this Agreement, provided that Buyer is not the defaulting Party, and, provided further that such draw down of such security shall not relieve the PSMFB Service Provider of its liability for amounts due and owing or for damages in excess of such PSMFB Service Provider Security.

(c) PSMFB Service Provider acknowledges that, if it were to breach, its obligation to provide the Buyer with PSMFB Services, the Buyer would be irreparably harmed. In such circumstances, the Buyer, provided Buyer is not the defaulting party, shall be entitled to proceed directly to a court of competent jurisdiction and seek such injunctive, declaratory or other injunctive relief as may be reasonably necessary to prevent such breach, without the requirement of posting any bond and without any additional findings of irreparable injury or other conditions to injunctive relief.

13.6 Procedure for Termination For Cause:

Twenty (20) Day Notice: If any Party shall have a right to terminate in accordance with this Article 13 (after allowing for any applicable cure periods) the same may be exercised by written notice of termination given to the Party in default at least twenty (20) Days prior to (or, in the case of a bankruptcy or insolvency default simultaneously with) the Termination Date provided, however, that if Back-End Transition Services, Modified Back-End Transition Services or Buyer Data Transfer shall be required, said notice shall specify a proposed

Termination Date in accordance with the applicable provision of Section 2.4 and shall indicate the service required.

13.7 No Consequential Damages:

Notwithstanding any other provision of this Agreement, neither Buyer, Buyer's Related Parties, PSMFB Service Provider, PSMFB Service Provider's Related Parties nor their respective successors and assigns shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with, the performance or non-performance of this Agreement or any of the obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise.

13.8 Damages:

To the extent any damages required to be paid under this Agreement are liquidated, the Parties agree that the damages are difficult or impossible to determine, otherwise obtaining an adequate remedy is inconvenient and the PSMFB Transition Date Liquidated Damages set forth in this Agreement constitute a reasonable approximation of the harm or loss. For breach of any provision for which PSMFB Transition Date Liquidated Damages are provided, subject to Buyer's termination rights in Section 2.3 and suspension of performance rights in Section 13.9, such PSMFB Transition Date Liquidated Damages are the sole and exclusive remedy and PSMFB Service Provider's liability will be limited as set forth herein.

13.9 Suspension of Performance:

In addition to the remedies set forth above and, notwithstanding other provisions herein, whenever any Event of Default shall have occurred and is continuing, the non-defaulting Party, to the extent permitted by law and to the extent of such default, shall be entitled to suspend

immediately its performance under this Agreement until such Event of Default is cured; provided, however, that PSMFB Service Provider's right to suspend performance shall only apply to (a) Buyer's default pursuant to Section 13.2(a), 13.2(d), and/or 13.2(e) herein, (b) Buyer's failure to pay for any services during the Interim Period and/or (c) Buyer's failure to comply with the requirements of Section 13.12, if applicable.

13.10 Limitations of Liability, Remedies, and Damages:

EACH PARTY ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL THE AFFILIATES OF A PARTY OR THE PARTNERS, TRUSTEES, MEMBERS, SHAREHOLDERS, OWNERS, OFFICERS, MANAGERS, DIRECTORS OR EMPLOYEES OF A PARTY OR OF SUCH PARTY'S AFFILIATES BE LIABLE FOR ANY PAYMENTS, OBLIGATIONS OR PERFORMANCE DUE UNDER THIS AGREEMENT FROM, OR FOR ANY BREACH OR FAILURE OF PERFORMANCE UNDER THIS AGREEMENT BY, SUCH PARTY; AND THE SOLE RECOURSE OF EITHER PARTY FOR ANY PAYMENTS, OBLIGATIONS OR PERFORMANCE DUE UNDER THIS AGREEMENT FROM, OR FOR ANY BREACH OR FAILURE OF PERFORMANCE UNDER THIS AGREEMENT BY, THE OTHER PARTY SHALL BE AGAINST THE OTHER PARTY AND SUCH OTHER PARTY'S RESPECTIVE ASSETS AND NOT AGAINST ANY OTHER PERSON. THE TOTAL CUMULATIVE LIABILITY OF PSMFB SERVICE PROVIDER TO BUYER ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO ANY LIABILITY FOR LIQUIDATED DAMAGES OR PENALTIES (INCLUSIVE OF LIABILITY ARISING OUT OF THIRD PARTY CLAIMS FOR DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE), WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT, (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR

OTHERWISE, SHALL NOT EXCEED \$6,000,000; PROVIDED, HOWEVER, THAT THE TOTAL PAYMENTS AND INVOICE DEDUCTIONS IN ANY CALENDAR YEAR THAT THE PSMFB SERVICE PROVIDER IS REQUIRED TO MAKE HEREUNDER IN ANY CALENDAR YEAR SHALL NOT EXCEED \$2,000,000; PROVIDED FURTHER, THAT ANY TOTAL PAYMENTS AND INVOICE DEDUCTIONS IN ANY CALENDAR YEAR IN EXCESS OF SUCH \$2,000,000 MAY NOT BE CARRIED OVER TO ANY SUBSEQUENT CALENDAR YEAR. IN NO EVENT SHALL BUYER'S LIABILITY TO THE PSMFB SERVICE PROVIDER ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE SUM OF THE AMOUNTS PAID AND THE AMOUNTS REMAINING TO BE PAID TO PSMFB SERVICE PROVIDER PURSUANT TO THIS AGREEMENT (INCLUSIVE OF LIABILITY ARISING OUT OF THIRD PARTY CLAIMS FOR DEATH, PERSONAL INJURY OR PROPERTY DAMAGE). THE LIMITATIONS SET FORTH IN THIS SECTION 13.10 SHALL NOT APPLY WITH RESPECT TO LOSSES ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

13.11 Termination Rights:

For the avoidance of doubt and the purpose of clarity, nothing in this Article 13 shall in any manner limit or modify Buyer's rights of termination for convenience set forth in Sections 2.3(c) and 2.3(d).

13.12 Buyer Default and Security:

In the event of Early Termination due to a Buyer default pursuant to Section 13.2(a) or 13.2(e), the Parties agree that if Buyer requires Back-End Transition Services, Modified Back End Transition Services, Buyer Data Transfer Services, or the continuation of PSMFB Services and/or Additional Services during the Interim Period, PSMFB Service Provider shall not be

obligated to provide such services until Buyer provides PSMFB Service Provider with cash collateral (“Cash”) or a Letter of Credit in a form reasonably acceptable to PSMFB Service Provider, provided that such Letter of Credit must comply with the requirements set forth in Appendix XII. The amount of such Letter of Credit or Cash shall equal the sum of (i) PSMFB Service Provider’s reasonable estimate of the costs of providing the Back-End Transition Services, Modified Back-End Transition Services, Buyer Data Transfer Services, as Buyer requests in accordance with Section 2.4, (ii) the amount of any monies currently due, if any, to the PSMFB Services Provider in accordance with Article 5, plus (iii) if Buyer also requires PSMFB Services and/or Additional Services during the Interim Period, the applicable Total Annual Fee and Additional Services Fee, if applicable, in accordance with Appendix IV for the period of time during which such PSMFB Services are required. In the event that Buyer posts a Letter of Credit and Buyer fails to maintain such Letter of Credit in accordance with Appendix XII, or if there is a Letter of Credit Default as set forth in Appendix XII, PSMFB Service Provider may without the Buyer’s consent advance the Termination Date by providing Buyer at least three (3) Days prior written notice of the new Termination Date.

ARTICLE 14 - ASSIGNMENT

14.1 PSMFB Service Provider’s Right to Assign:

In accordance with Section 138 of the State Finance Law, this Agreement may not be assigned by PSMFB Service Provider or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of Buyer which consent shall not be unreasonably withheld or delayed, and any attempts to assign this Agreement without Buyer’s written consent are null and void. PSMFB Service Provider may, however, assign its right to receive payment without Buyer’s prior written consent unless this

Agreement concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law. PSMFB Service Provider may, however, also assign this Agreement and its rights and obligations hereunder without the consent of Buyer to its Affiliate; provided that (i) such Affiliate's secured or unsecured debt is rated at least investment grade by Moody's and Standard and Poor's, (ii) such Affiliate agrees in writing to be bound by and assume the obligations under this Agreement and (iii) the Affiliate has a level of experience of performing PSMFB Services that is comparable to that of PSMFB Service Provider.

14.2 Buyer's Right to Assign:

This Agreement may not be assigned by Buyer or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the PSMFB Service Provider which consent shall not be unreasonably withheld or delayed, and any attempts to assign this Agreement without the PSMFB Service Provider's written consent are null and void. Buyer may, however, assign this Agreement and its rights and obligations hereunder without the consent of PSMFB Service Provider to an Affiliate; provided that (i) such Affiliate's secured or unsecured debt is rated at least investment grade by Moody's and Standard and Poor's, and (ii) such third party agrees in writing to be bound by and assume the obligations under this Agreement.

ARTICLE 15 - DISPUTE RESOLUTION

15.1 Notice:

Subject to Section 13.4, either Party ("Aggrieved Party") shall have the right to give written notice to the other Party ("Noticed Party") that the Noticed Party is not performing in accordance with the terms and conditions of this Agreement or that a determination or matter under this Agreement is in dispute. Such notice shall describe with specificity the basis for the

Aggrieved Party's belief and may describe the recommended options to correct the failure or to address the dispute or concern.

15.2 Response:

If the Noticed Party agrees with the Aggrieved Party's concern, the Noticed Party shall take appropriate action to correct the failure or to satisfactorily address the dispute or concern. In such circumstance, the Noticed Party shall respond to the Aggrieved Party's written notice within three (3) Days of receipt thereof describing the action taken in response to the notice and shall bear all costs incurred by both Parties associated with the corrective action.

15.3 Resolution of Dispute:

If the Noticed Party disagrees with the 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 five (5) Days of the Aggrieved Party's notice to the Noticed Party of the Aggrieved Party's concern. The Parties agree to use their Commercially Reasonable Efforts to settle promptly any disputes or claims between them 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 shall be confidential, subject to applicable law, and shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and applicable state rules of evidence. If, after at least an initial good faith discussion by senior management, either Party believes in good faith that continued discussions will not result in a resolution of the dispute, then such Party may pursue its rights and remedies at law. The Parties may also mutually agree to use alternative forms of dispute resolution including mediation or arbitration in lieu of, or prior to, pursuing their

respective rights and remedies at law. The Aggrieved Party may exercise any right of termination that it has pursuant to this Agreement, if any, by giving reasonable Notice to the other Party whether or not the Noticed Party is pursuing its rights and remedies at law; provided that, should the Noticed Party prevail in any litigation, its relief shall be subject to the limitations set forth in this Agreement.

15.4 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 15 are pending. The parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article 15, 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 15.

ARTICLE 16 - REPRESENTATIONS, WARRANTIES AND INDEMNITIES

16.1 PSMFB Service Provider's Representation and Warranties:

PSMFB Service Provider represents and warrants to Buyer that as of the date of execution of this Agreement:

(a) PSMFB Service Provider is a limited liability company duly organized and validly existing under the laws of the State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and PSMFB Service Provider is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

(b) PSMFB Service Provider represents and warrants that it is capable of suing and being sued in the State of New York, and that it will assert no legal defense(s) to the assertion of jurisdiction in the courts of the United States of America for the Eastern District of New York having subject matter jurisdiction, but in the event that such courts refuse to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement, then the Parties shall submit to the exclusive jurisdiction of the New York state courts located in the Borough of Manhattan in New York City, New York;

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

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

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

(f) There are no actions, suits, proceedings or investigations pending or, to the knowledge of PSMFB Service Provider, threatened in writing against PSMFB Service Provider, at law or in equity before any Governmental Authority, which individually or in the aggregate

are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of PSMFB Service Provider, or to result in any impairment of PSMFB Service Provider's ability to perform its obligations under this Agreement and PSMFB Service Provider has no knowledge of any violation or default by PSMFB Service Provider or its Affiliates with respect to any order, writ, injunction or decree of any court or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality which is reasonably likely to have such a materially adverse effect or to result in such impairment; and

(g) PSMFB Service Provider represents and warrants that it is in compliance in all material respects to the extent compliance is required as of such date, with all Legal Requirements, judicial and administrative orders, rules and regulations, and permits:

(i) which govern PSMFB Service Provider's ability to perform its obligations under this Agreement, or

(ii) the noncompliance with which would have a material adverse effect on PSMFB Service Provider's ability to perform its obligations under this Agreement.

16.2 Buyer's Representation and Warranties:

Buyer represents and warrants to PSMFB Service Provider that as of the date of execution of this Agreement:

(a) The (i) Long Island Power Authority is duly organized and validly existing in the State of New York, has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and is duly qualified in each

jurisdiction wherein the nature of the business transacted by it makes such qualification necessary, (ii) Long Island Lighting Company d/b/a LIPA is a corporation duly organized and validly existing in the State of New York, has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary, and (iii) Long Island Power Authority acting on behalf of itself and the Long Island Lighting Company d/b/a LIPA jointly and severally, hereby undertakes, assumes and agrees to perform the Buyer's obligations under this Agreement;

(b) Buyer represents and warrants that it is capable of suing and being sued in the State of New York, and that it will assert no legal defense(s) to the assertion of jurisdiction in the courts of the United States of America for the Eastern District of New York having subject matter jurisdiction, but in the event that such courts refuse to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement, then the Parties shall submit to the exclusive jurisdiction of the New York state courts located in the Borough of Manhattan in New York City, New York;

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

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

(e) This Agreement has been duly and validly executed and delivered by Buyer and, as of the PSMFB Effective Date shall constitute, a legal, valid and binding obligation

of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity and no authorization, approval, exemption or consent by any governmental or public body or authority is required in connection with the authorization, execution, delivery and carrying out of the terms of this Agreement by Buyer, which has not yet been obtained by Buyer;

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

(g) Buyer represents and warrants that it is in compliance in all material respects to the extent compliance is required as of such date, with all Legal Requirements, judicial and administrative orders, rules and regulations, and permits:

(i) which govern Buyer's ability to perform its obligations under this Agreement, or

(ii) the non-compliance with which would have a material adverse effect on Buyer's ability to perform its obligations under this Agreement.

ARTICLE 17 - MISCELLANEOUS PROVISIONS

17.1 Next Business Day:

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

17.2 Amendments:

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

17.3 Binding Effect:

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

17.4 Counterparts:

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

17.5 Notices:

Unless otherwise specified, where notice is required by this Agreement, such notice shall be in writing and shall be deemed given:

(a) upon receipt, when mailed by United States registered or certified mail, postage prepaid, return receipt requested;

(b) upon the next Business Day, when sent by overnight delivery, postage prepaid using a recognized courier service; or

(c) upon receipt, when sent by facsimile transmission, provided receipt of such facsimile transmission is confirmed before 5:00 P.M. EPT and written confirmation of such notice is sent on the same Day in accordance with either Subsection (i) or (ii) above. In all instances, notice to the respective Parties should be directed as follows:

To PSMFB Service Provider: Shahid Malik
President
PSEG Energy Resources & Trade LLC
80 Park Plaza, T-19
Newark, New Jersey 07102
Telephone: (973) 430-7835
Fax: (973) 643-8385

With a copy to: Vice President – Commercial Law
PSEG Energy Resources & Trade LLC
80 Park Plaza, T-19
Newark, New Jersey 07102
Telephone: (973) 430-7698
Fax: (973) 643-8385

To Buyer: Vice President, Power Markets
Long Island Power Authority
333 Earle Ovington Boulevard, Suite 403
Uniondale, New York 11553
Telephone: 516-222-7700
Fax: 516-222-9137

With a copy to: Lynda Nicolino
General Counsel
Long Island Power Authority
333 Earle Ovington Boulevard, Suite 403
Uniondale, New York 11553
Telephone: 516-222-7700
Fax: 516-222-9137

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

17.6 Entire Agreement:

This Agreement (including the attached Appendices) constitutes the entire understanding between the Parties and supersedes any previous agreements between the Parties with respect to PSMFB Services.

17.7 Governing Law and Jurisdiction:

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, except where the Federal supremacy clause requires otherwise, without regard to principles of conflicts of law. Actions arising from this Agreement shall be subject to the exclusive jurisdiction of the courts of the United States of America for the Eastern District of New York having subject matter jurisdiction, but in the event that such courts refuse to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement, then the Parties shall submit to the exclusive jurisdiction of the New York state courts located in the Borough of Manhattan in New York City, New York.

17.8 Service of Process:

In addition to the methods of service allowed by the New York Civil Practice Law & Rules ("CPLR"), each Party hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Party's actual receipt of process or upon the serving Party's receipt of the return thereof by the United States Postal Service as refused. Each Party must promptly notify the other Party, in writing, of each and every change of address to which service of process can be made. Service to the last known address provided pursuant to Section 17.5 shall be sufficient.

17.9 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 or modification, as applicable.

17.10 Headings:

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

17.11 Third Parties:

Except for the license grants, indemnification obligations, and otherwise specified in this Agreement, this Agreement is intended solely for the benefit of the Parties herein. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party to this Agreement.

17.12 Relationship of the Parties:

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.

17.13 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 law.

17.14 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.

17.15 Indemnification:

Except as otherwise provided herein, each Party (the “Indemnifying Party”) shall indemnify and hold harmless the other Party (the “Indemnified Party”) and its Affiliates and each of their trustees, shareholders, owners, managers, directors, officers, partners, members, agents and employees, from and against any and all claims, liability, costs or expenses for loss, damage, or injury, including damage and liability for bodily injury to or death of third Persons or damage to property of third Persons (collectively, "Loss"), to the extent arising out of, in connection with, or resulting from, the Indemnifying Party's breach of this Agreement, including any of the representations or warranties made in this Agreement, or the Indemnifying Party's negligent action, which it takes or fails to take related to this Agreement, which is inconsistent with its obligations under this Agreement; provided, however, that neither Party shall have any indemnification obligations hereunder in respect of any Loss to the extent caused by the other

Party's negligence or willful misconduct. Each Party hereto shall furnish the other Party with notice promptly (but in no event later than ten (10) Days prior to the time any response is required by law) of any event or circumstances, or the threat thereof, which might give rise to such indemnification. Such notice shall be given as soon as reasonably practicable after the Party obligated to give such notice becomes aware of such claim or proceeding and shall include a complete copy of all notices, pleadings and other papers related thereto. Failure to give such notice shall not excuse an indemnification obligation. PSMFB Service Provider shall not, however, be required to reimburse, defend, or indemnify any LIPA Indemnified Party for any Loss to the extent such Loss is due to (a) PSMFB Service Provider being directed by LIPA to take or refrain from taking any action which is contrary to PSMFB Service Provider's advice; (b) any act or omission of any LIPA Indemnified Party determined to be responsible for or contributing to the Loss; or (c) any customer claim brought by a retail or wholesale electric customer of LIPA that is not directly related to a breach by PSMFB Service Provider of its obligations under this Agreement ; or (d) LIPA's failure to make payments to third Persons required by this Agreement.

17.16 Provisions Required by Law:

(a) Intentionally Omitted.

(b) **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 PSMFB Service Provider 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.

(c) **Non-Discrimination Requirements:** In accordance with Article 14 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, PSMFB Service Provider 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, PSMFB Service Provider 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;

(i) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or

(ii) discriminate against or intimidate any employee for the performance of work under this Agreement.

(d) **Records:** The PSMFB Service Provider shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Agreement (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. Buyer shall take reasonable steps to protect from public disclosure any of the Records which are exempt from the disclosure under Article 87 of the Public Officers Law (the "Statute") provided that:

(i) PSMFB Service Provider shall timely inform Buyer, in writing, that said Record should not be disclosed;

(ii) said Record 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, either Party's right to discovery in any pending or future litigation.

(e) **Equal Employment for Minorities and Women:** In accordance with Article 312 of the New York Executive Law:

(i) PSMFB Service Provider 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 Buyer, PSMFB Service Provider 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 the PSMFB Service Provider's obligations herein; and

(iii) PSEG is an equal opportunity employer. PSMFB Service

Provider 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 PSMFB Service Provider.

(f) **MacBride Fair Employment Principles:** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the New York Laws of 1992), PSMFB Service Provider hereby stipulates that PSMFB Service Provider 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.

(g) **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

(h) Requirements of Omnibus Procurement Act: The Omnibus Procurement Act of 1992 requires that by signing this Agreement, PSMFB Service Provider certifies that:

(i) PSMFB Service Provider 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;

(ii) PSMFB Service Provider has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; and

(iii) PSMFB Service Provider 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. PSMFB Service Provider agrees to document these efforts and to provide said documentation to Buyer upon request.

(iv) PSMFB Service Provider acknowledges that the State may seek to obtain offset credits from foreign countries as a result of this Agreement and agrees to cooperate with the State in these efforts.

(i) **Prohibition on Purchase of Tropical Hardwoods:** The PSMFB Service Provider certifies and warrants that all wood products to be used under this Agreement 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 the PSMFB Service Provider to establish to meet with the approval of the State.

(j) **Purchases of Apparel:** In accordance with State Finance Law 162 (4-a), Buyer shall not purchase any apparel from PSMFB Service Provider if PSMFB Service Provider is unable or unwilling to certify that:

(i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws; and

(ii) the PSMFB Service Provider will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with Buyer), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by PSMFB Service Provider.

(iii) **Affirmation of Compliance and Certification of Disclosure:** PSMFB Service Provider affirms that it understands and agrees to comply with the procedures of the Governmental Entity relative to permissible contacts as required by the State Finance Law § 139-j (3), § 139-j (6)(b) and § 139-k (5). .

(k) **Optional Termination by the Buyer:** The Buyer reserves the right to terminate this Agreement in the event it is found that the certification filed by PSMFB Service Provider in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Buyer may exercise its termination right by providing written notification to the PSMFB Service Provider in accordance with the written notification terms of this Agreement.

(l) **Late Payment:** Timeliness of payment and any interest to be paid to the PSMFB Service Provider for late payment shall be governed by Section 2880 of the Public Authorities Law and the guidelines adopted by the Buyer thereto and the provisions of this Agreement and where such provisions are in conflict, the terms of this Agreement shall govern.

(m) **Reciprocity and Sanctions Provisions:** PSMFB Service Provider 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 the PSMFB Service Provider be denied contracts which it would otherwise obtain.

(n) **Minority and Women-Owned Business Enterprise Procedures:** The PSMFB Service Provider shall comply the terms set forth in Appendix XIV - Minority And Women-Owned Business Enterprise Procedures.

17.17 Local Workers:

To the extent possible and subject to the collective bargaining agreement of PSMFB Service Provider and/or its affiliates, PSMFB Service Provider shall make a good faith effort

given its commercial requirements to hire local workers while performing PSMFB Services and its obligations under the terms of this Agreement.

17.18 Wage and Hour 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 PSMFB Service Provider'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, PSMFB Service Provider 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.

17.19 International Boycott Prohibition:

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Agreement exceeds \$5,000, the PSMFB Service Provider agrees, as a material condition of this Agreement, that neither the PSMFB Service Provider 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 PSMFB Service Provider, or any of the aforesaid affiliates of PSMFB Service Provider, 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 this Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void.

17.20 Set-Off Rights:

Each Party shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, a Party's option to withhold for the purposes of set-off any monies due to the other Party under this Agreement up to any amounts due and owing to the Party initiating set-off with regard to this Agreement, or any other contract with the Party initiating set-off, including any contract for a term commencing prior to the PSMFB Effective Date, plus any amounts due and owing to the Party initiating set-off for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. Each Party shall exercise its set-off rights in accordance with such Party's normal practices including, in cases of set-off pursuant to an audit, the finalization of such audit by such Party or its representatives, as applicable.

17.21 Non-Collusive Bidding Requirement:

In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, PSMFB Service Provider warrants, under penalty of perjury, that its bid was arrived at independently and without collusion, consultation, communication, or agreement aimed at restricting competition. PSMFB Service Provider further warrants that, at the time PSMFB Service Provider submitted its bid, an authorized and responsible person executed and delivered to the Buyer a non-collusive bidding certification on PSMFB Service Provider's behalf.

17.22 Contingency Fees:

PSMFB Service Provider hereby certifies and agrees that:

(a) it has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Buyer 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) it will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Buyer.

17.23 Survival:

All obligations with respect to confidentiality and Section 4.8, Article 6, Article 8, Section 13.7, Section 13.10, Section 17.15, Section 17.25, Article 18, and any related Administrative Protocols and Procedures of this Agreement shall survive the expiration or termination of this Agreement.

17.24 Change In Legal Requirements:

In the event that a change in Legal Requirements should prevent the PSMFB Service Provider from performing any of the PSMFB Services (“Legal Restriction”), then such Legal Restriction shall be treated as a Force Majeure Event and the Parties shall comply with the procedures set forth in Section 11. If there is a change in Legal Requirements that has a material adverse effect upon PSMFB Service Provider’s ability to perform the PSMFB Services at the compensation rates as provided herein the PSMFB Service Provider shall have the right on and after the first day of Contract Year six (6) to notify the Buyer of same (“Notice of Change in Legal Requirements”). Thereafter, the Parties shall, in good faith negotiate an equitable adjustment to the Agreement, to address the change in Legal Requirements. If after ninety (90)

Days from the date that the Buyer receives a Notice of Change in Legal Requirements, the Buyer and PSMFB Service Provider have not reached agreement on an equitable adjustment to this Agreement, then PSMFB Service Provider, upon written notice to Buyer seek resolve any disputes related to the Notice of Change In Legal Requirements in accordance with Article 15 (“Dispute Resolution”). If such dispute resolution proceeding that is not resolved by mediation pursuant to Section 15.3, then the matter shall be submitted to binding arbitration in accordance with the AAA rules. Such arbitration will be venued in New York. The Arbitrator shall determine (a) if there is a change in Legal Requirements and if so (b) does the change in Legal Requirements have a material adverse effect upon PSMFB Service Provider’s ability to perform the PSMFB Services. If the Arbitrator determines that (a) and (b) in the PSMFB Service Provider’s favor, then the Arbitrator will determine what equitable adjustments should be made to the Agreement. The PSMFB Service Provider shall not be responsible to Buyer for any losses suffered or increased costs incurred by Buyer as a result of any change in Legal Requirements.

17.25 Segregation of Duties:

At all times during the Base Term and the Extended Term, if any, the PSMMO Services will be provided independently from the PSMFB Services Provider and as more particularly described in Appendix II and Appendix XIV.

17.26 Taxes:

The Parties acknowledge that PSMFB Service Provider shall not have title to any of the commodities purchased or sold by Buyer hereunder and shall not be responsible for any taxes related to Buyer-owned, leased or licensed assets or revenues, or transactions conducted under this Agreement, including any taxes imposed on Buyer’s transactions conducted hereunder and

any sales taxes and similar taxes imposed on payments made by PSMFB Service Provider on behalf of Buyer.

ARTICLE 18 - CONFIDENTIALITY

18.1 Confidential Articles and Sections:

The Parties agree that the following articles, sections and appendices of the Agreement include 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 PSMFB Service Provider (and/or their Related Parties) and that such articles, sections and appendices are PSM Confidential Information: Sections 13.10; and Appendices IV, V, VI, XII and XIV.

18.2 Claim of Confidentiality:

(a) The Receiving Party shall hold the PSM Confidential Information of the Disclosing Party in confidence and shall protect the PSM Confidential Information from disclosure to third parties consistent with the definition of PSM Confidential Information and the provisions of this Article and subject to applicable Legal Requirements, provided, however, that a Party may disclose PSM Confidential Information to its Affiliates, Lenders and potential Lenders, and potential and actual equity investors, as well as to trustees, directors, employees, consultants, agents or representatives of such Party, its Affiliates or Lenders (“Representatives”) provided that any such Representatives is (i) obligated by Legal Requirements, professional rules of conduct or a legally binding obligation, to maintain the confidentiality, and restrict the use, of such PSM Confidential Information in a manner at least as restrictive as set forth in the provisions of this Article 18 and the other obligations of limited use and non-disclosure set forth in this Agreement, and (ii) has a need to know such PSM Confidential Information in order to fulfill its obligations to the Receiving Party with respect to (x) the Receiving Party’s exercise of

the rights granted to the Receiving Party to use such PSM Confidential Information, or (y) with respect to the PSMFB Service Provider as the Receiving Party, assisting Receiving Party to perform the PSMFB Services under this Agreement; and, with respect to the Buyer as the Receiving Party, assisting Receiving Party to fulfill its obligations under this Agreement or to use the PSMFB Services. Further, the Parties acknowledge and agree that the Receiving Party will be responsible to the Disclosing Party for all acts and omissions of any Representatives that cause a breach of any of the provisions of this Article 18 and/or any other obligations of limited use and non-disclosure set forth in this Agreement, to the same extent as if such acts or omissions were the acts or omissions of the Receiving Party.

(b) Except with the Disclosing Party's prior written consent, the Receiving Party shall not at any time: (i) use the PSM Confidential Information for any purpose other than to (A) exercise the rights granted to it to with respect to the PSM Confidential Information or (B) with respect to the PSMFB Service Provider as the Receiving Party, perform the PSMFB Services; and, with respect to Buyer as the Receiving Party, to fulfill its obligations under this Agreement or to use the PSMFB Services (subsections (i) (A) and (B) being the "Permitted Purposes") or (ii) publish, disclose or otherwise divulge the PSM Confidential Information to any person or entity, except as set forth in this Agreement.

(c) The Receiving Party shall employ every reasonable procedure available to prevent the unauthorized disclosure or use of the PSM Confidential Information. At a minimum, these procedures will be no less restrictive than procedures currently being used by Receiving Party to protect its own confidential information and data of similar import. In the event that a Receiving Party shall have knowledge of any breach of the confidentiality of, or the

misappropriation of, any PSM Confidential Information of the Disclosing Party, that such Receiving Party shall promptly give notice thereof to the Disclosing Party.

18.3 Media Release:

The Parties agree that no media releases or public announcements shall be made by any Party relating to this Agreement, its subject matter or the PSM Confidential Information unless and until coordinated with and approved in writing by, the other Party, such approval not to be unreasonably withheld or delayed. The Parties agree that, in addition to other remedies pursuant to this Agreement and applicable law, the Parties are entitled to injunctive relief to enforce this Section 18.3 and enjoin any violations or threatened violations of this Section. Notwithstanding the foregoing, Buyer agrees that the PSMFB Service Provider may mention the fact that they provide certain PSMFB Services to Buyer in the context of their private sales meetings with their prospective and actual clients.

18.4 Compliance with the Freedom of Information Law:

PSMFB Service Provider hereby expressly acknowledges that Buyer is subject to the requirements of the New York Freedom of Information Law (“FOIL”) and must comply therewith. If a third party requests that Buyer disclose PSM Confidential Information` that Buyer has received from PSMFB Service Provider, Buyer will:

- (a) notify PSMFB Service Provider of the request;
- (b) provide PSMFB Service Provider the opportunity to provide information regarding the need for confidential treatment;

(c) evaluate the third party's request for disclosure and PSMFB Service Provider's request for confidential treatment; and

(d) determine if the PSM Confidential Information is subject to disclosure under FOIL.

If Buyer determines that the PSM Confidential Information is subject to disclosure, it will provide prompt written notice of such determination to PSMFB Service Provider so that PSMFB Service Provider may seek a protective order or other appropriate remedy. If PSMFB Service Provider does not obtain a protective order or no formal proceeding has been initiated by PSMFB Service Provider within a reasonable period of time after Buyer provides notice to PSMFB Service Provider of its intent to make public the PSM Confidential Information, then Buyer may disclose such information with no liability or further obligation to PSMFB Service Provider as to such disclosed PSM Confidential Information.

18.5 Treatment of Otherwise Publicly Available Information:

Notwithstanding anything to the contrary in this Article 18, neither Party shall be required to hold confidential, and the Parties' obligations set forth in Section 18.2 shall not apply to, any information to the extent which such information:

(a) is or becomes publicly available other than through the a disclosure by the Receiving Party or its Representatives;

(b) is required to be disclosed by a governmental or judicial order, rule or regulation, subject to the remaining provisions of this Section 18.5;

(c) is independently developed by the Receiving Party without use or knowledge of the Disclosing Party's PSM Confidential Information; or

(d) becomes available to the Receiving Party without restriction from a third party.

In the event that a Receiving Party or any Representative of a Receiving Party is requested pursuant to, or required by, applicable law, regulation or by a legal or regulatory process to disclose any of the PSM Confidential Information of the Disclosing Party, the Receiving Party shall (except to the extent prohibited by law) (i) provide the Disclosing Party with prompt written notice prior to any such disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy and (ii) reasonably cooperate with the Disclosing Party's attempts to assure confidential handling of such information. In the event that no protective order or other remedy is obtained, the Receiving Party shall only disclose that portion of the PSM Confidential Information that it is advised by counsel is legally required and use its reasonable efforts to cause the applicable governmental entity to treat such information in a confidential manner and to prevent such PSM Confidential Information from becoming part of the public domain.

18.6 Remedies:

The Parties agree that the PSM Confidential Information furnished hereunder is of a special and unique nature, of extraordinary value and of such a character that any unauthorized use or disclosure thereof by the Receiving Party or any Representative of the Receiving Party will cause injury to the Disclosing Party for which the Disclosing Party will not have an adequate remedy at law. Accordingly, in such event, the Disclosing Party shall have the right to have the provisions of this Article 18 and the obligations of limited use otherwise set forth in this Agreement specifically enforced by any court having equity jurisdiction and to obtain a temporary or permanent injunction or order prohibiting the Receiving Party or its

Representatives from such unauthorized use or disclosure of any PSM Confidential Information. In any proceeding by the Disclosing Party to obtain injunctive or other equitable relief to enforce the provisions hereof, the Receiving Party's ability to answer in damages shall not be a bar or interposed as a defense to the granting of such relief and the Disclosing Party shall not be required to post a bond or other undertaking in such proceeding. Except as specifically stated, the provisions of this Section 18.6 shall not otherwise limit any of the Disclosing Party's remedies at law or equity.

18.7 Return of PSM Confidential Information:

Any tangible PSM Confidential Information of the Disclosing Party which is made available to the Receiving Party by the Disclosing Party or to which the Receiving Party may have access shall not be copied, reproduced or duplicated in any form or manner for any purpose other than the Permitted Purposes. Upon the written request of the Disclosing Party, and except as otherwise provided below, the Receiving Party shall, at the Disclosing Party's election, either (i) promptly deliver to the Disclosing Party all copies of any and all PSM Confidential Information` and promptly destroy all copies of, any and all analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party or its Representatives based on the use of PSM Confidential Information` (and confirm such destruction to the Disclosing Party in writing), or (ii) promptly destroy all copies of any and all written PSM Confidential Information and all copies of any and all analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party or its Representatives based on the use of PSM Confidential Information (and confirm such destruction to the Disclosing Party in writing), in each case at the Receiving Party's expense and regardless of whether such PSM Confidential Information, analyses, compilations, forecasts, studies or other documents are in the possession of the

Receiving Party or in the possession of any of its Representatives. Notwithstanding the foregoing, the Receiving Party may retain any documents (such analysis, compilations, forecasts, studies or other documents) submitted to its or its Affiliates' board of directors or board of trustees or screening or investment committee in connection with, or related to, this Agreement that contain or are based on the use of PSM Confidential Information to the extent required by applicable law or regulation, but the Receiving Party shall keep all such documents and PSM Confidential Information confidential in accordance with this Agreement. Moreover, neither the Receiving Party, nor its Representatives, shall be obligated to erase PSM Confidential Information contained in an archived computer system backup in accordance with its security and/or disaster recovery procedures, provided that the Receiving Party and its Representatives shall not cause or permit access to or recovery of PSM Confidential Information from such computer system backup and the Receiving Party and its Representatives shall keep all such documents and PSM Confidential Information confidential and restrict the use thereof in accordance with this Agreement. Regardless of any return or destruction of PSM Confidential Information or analyses, compilations, forecasts, studies or other documents based on the use of PSM Confidential Information, all PSM Confidential Information, including, without limitation, any and all oral PSM Confidential Information, shall continue to be subject to the terms of this provisions of this Article 18 and the other obligations of limited use and non-disclosure set forth in this Agreement.

18.8 No Licenses:

It is agreed that, except as otherwise expressly set forth in this Agreement, no right or license under any patents, copyrights, or other rights of the Disclosing Party and any of its

subsidiaries or affiliates, licensors or suppliers is granted to the Receiving Party by this Agreement or by any disclosure of PSM Confidential Information hereunder.

18.9 Term of Confidentiality:

Without limiting the survival of the obligations set forth in Article 8, the obligations set forth in this Article 18 (with respect to PSM Confidential Information not related to, included in, or encompassed by, the provisions of Article 8 hereof) shall survive expiration or termination of this Agreement for a period of two (2) years thereafter.

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IN WITNESS WHEREOF, the Parties have executed this agreement as of the Day and year first above written.

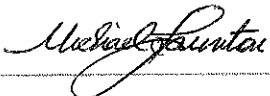
THE LONG ISLAND POWER AUTHORITY

By: 

Name: MICHAEL J. DAWSON

Title: CFO

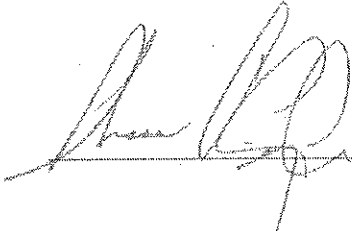
THE LONG ISLAND LIGHTING COMPANY d/b/a LIPA

By: 

Name: MICHAEL J. DAWSON

Title: CFO

PSEG ENERGY RESOURCES & TRADE LLC

By: 

Name: Shawn P. Leyden

Title: Vice President – Commercial Law

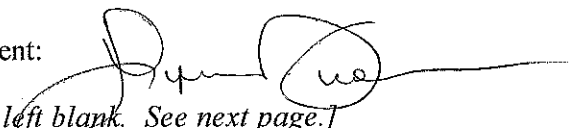
STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

On the 27 day of November, in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared ^{Michael} Taunton, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their capacity(ies), and that by his/~~her~~/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and office of individual taking acknowledgment:


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Lynda Nicolino
Notary Public, State of New York
County of Suffolk
No. 02NI4977085
Commission Expires Jan. 22, 2015

STATE OF NEW JERSEY)

) SS.:

COUNTY OF ESSEX)

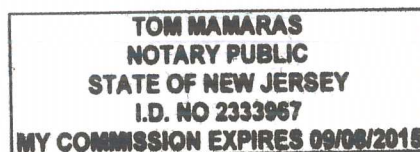


On the 26 day of November, in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared S.P. Leyden, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and office of individual taking acknowledgment:

A handwritten signature in blue ink, appearing to read "Tom Mamaras", written over a horizontal line.

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APPENDIX I
REQUIRED PROCUREMENT FORMS AND CERTIFICATIONS

Attached, are the following required procurement forms and certifications:

- Non-Collusive Bidding Certification
- Vendor Responsibility Questionnaire
- MacBride Fair Employment Principles
- Contingent Fee Certification
- Buyer Standard of Conduct
- Affirmation of Understanding of Guidelines Regarding Procurement Lobbying
- Offerer Disclosure of Prior Non-Responsibility Determinations]

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APPENDIX II

PSM FRONT AND BACK OFFICE SERVICES

PART 0 – INTRODUCTION, OVERVIEW, AND GENERAL DESCRIPTION OF PSMFB SERVICES

1. Introduction:

Consistent with the provisions of Article 4 and Article 7, this Appendix describes in greater detail the PSMFB Services to be provided by the PSMFB Service Provider during the Base Term, and the Extended Term, if applicable. The Parties agree and acknowledge that (i) the descriptions of services are not static, (ii) some changes in Buyer's requirements (e.g., new or expiring power contracts, added or retired generation assets, changes in ISO/RTO or other applicable regulations, added reporting requirements) for, or with respect to, PSMFB Services may occur from time to time over the Base Term, or Extended Term, if applicable, and (iii) such changes are contemplated to be included within the scope of this Agreement and within the descriptions set forth in this Appendix, even if not specifically stated or described. Such changes are consistent with, and to be expected or anticipated within, normal business operations similar to those of Buyer, and do not alter the essential purpose, objective or nature and character of the described service or services to be provided by PSMFB Service Provider, even if such changes result in reasonably different volumes or require reasonable modifications in or to specific business processes. Unless otherwise specifically stated in Appendix IV, all costs associated with the performance of PSMFB Services, including such changes as described above, shall be borne by the PSMFB Service Provider. The Parties also agree and acknowledge that other changes, while in the nature of PSMFB Services, may be outside the scope of such services, as defined herein, and such changes shall be dealt with as an Additional Service under Part III of this Appendix.

The Parties further agree that (i) services in connection with the generation units identified in Table II-1f are not within the scope of PSMFB Services and that any services for such generating units may be provided as Additional Services and (ii) PSMFB Services shall in no event include services provided directly to or with any or all of Buyer's retail customers. Any such services may be provided as Additional Services. Tables II-1a-e sets forth the Front Office Services and Back Office Services to be provided for each category of Power Supply Resources.

In the event of a conflict between Tables II-1a-e and the Appendix, the Tables shall control as to the services which PSMFB Service Provider shall provide with respect to each Power Supply Resource, while the Appendix shall control with respect to the description of, and Buyer's requirements for, such services.

By way of example, and not by way of limitation, the Parties agree that the number of agreements in each category of "Power Supply Resources" specified in Tables II-1a-e may change. For example, the number of agreements included under PSR Type No. 1, PSA Units, may increase or decrease from time-to-time. Such fluctuations in any of the Power Supply Resources are contemplated within the scope of PSMFB Services and not as Additional Services. However, the addition of a single agreement to any Power Supply Resources where the Product delivery point is in an ISO/RTO other than the NYISO, ISO-NE, or PJM, would require an Additional Service with respect to providing front and back office services for that particular agreement. In addition, the Parties agree that additions to the specific Front Office Services or Back Office Services required for any Power Supply Resources would also be an Additional Service. For example, bidding and scheduling of an existing or new agreement under PSR No. 1 is contemplated within PSMFB Services, while Back-Office Service No. 4 ("Billing Services") with regard to PSR Type No. 1 is not contemplated as PSMFB Services. Thus, an Additional Service would be required if Buyer chose to request Billing Services with respect to PSR Type No. 1. In addition, the Parties agree that addressing and responding to changes in ISO/RTO reporting requirements are part of PSMFB Services while providing credit management services and credit support are not. The inclusion of credit management services either as a Front Office or a Back Office service for any Power Supply Resources would be an Additional Service.

PSMFB Service Provider is expected to use its resources, experience and expertise obtained in the course of providing PSMFB-type services for its Affiliates in conjunction with its provision of PSMFB Services to Buyer under this Agreement.

2. Overview:

In providing the PSMFB Services, the PSMFB Service Provider shall interact and coordinate as necessary to provide the PSMFB Services with a variety of suppliers, vendors, businesses, individuals and other entities, including, but not limited to, the following:

- (a) Each of the Generating Facilities, and the operators and managers thereof,
- (b) Other Buyer suppliers,
- (c) Cable Resources operators and representatives,
- (d) Buyer's Control Center,
- (e) Buyer's planning committee,
- (f) Buyer's ISO/RTO representatives
- (g) CEE PSMFB Service Provider (during Front-End Transition Period),
- (h) the PSMMO Service Provider,
- (i) Power Asset Management,
- (j) the NYISO, ISO-NE and PJM, and any other market operators in which Buyer is a member, provided that Buyer and PSMFB Service Provider have agreed in writing to procure PSMFB Services with respect to such "other market operators" as an Additional Service.
- (k) Fuel Management Service Provider,
- (l) FERC,
- (m) DOE,
- (n) NERC,
- (o) New York State Reliability Council, L.L.C. ("NYSRC"), and
- (p) Others, as requested by Buyer within the scope of this Agreement.

3. General Description of Services

This Agreement requires the PSMFB Service Provider to provide PSMFB Services, which are comprised of Front Office Services and Back Office Services, designed to meet Buyer's requirements. The following is a brief overview description of the Front and Back Office services:

- (a) **Front Office Services:** Refers to the various tasks related to, and the responsibilities for, the purchase and sale of all capacity, energy, ancillary services, and transmission congestion contracts on a 24 hours per day – 7 day week basis to meet the needs of Buyer's customer load in a least cost manner consistent with Buyer's existing agreements, policies, regulations, and reliability constraints. In addition, such tasks and responsibilities include performing ISO/RTO bidding and scheduling of all assets under contract to Buyer, as well as dispute resolution support in accordance with Front Office

Service No. 9(b), and related services, in order to maximize the benefits of such assets to Buyer's customers as a whole, minimize the overall cost to Buyer's customers, and meet electric system reliability standards.

(b) Back Office Services: Refers to the various tasks related to, and the responsibilities for, providing accounting, settlement, dispute resolution support (other than ISO/RTO credit dispute resolution support unless mutually agreed to by the PSMFB Service Provider and Buyer in the future), and related reporting and support services.

The PSMFB Service Provider shall provide all of the PSMFB Services described in this Appendix II, as required, to meet Buyer's service requirements as described herein. In providing the PSMFB Services, any strategies, procedures, and protocols developed by the PSMFB Service Provider, whether or not referenced herein, shall be subject to the Buyer's policies and procedures, and require Buyer's prior written approval prior to implementation, and once approved shall be set forth in the Administrative Protocols and Procedures.

PART 1: POWER SUPPLY MANAGEMENT FRONT-OFFICE SERVICES

As part of the primary function and purpose of the Front Office Services component of the PSMFB Services, PSMFB Service Provider shall purchase and sell Energy, Capacity, and Ancillary Services on a 24 hours per day - 7 day a week basis to meet the needs of Buyer's customer load in a least cost manner consistent with Buyer Contracts, other applicable agreements, ISO/RTO requirements, applicable policies, reliability constraints, and in compliance with applicable Legal Requirements.

1. PSMFB Service Provider shall perform ISO/RTO bidding and/or scheduling and/or Dispatch, as applicable, of all Power Supply Resources in a manner that maximizes the benefits to Buyer's customers as a whole, minimizes the overall cost to Buyer's customers, and meets electric system reliability standards. The following provides additional detail regarding PSMFB Service Provider's responsibilities and obligations under the Front Office Services component of the PSMFB Services ("Front Office Service No. 1"):

In providing the Front Office Services component of the PSMFB Services, beginning on the PSMFB Services Start Date, and continuing through the Base Term, and Extended Term, as applicable:

(a) The PSMFB Service Provider shall, consistent with Prudent Utility Practices, perform the Dispatching, bidding and scheduling of Power Supply Resources, which are used to provide power to, and in order to serve the Load Requirements of, Buyer's customers, into the respective ISO/RTOs.¹ In addition, the PSMFB Service Provider shall participate in the NYISO, ISO-NE, PJM, and any other markets in which Buyer is a member, provided, however, that prior thereto, Buyer and PSMFB Service Provider must have agreed in writing to the provision of PSMFB Services with respect to such "other markets" as an Additional Service.

(b) In furtherance of the foregoing, the PSMFB Service Provider shall utilize the Power Supply Resources.

(c) In performing the Dispatch, bidding, scheduling and RTO/ISO participation functions of the PSMFB Services, PSMFB Service Provider shall:

(i) bid and schedule the Power Supply Resources in a manner that is in accordance with all FERC, NERC, NYSRC and ISO/RTO rules and procedures, recognizing that Buyer's load requirements include the NYISO Zone K requirements less certain municipal loads, New York Power Authority ("NYPA") loads and loads served under retail access programs (collectively the "Load Requirements");

¹ For ease of reference, Power Supply Resources includes the PSA Units, PPA Units, IPP Units, Buyer Owned Units, Cable Resources, Industry Standard Master Agreements (e.g., EEI Agreements and ISDAs), agreements for the purchase and sale of emission credits and allowances, transmission capacity, firm transmission rights, transmission congestion contract rights, and transmission and related resources. A listing of the PSA Units, PPAs, IPPs, Cable Resources, and Buyer Owned Units, as of the Effective Date, is found in Tables II-1a-e. It is anticipated that generating facilities and other resources will be added from time-to-time, while others will be retired or repowered from time-to-time, over the Base Term and Extended Term, if applicable. Updates to Tables II-1a-e shall be reflected in updates to the Administrative Protocols and Procedures.

(ii) coordinate the bidding and scheduling of Buyer's Load Requirements and Buyer's Power Supply Resources with the ESO and/or Buyer's Control Center, as applicable;

(iii) ensure that all PSMFB Services are provided in an independent manner and in Buyer's best interest. In order to accomplish this objective, the PSMFB Service Provider shall:

A) develop and recommend strategies and procedures, including bidding and scheduling strategies and procedures, for the Dispatch and utilization of the Power Supply Resources, which shall be submitted to Buyer for its prior written approval before implementation;

1. Such strategies and procedures shall include components for optimizing, coordinating and undertaking scheduled transactions including those with adjacent ISO/RTO markets;

2. Such strategies and procedures shall also include components for participating effectively in the Real-Time Market under relevant ISO/RTO market rules and any subsequent revisions or updates to such rules.

B) implement and apply, on a daily and hourly basis as applicable, 365 days a year, 7 days per week and 24 hours per day, the approved and selected bidding and scheduling strategies and procedures with respect to the Dispatch, bidding and scheduling the Power Supply Resources, in order to ensure and coordinate the delivery and/or sale of Capacity, Energy and Ancillary Service with, or into, the NYISO PJM and ISO-NE;

C) facilitate and ensure Buyer's efficient and effective participation in the ISO/RTO and bilateral capacity resources markets for purposes of purchasing and selling Capacity on a Monthly and/or seasonal basis in order to satisfy Buyer's capacity requirements;

D) develop load forecasts (including daily forecasts) and scheduling requirements for Buyer's consideration;

E) develop load forecasts and capacity requirements with Buyer's Electric System operations as well as the Buyer's planning group, taking into appropriate consideration unit outages in accordance with the applicable Standards of Conduct;

F) prepare and submit day-ahead and hour-ahead generation offers with full consideration of fuel availability, fuel price forecasts, resource availability, oil and gas inventory, transportation, environmental considerations, and other related matters. Such offers shall be based on current fuel availability and fuel price information as provided by the Fuel Management Service Provider and coordinated with other Buyer functions;

G) Request information regarding, and consider, oil delivery and inventory constraints available from the Fuel Management Service Provider.

(d) In connection with PSMFB Service Provider's performance of the bidding, scheduling, Dispatch, and RTO/ISO participation functions, to the extent that the Required Data (defined below) is not available through the PSM EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data. "Required Data" is information consistent with Prudent Utility Practices, required to perform the bidding, scheduling, Dispatch, and RTO/ISO participation functions, which includes, but is not limited to, fuel prices, fuel availability, fuel inventory, generator availability, generator outage schedules, Cable Resource availability, Electric System reliability requirements, reserve requirements and identification of must-run generation resources.

(e) For the purpose of clarity and the avoidance of doubt, the PSMFB Service Provider is acting solely as agent for Buyer and as such with respect to its agency status the respective RTO/ISOs shall look to Buyer and not to PSMFB Service Provider with respect to

any RTO/ISO costs, charges, penalties, etc. associated with the PSMFB Service Provider's membership in such RTO/ISOs. The PSMFB Service Provider shall pass-through to Buyer any such RTO/ISO costs charges, penalties, etc. that are the responsibility of, and result from, the PSMFB Service Provider being a member company of the RTO/ISOs.

(f) In connection with the PSMFB Services provided herein, Buyer will ensure that it provides sufficient and satisfactory credit support to the RTO/ISOs and with all of its counterparties who are member companies of the RTO/ISOs in order that the PSMFB Service Provider can perform all of its duties under this Agreement. The PSMFB Service Provider will be excused for any action taken or not taken in the event that Buyer has not provided sufficient and satisfactory credit support in a timely manner to the RTO/ISOs.

2. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, proactively manage the Power Supply Resources to minimize Buyer's costs, maximize benefits to Buyer's customers, and meet the requirements of all applicable FERC, NERC, NYSRC, ISO/RTO rules and procedures and electric system reliability criteria ("Front Office Service No. 2").

(a) In so managing such resources and assets, the PSMFB Service Provider shall:

(i) utilize sound asset management practices, which are designed to address financial, time, materials, supply, reliability, safety, Legal Requirements and other risks, in order to maximize the value of the Power Supply Resources related to Buyer's Electric System;

(ii) recommend asset management strategies for Buyer's consideration and approval. Upon receipt of Buyer's approval, the PSMFB Service Provider shall implement such strategies through, and with respect to, all pertinent activities;

(iii) measure, monitor, and adjust the asset management strategies to adapt to changing markets;

(iv) participate in mid- and long-range planning with Buyer with respect to the Power Supply Resources;

(v) coordinate with Buyer's contractors and agents, and with market participants and system operators, in compliance with applicable PSMFB and Buyer Standards of Conduct, as necessary regarding generation and transmission availability;

(vi) provide strategic asset management analysis, and participate in Transmission Congestion Contract ("TCC") auctions in order to optimize the acquisition or sale of TCCs with respect to ISO/RTO congestion charges;

(vii) verify amount and accuracy of payments received for TCCs that are grandfathered, purchased or otherwise allocated to Buyer;

(viii) conduct on-going market research;

(ix) develop forecasts of prices at proxy trading hubs and conduct transmission analysis in order to stay abreast of current market opportunities related to potential physical transactions between adjacent ISO/RTOs or specific unit participation purchases or sales opportunities;

(x) identify long-term market opportunities through independent market research and coordination with Buyer and its service providers;

(xi) manage the utilization of Cable Resources including (A) monitoring availability, and scheduling transactions accordingly, (B) coordinating with other service providers or directly assuming the responsibility of determining the overall value of hedging cable services, and (C) determining the causes and legitimacy of curtailments related to cable congestion and derates; (xii)

develop, coordinate, and integrate emission/environmental considerations into the management of, and the bidding and scheduling strategies for, the Power Supply Resources; and

(xiii) execute power and fuel forward hedges in accordance with specific instructions provided by Buyer.

(b) In connection with PSMFB Service Provider's management of the Power Resources to the extent that the Required Data is not available through the PSM EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data.

3. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, develop pre- and post- production-day analysis to aid in achieving strategic objectives ("Front Office Service No. 3").

(a) The PSMFB Service Provider shall:

(i) In a manner acceptable to Buyer, develop segregated Mid Office Services to monitor and evaluate the performance of the PSMFB Service Provider's strategies in the relevant markets;

(ii) adapt rapidly to changing market conditions by developing and adjusting the utilization of Power Supply Resources, and trading activities;

(iii) optimize the performance of Power Supply Resources through on-going assessments, which compare planned operations to actual performance;

(iv) provide Buyer with timely reports on all aspects of the operations of Power Supply Resources, including, without limitation:

A) Statistics on Capacity, Energy and Ancillary Services;

B) Changes in applicable markets, including the identification and assessment of the potential impact of such changes on Buyer;

C) Generator test schedules;

D) Generator bid and award summaries;

E) Cable curtailments, provided required information is provided by Cable Owners in a timely manner;

F) Generator derates, provided required information is provided by ESO in a timely manner; and

G) Generators run out of merit, including results of ESO's Supplemental Resource Evaluation, provided information is provided by ESO in a timely manner;

(v) provide all required and requested reports in a timely manner as required by Buyer. Reports shall be provided either electronically via a web portal or other reporting database available to Buyer; and

(vi) not provide the Electric System Bulletin Board Data Report.

4. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide data and analysis to assist Buyer in planning, asset acquisition, and marketing activities (“Front Office Service No. 4”).

(a) The PSMFB Service Provider shall proactively provide fundamental, technical and quantitative data, analysis, recommendations and feedback to Buyer, its consultants, or agents, regarding the near-term, intermediate, and long-term power supply, Energy, Capacity, transmission, Ancillary Services needs, forecasts and conditions related to Buyer's Electric System, and regarding marketing activities. In order to accomplish the above, the bidding and scheduling strategies and processes for the Power Supply Resources shall:

(i) use economic data (e.g. production, consumption, heat rates) to forecast prices with suitable accuracy for short, medium and long term market participation and resource planning activities including market clearing prices, locational based marginal pricing, forward prices, and fuel prices;

(ii) use load forecasting methodologies that support and provide input to short- and long-term load forecasting for Buyer's Electric System operations, long term strategy development and power system planning, and support bidding and scheduling, and trading activities including short term optimization; and

(iii) use volumetric forecasting methodologies of Energy, Capacity and fuels appropriate for the short and medium terms (less than 3 years).

5. Subject to Appendix IX, PSMFB Service Provider shall, consistent with Prudent Utility Practices, establish communication processes and interfaces with Buyer's operational agents, contractors and entities, (e.g., Buyer's Control Center, DRM, PSA Units, PPA Units, IPP Units, Buyer Owned Units, Cable Resources, Other Resources, Fuel Management Service Provider, and others as required) ("Front Office Service No. 5").

(a) In furtherance of the foregoing, PSMFB Service Provider shall:

(i) communicate, coordinate and interact, on a daily basis, if needed or as requested by Buyer, with Buyer's operational agents, contractors and entities and with third parties as necessary or required, to ensure effective and comprehensive communication. In this regard, PSMFB Service provider shall establish communication processes and interfaces, which shall include, but not be limited too, processes and interfaces for:

- (A) each of Buyer's power suppliers,
- (B) Cable Resources operators and representatives,
- (C) Buyer's Control Center,
- (D) Buyer's planning committee,
- (E) Buyer's ISO/RTO representatives,
- (F) CEE PSMFB Service Provider (during Front-End Transition Period),
- (G) the PSMMO Service Provider,
- (H) Buyer's staff and Agents,
- (I) Power Asset Management,
- (J) the NYISO, ISO-NE and PJM, and any other market operators in which Buyer is a member, provided that Buyer and PSMFB Service Provider have agreed in writing that

PSMFB Service Provider will provide PSMFB Services with respect to such “other market operators” as an Additional Service,

- (K) Fuel Management Service Provider,
- (L) FERC,
- (M) DOE,
- (N) NERC,
- (O) NYSRC, and
- (P) Others, as requested by Buyer within the scope of this Agreement.

(b) The PSMFB Service Provider shall maintain clear and effective relationships and communication channels with all of Buyer’s operational Agents, contractors, entities and their managers and operators or other representatives, as applicable, and shall communicate any and all concerns to Buyer in a timely manner.

(c) The PSMFB Service Provider’s communications requirements, additional details regarding which shall be set forth in the Administrative Protocols and Procedures, include, but shall not be limited to:

- (i) Gathering and immediately disseminating accurate and appropriate information on the status of the Power Supply Resources;
- (ii) Performing all ISO/RTO related responsibilities necessary for carrying out the PSMFB Services described herein;
- (iii) Conducting performance-related discussions with PPA Units to ensure PPA contract compliance;
- (iv) Maintaining and distributing all required information necessary to perform intermediate and long range Capacity and Energy planning functions;

(v) Maintaining and distributing all operational information needed to meet permit and regulatory requirements as such requirements have been defined by Buyer to PSMFB Service Provider; and

(vi) Conducting all communications with FERC or ISO/RTO market monitoring or enforcement staff in close consultation with Buyer's management team, and in accordance with Buyer's market monitoring communications procedures as specified in the Administrative Protocols and Procedures.

6. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide Contract Administration and Compliance Services ("Front Office Service No. 6").

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) Administer the Buyer Contracts and other agreements related to Power Supply Resources identified in Tables II-1a-e in accordance with their respective terms and conditions and perform the PSMFB Services for each Power Supply Resource as specified in Tables II-1a-e.

(ii) Contract administration and compliance services refers to the set of services related to a given contract, which may include, but is not limited to ensuring that required actions, are completed in conformance with the terms and conditions of said contracts and reviewing and monitoring invoices and operational reports upon which the invoices are based for accuracy.

7. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide Data Management Services ("Front Office Service No 7").

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) develop, maintain and utilize standard, secure, high-performance database(s) and data management software, as described in Appendix VI as the IT System, which supports all functions performed by the PSMFB Service Provider, and:

(A) Efficiently adapts to meet changing market conditions;

(B) Permits establishing various user privilege levels with Buyer Authorized Representatives;

(C) Efficiently interfaces in a secure fashion with other public and private computer networks as may be required, and with Buyer, its contractors and Agents, and ISO/RTOs; and

(D) Ensures that Buyer has full, complete and all-hours access to all posted data pertaining to the operational and economic performance of the Power Supply Resources for which such data is collected, processed and/or maintained under the Agreement, which access provides ad hoc, structured query, retrieval and report writing capability. Buyer shall have full read access to copies of both operating and archival databases through a dedicated portal, or functional equivalent, for direct access by Buyer and its authorized representatives to all data and reports.

(ii) The PSMFB Service Provider shall store such information in databases so that it is reasonably accessible to Buyer in a usable format.

(iii) The PSMFB Service Provider shall provide the necessary interfaces in accordance with Appendix IV and IX so that Buyer and its contractors/consultants may access information related to PSMFB Services during the Base Term and Extended Term, if applicable.

(iv) Ensures the capture of all Capacity, Energy, Ancillary Services and energy commodity transactions, deal types, and transactions utilizing other contracting instruments that Buyer uses consistent with the Power Supply Resources set forth in Tables II-1a-e;

(v) Ensures IT System can properly interface with PSM EDM and ISO/RTOs; and

(vi) Provides regular uploads of PSM Front Office data to the PSM EDM.

(b) Data storage must, at a minimum, include an operational and an archival database that can store operational data to comply with Buyer's Record retention policies in accordance with Section 17.16(d) of the Agreement.

8. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, comply with ISO/RTO required certification, testing and other submissions required for PSMFB Service Provider and Buyer to participate in such ISO/RTO Markets ("Front Office Services No. 8").

The PSMFB Service Provider shall effectively manage the applicable ISO/RTO certificate process for both its and Buyer's employees (Buyer's employees are defined as direct employees of Buyer, and not employees of any of Buyer's other consultants, contractors, service providers or other third parties) ensuring personnel have appropriate access to all necessary data, ISO/RTO systems and other relevant systems for purposes of their participation in such ISO/RTO Markets on Buyer's behalf and in order for PSMFB Service Provider to provide the PSMFB Services hereunder. The PSMFB Service Provider shall perform periodic reviews (quarterly or semi-annually) of applicable ISO/RTO certificates, authorizations, and permissions in order to assure that they are up-to-date, in proper form and that PSMFB Service Provider and Buyer are in compliance with the terms thereof.

9. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide compliance assurance, and regular, timely and complete regulatory updates, to Buyer subject to the Conflict of Interest of Part 6 of Appendix II ("Front Office Service No. 9").

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) Facilitate compliance with all Legal Requirements, including federal, state and regulatory requirements related to the purchase and sale of Capacity, Energy and Ancillary services;

(ii) Ensure that units are bid, scheduled and Dispatched into the appropriate and relevant ISO/RTO Market in accordance with approved strategies and processes, and in compliance with all Legal Requirements, operating

instructions, requirements, limitations, permits, NPDES permits, interstate and intrastate requirements and federal permit compliance as appropriate;

(iii) Immediately report to Buyer operational developments or other activities that may violate applicable Legal Requirements and/or otherwise result in fines or other penalties, as well as in conjunction with such reports, identify the corrective actions required and performed to address the facts and circumstances giving rise to the violations or the assessment of fines or penalties;

(iv) Prepare and provide to Buyer, for submission to applicable Governmental Authority, all monthly, quarterly and/or yearly, forms or reports directly relating to the PSMFB Services provided or performed under the Agreement and required by DOE, FERC, NERC or any other regulatory agency. A list of such reports shall be set forth in, and maintained as part of the Administrative Protocols and Procedures;

(v) Promptly inform Buyer of any and all regulatory changes to these reporting requirements; and

(vi) Promptly provide relevant information to Buyer's ISO/RTO representatives on ISO/RTO market rule changes and developments and with respect to issue resolution.

(b) The PSMFB Service Provider shall provide support to Buyer's ISO/RTO representatives, business representatives, and legal counsel on any FERC, other regulatory proceeding, arbitration or state/federal court proceeding. For the avoidance of doubt and the purpose of clarity, the PSMFB Service Provider's obligations hereunder shall be limited to providing:

(i) factual support (including business advice and analysis) for Buyer's ISO/RTO representatives and legal counsel work in any FERC regulatory and policy proceeding (including any associated appellate proceeding) involving developments in the markets in which the PSMFB Service Provider is providing PSMFB Services to Buyer pursuant to the Agreement. To the extent practicable, Buyer shall use its employees or other non-PSMFB Service Provider employees

to provide any necessary testimony or direct advocacy in such above-described FERC regulatory and policy proceedings. Notwithstanding anything herein, the provision of testimony by PSMFB Service Provider in support of Buyer in connection with such above-described FERC regulatory and policy proceedings, shall only occur with the prior consent of the PSMFB Service Provider, after a determination by PSMFB Service Provider in its sole discretion that such testimony does not present a conflict of interest. In the event that PSMFB Service Provider determines in its sole discretion that providing testimony on behalf of Buyer would present a conflict of interest, the PSMFB Service Provider further agrees that its employees directly providing PSMFB Services under the Agreement to Buyer with specific titles to such dedicated employees to be provided by PSMFB Service Provider to Buyer and updated from time to time as necessary shall not provide testimony on behalf of another entity (including an Affiliate) in such proceeding. For the avoidance of doubt and the purpose of clarity, PSMFB Service Provider, in any case, is not prohibited from providing testimony in any proceeding on behalf of itself or another entity (including an Affiliate) or representing itself or any of its Affiliates before any regulatory or governmental authority in accordance with Section 4.18 of the Amended and Restated OSA (“Conflicts of Interest”). If testimony is provided by PSMFB Service Provider on behalf of Buyer, PSMFB Service Provider shall be reimbursed by Buyer for its actual, reasonable and verifiable travel expenses.

(ii) in proceedings other than those FERC regulatory and policy proceedings addressed in subsection (i) above, factual support (including business advice and analysis) for Buyer's ISO/RTO representatives, business representatives and legal counsel working on any FERC proceeding, other regulatory proceeding, state or federal court proceeding or arbitration, which relates to the performance of the PSMFB Services by the PSMFB Service Provider under the Agreement. To the extent that such support requires the provision of testimony, such testimony shall be limited to testimony by one or more PSMFB Service Provider employees (each a “PSMFB Service Provider Witness”) engaged in performing PSMFB Services hereunder regarding the

nature of the circumstances and the facts involved in, or with respect to, the PSMFB Services under review in such proceeding. On such occasions that Buyer reasonably believes that it shall require one or more PSMFB Service Provider Witnesses to testify in such proceeding, the following process shall be adhered to:

(A) Buyer shall notify PSMFB Service Provider of the need for PSMFB Service Provider Witness testimonial support;

(B) upon receipt of such notice, PSMFB Service Provider shall promptly determine, in its discretion exercising good faith and reasonable judgment, whether the provision of such testimony presents an actual conflict of interest with PSMFB Service Provider or its affiliates and shall promptly notify Buyer of its determination;

(C) if there is no conflict, PSMFB Service Provider shall provide the requested PSMFB Service Provider Witness or Witnesses and testimony;

(D) if a conflict has been identified by PSMFB Service Provider, then senior representatives of Buyer and PSMFB Service Provider shall promptly meet and confer regarding the conflict and whether and how the PSMFB Service Provider testimony can be limited to avoid the conflict;

(E) whether or not the PSMFB Service Provider Witness testimony can be so limited, if the failure to provide the PSMFB Service Provider Witness testimony is determined by Buyer, in its discretion exercising good faith and reasonable judgment, to prejudice Buyer's ability to defend/support its position in the proceeding, then, Buyer shall promptly notify PSMFB Service Provider, and, notwithstanding any identified conflict, PSMFB Service Provider shall provide the needed PSMFB Service Provider Witness and testimony;

(F) if the failure to provide the PSMFB Service Provider Witness testimony will not prejudice Buyer's ability to defend/support its position in the proceeding, then Buyer shall promptly notify PSMFB Service

Provider, and PSMFB Service Provider shall not be required to provide PSMFB Service Provider Witness testimony unless the PSMFB Service Provider Witness testimony can be limited to avoid the conflict pursuant to paragraph (D) above; and

(G) if PSMFB Service Provider declines to provide the PSMFB Service Provider Witness and testimony under paragraphs (C), (E) or (F) above, then Buyer reserves all rights to seek a subpoena under applicable rules, in order to compel PSMFB Service Provider Witness appearances and testimony, and PSMFB Service Provider reserves all rights to oppose issuance of the subpoena and to move to quash the subpoena.

If testimony is provided by PSMFB Service Provider, PSMFB Service Provider shall be reimbursed by Buyer for its actual, reasonable and verifiable travel expenses in providing the PSMFB Service Provider witness and testimony.

10. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide asset planning services to Buyer (“Front Office Service No. 10”).

In furtherance of the foregoing, the PSMFB Service Provider shall:

(a) Engage in asset planning activities with Buyer in order to address the financial, time, materials, supply, reliability, safety, Legal Requirements needs and other risks, associated with maximizing the value of the Power Supply Resources through asset utilization strategies;

(b) Provide data, reports, evaluations and recommendations to Buyer or its contractors and Agents in order to facilitate the planning, construction and operation of Buyer’s Electric System and existing and new Power Supply Resources that can serve Buyer’s Load Requirements in a manner that maximizes the benefits to Buyer’s customers, and minimizes the overall costs to Buyer’s customers, while meeting Buyer’s Electric System and other applicable reliability requirements.

(c) Provide its bidding and scheduling approach and strategy to Buyer’s planners to enhance their ability to model the behavior of the Long Island Energy market and Energy flows.

- (d) Not provide Buyer's integrated resource plan.

11. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide Operational Planning Services to Buyer ("Front Office Service No. 11").

- (a) In furtherance of the foregoing, the PSMFB Service Provider shall:

- (i) participate in and provide input to the development and implementation of Buyer's long-term operational planning and market strategy for Buyer's Power Supply Resources and market opportunities in order to maximize the benefits to Buyer's customers, minimize the overall costs to Buyer's customers, and meet Buyer's Electric System and other applicable reliability requirements; and

- (ii) recommend discretionary outages of the Power Supply Resources, and if approved by the appropriate operating authority (e.g., ESO, ISO/RTO) schedule such discretionary outages of the Power Supply Resources, use merchant generation and transmission facilities to effectuate lower operating costs, and/or make market sales without impacting Buyer's Electric System security or reliability.

- (b) In connection with PSMFB Service Provider's provision of operational planning services, to the extent that the Required Data is necessary for the provision of such services, and not available through the PSM EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data.

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PART 2. POWER SUPPLY MANAGEMENT BACK OFFICE SERVICES

The primary function of the Back Office Services component of the PSMFB Services is to provide accounting, administrative, transaction documentation, reconciliations, and settlement, financial reporting, compliance, dispute resolution support, and related reporting and support services for all PSMFB Front Office Services' transactions performed and undertaken by the PSMFB Service Provider, which, as set forth in Part 1, includes the bidding, scheduling and Dispatch of the Power Supply Resources. A listing of the PSA Units, PPA Units, IPP Units, Cable Resources, and Buyer Owned Resources, as of the date of this Agreement, is found in Tables II-1a-e,² and PSMFB Service Provider shall provide the Back Office Services component of the PSMFB Services with respect to Power Supply Resources in accordance with the allocation of responsibility set forth in Tables II-1a-e and as further detailed below in this Part 2. The following provides additional detail regarding PSMFB Service Provider's responsibilities and obligations under the Back Office Services component of the PSMFB Services:

In providing the Back Office Services component of the PSMFB Services, beginning on the PSMFB Services Start Date, and continuing through the Base Term, and Extended Term, as applicable:

1. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, maintain accurate books and accounting records; provide information as requested by Buyer ("Back Office Service No. 1").

- (a) In furtherance of the foregoing, the PSMFB Service Provider shall:
 - (i) maintain accurate books and accounting records for all PSMFB Services performed under the Agreement;

² As stated above, it is anticipated that generating facilities and other resources will be added from time-to-time to Power Supply Resources, while others will be retired or repowered from time-to-time, over the Base Term and Extended Term, if applicable. Updates to Tables II-1a-e shall be reflected in updates to the Administrative Protocols and Procedures. As also indicated above, for the avoidance of doubt and the purpose of clarity, it is again noted that PSMFB Service Provider shall not be providing any credit management services and shall not be responsible for processing, reconciling, or monitoring any margin or collateral requirements with regard to any Contract Type on Tables II-1a-e or any other agreement.

(ii) shall maintain and retain all data and accounting records in compliance with Buyer's Record retention policies, as they may be amended from time to time, and in accordance with Section 17.16(d) of this Agreement;

(iii) make available to Buyer, all records/data pertaining to the PSMFB Services provided under the Agreement (including data to be obtained from the Power Supply Resources related to PSMFB Services).

2. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, develop and implement a generation performance reporting system and processes ("Back Office Service No. 2").

In furtherance of the foregoing, the PSMFB Service Provider shall:

(a) in consultation with Buyer, develop the most appropriate daily, weekly, and monthly reporting packages for reporting on the performance of Buyer's Power Supply Resources.

(b) in consultation with Buyer and subject to Section 4.6(d), develop the information services and IT Systems necessary for providing on-going reporting to Buyer, or Buyer's designee, in order to undertake various independent analyses of the Power Supply Resources.

(c) in connection with PSMFB Service Provider's development of the generation performance reporting system and processes, to the extent that the Required Data is not available through the PSM -EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data necessary for the development and/or implementation of such generation performance reporting system and processes.

3. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, identify, verify and reconcile on a timely basis all amounts due Buyer pursuant to Buyer Contracts with respect to applicable Power Supply Resources, and with respect to ISO/RTO transactions for all PSMFB Services provided under the PSMFB Services Contract ("Back Office Service No. 3").

In furtherance of the foregoing, the PSMFB Service Provider shall, on a daily basis, verify, validate and reconcile with Front Office personnel the details regarding pricing and quantity scheduled and delivered or received, as the case may be of all Buyer Contracts and ISO/RTO transactions, including the dollar amounts thereof and resolve and reconcile any discrepancies and provide such information and data to the billing services personnel for originating and processing invoices with respect thereto.

4. Billing Services - The PSMFB Service Provider shall, consistent with Prudent Utility Practices, develop an efficient payment process (“Back Office Service No. 4”).

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) perform billing services with respect to those Power Supply Resources Contract types so specified in Tables II-1a-e, column “Back Office Service No. 4”. In general, such billing services shall include, but not be limited to:

(A) Informing Buyer of charges and payments associated with PSMFB Services;

(B) Originating, processing and reconciling of invoices from, or to, third parties with respect to the Power Supply Resources, the ISO/RTO Markets and as otherwise relates to the PSMFB Services to verify proper documentation, operational data, and accuracy, to support the invoice, and appropriate payment;

(C) Issuance of payment instructions with appropriate supporting documentation to Buyer;

(D) Verify that invoices are in compliance with contract terms;

(E) Providing Buyer with summary reports for settled and accrual amounts for each corresponding activity; and

(b) PSMFB Service Provider shall not provide Billing Services related to Power for Jobs billing or Economic Development Program billing.

(c) Billing Services for any transmission service charge billing shall be limited to provision of related ISO/RTO data.

5. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, develop an accurate and efficient payment/invoice schedule (“Back Office Services No. 5”).

(a) In furtherance of the foregoing, the PSMFB Service Provider shall in consultation with Buyer, develop an accurate and efficient payment/invoice schedule that details Buyer’s anticipated cash disbursements related to PSMFB Services for the Month by Day in order to assist Buyer manage its cash.

The following cash management services are not included in the PSMFB Services: receive, review and reconcile bank accounts and tie balances to the general ledger, reconcile any outstanding balances, and communicate outstanding balances and/or discrepancies.

6. The PSMFB Service Provider shall, consistent with Prudent Utility Practices and subject to Appendix IX, automate data transfer between the IT System and Buyer (“Back Office Service No. 6”).

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) in consultation with Buyer, develop an accurate, efficient, and reliable IT System to transfer relevant accounting data and information from the IT System to Buyer as more fully described in Appendix IX, which IT System shall:

(A) provide regular uploads of Back Office Services data to the PSM EDM system as described in Appendix IX;

(B) provide necessary interface and connectivity to Buyer and its contractors/consultants to such IT System and copies of databases as necessary for PSMFB Service Provider’s performance of all PSMFB

Services, and in order for Buyer to conduct its business in an efficient and effective manner over the Base Term, and Extended Term, if applicable;

(C) For the avoidance of doubt and the purpose of clarity, this data shall not be provided by PSMFB Service Provider in real time unless otherwise specifically provided for herein or in the Administrative Protocols and Procedures. Further, PSMFB Service Provider shall not provide Buyer with direct access to the IT System.

(b) In connection with PSMFB Service Provider's development of the IT System in accordance with the Agreement and as set forth in Appendix VI, to the extent that the Required Data is not available through the PSM-EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data necessary for the development and/or implementation of such IT System also in accordance with Appendix VI.

7. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide reconciliation of ISO/RTO charges and payments, daily settlement documentation, and dispute tracking mechanism ("Back Office Service No. 7").

(a) In furtherance of the foregoing, and in conjunction with Back Office Service No. 3, the PSMFB Service Provider shall:

- (i) provide a complete reconciliation of all ISO/RTO charges and payments;
- (ii) prepare and provide to Buyer daily settlement documentation;
- (iii) provide to Buyer electronic copies of invoices;
- (iv) establish and maintain a dispute tracking mechanism;
- (v) submit disputes to ISO/RTOs in a timely manner; and
- (vi) support Buyer in the dispute resolution process in accordance with Front Office Service 9(b).

(b) In addition, the PSMFB Service Provider shall, to the extent necessary, be responsible for the reconciliation of all ISO/RTO rebills for production Months not yet “finalized” by the PSMFB Services Start Date. Additional details regarding these processes and procedures shall be set forth in the Administrative Protocols and Procedures.

8. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, continually inform Buyer of outstanding ISO/RTO billing issues, and support the resolution process (“Back Office Service No. 8”).

(a) In furtherance of the foregoing, and in conjunction with Back Office Service No. 3, No. 7, and No. 9, the PSMFB Service Provider shall:

- (i) be involved in the applicable ISO/RTO committees relating to settlement issues;
- (ii) provide Monthly reports to Buyer outlining the important current and future settlement issues to the extent that they exist;
- (iii) whenever possible, quantify billing code errors; and
- (iv) participate in ISO/RTO settlement working groups/task forces to the extent deemed necessary by both Buyer and the PSMFB Service Provider.

(b) PSMFB Service Provider’s obligations hereunder are limited to as set forth in Front Office Service No. 9(b).

9. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, be knowledgeable with respect to, and monitor Legal Requirements, including regulatory developments in order to provide regulatory updates and compliance assurance to Buyer (“Back Office Service No. 9”).

(a) In furtherance of the foregoing, for all relevant matters pertaining to Back Office operations Services the PSMFB Service Provider shall:

- (i) be knowledgeable of GAAP accounting requirements, accounting requirements relating to Financial Account Standards Board (“FASB”) and Emerging Issues Task Force (“EITF”) issues, Sarbanes-Oxley requirements,

required Quarterly FERC sales reporting, and all Legal Requirements, including other regulatory requirements; and

(ii) inform Buyer of regulatory changes to reporting requirements.

(b) In conjunction with the provision of Back Office Services as a component of the PSMFB Services, PSMFB Service Provider shall also provide support to Buyer's ISO/RTO representatives, business representatives, and legal counsel on any FERC, other regulatory proceeding, arbitration or state/federal court proceeding under the same terms and conditions as Front Office Service No. 9(b).

PART 3: FRONT OFFICE, MID OFFICE, AND BACK OFFICE COORDINATION:

As a matter of appropriate and effective operating procedures, including accounting and financial controls (which operating procedures shall be reviewed with Buyer and further detailed in the Administrative Protocols and Procedures), the PSMFB Service Provider shall maintain a Front Office Services staff whose sole responsibility is to perform Front Office Services and a separate Back Office Services staff that is solely responsible for performing Back Office Services. The PSMMO Service Provider staff responsible for Mid Office Services, as defined in Appendix XIV, shall be separated from staff performing PSMFB Services and FM Services and shall report to different executive management. At no time, will an individual with Front-Office Services or Back- Office Services responsibilities associated with the PSMFB Services or services provided by the FM Services Provider be performing PSMMO Services. Provided PSMFB Service Provider exercises appropriate supervision and employs appropriate and effective accounting and financial controls consistent with Prudent Utility Practices, nothing herein shall prevent PSMFB Service Provider from reassigning and transferring staff to, and from, the Front Office, Mid Office or Back Office, or prevent such reassigned or transferred staff from performing Back Office Services or Front Office Services, respectively, when so reassigned.

(a) Front Office Services Staff Coordination with Back Office Services Staff: The Front Office Services staff shall provide Front Office Services data including: schedules, invoices, receipts, transaction records, and regular reports of its purchase, sales and scheduling activities to (i) Back Office Services staff, (ii) the PSMMO Service

Provider, as well as to (iii) Buyer and its consultants. In addition, the Front Office Services staff shall notify the Back Office Services staff, and the PSMMO Service Provider, as well as Buyer and its consultants when a New Buyer Contract is established, and provide a detailed description of the contract terms and conditions; and, as appropriate, provide corresponding contract administration services for such contract.

(b) PSMMO Service Provider Coordination: The PSMMO Service Provider is responsible for monitoring the performance of the PSMFB Service Provider and for providing regular reports to Buyer on how well the PSMFB Service Provider is (i) meeting Buyer's Load Requirements and (ii) managing the Power Supply Resources in a least cost manner that is consistent with Buyer Contracts, and with applicable Buyer policies, and regulations and reliability constraints. Accordingly, the Front Office Services staff and Back Office Services staff shall provide regular reports of its, and their, activities to the PSMMO Service Provider, as well as to Buyer and its consultants. For the avoidance of doubt and the purpose of clarity and except as provided in Appendix XIV, the Parties agree that PSMFB Service Provider shall not be providing any credit management services to Buyer and shall not be responsible for processing, reconciling, or monitoring any margin or collateral requirements for Buyer with regard to any contract associated with Power Supply Resources on Tables II-1a-e. In the event that such services are hereafter required and provided that the Parties mutually agree with respect to the terms and conditions of providing such services, such undertaking shall be treated, priced and performed as an Additional Service hereunder.

(c) Back Office Staff Coordination with Front Office Services Staff: The Back Office Services staff shall provide all Back Office Services data including: schedules, invoices, receipts, transaction records, and regular reports of its purchase, sales and scheduling activities to the (i) Front Office Services staff, (ii) the PSMMO Service Provider, as well as (iii) Buyer and its consultants. In addition, the Back Office Services staff shall provide all pertinent records for access by the Front Office Services staff, the PSMMO Service Provider, and Buyer and its consultants, including but not limited to, all accounting, administrative, transaction documentation, reconciliations, and settlement, financial reporting, compliance, dispute resolution support, and related reporting and

support services for all Front Office Services transactions performed and undertaken by the PSMFB Service Provider.

PART 4: AUDITS

Buyer shall have the right upon prior written notice and on Business Days to audit all PSMFB Service Provider transactions.

PART 5: BUSINESS CONTINUITY

As set forth in Section 4.7 and in Appendix VIII, the PSMFB Service Provider shall provide services that ensure business continuity in the event of a business disruption(s).

PSMFB Service Provider recognizes and acknowledges that the PSMFB Services are critical services to Buyer, and that Buyer relies on the performance of the PSMFB Service Provider, which is critically significant to the conduct of Buyer's business and to its ability to serve its customers.

A brief description of how the PSMFB Service Provider shall maintain continuous service during periods of business disruptions is set forth in Appendix VIII and a further detailed description shall be set forth in the Administrative Protocols and Procedures ("Business Continuity Plan"). The pricing to maintain and implement, if necessary, the Business Continuity Plan is included in the Total Annual Fees set forth in Appendix IV.

In the event of a business disruption, including but not limited to a Force Majeure Event, that adversely impacts the PSMFB Service Provider's performance to such an extent that it jeopardizes Buyer's ability to conduct its business and meet the needs of its customers, Buyer may, at its sole discretion, transfer such responsibilities to an alternate service provider in accordance with the provisions of the Agreement and as further detailed in the Administrative Protocols and Procedures until such business disruption has been resolved to Buyer's satisfaction.

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PART 6: CONFLICT OF INTEREST

Unless otherwise prohibited from such disclosure pursuant to the terms of a particular contract, the PSMFB Service Provider shall provide a list of, and shall disclose, any contracts it has with third parties to provide services similar to PSMFB Services. Such list shall be maintained and updated in the Administrative Protocols and Procedures.

The PSMFB Service Provider shall ensure that during the Base Term, and Extended Term, if applicable, the PSMFB Service Provider's services for, and involvement with clients other than Buyer, shall not create any conflict of interest with Buyer. The PSMFB Service Provider shall not perform any new services for an existing client or engage a new client that would involve a potential conflict of interest with Buyer without receiving from Buyer the express prior written waiver of the conflict. For the purpose of this Part 6, a new or existing client does not include any Affiliates of the PSMFB Service Provider. Further, notwithstanding any provision contained in this Agreement to the contrary, nothing herein shall preclude the PSMFB Service Provider from representing itself or any of its Affiliates before any regulatory or governmental authority, and if a conflict of interest should arise, then such conflict will be addressed in accordance with the procedures as provided in Section 4.18 of the Amended and Restated OSA.

The Parties acknowledge that, as of the PSMFB Effective Date, the PSMFB Service Provider shall comply with its own standards of conduct, which are set forth in the Administrative Protocols and Procedures, as they may be amended from time-to-time ("PSMFB Service Provider's Standards of Conduct"), and with Buyer's Standards of Conduct referenced in Appendix I, as amended from time-to-time. In the event of a conflict in such standards with respect to the PSMFB Services, the more restrictive standards of conduct shall control. In addition to the foregoing, PSMFB Service Provider specifically warrants that it shall not, and it shall monitor and supervise its employees and contractors engaged in trading activities on Buyer's behalf so that they shall not, disclose to any Person not authorized under this Agreement or by the specific, prior written consent of Buyer, or use information about Buyer, including, without limitation, information regarding Buyer's trading activities, the operation or status of the Power Supply Resources, for, with, on behalf of, or for any reason with respect to PSMFB

Service Provider, its Affiliates, any other client of PSMFB Service Provider and/or any other third party.

PART 7: ADDITIONAL SERVICES:

In accordance with Section 5.3, the Parties may agree that the PSMFB Service Provider shall perform additional services beyond those described or specified in this Agreement (“Additional Services”). Additional Services, which do not have a stated fee set forth in Appendix IV (e.g., negotiation of New Buyer Contracts) shall be paid by Buyer to PSMFB Service Provider in accordance with Appendix IV Part 3 and shall be performed by PSMFB Service Provider as agreed upon in writing by and between the Parties.

PART 8: LEGAL SERVICES:

Notwithstanding anything contained in this Agreement to the contrary, PSMFB Service Provider shall in no event and at no time provide legal services of any kind, including, but not limited to contract interpretation, tariff interpretation, legal representation, or advice and counsel on any matter to Buyer, Buyer’s Related Parties or Buyer’s Personnel. PSMFB Service Provider will comply with all rules, regulations, orders and laws.

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Table II-1a: PSA Units:

PSA Units:	Capacity (MW)	Contract Expiration³	Type Facility 1	Fuel
National Grid E.F. Barrett 1,2	385	2028	ST	Gas, Resid 2
National Grid Northport 1,2,3,4	1,552	2028	ST	Gas, Resid
National Grid Port Jefferson 3,4	383	2028	ST	Gas, Resid
National Grid E.F. Barrett 1-12	305	2028	SC	Gas, Resid
National Grid Wading River 1-3	241	2028	SC	Distillate
National Grid East Hampton 1	18	2028	SC	Distillate
National Grid Glenwood 1-3	115	2028	SC	Distillate
National Grid Holtsville 1-10	524	2028	SC	Distillate
National Grid Northport GT-1	13	2028	SC	Distillate
National Grid Port Jefferson GT	12	2028	SC	Distillate
National Grid Shoreham 1-2	64	2028	SC	Distillate
National Grid Southampton 1	7	2028	SC	Distillate
National Grid Southhold 1	12	2028	SC	Distillate
National Grid West Babylon 4	49	2028	SC	Distillate
National Grid East Hampton 2-4	6	2028	IC	Distillate

1 CC – Combined Cycle, ST – Steam, IC – Internal Combustion, SC – Simple Cycle Combustion Turbine, PS – Pumped Storage

2 Resid means residual oil.

3 The original Power Supply Agreement expired by its terms on May 27, 2013. The Amended and Restated Power Supply Agreement (“A&R PSA”) commenced its term on May 28, 2013 and ends April 30, 2028; however the terms of the A&R PSA provides LIPA the flexibility to terminate the contract any time after 12 years to the extent LIPA no longer needs the National Grid plants. If LIPA chose to exercise all of the repowering and ramp down provisions in the contract, there is the potential that LIPA could terminate earlier than 12 years. LIPA would have to provide at least two years advance notice to National Grid of LIPA’s election to terminate the contract.

Table II-1b: PPA Units¹:

PPA Units	Capacity (MW)	Contract Expiration	Type Facility ²	Fuel
Calpine Bethpage	77	2025	CC	Gas
Equus	47	2017	SC	Gas, Distillate
FPLE Bayswater	54	2020	SC	Gas
FPLE Jamaica Bay	55	2018	SC	Gas, Distillate
Pinelawn	75	2025	CC	Gas, Distillate
PPL Global Shoreham	76	2017	SC	Distillate
PPL Edgewood - Brentwood	79	2018	SC	Distillate
Village of Freeport	10	2034	SC	Gas, Distillate
NYPA Flynn	136	2014 ⁴	CC	Gas, Distillate
NYPA Gilboa	50	2015	PS/Hydro	Water
Global Common Greenport	48	2018	SC	Distillate
Bear Swamp	345	2021	PS/Hydro	Water
FPLE Marcus Hook	685	2030	CC	Gas
Caithness ³	326	2029	CC	Gas, Distillate
National Grid Glenwood	80	2027	SC	Gas, Distillate
National Grid Port Jefferson GT 2-3	79	2027	SC	Gas, Distillate
FitzPatrick	Energy Only	2014 ⁴	Nuc	Nuc
Brookfield Energy	Energy and RECs Only	2019	R	Hydro and Wind
PPL EnergyPlus – Cumberland Landfill	Energy and RECs Only	2019	R	Landfill Gas
Eastern Long Island Solar Project	11.3	2032	R	PV
Long Island Solar Farm	31.5	2031	R	PV

1 Any new generating facilities selected in the 2010 G&T RFP, or any subsequent procurement for capacity and/or energy resources are considered to be included in the scope of services for power supply management front and back office services.

2. CC Combined Cycle, ST Steam, IC Internal Combustion, SC Simple Cycle Combustion Turbine, PS Pumped Storage

3 LIPA's share is 286 MW, however the total capacity of the Caithness Plant is 326 MW.

4 All contracts with 2014 expiration will be included if extended beyond 2014.

Table II-1c: IPP Units:

IPP Units	Capacity (MW)	Contract Expiration	Type Facility [1]	Fuel
Babylon Resource Recovery ¹	14	2017; 5 year extension	ST	Refuse
Hempstead Resource Recovery ²	71	2017; 5 year extension	ST	Refuse
Huntington Resource Recovery ³	24	2017; 5 year extension	ST	Refuse
Islip Resource Recovery ⁴	9	2017; 5 year extension	ST	Refuse
Suez Nassau Energy	46	2016	CC	Gas, Distillate

1 The original Babylon Resource Recovery Parallel Generation Agreement was set to expire in 2013. LIPA entered into an Amended and Restated Parallel Generation on May 25, 2012 which has a 5-year base term, and Babylon's option to extend for an additional 5 years.

2 The original Hempstead Resource Recovery Parallel Generation Agreement expired in 2009. LIPA continued to purchase the facilities' output under LIPA SC-11 Tariff. LIPA entered into a Power Purchase Agreement on May 25, 2012 which has a 5-year base term, and Hempstead's option to extend for an additional 5 years.

3 The original Huntington Resource Recovery Parallel Generation Agreement was set to expire in 2012. LIPA entered into an Amended and Restated Parallel Generation on May 25, 2012 which has a 5-year base term, and Huntington's option to extend for an additional 5 years.

4 The original Islip Resource Recovery Parallel Generation Agreement expired in 2010. LIPA continued to purchase the facilities' output under LIPA SC-11 Tariff. LIPA entered into a Power Purchase Agreement on May 25, 2012 which has a 5-year base term, and Islip's option to extend for an additional 5 years.

Table II-1d: Buyer Owned Power Supply Resources:

<u>Buyer Owned Power Supply Resources</u>	Capacity (MW)	Type Facility ^[1]	Fuel
Nine-Mile Point 2*	224	ST	Nuclear
* Jointly-owned with Constellation Energy			

Table II-1e: Cable Resources:

Cable Resources	Capacity (MW)	Contract Expiration	Type Facility ^[1]
Cross Sound Cable	330	2032	DC Tie
Neptune Cable	660	2027	DC Tie
1385 Cable (also known as the Northport-Norwalk Cable)	200	N/A*	Scheduled AC Tie

* Jointly owned with Northeast Utilities, Inc.

Table II-1f: Generating Units for which No Services are Provided:

If Buyer requires services in connection with one or more of these Generating Units, such services would be provided as an Additional Service.

Bethpage (Oyster Bay) Landfill
Birchwood Nursing Home
Brookhaven National Lab
Central General Hospital
Connetquot High School
East Northport Landfill
Entenmanns
Fairway Manor
Fala Direct Marketing
Hofstra University
Hubbard Power and Light
Huntington Lodge
Huntington YMCA
Islip Landfill
John F Kennedy Junior High School
Lasalle Academy
Mercy Hospital
Nathan Hale Housing
Nesconset Nursing Home
Nissequogue Cogen
Oceanside Landfill
Park Nursing Home
Resort Nursing Home
Robert Frost Junior High School
Rockaway Care Center
Ronkonkoma Junior High School
Sayville Junior High School
Smithtown High School
South Oaks Hospital
Southampton College
St. Charles Hospital
St. Johnsland Nursing Center
SUNY Farmingdale
TBG Cogen
Village of Rockville Centre
Waldbaums
Yaphank Landfill

APPENDIX III - TRANSITION PLANS

PART 1: FRONT-END TRANSITION PLAN

Pursuant to Section 3.1(a) and Appendix IX, the PSMFB Service Provider shall perform and support the services set forth below (“Front-End Transition Services”) with all such services collectively being referred to as the “Front-End Transition Plan”. The PSMFB Service Provider will assist Buyer in preliminary planning for Front-End Transition Services prior to the PSMFB Effective Date, subject to PSMFB Service Provider limitations on manpower and expenses recognizing that Buyer’s payments to the PSMFB Service Provider for Front-End Transition Services shall be made in accordance with the completion of milestones set forth in Appendix IV.

Subject to Section 2.1 and Appendix IX, and upon the Front-End Transition Start Date, the PSMFB Service Provider shall promptly commence performance of the following activities:

- Meet with all the current and future Buyer stakeholders (e.g., Buyer, CEE and the PSMMO Service Provider) on a regular basis to assess the progress of transition processes;
- Allocate PSMFB Service Provider personnel for the new responsibilities related to this Agreement, and start training the regular and back up personnel who will perform the PSMFB Services;
- Design, build and test the web portal in order for Buyer to provide and receive relevant data and reports;
- In conjunction with Buyer and the PSMMO Service Provider prepare and compile the Administrative Protocols and Procedures for PSMFB Services, as required by the various processes and communication protocols set forth or described in Appendix II, or otherwise in this Agreement;
- File applications for issuance or transfer of any permits and other licenses as required by this Agreement with ISO/RTO, FERC and other regulatory agencies;

- Collect all relevant information about Buyer's Power Supply Resources such as: MW rating versus temperature curves, heat rate ratings and start up times and ramp rates in order to build a short-term economic dispatch model. Research mid and long-term economic dispatch models for possible purchases and sales of power;
- Simulate dispatch and power purchase and sale decisions for evaluation by Buyer;
- Collect all the information required to update and upgrade the IT System in order to implement hardware installation and in order to upgrade and customize the software platform for Buyer, and work on any software compatibility issues;
- Transfer market and accounting data from CEE and Buyer as necessary to perform PSMFB Services;
- Using historical data, test applicable trade, accounting and IT System and verify all the reports for accuracy;
- Test (i) the interface with Buyer's servers and (ii) the information look up capability and production of the reports needed by Buyer, as described in the Administrative Protocols and Procedures; and
- Test and demonstrate that the PSMFB Services work in parallel with those PSMFB Services being provided by CEE for SIXTY (60) Days, and then begin performing PSMFB Services starting January 1, 2015 or such other date in accordance with the Agreement.

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PART 2: BACK-END TRANSITION PLAN

Pursuant to Section 3.1(b) of this Agreement, the PSMFB Service Provider shall perform and support the services outlined below and as may be more fully set forth in the Administrative Protocols and Procedures (“Back-End Transition Services”) with all such services collectively being referred to as the “Back-End Transition Plan”. Payments for Back-End Transition Services shall be made in accordance with Appendix IV Part 4 and the Final Back-End Transition Plan developed in accordance with Section 3.1(b).

The Back-End Transition Services include those services required to accomplish an orderly “hand off” of responsibilities, if necessary, to a subsequent service provider or Buyer which shall include:

- Transfer of ISO/RTO-related and historical data;
- Transfer of accounts payable and receivable information;
- Transfer of risk system data (contracts, positions, counterparties, and credit); and
- Completion of 60 Days of live system and simultaneous operation with new PSMFB service provider.

Details regarding the Back-End Transition Plan shall be set forth in the Administrative Protocols and Procedures.

PART 3: MODIFIED BACK-END TRANSITION SERVICES, BUYER DATA TRANSFER SERVICES AND NO BACK-END TRANSITION SERVICES

In accordance with Section 2.4 and subject to Section 13.12, in the event of an Early Termination, the PSMFB Service Provider shall perform Modified Back End Transition Services, or Buyer Data Transfer Services, or No Back-End Transition Services as specified by Buyer. Payment for Modified Back End Transition Services, Buyer Data Transfer Services, or No Back-End Transition Services shall be in accordance with Appendix IV Part 5.

The Modified Back-End Transition Plan and Buyer Data Transfer Services shall include the following services:

- Those services required to accomplish an orderly “hand off” of responsibilities, if necessary, to a subsequent service provider or Buyer which shall include, transfer of ISO-related and historical data;
- Transfer of accounts payable and receivable information; and
- Transfer of risk system data (contracts, positions, counterparties, and credit).

Details regarding the Modified Back-End Transition Plan, Buyer Data Transfer Services and No Back-End Transition Services shall be set forth in the Administrative Protocols and Procedures.

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**APPENDIX IV - PSM FRONT AND BACK OFFICE SERVICES PRICING
AND PAYMENT SCHEDULE**

PART 1: FRONT-END TRANSITION PERIOD

In regard to the implementation of PSM EDM , as set forth in Appendix IX, the total price for all Front-End Transition Services to be provided during the Front End Transition Period shall equal \$13,000,000 (the “FETP Price”) and payments, in the corresponding amount, shall be made upon achieving each milestone set forth below in Table IV -1.

(a) Front End Transition Period Milestone Payment Schedule

If the PSMFB Effective Date occurs on or before December 1, 2013, the following table provides the Milestone, Target Milestone Dates, Milestone Completion Criteria, and Milestone Payments.

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Table IV – 1: Front-End Transition Milestone Payment Schedule

Milestone	Target Milestone Date	Milestone Completion Criteria	Milestone Payment (\$1,000s)
PSMFB Effective Date attained in accordance with Section 2.1(a)	January 1, 2014	Buyer's written notice to PSMFB Service Provider that PSMFB Effective Date has occurred	1,000
Purchase Software Licenses (Bid/Offer Tool, Trade Capture Tool, and a Settlement Tool, Asset Logging Tool)	Feb 24, 2014	PSMFB Service Provider's written certification that software licenses have been purchased	3100
IT Hardware Purchase	Feb. 24, 2014	PSMFB Service Provider's written certification that all required hardware has been purchased	250
Prepare Load Forecasting Tool and Checking	Feb. 28, 2014	PSMFB Service Provider's written certification that Itron MetrixIDR preparation and checking has begun	100
Start Personnel Training	March 7, 2014	PSMFB Service Provider's written certification that personnel training has begun	200
Bid/Offer Completion Milestone	April 15 2014	PSMFB Service Provider's written certification that Bid/Offer Tool has been completed	500
Load Forecasting Completion Milestone	May 2, 2014	PSMFB Service Provider's written certification that Load Forecasting Tool and successfully tested	500
Completion of Personnel Training	June 30, 2014	PSMFB Service Provider's written certification that personnel training has been completed	1,500
Web Portal Completion Milestone	August 29, 2014	PSMFB Service Provider's written certification that web portal has been completed	800
Completion Milestones (Trade Capture Tool, Settlement Tool)	July 25, 2014	PSMFB Service Provider's written certification that Trade Capture and Settlement Tools have been completed	2,800
Completion of Administrative Protocols & Procedures	Sept. 12, 2014	Both Parties signatures on the Administrative Protocols & Procedures	250
Completion of Reports Design and Setup	Sept. 30, 2014	Acceptance by Buyer of PSMFB Service Provider's initial run of reports.	250
Completion of IT system testing	Oct. 10, 2014	Written certification that PSMFB Service Provider's IT System have completed testing	500
Start 60 Days Live System and Simultaneous Operations with CEE PSMFB Agreement	Oct. 17, 2014	Date of receipt of PSMFB Service Provider's notice of start of Live System Test	250
Business Continuity Plan Testing	November 14, 2014,	Buyer's acceptance of PSMFB Service Provider's Business Continuity Plan testing report	750
Completion of Live System and Simultaneous Operations with CEE PSMFB Agreement	Dec. 19, 2014	Written certification that live system and simultaneous operations with CEE PSMFB Agreement has been successfully completed	250
		TOTAL PAYMENTS	\$13,000

The Parties may mutually agree in writing to adjust any of the Target Milestone Dates, the Milestone Completion Criteria and Milestone Payments depending on actual

circumstances that exist at the time including, but not limited to progress towards completion, brief delays or schedule acceleration.

(b) Front End Transition Period Delay Pricing

If the PSFMB Effective Date occurs after December 1, 2013, then the Milestone Payments in Table IV-1 shall increase by 20% or as provided in Section 2.1.

PART 2: BASE TERM AND EXTENDED TERM, IF APPLICABLE, PRICING SUMMARY

The total annual fee for the PSMFB Services provided during the Base Term and Extended Term, if applicable, shall consist of two components: (1) the annual fee of providing PSMFB Services which are fixed for the first year of the Base Term and escalate annually thereafter as set forth below (“Annual Fee”) and (2) the management fee for providing PSMFB Services which is an annual fixed fee for the Base Term and Extended Term, if applicable (the “PSMFB Services Management Fee”) (the Annual Fee and the PSMFB Services Management Fee collectively the “Total Annual Fee”).

The Annual Fee component will escalate at the New York State CPI in each year of the Base Term and Extended Term, if applicable, on the anniversary of the PSMFB Services Start Date. The New York State CPI is the Bureau of Labor Statistics CPI index for "All Urban Consumers for NY, NJ, CT, PA: Series ID CUURA101SA0" as quoted on the website: <http://www.bls.gov/ro2/home.htm>, or successor website (the “Escalation Rate”). The PSMFB Services Management Fee shall not be subject to escalation during the Base Term and Extended Term, if applicable.

Buyer shall pay the sum of the (1) Annual Fee and (2) the PSMFB Services Management Fee in twelve (12) equal Monthly payments.

Table IV–3: PSMFB Service Management Fee and Annual Fee for Contract Year 1

PSMFB Services	PSMFB Services Management Fee	Annual Fee (subject to escalation at the Escalation Rate after Contract Year 1)	Total Annual Fee
Base Term – Contract Year 1	\$2,000,000	\$6,900,000	\$8,900,000

(a) Additional Services for Off-Hours Staffing Options

Contract Off-Hours Staffing is included in the Annual Fee for any Contract Year in the Base Term and Extended Term, if applicable.

In Contract Year 1, the applicable Annual Fee includes the cost of providing Modified Off-Hours Staffing.

For Contract Years 2 to 10 of the Base Term or any subsequent Contract Year in the Extended Term, if applicable, PSMFB Service Provider shall provide Modified Off-Hours Staffing at the yearly rate of \$450,600 plus Multi-Year Escalation.

If Buyer requires the PSMFB Service Provider to provide One-Person Off-Hours Staffing, for any Contract Year, such service shall be provided as an Additional Service at the yearly rate of \$850,000 plus Multi-Year Escalation.

If Buyer requires the PSMFB Service Provider to provide Two-Person Off-Hours Staffing, for any Contract Year, such service shall be provided as an Additional Service at the yearly rate of \$1,350,000 plus Multi-Year Escalation.

“Multi-Year Escalation” means that the amount to be charged for such Additional Service shall be an amount that has been escalated at the applicable Escalation Rate for each year between Contract Year 1 and the Contract Year the applicable Off-Hours Staffing is to be provided. For example, if One Person Off-Hours Staffing is requested in Contract Year 3 and the Escalation Rate for Year 2 is 1% and the Escalation Rate for Contract Year 3 is 2%, then the amount to be charged for such Additional Service (which charge shall be escalated yearly thereafter in accordance with the Escalation Rate) shall equal the product of \$850,000 multiplied by 101% multiplied by 102% which equals \$875,670.

(b) Intentionally Omitted

(c) Performance Penalty

The calculation of the Annual Penalty due, if any, for a Contract Year shall be calculated after the last Day in the applicable Contract Year in accordance with Appendix V. If the PSMFB Service Provider's performance for a Contract Year results in an Annual Penalty, pursuant to Appendix V, Buyer shall notify PSMFB Service Provider in accordance with the Administrative Protocols and Procedures, and, the PSMFB Service Provider shall reduce its next Monthly invoice to Buyer by the amount of such Annual Penalty. In the event that the next Monthly invoice is less than the Annual Penalty, PSMFB Service Provider shall continue to reduce its Monthly invoices until Buyer has been fully credited with the amount of the applicable Annual Penalty. In no event shall the Annual Penalty for any Contract Year exceed the Maximum Aggregate Penalty for the applicable Contract Year.

PART 3: ADDITIONAL SERVICES PRICING SUMMARY

The Parties may agree in writing that the PSMFB Service Provider shall provide to Buyer additional services beyond those specified in this Agreement ("Additional Services"). Additional Services that do not have a specific rate set forth in this Agreement or as otherwise agreed to by the Parties (e.g., negotiation of contracts with third parties) in writing shall be paid by Buyer to PSMFB Service Provider on a time-and-material basis, as set forth below, and shall be performed by PSMFB Service Provider as agreed to in writing by the Parties.

PSMFB Service Provider shall be compensated its actual, reasonable and verifiable costs incurred in procuring materials, subcontractors, IT services, software license, and other similar items in preparation for and in performing such Additional Services, plus an adder of 10%. PSMFB Service Provider shall also be compensated for the time of its own personnel in preparing for and performing Additional Services at the following hourly rates, which rates shall escalate as set forth below:

Table IV – 4: PSMFB Services Contract Year 1 Hourly Rates

<u>Contract Year 1</u>	<u>Hourly Rates</u>
Officer	\$450/hour
Director	\$250/hour
Manager	\$150/hour
Analyst	\$100/hour
Administrative Support	\$ 50/hour

The Contract Year 1 Hourly Rates shall apply to the Front-End Transition Period and to Contract Year 1 for Additional Services and shall be escalated thereafter at the applicable Multi-Year Escalation Rate for each year after Contract Year 1. For example, if Additional Services are requested in Contract Year 3 requiring the use of a Manager and the Escalation Rate for Year 2 is 1% and the Escalation Rate for Contract Year 3 is 2%, then the hourly rate for that Manager in Contract Year 3 is \$154.53 and such rate shall escalate thereafter at the Escalation Rate.

The charges for Additional Services shall not be added to the Annual Fees or the PSMFB Services Management Fee. The charges for Additional Services shall not be included in the calculation of any penalties hereunder, including, but not limited to the Maximum Aggregate Penalty. The charges for Additional Services shall be separately stated on the PSMFB Service Provider's Monthly invoice prepared and sent to Buyer pursuant to Section 6.1.

PART 4: BACK END TRANSITION PRICING SUMMARY

For the services provided by the PSMFB Service Provider as described in the section "PART 2: BACK-END TRANSITION SERVICES" of Appendix III, as such services may be modified in order to develop the Final Back-End Transition Plan pursuant to Section 3.1(b), in the last Contract Year, Buyer shall pay the PSMFB Service Provider a Back-End Transition Payment comprised of a fixed fee of 40% of the Annual Fee (as escalated in accordance with the Escalation Rate) in accordance to the Milestone Schedule in the Final Back-End Transition Plan in addition to the Annual Fee and PSMFB Services Management Fee applicable to such year.

PART 5: MODIFIED BACK-END TRANSITION SERVICES, BUYER DATA TRANSFER SERVICES, NO BACK-END TRANSITION SERVICES PRICING SUMMARY

For the services provided by the PSMFB Service Provider as described in the section “PART 3: MODIFIED BACK-END TRANSITION SERVICES, BUYER DATA TRANSFER SERVICES AND NO BACK-END TRANSITION SERVICES” of Appendix III, Buyer shall pay the PSMFB Service Provider for such Modified Back-End Transition Services and Buyer Data Transfer Services, as applicable, as Additional Services, in accordance with “PART 3: ADDITIONAL SERVICES PRICING SUMMARY” of Appendix IV and Buyer shall also reimburse PSMFB Service Provider its Severance Costs, not to exceed 40% of the applicable Annual Fee.

For the No Back-End Transition Period Services option of Appendix III, Buyer shall reimburse PSMFB Service Provider its Severance Costs, not to exceed 35% of the Annual Fee referenced above.

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APPENDIX V PERFORMANCE STANDARDS

PART 1:

1. Performance Metrics Process.

The performance metrics set forth in Table V-1 shall be used to measure the PSMFB Service Provider's performance against the Performance Standards ("Performance Metrics"). The PSMFB Service Provider may be subject to an annual penalty based on its performance in the applicable Contract Year as determined by the Performance Metrics set forth in this Appendix V (the "Annual Penalty"). The Annual Penalty for a Contract Year shall in no event exceed the applicable Maximum Aggregate Penalty as defined herein.

The Maximum Aggregate Penalty that may be imposed for a Contract Year shall equal 10.65% of the Total Annual Fees for such Contract Year, excluding any fees for Additional Services including, but not limited to, Additional Services for Modified Off-Hours Staffing, One-Person Off-Hours Staffing or Two-Person Off-Hours Staffing ("Maximum Aggregate Penalty").

If the PSMMO Service Provider is unable to monitor and report on any Performance Metrics or in the Event of Force Majeure (a "Monitoring Outage"), then the Maximum Aggregate Penalty will be reduced by the Weighting Factor of the affected Performance Metrics for the duration of Monitoring Outage; provided however, that such Monitoring Outage is not due, in whole or in part, to failure of the PSMFB Service Provider to meet its obligations under this Agreement, unless such failure is due to a Force Majeure Event. Thus, the Maximum Aggregate Penalty that may be imposed on the PSMFB Service Provider for its performance in Contract Year 1 of the Base Term, assuming no Monitoring Outages, is equal to \$870,702.50.

Example of a Monitoring Outage: If the Weighting Factor for a Performance Metric subject to a Monitoring Outage is 10% and the duration of the Monitoring Outage

is one (1) Month, then the Maximum Aggregate Penalty for that Contract Year would be $[1 - (\text{Performance Metric \%} \times \text{fraction of year}) \times (\text{Maximum Aggregate Penalty})] = [1 - (0.10 \times 1/12 \times \$870,702.50)] = \$863,446.67$.

Actual performance that is better than the Offset Trigger, as defined below, is defined as “Favorable Performance.” Actual performance that is worse than the Penalty Trigger, as defined below, is defined as “Unfavorable Performance.” Favorable Performance will be used to offset Unfavorable Performance.

2. Performance Metrics Annual Penalty.

(a) Each Performance Metric shall be assigned weighting points for either Favorable Performance or Unfavorable Performance, as defined herein, respectively (“Weighting Points”).

(i) Weighting Points for Favorable Performance shall be positive integers.

(ii) Weighting Points for Unfavorable Performance shall be negative integers.

(iii) Penalty triggers and offset triggers shall be established such that positive integers can fully offset negative integers for each Performance Metric. A penalty trigger, as listed in Table V-2 Option A, refers to a level of Unfavorable Performance that results in a score that does not satisfy the Benchmark (“Penalty Trigger”). An offset trigger, as listed in Table V-2 Option A, refers to a level of Favorable Performance that results in a score that satisfies the Benchmark (“Offset Trigger”). A trigger event is either a Penalty Trigger or an Offset Trigger (each a “Trigger Event”).

(b) The Annual Penalty shall be calculated as follows: (i) if the sum of all Weighting Points for all Performance Metrics is greater than or equal to zero, the Annual Penalty shall equal zero, or (ii) if the sum of all Weighting Points for all Performance

Metrics is less than zero, then the absolute value of the sum of all Weighting Points for all Performance Metrics shall be divided by the sum of the maximum possible Weighting Points for all Performance Metrics (the “Denominator”) and expressed as a percentage. The resulting percentage is multiplied by the Maximum Aggregate Penalty to calculate the Annual Penalty, if any. For the avoidance of doubt and the purpose of clarity, the Maximum Aggregate Penalty shall be calculated for each Contract Year, even though certain performance metrics may require monthly, daily, or hourly calculations. In the event of such monthly, daily or hourly calculations, such calculations shall be netted for the purpose of calculating the Maximum Aggregate Penalty.

(c) To the extent that an Annual Penalty would have otherwise exceeded the Maximum Aggregate Penalty in any Contract Year, such excess shall not be accumulated or carried forward to succeeding, or back to prior, Contract Years.

(d) For the avoidance of doubt and the purpose of clarity, the PSMFB Service Provider shall be subject to the payment of the Annual Penalty up to the Maximum Aggregate Penalty for Unfavorable Performance. In no event shall Buyer be responsible to make any payment for Favorable Performance to the PSMFB Service Provider relating to Performance Metrics in any Calendar Year or over the Base Term or Extended Term, if applicable. Offset(s) shall not be accumulated or carried forward to succeeding, or back to prior Calendar Years. Each Contract Year Performance Metrics shall be evaluated without consideration of the scores received during prior Contract Years.

Example of: No Contract Year-to-Contract Year Offset Calculation:

The PSMFB Service Provider receives a Favorable Performance on an overall basis for the third (3rd) Contract Year with excess offsets. In such an event the PSMFB Service Provider shall not have to pay an Annual Penalty for such Contract Year.

In the fourth (4th) Contract Year the PSMFB Service Provider receives an Unfavorable Performance and is required to pay an Annual Penalty to Buyer. In this example any Offsets from the third (3rd) Contract Year would not be credited towards the fourth (4th) Contract Year's Annual Penalty to reduce the amount of Annual Penalty owed by the PSMFB Service Provider to the Buyer.

3. Monitoring and Reporting.

The PSMFB Service Provider shall provide the PSMMO Service Provider full access to all Records so that it may monitor and report on such Performance Metrics on Buyer's behalf.

4. Performance Metrics Chart

The Performance Metrics are defined in the attached Table V-1, labeled "Performance Metrics" and such Performance Metrics shall be used for Contract Year 1. On annual basis, the Parties shall review the Performance Metrics and may modify for any Contract Year in the Base Term, and or Extended Term, if applicable, the Performance Metrics, including, but not limited to omitting certain Performance Metrics, provided, however that the agreed to modifications and/or omissions are (i) set forth in writing in the Administrative Protocols and Procedures; (ii) provide for substantially similar incentives and risks as set for in the original Performance Metrics set in Contract Year 1; and (iii) do not eliminate the measurement of Performance Standards. The relative weight ("Weighting Factor") and defined level of performance ("Benchmark") for each metric are also shown in Table V-1. If a numeric value for a Benchmark is not specified in Table V-1, the Parties shall apply the stated Benchmark criteria to establish the numeric value to be set forth in the Administrative Protocols and Procedures. A measurement mechanism for each metric shall be established by the Parties and set forth in the Administrative Protocols and Procedures. Table V-2 sets forth sample calculations of penalties using sample Penalty Trigger Levels, Offset Trigger Levels, and Penalty Scales. The Performance Metrics, Weighting Factors, Benchmarks, and measurement mechanisms will be periodically reviewed by the Parties and may be revised as agreed to by the Parties and set forth in the Administrative Protocols and Procedures.

Table V-1: Performance Metrics:

Metric No.	Performance Metrics	Benchmarks & Weightings
1	<p>Cable Schedule Effectiveness³: PSMFB Service Provider's performance in maximizing the economic benefit of Cable Resources⁴ to Buyer and Buyer's ratepayers.</p> <p>For each hour, compare the Day Ahead LMP On-Island with the Day Ahead LMP Off-Island (across each Cable Resource). The Performance Metric shall be measured hourly using:</p> <ul style="list-style-type: none"> • <i>Equivalent Available MWh</i> means the total transfer capability in MWh over Cable Resources less any impact of Cable Outages⁵ and less Buyer's Cable Curtailments⁶ and adjusted for losses; and, • <i>LMP Difference</i> is the difference between the LMP On-Island and the LMP Off-Island • <i>Deficiency</i> means scheduled Equivalent Available MWh for which the Day Ahead LMP On-Island is less than the Day-Ahead LMP Off-Island times the LMP Difference; and, • <i>Lost Opportunity</i> means unscheduled Equivalent Available MWh when the Day Ahead LMP On-Island is greater than the Day-Ahead LMP Off-Island times the LMP Difference; and, • <i>Impact</i> means sum of Lost Opportunity and Deficiency. <p>The sum of the Impact for each hour of the year will equal the Annual Impact. An Annual Impact Benchmark shall be defined in the Administrative Protocols and Procedures.</p>	<p>10% weighting</p> <p>Benchmark based on historical performance, adjusted for energy price levels.</p>
2	<p>Bid Reporting / Documentation: for all Required Reports and Required Documentation to be specified by Buyer in the Bid Reporting / Documentation Guidelines set forth in the Administrative Protocols and Procedures, measure the number of all Required Reports and Required Documentation submitted after the respective Deadlines. The Performance Metric shall be reported to Buyer on a Monthly basis. The Benchmark shall be applied for each Contract Year.</p>	<p>5 % weighting</p> <p>95% of Required Reports and Required Documentation submitted by their respective deadlines.</p>
3	<p>Bid Accuracy⁷: measured on a Daily basis and reported on a Monthly basis. The Benchmarks shall be applied for each Contract Year. Based on deviation of data used by PSMFB Service Provider to formulate bids from bid input data provided to PSMFB Service Provider by Buyer. The Performance Metric is to be measured in the following two ways:</p> <ul style="list-style-type: none"> • <i>Number of Errors:</i> Calculate the number of errors (including errors of omission) in bid parameters (e.g. unit availability, fuel type, fuel price, HR curves, O&M, startup costs, ramp rates) in all hours. • <i>Dollars:</i> Calculate the total annual dollar impact of errors (including errors of omission). Example 1: if a bid of \$10 should have been entered for 100 MWh, and the bid entered was \$1, this Performance Metric would be calculated as (\$10 - \$1)*100 	<p>10% weighting (5% each)</p> <ol style="list-style-type: none"> 1. 60 errors per year 2. Aggregate Annual Cost of bid errors

³ This Performance Metric is not applicable to the 1385 or Y49/50 cables.

⁴ For the purposes of the Cable Schedule Effectiveness metric, "Cable Resources" means the Cross Sound Cable and the Neptune Cable.

⁵ Cable Outages means for Cable Resources: Maintenance Outages, Forced Outages, Miscellaneous Curtailments and Derates.

⁶ Cable Resource Curtailments means curtailments ordered by any ISO (NYISO, ISO-NE, or PJM) or by Buyer.

⁷ Bid Accuracy Performance Metric is not intended to measure deviations from the forecasted price vs. the actual price, rather, this Performance Metric is designed to measure the accuracy in translating input data, in whatever form, into accurate Bids.

Metric No.	Performance Metrics	Benchmarks & Weightings
	MWh = \$900, provided that the bid was accepted at the bid price. Example 2: If a bid of \$10 for 100 MWh and the bid entered was \$10 for 1,000 MWh, this metric would be calculated as $(\$10 \times (1,000-100)) = \900 .	
4	<p>Adherence to Bidding Strategy and Process: This Performance Metric shall be measured on a daily basis and reported to Buyer on a Monthly basis. The Benchmark shall be applied for each Contract Year. The Performance Metric measures the PSMFB Service Provider's adherence to either (a) Energy Bidding Guidelines, or (b) other Buyer Documented and Approved Strategies (collectively "<u>Guidelines</u>") which shall be set forth in the PSMFB Administrative Protocols and Procedures.</p> <p>The Buyer shall, when necessary, with input from the PSMFB Service Provider, define specific parameters and notification requirements and process(es) for permitted deviations from the Guidelines.</p> <p>In addition to any notification requirements set forth by Buyer, the PSMFB Service Provider shall provide Buyer, on a monthly basis, a summary of all deviations from the Guidelines including the date and time of the deviation, the reason for the deviation, the duration of the deviation and the resulting impact to Buyer of the deviation.</p>	<p>15% weighting</p> <p>Rolling 98 % annual adherence rate</p>
5	<p>Contingent Bid Responsiveness: Effectiveness of PSMFB Service Provider's response time to contingent events (generator, cable, fuel, supply disruptions etc.). Contingent Bid Guidelines shall be developed by PSMFB Service Provider and revised and approved by Buyer and shall specify defined Trigger Events which, in turn, shall generate and transmit an automated, electronic notification or phone notification of such an event.</p> <p>The PSM Service Provider shall confirm the receipt of the Trigger Event notification within 30 minutes and maintain a log for each Trigger Events that contains a description of the event, the time stamp of the transmittal of the notification, the time stamp of the receipt of the notification, the time stamp and description of the response (e.g., "adjust bids", "no action"). If appropriate, no action is a valid response to a Trigger Event.</p>	<p>5% weighting</p> <p>95% annual on-time response to Trigger Events.</p>
6	<p>Fuel Economics – Annual Gas Balancing Cost: This Performance Metric applies only to natural gas balancing charges associated with generating units that are not under the PSA. The metric is a measure of the PSMFB Service Provider's ability to optimize balancing charges to Buyer. The Benchmark shall be applied for each Contract Year.</p> <p>The measurement of this Performance Metric will be as set forth in the Administrative Protocols and Procedures.</p>	<p>5% weighting</p> <p>Annual Benchmark would be based on historical performance, adjusted for gas price levels.</p>
7	<p>Annual Significant Financial Loss: This Performance Metric measures or reflects actual financial loss to Buyer solely attributable to the fault of the PSMFB Service Provider in its performance under the Agreement. If such an event is covered by any other Performance Metric, the event shall be counted, at LIPA's option, in the measurement of the Significant Financial Loss Performance Metric or the other applicable Performance Metric, but not both.</p>	<p>15% weighting</p>
8	<p>PSM Enterprise Data Management: This Performance Metric is designed to measure, on a daily basis, the accuracy and timeliness of data that is posted by the PSMFB Service Provider into the Staging Area with such data being ready for download to the Buyer. Specifically, the metric measures the extent to which (i) the data is posted in a timely manner, (ii) the data is accurate as posted, as of the time of the posting, (iii) the data is updated, as appropriate, in a timely and accurate manner; and (iv) data obtained from Buyer or third parties that is determined to be incorrect or inaccurate by the PSMFB Service Provider as incorrect or inaccurate is reported as such in a timely manner and corrected if possible.</p> <p>The Benchmark shall be applied for each Contract Year.</p>	<p>5% weighting</p>

Metric No.	Performance Metrics	Benchmarks & Weightings
9	<p>Load Forecasting: This Performance Metric is designed to measure, on an hourly basis, the accuracy of the Load Forecast used by the PSMFB Service Provider for PSM purposes. To calculate the metric, measure the hourly differential between the Forecast Load (Forecast Load means the forecast for Buyer Customer Load (bundled customers only) submitted to the NYISO) and the corresponding Actual Load (Actual Load means the hourly actual Buyer Customer Load (bundled customers only) for each hour based on control room measurements as reported the following day). The comparison for each hour is to be calculated and reported on a weekly basis with the performance metric determined for each Contract Year.</p> <p>Note: the Forecast load could differ from the scheduled load.</p> <p>For each hour, calculate:</p> <p>Absolute Forecast Error (%) = (ABS [Forecast Load – Actual Load])/Actual Load</p> <p>The annual average Absolute Forecast Error shall be calculated as the average of the hourly forecast errors. The Benchmark shall be applied on an annual basis.</p>	5% weighting
10	<p>Capacity Market: This Performance Metric measures the effectiveness of the PSMFB Service Provider in meeting Buyer’s Statewide Capacity Requirement at a lower cost than Buyer would otherwise pay in the corresponding monthly Statewide Capacity Market auctions. This Performance Metric does not apply to the Locational (Long Island) Capacity market transactions. The Benchmark shall be applied for each Contract Year.</p>	<p>5% weighting</p> <p>Benchmark = annual cost of meeting Buyer’s Rest-of-State Capacity requirements in monthly auctions</p>
11	<p>Overall Satisfaction: This Performance Metric is designed to measure Buyer’s overall satisfaction with the PSMFB Service Provider’s performance. Factors such as effective communication with Buyer and other service providers, accuracy and availability of market information, responsiveness, sound business judgment, value-added recommendations, and any other factors deemed relevant by Buyer will be considered. The Benchmark shall be applied for each Contract Year.</p>	20% weighting

PART 3 – PERFORMANCE METRICS AND TERMINATION:

In the event of termination because of an Event of Default by Buyer, the Parties agree that PSMFB Service Provider’s performance will not be measured and the Performance Metrics shall be suspended during the Interim Period. For the purposes of calculating an Annual Penalty, if any, for the portion of the applicable Contract Year, prior to the commencement of the Interim Period, such Interim Period shall be treated as a Monitoring Outage.

Table V – 2: Option A - Sample Performance Metrics Calculation Table

Metric Number	Performance Metrics	Weighting Factor	Benchmark	Sample Penalty Trigger Level	Sample Offset Trigger Level	Sample Penalty Scale	Sample Actual Performance (For Illustration Only)	Sample Weighting Points (for Illustration Only)
1.	Cable Schedule Effectiveness	10%	Annual Impact Benchmark (Impact = Lost Opportunity + Deficiency), to be based on historic performance adjusted for energy price levels.	Benchmark + \$X.	Benchmark - \$X.	1 weighting point for each \$Y million dollars above/below trigger levels with a maximum of 10 for both penalty points and offset points.	Penalty Trigger + 10Y	-10
2.	Bid Reporting / Documentation	5 %	95% of Reports and Required Documentation submitted timely for the year	95%	95%	1 weighting point for each percentage point performance above/below trigger levels with a maximum of 5 for both penalty points and offset points.	100%	5
3.	Bid Accuracy – Number of Errors	5%	60 errors per year	60 errors per year	60 errors per year	1 weighting point for each error above/below trigger levels with a maximum of 5 for both penalty points and offset points.	70 errors in a year	-5
4.	Bid Accuracy – Aggregate Annual Cost	5%	\$X million annual cost of bid errors.	\$X million in annual cost	\$X million in annual cost	1 weighting point for each \$Y million dollars above/below trigger levels with a maximum of 5 for both penalty points and	\$X + 3Y	-3

Metric Number	Performance Metrics	Weighting Factor	Benchmark	Sample Penalty Trigger Level	Sample Offset Trigger Level	Sample Penalty Scale	Sample Actual Performance (For Illustration Only)	Sample Weighting Points (for Illustration Only)
						offset points.		
5.	Adherence to Bidding Strategy and Process	10%	98% annual adherence	98%	98%	1 weighting point for each 0.2% above/below trigger levels with a maximum of 10 for both penalty points and offset points.	98.4%	2
6.	Contingent Bid Responsiveness	5%	95% annual on-time response to Trigger Events.	95%	95%	1 weighting point for each percentage point above/below the trigger levels with a maximum of 5 for both penalty points and offset points.	85%	-5
7.	Fuel Economics – Annual Gas Balancing Cost	5%	Based on historic performance, adjusted for gas price levels.	Benchmark + \$X.	Benchmark - \$X.	1 weighting point for each \$Y million dollars above/below trigger levels with a maximum of 5 for both penalty points and offset points.	Penalty Trigger + 10Y	-5
8.	Annual Significant Financial Loss	10%	\$Z	\$Z	\$Z	1 weighting point for each \$Y million of loss above/below triggers with a maximum of 10 for both penalty points and offset points.	\$0	10
9.	PSM	5%	X% of all data	X%	X%	1 weighting	X - 2%	- 2

Metric Number	Performance Metrics	Weighting Factor	Benchmark	Sample Penalty Trigger Level	Sample Offset Trigger Level	Sample Penalty Scale	Sample Actual Performance (For Illustration Only)	Sample Weighting Points (for Illustration Only)
	Enterprise Data Management:		posted to Staging Area accurately and timely for the year			point for each percentage point above/below trigger levels with a maximum of 5 for both penalty points and offset points.		
10.	Load Forecasting:	5%	X% Annual Average Absolute Forecast Error	X+1%	X-0.5%	1 weighting point for each .1% above the penalty trigger or below the offset trigger with a maximum of 5 for both penalty points and offset points.	Penalty Trigger + .5%	-5
11.	Capacity Market:	5%	Annual Cost of meeting Rest-of-State (i.e., non-Long Island) Capacity Requirement in Monthly Auctions	Actual annual cost of Rest-of-State capacity \$1 million higher than Benchmark	Actual annual cost of Rest-of-State capacity \$1 million lower than Benchmark	1 weighting point for each \$.5 million above/below trigger levels with a maximum of 5 for both penalty points and offset points.	Actual annual cost \$10 million above monthly auction prices	-5
12.	Overall Satisfaction:	30%	Annual Subjective Evaluation by Buyer on a Scale from 1 to 10	5	5	6 weighting points for each point on scale from 1 to 10 relative to "5" benchmark with a maximum of 30 for both penalty points and offset points.	7	+12

Metric Number	Performance Metrics	Weighting Factor	Benchmark	Sample Penalty Trigger Level	Sample Offset Trigger Level	Sample Penalty Scale	Sample Actual Performance (For Illustration Only)	Sample Weighting Points (for Illustration Only)
	Annual Metric Penalty Points (sum of all Weighting Points)							-11
	Denominator = sum of Maximum Possible Weighting Points for all Performance Metrics							100
	Weighting Point Percentage							11%
	Maximum Aggregate Penalty							\$870,702.50
	Annual Penalty (Annual Penalty = 0 if Annual Metric Penalty Points are greater than or equal to zero.)							\$95,777.28

[Remainder of the page is intentionally left blank. See next page.]

APPENDIX VI

IT SYSTEM USED TO PROVIDE PSMFB SERVICES

The PSMFB Service Provider shall purchase, develop, and maintain the necessary hardware, software, any supporting software tools, and any other software applications required to perform the PSMFB Services that the PSMFB Service Provider, in its sole discretion, deems necessary to perform the PSMFB Services (“IT System”). The IT System is the system of record for the data originated by the PSMFB Service Provider. For avoidance of doubt, the IT System shall remain PSMFB Service Provider Property.

The following software systems are either currently being used by the PSMFB Service Provider or are planned to be used to provide PSMFB Services. The list below may be modified during the Front-End Transition Period Base Term and Extended Term, if applicable, at PSMFB Service Provider’s discretion provided that such change shall not relieve the PSMFB Service Provider of providing the PSMFB Services set forth in Appendix II.

(a) “Aligner” (Trade Capture Tool) is a software product from SunGard Data System, Inc. that is the repository for all transactions which is used for, among other things recording trades, position reporting, and performing risk management functions and associated reporting functions such as Mark To Market and VaR analysis.

(b) Intentionally Omitted

(c) Settlement Tool – being evaluated. This software is used for, among other things, interfacing with the relevant ISO/RTOs and producing settlement reports to resolve billing issues with the ISO/RTOs.

(d) Bid/Offer Tool – being evaluated. This software is used for economic dispatch of generation, consolidation and control of generation characteristics and bid strategies, and creation of generator bids.

(e) “Load Forecaster” (also known as Itron MetrixIDR) is a product from Itron MetrixIDR Systems that stores data and produces a localized load forecasts.

(f) The PSMFB Service Provider shall use the following additional software products and licenses for the gathering of market information to gain market intelligence to optimize trading activities: Reuters, Platts and CQG, Dayzer, [ENVA Power][Genscape]. Additional products and licenses may be added at the discretion of the PSMFB Service Provider during the Front-End Transition Period, Base Term, or Extended Term.

The PSMFB Service Provider's IT System shall be capable of sustaining services in the event of either major or minor power/communication outages. All of the PSMFB Service Provider's servers shall be fully redundant with separate dual uninterruptible power supply (UPS) supplied power lines. All critical network components shall have redundant power supplies with separate dual UPS supplied power sources. Except to the extent of a Force Majeure Event as set forth in Article 11 resulting in a delay in the implementation of the Business Continuity Plan, the PSMFB Services Provider shall implement, as necessary, the Business Continuity Plan specified in Appendix VIII.

All local and wide area network service components and servers are monitored 24x7 by the PSMFB Service Provider. For the avoidance of doubt and the purpose of clarity, PSMFB Service Provider shall receive notification of problems that may arise with respect to local and wide area network service components and servers 24x7, however the time within which to respond and/or correct such problems shall be at the PSMFB Service Provider's sole discretion, provided that the PSMFB Service Provider shall continue to provide PSMFB Services subject to Article 11. The PSMFB Service Provider shall have fully redundant 24x7 multi-path communication circuits for both voice and data services. All PSMFB Service Provider's production servers shall be backed-up every night. All backup media shall be stored off-site in a controlled access facility. All end-of-month backup media shall be kept in accordance with Section 17.16(d) Records.

APPENDIX VII – FORM OF INSURANCE CERTIFICATION



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/09/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA, INC. 445 SOUTH STREET MORRISTOWN, NY 07962 Attn: Morristown.certrequest@marsh.com Fax 212-948-0979 074725-PSE&G-4XS-13-14	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE INSURER A : N/A INSURER B : N/A INSURER C : INSURER D : INSURER E : INSURER F :	
INSURED PSEG ENERGY RESOURCES & TRADE LLC 80 PARK PLAZA, T-19 NEWARK, NJ 07102	NAIC # N/A N/A	

COVERAGES	CERTIFICATE NUMBER: NYC-006735848-01	REVISION NUMBER: 13
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A			EXCESS WC			X WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ SEE ATTACHED E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

LONG ISLAND POWER AUTHORITY AND LONG ISLAND LIGHTING CO., DBA LIPA ARE INCLUDED AS ADDITIONAL INSURED'S EXCEPT FOR WORKERS' COMPENSATION. WAIVER OF SUBROGATION SHALL APPLY SUBJECT TO THE POLICY TERMS AND CONDITIONS.

CERTIFICATE HOLDER**CANCELLATION**

LONG ISLAND POWER AUTHORITY 333 EARLE OVINGTON BOULEVARD UNIONDALE, NY 11553	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/10/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA, INC. 445 SOUTH STREET MORRISTOWN, NJ 07962-1966 Attn: Morristown.Certrequest@marsh.com/ Fax:212-948-0979 074725-PSE&G-AWUMB-13-14.	CONTACT NAME: PHONE (A/C, No. Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Associated Electric & Gas Ins Services Ltd INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	NAIC # 3190004
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COVERAGES **CERTIFICATE NUMBER:** NYC-006735843-02 **REVISION NUMBER:** 8

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ SELF-INSURED \$ 5,000,000
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	UMBRELLA LIABILITY			XL5147102P	08/01/2013	08/01/2014	SIR 5,000,000 LIMIT 10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
LONG ISLAND POWER AUTHORITY AND LONG ISLAND LIGHTING CO., DBA LIPA ARE INCLUDED AS ADDITIONAL INSURED'S. WAIVER OF SUBROGATION SHALL APPLY SUBJECT TO THE POLICY TERMS AND CONDITIONS.

CERTIFICATE HOLDER LONG ISLAND POWER AUTHORITY 333 EARLE OVINGTON BOULEVARD UNIONDALE, NY 11553	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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AGENCY CUSTOMER ID: 074725

LOC #: Morristown



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY MARSH USA, INC.		NAMED INSURED PSEG ENERGY RESOURCES & TRADE LLC 80 PARK PLAZA, T-19 NEWARK, NJ 07102
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

EXCESS WORKERS' COMPENSATION POLICIES:

CARRIER	POLICY #	DATES	LIMITS
AEGIS Insurance Services LTD	W5146102P	08/01/2013 - 08/01/2014	\$10,000,000 / SIR \$2,500,000

APPENDIX VIII

BUSINESS CONTINUITY PLAN

In the event it becomes necessary for the PSMFB Service Provider to implement its Business Continuity Plan, it shall immediately notify the Buyer's Representative and provide information on the nature and extent of the disruption, its expected duration, and the extent to which the Business Continuity Plan has successfully restored PSMFB Services. In addition, the PSMFB Service Provider shall provide to Buyer's Representative regular updates on the status of event causing the disruption of service, and the actions taken by the PSMFB Service Provider to restore PSMFB Services to their normal state.

The PSMFB Service Provider shall implement the Business Continuity Plan, as provided in this Appendix VIII, except to the extent prevented, in whole or in part by a Force Majeure Event.

The specific details of the Business Continuity Plan shall be set forth in the Administrative Protocols and Procedures.

1. Strategy and Approach

This Business Continuity Plan addresses the need for and requirement of the PSMFB Service Provider to continue performing PSMFB Services and fulfilling all contractual obligations of this Agreement.

The Business Continuity Plan for the PSMFB Service Provider, includes the following categories of service:

- Backup IT System;
- Office Facilities; and
- Telecommunications.

(a) Backup IT System:

The PSMFB Service Provider shall provide a backup to its IT System at the PSMFB Service Provider's disaster recovery site such that all critical PSMFB Services can be provided in the event the Business Continuity Plan is implemented.

The backup IT System shall include critical infrastructure components such as: network servers, the Local Area Network (“LAN”), the Wide Area Network (“WAN”), PC Hardware and operating system components, and telecommunications capability remain functional. The PSMFB Service Provider shall ensure that it is able to connect to its critical business applications at its disaster recovery site using the Virtual Private Network (“VPN”).

(b) Office Facilities:

The PSMFB Service Provider shall provide alternative office facilities in the event the Business Continuity Plan is implemented.

(c) Telecommunication:

The PSMFB Service Provider shall arrange for back-up telecommunication systems which shall be activated in the event the Business Continuity Plan is implemented.

2. Lessons Learned Review

After all PSMFB Services have been restored to normal and the Business Continuity Plan has been de-activated, the Parties shall meet to identify any lessons learned.

In addition, the PSMFB Service Provider shall prepare a written report describing the nature and details of the event, including, but not limited to, root cause of the service disruption, the extent of its impact on PSMFB Services and third parties, the actions that were taken concerning critical applications and critical infrastructure, and any other details of the event as requested by Buyer. Such further details shall be described in the Administrative Protocols and Procedures.

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APPENDIX IX

PSM ENTERPRISE DATA MANAGEMENT

1. PSM Enterprise Data Management – Overview:

Buyer's PSM enterprise data management system is used to manage Buyer's enterprise data ("PSM EDM") and is the conduit and storage facility for all information provided to and by the PSMFB Service Provider and the FM Service Provider and shall also be used by the Buyer and its contractors involved in PSMFB Services. The PSMFB Service Provider shall utilize the PSM EDM in order to access and exchange information with Buyer, the PSMMO Service Provider, Buyer's suppliers, contractors, consultants and agents; provided, however, that nothing herein shall preclude the PSMFB Service Provider from obtaining data from other sources or by other methods. The PSMFB Service Provider shall strictly control access of the PSMFB Service Provider Personnel to the PSM EDM and the use of the information contained in the PSM EDM shall be in accordance with this Agreement and may not be used for any other purpose without Buyer's prior written approval. Unless otherwise prohibited by Legal Requirements or applicable license agreements, the PSMFB Service Provider agrees to allow Buyer, its consultants, contractors and agents the use of any data the PSMFB Service Provider contributes to the PSM EDM. The PSM EDM is intended to:

- (a) Provide a system for multiple vendors, under contract to Buyer, to share data that is required by or from each other in order to accomplish their primary responsibilities under their respective contracts with Buyer;
- (b) Provide an interface mechanism for the data, which is the basis for a Buyer management dashboard, or for meeting other Buyer reporting requirements;
- (c) Provide data management and reporting in order to support Buyer decision-making and for meeting Buyer's customer service obligations;
- (d) Satisfy Buyer's long-term information technology strategies requiring that all proposed information systems to be owned or utilized by Buyer in connection with its business activities must utilize a common interface model for the sharing of data; and

(e) Provide an end-state system ready for use on a schedule that is intended to allow for a smooth transition of the responsibilities for the existing services to the PSMFB Service Provider and the PSMMO Office Service Provider, as applicable.

The PSM EDM is also intended to contain the following types of information relevant to the PSMFB Services including, but not limited to (details and sources of information to be set forth in the Administrative Protocols and Procedures):

- (a) NYISO, PJM, and ISO-NE information;
- (b) Power sales and purchases, including bidding and scheduling information;
- (c) Short-term load forecast information;
- (d) Generating data (e.g., operational data, performance, dispatch notices, fuel consumption, emissions, scheduled maintenance and forced outages) for those generating units under contract with Buyer;
- (e) Power purchase and sales contracts information;
- (f) Generation bidding and scheduling information;
- (g) Fuel purchase and tolling contracts information;
- (h) Physical and financial hedging information;
- (i) Reports, data and other information provided by the PSMMO Service Provider; and
- (j) Reports, data and other information provided by the PSMFB Service Provider.

2. PSM EDM Operation and Maintenance

The PSM EDM shall be operated and maintained at Buyer's cost and expense. The PSMFB Service Provider shall develop, establish, install, test, and maintain, at PSMFB Service Provider's cost and expense, two data repositories necessary and required in order to either receive or send data and other information from and to the PSM EDM (such repositories, the "Staging Areas"). The PSM EDM shall be made available to the PSMFB Service Provider by Buyer to support each Business Process as required in order for the PSMFB Service Provider

to perform the PSMFB Services hereunder. For the purposes of this Agreement, a “Business Process” is defined as: a collection of coordinated and sequenced tasks and sub-processes performed to deliver defined products and services. The Business Processes required by the PSMFB Service Provider in order to perform PSMFB Services shall be set forth in the Administrative Protocols and Procedures.

The Buyer represents and warrants to the PSMFB Service Provider that the operational and functional capabilities of the PSM EDM are capable to support all Business Processes and Primary Solutions. A “Primary Solution” is defined as an electronic system that uses the Buyer provided network integration solution and Staging Areas as a common means of communication among Buyer and its various service providers, and which provides all Required Data in a timely manner.

3. Primary Solution Employed For All Business Processes

(a) PSM EDM Interface:

The PSMFB Service Provider shall provide the Staging Areas for each Business Process, which shall be used by the PSMFB Service Provider to provide and receive information as required for the PSMFB Service Provider to perform the PSMFB Services. The two Staging Areas shall be developed, constructed, installed and tested during the Front-End Transition Period.

(b) IT System and Data Sources:

The IT System shall be configured to allow for the regular input and extraction of data and other information from and to the PSM EDM in order for the PSMFB Service Provider to perform the PSMFB Services and for Buyer to obtain information for managing its business. The costs for the PSMFB Service Provider to develop and implement such IT System are included in the PSMFB Service Provider’s Front-End Transition Period pricing as set forth in Appendix IV. The costs for the PSMFB Service Provider to maintain such IT System and the Staging Areas are included in its Total Annual Fee as set forth in Appendix IV.

4. Administrative Protocols and Procedures

The Parties shall set forth details of the PSM EDM in the Administrative Protocols and Procedures.

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APPENDIX X

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROCEDURES

I. DECLARATION OF POLICY AND STATEMENTS OF GOALS. It is the policy of the Buyer to provide Minority and Women-Owned Business Enterprises (M/WBEs) the greatest practicable opportunity to participate in the Buyer's contracting activity for the procurement of goods and services. To effectuate this policy, the PSMFB Service Provider shall comply with these provisions and the provisions of Article 15-A of the New York Executive Law. The PSMFB Service Provider will use its Commercially Reasonable Efforts to achieve the below-stated M/WBE Goals set for the Contract, and will cooperate in any efforts of the Buyer, or any government agency which may have jurisdiction, to monitor and assist PSMFB Service Provider's compliance with the Buyer'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 Buyer 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 Buyer; or
 - (b) A written agreement in excess of one hundred thousand dollars (\$100,000), whereby the Buyer 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) PSMFB SERVICE PROVIDER. An individual, a business enterprise including a sole proprietorship, a partnership, a corporation, a not-for-profit corporation, or any other party to an Buyer contract, or a bidder in conjunction with the award of an Buyer contract or a proposed party to an Buyer 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 Buyer 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 PSMFB Service Provider must aim in expending good

faith efforts to subcontract with or otherwise ensure the commercial involvement of minority and women-owned businesses on specific Buyer 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.
- (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 Buyer 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 PSMFB Service Provider's obligation under a Buyer 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 Buyer 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 Buyer, an M/WBE Officer who will have the responsibility for and Buyer 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 Buyer.

The bidder will also designate an M/WBE Officer who will have the responsibility for, and Buyer 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 Buyer's bid document or request for proposals may be obtained or inspected and also at the Buyer'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 PSMFB Service Provider may submit a complete Utilization Plan, which shall include identification of the M/WBEs which the PSMFB Service Provider intends to use; the dollar amount of business with each such M/WBE; the Contract Scope of Work which the PSMFB Service Provider intends to have performed by such M/WBEs; and the commencement and end dates of such performance. The Buyer 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 Buyer shall consider a partial or total waiver of Goal requirements only upon the submission of a written request for a waiver following PSMFB Service Provider'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 PSMFB Service Provider 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 PSMFB Service Provider 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 Buyer or any other authorized governmental entity.
- (5) The PSMFB Service Provider 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.
- (6) The Buyer will conduct compliance reviews for determination of the PSMFB Service Provider's performance relative to meeting the specified M/WBE Goal which may include review and inspection of documents pertaining to the PSMFB Service Provider's efforts towards meeting the Goals and on-site interviews with personnel of PSMFB Service Provider and its Subcontractors. The PSMFB Service Provider will fully cooperate to assist the Buyer in this endeavor.
- (7) The PSMFB Service Provider 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 PSMFB Service Provider is unable to meet the Goals with Certified Businesses by making all of the good faith efforts defined herein (under section VI), the PSMFB Service Provider 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 PSMFB Service Provider 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 Buyer reserves the right to reject any firm as counting toward meeting the PSMFB Service Provider's M/WBE goal if, in the opinion of the Buyer, the facts as to that firm's business and technical organization and practices justify the rejection.

VI. PSMFB SERVICE PROVIDER'S GOOD-FAITH EFFORTS. To satisfy the M/WBE participation requirements, the PSMFB Service Provider 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 Buyer 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 PSMFB Service Provider in performing work that the PSMFB Service Provider normally performs with its own forces and the contract scope of work has not been fully performed, the PSMFB Service Provider shall consider subcontracting such work or portions of it to meet the M/WBE Goals.

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APPENDIX XI

ADMINISTRATIVE PROTOCOLS AND PROCEDURES

In accordance with Section 4.11 of this Agreement, the Administrative Protocols and Procedures shall be jointly developed by PSMFB Service Provider and Buyer and shall include the following topics with a level of detail reasonably required by the Parties to perform their obligations under this Agreement, with jointly developed written updates prepared periodically by Buyer and PSMFB Service Provider, as circumstances may dictate:

1. Each Party's Representatives
2. PSMFB Service Provider Staffing:
 - (a) List of PSMFB Service Provider's staffing (e.g., name, title, responsibilities); and
 - (b) Notification Process for PSMFB Service Provider Staffing Changes.
3. List of Power Supply Resources:
 - (a) PSA Units;
 - (b) PPA Units;
 - (c) IPP Units;
 - (d) Cable Resources;
 - (e) Buyer-Owned Units;
 - (f) Industry Standard Master Agreements;
 - (g) Capacity, Energy, and Ancillary Services Purchase and Sale;
 - (h) Emission Credits Purchase and Sale;
 - (i) Transmission Purchase and Sale; and
 - (j) TCC and FTR Purchase and Sale.
4. Communications protocols with regard to:
 - (a) the PSMMO Service Provider;
 - (b) each of Buyer's power suppliers;
 - (c) Buyer's Electric Systems Operation ("ESO") center;
 - (d) Buyer, including Servco resource planning personnel providing planning services to Buyer;
 - (e) the Fuel Manager;
 - (f) CEE (in connection with Front-End Transition Services);
 - (g) Power Asset Management;
 - (h) the NYISO, ISO-NE and PJM; and
 - (i) the FERC.
5. Buyer's Policies and Procedures applicable to PSMFB Services, including Buyer's Standards of Conduct
6. PSMFB Service Provider's Operating Procedures applicable to PSMFB Services, including PSMFB Service Provider's Standards of Conduct

7. The PSMFB Service Provider's and the PSMMO Service Provider's report schedule and description of reports
8. List of reports to applicable Governmental Authority, all monthly, quarterly and/or yearly, forms or reports directly relating to the PSMFB Services required by DOE, FERC, NERC or any other regulatory agency
9. Performance Standards, Performance Metrics and Measurement Instructions
10. PSM EDM specifications
11. IT System Components
12. PSMFB Service Provider IT System – description of functionality
13. Intellectual Property Examples
14. Business Continuity Plan
15. Draft Final Back-End Transition Plan
16. PSMFB Service Provider's Disclosure of Contracts regarding Potential Conflicts of Interest – list of any contracts it has with third parties to provide services similar to PSMFB Services (excluding contracts prohibited from disclosure pursuant to the terms of such contracts)

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Appendix XII

LETTER OF CREDIT PROVISIONS

Section 13.12 of the Agreement requires under certain circumstances that Buyer provide PSMFB Service Provider with a Letter of Credit or Cash in order to obtain certain services under such circumstances. For purposes of Section 13.12 a “Letter of Credit” means an irrevocable, transferable standby letter of credit, issued for the benefit of PSMFB Service Provider by a major U.S. commercial bank or the U.S. branch of a foreign bank with a Credit Rating of at least “A-“ by S&P and “A3” by Moody’s with a capital surplus of ten billion dollars (US\$10 Billion) (an “Issuer”); provided that such Issuer shall be reasonably acceptable to the PSMFB Service Provider; and provided, further, that such Letter of Credit shall be in a form reasonably acceptable to the PSMFB Service Provider and such Letter of Credit satisfies all the requirements set forth in this Appendix XII as follows:

A. To the degree necessary to comply with the requirements of Section 13.12 of the Agreement, Buyer, or the Issuer of the Letter of Credit, prior to the expiration of any outstanding Letter of Credit, shall renew, or cause the renewal of, the outstanding Letter of Credit on a timely basis, or shall provide a substitute Letter of Credit, or Cash, in either case, at least thirty (30) Business Days prior to such expiration if the Issuer has indicated its intent not to renew such Letter of Credit.

B. Upon the occurrence of a Letter of Credit Default (as defined below), Buyer agrees to deliver to PSMFB Service Provider a substitute Letter of Credit, or Cash, in either case, on or before the second Business Day after the occurrence thereof (or on or before the fifth Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).

C. PSMFB Service Provider shall apply the Cash proceeds received from drawing upon the Letter of Credit against all amounts that are due and owing from Buyer in accordance with the provisions of Section 13.12 of this Agreement but which have not been paid to PSMFB Service Provider within the time allowed for such payments under this Agreement, including applicable cure periods. Notwithstanding PSMFB Service Provider’s receipt of Cash under the Letter of Credit, Buyer shall remain liable for any amounts owing to PSMFB Service

Provider that remain unpaid after the application of the amount of the Cash proceeds so drawn by PSMFB Service Provider.

D. The Letter of Credit shall provide that it shall be maintained for the benefit of PSMFB Service Provider in accordance with the requirements of Section 13.12 of this Agreement, and shall be delivered by Issuer to such address as PSMFB Service Provider shall specify. The Letter of Credit shall also provide that PSMFB Service Provider:

- (1) may, upon Buyer's failure to pay PSMFB Service Provider for monies due and owing under the Agreement, which have not been paid to PSMFB Service Provider within the time allowed for such payments under this Agreement, including applicable cure periods, draw upon the Letter of Credit in an amount that is equal to all amounts that are due and owing from Buyer under the Agreement; or (2) may draw upon the full available amount of the Letter of Credit if such Letter of Credit, or Cash, in either case, is not renewed or a substitute Letter of Credit is not provided at least thirty (30) Business Days prior to the expiration of the existing Letter of Credit; and
- (2) may draw upon the Letter of Credit upon submission to the Issuer one or more statements of PSMFB Service Provider in accordance with the specific requirements of the Letter of Credit.

E. The Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 or by subsequent Uniform Customs and Practice for Documentary Credits fixed by subsequent Congresses of the International Chamber of Commerce (the "UCP"), and to the extent not inconsistent with the UCP, the laws of the State of New York without reference to its choice of law provision. Notwithstanding anything herein to the contrary, to the extent that the terms of this Appendix XII are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b), 16(d), and 36 of the UCP, the terms of this Letter of Credit shall govern. The Letter of Credit shall provide that with respect to Article 14(b) and 16(d) of the UCP, the Issuer shall have a reasonable amount of time, not to exceed three (3) banking day following the date of its receipt of documents from the PSMFB Service Provider, to examine the documents and determine whether to take up or refuse the documents and to inform the PSMFB Service

Provider accordingly. The Letter of Credit shall also provide that if it should expire during an interruption of business of the Issuer arising from a cause or circumstance referenced in Article 36 of the UCP, the Issuer specifically agrees to honor drafts drawn on this Letter of Credit if they are presented to the Issuer within thirty (30) days after the Issuer's resumption of business from such interruption and such drawings are otherwise in compliance with the terms and conditions of the Letter of Credit.

The expiry date under the Letter of Credit should also contain an evergreen provision.

Multiple draws are permitted under this Letter of Credit. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us, referencing this Letter of Credit No. _____. Partial drawings shall be permitted under the Letter of Credit. Amounts due in excess of the Letter of Credit are acceptable; however, in no event will payment exceed the amount available to be drawn under the Letter of Credit.

Typographical errors in the Letter of Credit, other than in amounts, will not be considered discrepancies.

Faxed document(s) are acceptable under the Letter of Credit.

With respect to Rule 5.01ai of ISP98, we shall have a reasonable amount of time, not to exceed three (3) business days following the date of its receipt of documents from Beneficiary, to take up or refuse the documents and to inform Beneficiary accordingly.

The Letter of Credit may not be amended, changed or modified without the express written consent of the PSMFB Service Provider and the Issuer.

F. The following definitions shall apply to the Letter of Credit issued in conjunction with the requirements of Section 13.12 and this Appendix XII:

“Credit Rating” means with respect to an entity, on any date of determination, the respective ratings then assigned to such entity's senior unsecured long-term debt (not supported by third party credit enhancement) or current issuer rating (whichever is

lower). In the event of an inconsistency in ratings by S&P and Moody's (a "split rating"), the lowest rating assigned shall control."

"Letter of Credit Default" shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the Issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's; (ii) the Issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the Issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the period in which Section 13.12 of this Agreement is applicable; or (v) any event analogous to an event specified in Section 13.2(d) or 13.2(e) of this Agreement shall occur with respect to the Issuer of such Letter of Credit.

"Moody's" means Moody's Investors Service, Inc. or its successor.

"S&P" means the Standard & Poor's Rating Services (a division of McGraw-Hill, Inc.) or its successor.

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APPENDIX XIII

FORM OF PAYMENT GUARANTEE

Date

To: Long Island Power Authority and
Long Island Lighting Company d/b/a LIPA
c/ o Long Island Power Authority
Suite 403
333 Earle Ovington Blvd.
Uniondale, NY 11553

Ladies and Gentlemen:

PSEG Energy Resources & Trade LLC a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 80 Park Plaza, T-19, Newark, New Jersey 07102 (“ER&T”) and the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, acting on behalf of itself and its operating subsidiary, the Long Island Lighting Company d/b/a LIPA, with its headquarters at 333 Earle Ovington Boulevard, Uniondale, New York 11553 (“Counterparty”) have entered into that certain **Contract to Provide Power Supply Management Front and Back Office Services to Long Island Power Authority by PSEG Energy Resources & Trade LLC dated []** (the “Agreement”).

In consideration of Counterparty entering into the Agreement with ER&T and in accordance with Section 10.1 of such Agreement, PSEG Power LLC a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 80 Park Plaza, T-6, Newark, New Jersey 07102 (“Guarantor”), to the extent of **\$2,000,000.00 (TWO MILLION DOLLARS)** (the “Guarantee Limit”), and subject to the terms and conditions hereof, hereby absolutely, irrevocably and unconditionally guarantees to Counterparty, with effect from the date hereof, the full and prompt payment of all present and future amounts payable by ER&T under the Agreement when the same shall become due and payable, whether on scheduled payment dates, upon oral or written demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace or cure period. Upon failure of ER&T promptly to pay any such amounts, and upon written demand by

Counterparty to Guarantor to the address set forth herein (or to such other address as Guarantor may specify in writing to Counterparty), Guarantor, subject to the Guarantee Limit, agrees promptly to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Payment Guarantee. This is a guarantee of payment and not of collection. Guarantor will be liable for direct damages only and to the extent provided for herein. In no event shall Guarantor be liable hereunder for consequential, incidental, punitive, exemplary or indirect damages, lost profits or revenues by statute, in tort or contract, under any indemnification provision or otherwise.

Guarantor hereby agrees that its obligations hereunder shall not be affected by the Agreement's validity, enforceability or the lack of authority of ER&T to execute or deliver the Agreement, or any change in, or amendment to, the Agreement.

Guarantor hereby waives acceptance of this Payment Guarantee, notice of dishonor, diligence, presentment, and demand on ER&T for payment or otherwise (except as provided hereinabove), filing of claims, the requirement of a prior proceeding against ER&T or any third party, protest or notice of any amendment, modification or waiver of or under the Agreement, and all other notices or demands not specified hereunder, and without the necessity of enforcing any remedy available under the terms of the Agreement.

If at any time payment by ER&T to Counterparty under the Agreement is rescinded or must be otherwise restored or returned by Counterparty to ER&T due to the insolvency, bankruptcy or reorganization of ER&T or otherwise, Guarantor's obligations hereunder with respect to such payment shall continue to be effective or shall be reinstated upon such rescission, or upon such restoration or return to ER&T being made by Counterparty.

Guarantor represents to Counterparty that:

1. it is a limited liability company duly organized and validly existing under the laws of the jurisdiction of its organization and has full power and legal right to execute, deliver and perform this Payment Guarantee;

2. its execution, delivery and performance of this Payment Guarantee have been and remain duly authorized by all necessary action and do not contravene any provision of its organizational documents or any law, regulation or contractual restriction binding on it or its assets;
3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Payment Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to, or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
4. this Payment Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms subject, as to enforcement, by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

In the event of any default by ER&T under the Agreement, Counterparty shall have the right to proceed first and directly against Guarantor under this Payment Guarantee without proceeding against any other person or entity or exhausting any other remedies which it may have and without resorting to any other security held by it.

By accepting this Payment Guarantee and entering into the Agreement, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against ER&T in respect of any amounts paid by Guarantor pursuant to this Payment Guarantee, provided that Guarantor shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that, and only after, it has paid all amounts payable by ER&T under the Agreement in full that are payable pursuant to this Payment Guarantee.

All notices or other communications to the Guarantor and Counterparty shall be in writing and shall be sent by hand delivery, mail (return receipt requested), facsimile (provided a

copy is also sent by overnight courier) or overnight courier. Notices sent by hand-delivery shall be deemed received on the date delivered, provided that if it is delivered after the close of the business day, it shall be deemed received on the next business day, notices sent by mail shall be deemed received on the date stamped on the return receipt, notices sent by facsimile (provided a copy is also sent by overnight courier) shall be deemed received on the date stated on the facsimile confirmation unless sent or transmitted after the close of the business day, in which case it shall be deemed received on the next business day), and notices sent by overnight courier shall be deemed received on the next business day. Notices shall be sent to:

If to Guarantor:

PSEG Power LLC
80 Park Plaza, T-4
Newark, New Jersey 07102,

Attention: Corporate Secretary

If to Counterparty:

Long Island Power Authority and
Long Island Lighting Company d/b/a LIPA
c/ o Long Island Power Authority
333 Earle Ovington Boulevard
Suite 403
Uniondale, NY 11553
Attention: Vice President, Power Markets

This Payment Guarantee shall be binding upon Guarantor and upon its successors and assigns and shall be for the benefit of Counterparty and its successors and assigns.

This Guarantor's guarantee of payment up to the Guarantee Limit, is a continuing guarantee from the date hereof for the term of this Payment Guarantee. This Payment Guarantee shall expire on _____, 2014 (the "Expiration Date").[note to LIPA: this guarantee shall be issued for one (1) year terms] Notwithstanding the foregoing, this Payment Guarantee may be terminated upon at least 10 days' prior written notice to that effect being actually received by Counterparty; provided, however, that such termination by Guarantor shall not be effective unless replacement Acceptable Credit Support (as defined in the Agreement), if any, has been

provided to Counterparty prior thereto. Such expiration or termination shall not, however, affect or reduce Guarantor's obligation hereunder for any liability of ER&T pursuant to the Agreement incurred prior to such expiration or termination.

In case any clause, provision, or section of this Payment Guarantee, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder thereof or any other clause, provision, or section, and each such clause, provision, or section shall be deemed to be effective and operative in the manner and to the full extent permitted by law.

This Payment Guarantee shall not be binding and shall be null and void and without any force and effect unless and until it is fully executed and delivered by each of Guarantor and Counterparty

This Payment Guarantee may not be modified or amended except in a writing signed by all the parties, provided, however that the Guarantor may increase the Guarantee Limit and/or extend the Expiration Date in writing without the consent or signature of Counterparty.

Subject to the Guarantee Limit, Guarantor shall reimburse Counterparty for its reasonable costs and expenses, including but not limited to reasonable attorney fees, incurred in an action to collect or enforce any of the obligations under this Payment Guarantee, provided Counterparty is ultimately successful in such enforcement action.

No failure on the part of the Counterparty to exercise, and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Counterparty of any right, remedy or power hereunder preclude any other future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to the Counterparty or allowed to it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Counterparty from time to time.

This Payment Guarantee shall be governed by and construed in accordance with the laws in force in the State of New Jersey without regard to principles of conflicts of law. Guarantor accepts service of process in the courts of the United States within the State of New Jersey, but in the event that such courts refuse to exercise jurisdiction or venue over the Guarantor and the Counterparty or any claims made pursuant to this Guaranty or the Agreement, then the Guarantor and Counterparty shall submit to the exclusive jurisdiction of the state courts of New Jersey. Guarantor represents and warrants that it is capable of suing and being sued in the United States.

This Payment Guarantee constitutes the entire agreement of the Guarantor and the Counterparty and supersedes all prior written or oral agreements and understandings between the Guarantor and the Counterparty with respect to the subject matter hereof. Any provision contained in this Payment Guarantee, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Nothing herein is intended to deny to Guarantor, and it is expressly agreed that Guarantor shall have and may assert, any and all of the defenses, set-offs, counterclaims and other rights which ER&T is or may be entitled arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of ER&T.

PSEG POWER LLC

By: _____
Name:
Title: Vice President and Treasurer

Accepted and Agreed:

Long Island Power Authority, acting on behalf of itself and its operating subsidiary, the Long Island Lighting Company d/b/a LIPA

By: _____
Name:
Title:

APPENDIX XIV

PSM MID OFFICE SERVICES

This Appendix describes the PSMMO Services that the PSMMO Service Provider shall perform pursuant to this Agreement.

The PSMMO Service Provider will be independent of the PSMFB Service Provider and the FM Service Provider. The PSMMO Service Provider shall monitor the activities and performance of the PSMFB Service Provider performing the Front-Office Services, Back-Office Services and those fuel management services of the FM Service Provider as well as the inherent and residual energy risks of Buyer. The PSMMO Service Provider will monitor the PSMFB Service Provider and FM Service Provider for its adherence to: (i) meeting Buyer's needs to serve Buyer's customer load, (ii) bidding Buyer's generation and transmission cables into the applicable ISOs using approved bidding strategies, and (iii) to meet the needs of Buyer's customer load in a least cost manner consistent with Buyer Contracts, other applicable agreements, ISO/RTO requirements, applicable policies, reliability constraints, and in compliance with applicable Legal Requirements (iv) providing comprehensive periodic energy risk management reports to Buyer. Providing PSMMO Services requires that the PSMMO Service Provider interface directly with and report to Buyer's Executive Risk Management Committee or other designee, as designated by Buyer.

The PSMMO Service Provider shall provide the services set forth below. Any performance metrics, reporting mechanisms, procedures, and protocols developed by the PSMMO Service Provider, as referenced herein, are subject to Buyer's policies, procedures, and prior written approval, such approval not to be unreasonably withheld or delayed.

PART 1: FIXED PRICE MID OFFICE SERVICES

From the PSMFB Services Start Date and through the Base Term and the Extended Term, if applicable, and for the fixed price set forth in Schedule A attached hereto, the PSMMO Service Provider shall:

1. **In consultation with Buyer, develop protocols, procedures, performance metrics, and reporting mechanisms that quantify/qualify PSMFB Service Provider performance on established performance metrics.**

The PSMMO Service Provider shall:

- a) Develop and update as needed with Buyer procedures for the calculation and reporting of the PSMFB Service Provider performance, including performance metrics agreed to by Buyer and the PSMFB Service Provider;
- b) Report PSMFB Service Provider performance to Buyer in accordance with Schedule C herein or as otherwise requested by Buyer, on a timely basis and at a level of detail agreed to with the Buyer; and

2. **Monitor the PSMFB Service Provider's adherence to bidding strategies agreed upon between the PSMFB Service Provider and Buyer. Monitor and evaluate the PSMFB Service Provider's compliance with market regulations. Monitor performance metrics agreed upon between the PSMFB Service Provider and Buyer.**

The PSMMO Service Provider shall:

- a) Review transactions arranged by the PSMFB Service Provider and identify transactions that are outside of Buyer's policies and procedures, are at variance with strategies that Buyer and the PSMFB Service Provider have agreed to, or are potentially in violation of applicable laws or market rules;
- b) Alert Buyer to transactions identified in 2(a) above;
- c) Recommend to Buyer resolution of transactions identified in 2(a) above;
- d) Check the transactions and confirmations of the PSMFB Service Provider for accuracy and report such performance to Buyer.

3. **Monitor and evaluate the PSMFB Service Provider's compliance with the Administrative Protocols and Procedures** that will be developed and agreed upon as outlined in Appendix XI.

The PSMMO Service Provider shall:

- a) Sample transactions executed by the PSMFB Service Provider;
- b) Test the processing of those transactions to verify the PSMFB Service Provider's compliance with applicable procedures, policies, guidelines, rules, and regulations pertaining to invoicing, accounting, and bill verification; and
- c) Report to Buyer on the results of the testing described in 3(b) above.

4. Monitor and evaluate and report on the performance of the Fuel Manager, including the interface between the PSMFB Service Provider and Fuel Manager, the effectiveness of fuel inputs to generation planning and dispatch, and the economic efficiency of that interface.

The PSMMO Service Provider shall:

- a) Review estimated fuel prices and volumes used by the PSMFB Service Provider and the FM Service Provider;
- b) Calculate variances between actual fuel volumes and projected fuel volumes;
- c) Calculate variances between actual fuel prices and projected fuel prices; and
- d) Calculate the economic impact of any price/volume variances and report such economic impact to Buyer.
- e) Develop and update as needed with Buyer procedures for the calculation and reporting of the FM Service Provider performance metrics under Buyer's separate agreement with FM Service Provider.
- f) Monitor and evaluate FM Service Provider's performance with respect to the FM Service Provider's performance metrics and calculate and report to Buyer such metrics under Buyer's separate agreement with FM Service Provider.

5. Monitor credit performance and associated reporting.

The PSMMO Service Provider shall, in accordance with procedures set forth in the Administrative Protocols and Procedures that will be developed and agreed upon as outlined in Appendix XI:

- a) Calculate, monitor and report to Buyer counterparty credit exposures on an ongoing basis in accordance with Buyer's credit policies;
- b) Calculate, monitor and report to Buyer ISO credit exposures on an ongoing basis and in accordance with Buyer's credit policies;
- c) Recommend actions to Buyer and the PSMFB Service Provider to help manage ISO and counterparty credit exposures and maintain compliance with Buyer's credit policies;
- d) Evaluate the creditworthiness of potential counterparties and maintain an updated list of acceptable counter parties and counterparty trading restrictions;
- e) In accordance with Buyer's credit policies, determine the appropriate credit limits for each counterparty;
- f) Calculate daily counterparty margin calls for collateral postings and returns and validate counterparty requests for collateral postings and returns. Notify Buyer of the amount and timing of collateral posting requirements as well as expected collateral receipts;
- g) Assist Buyer's legal services department and other contractors in the negotiation of credit terms related to trading contracts and agreements;
- h) Assist Buyer's finance department and other contractors in assessing the accounting impact of credit events;
- i) Provide data and reports to Buyer as necessary in conjunction with the activities described in this Section 5(a)-(h) above; and
- j) Develop and maintain computer systems necessary to perform the activities described in this Section 5(a)-(h) above.

6. Daily Market Price Collection

The PSMMO Service Provider shall, on a daily basis, collect and validate forward market prices from independent third party brokers or exchange quotes that are needed for all of Buyer's forward NYMEX and over the counter ("OTC") transactions :

- i. For electricity this will include various zones within the NYISO, NEPOOL Mass Hub, PJM West Hub, East Hub, JCPL zone and various time blocks (i.e. on peak, off peak or required to meet specific transactions).
- ii. For natural gas transactions, this will include Henry Hub, Transco Zone 6 NY, Iroquois Zone 2 and Tetco M3.
- iii. For oil this will include Heating Oil, Distillate and Residual Fuel Oil for various grades and locations.
- iv. For emissions this would include CO2, SO2, NOX (various vintages) and any new tradable emissions credits as a result of future EPA regulations.

7. Commodity Future Trading Commission Reporting

The PSMMO Service Provider or the independent third party hedge service provider shall meet the requirements of a Qualified Independent Representative. The PSMMO Service Provider shall confirm that all forward transactions comply with the current and future requirements of Commodity Futures Trading Commission. This will include a review and confirmation that reporting party requirements associated with Dodd Frank have accurately been communicated to the appropriate swap data reporting entity.

8. Accounting Support

Support Buyer's Finance Department with respect to accounting and financial reporting requirements for energy derivative instruments and energy hedge accounting activities in accordance with applicable FAS, GASB, and IASB standards, including FAS133, FAS157 and GASB 53.

9. Hedge Advisory Services (an Additional Service requested by Buyer)

The PSMMO Service Provider shall retain an independent third party to provide hedge advisory services. These services will include a recommended hedging program that meets Buyer's risk tolerances, and guidelines and boundaries associated with power and fuel hedges. The hedge advice will be presented to the Buyer's Executive Risk Management Committee for their review and approval. The costs associated with the

third party hedge advisory services have been included in the fixed price shown in Schedule B Part 1.

10. Periodic Reporting To Buyer's Executive Risk Management Committee

The PSMMO Service Provider shall work with Buyer, to create and deliver an energy risk management report on a weekly or other periodic basis.. The report may include information and commentary on:

- i. Expected power generation and load positions as well as fuel requirements for the forecasted period; with and without Buyer's current forward hedge transactions.
- ii. Hedge position information by year as well as a compliance with hedging limits that have been approved by Buyer's Executive Risk Management Committee.
- iii. Mark to market valuation for all hedge transactions
- iv. Collateral posted / received by counterparty
- v. Current exposure, credit limit, net current exposure and potential future exposure by counterparty.
- vi. Market value at risk, hedged mitigation effect and potential market exposure.
- vii. Gross margin at risk, by year, showing the impact of the hedge mitigation program
- viii. Recent changes and news associated with the NYISO, NEPOOL and PJM market places.

11. Participate in Executive Risk Management Committee

The PSMMO Service Provider shall provide a representative to participate in person or by telephone (as requested by Buyer) at all Executive Risk Management Committee (ERMC) meetings as an ex-officio member, with responsibility to prepare ERMC meeting materials, review reports provided as outlined above as well as participate in discussions concerning market conditions, hedge program compliance and effectiveness.

12. Support Buyer's Risk Management Program

The PSMMO Service Provider shall:

- (i) Maintain and update as needed Buyer's Energy Risk Management Policies.
- (ii) Assist Buyer in analyzing proposed energy commodity transactions from a risk management perspective.
- (iii) Develop and maintain computer systems as set forth in Schedule D herein.
- (iv) Prepare other reports as may be requested by Buyer and agreed to by the PSMMO, on an ad hoc basis, covering PSMFB energy commodity risk management subject matter.

PART 2: ADDITIONAL PSMMO SERVICES PRICING SUMMARY

The Parties may agree in writing that the PSMMO Service Provider shall provide to Buyer additional services beyond those specified in Appendix XIV ("Additional PSMMO Services"). Additional PSMMO Services that do not have a specific rate set forth in this Agreement or as otherwise agreed to by the Parties (e.g., negotiation of contracts with third parties) in writing shall be paid by Buyer to PSMMO Service Provider on a time-and-material basis, as set forth below, and shall be performed by PSMMO Service Provider as agreed to in writing by the Parties.

PSMMO Service Provider shall be compensated its actual, reasonable and verifiable costs incurred in procuring materials, subcontractors, IT services, software license, and other similar items in preparation for and in performing such Additional PSMMO Services, plus an adder of 10%. PSMMO Service Provider shall also be compensated for the time of its own personnel in preparing for and performing Additional PSMMO Services at the following hourly rates, which rates shall escalate as set forth below:

Table I – XIV: PSMMO Services Contract Year 1 Hourly Rates

<u>Contract Year 1</u>	<u>Hourly Rates</u>
Officer	\$450/hour
Director	\$250/hour

Manager	\$150/hour
Analyst	\$100/hour
Administrative Support	\$ 50/hour

The Contract Year 1 Hourly Rates shall apply to the Front-End Transition Period and to Contract Year 1 for Additional PSMMO Services and shall be escalated thereafter at the applicable Multi-Year Escalation Rate for each year after Contract Year 1. For example, if Additional PSMMO Services are requested in Contract Year 3 requiring the use of a Manager and the Escalation Rate for Year 2 is 1% and the Escalation Rate for Contract Year 3 is 2%, then the hourly rate for that Manager in Contract Year 3 is \$154.53 and such rate shall escalate thereafter at the Escalation Rate.

The charges for Additional PSMMO Services shall be separately stated on the PSMMO Monthly invoice prepared and sent to Buyer pursuant to Section 6.1.

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SCHEDULE A

MID OFFICE TRANSITION PLANS

PART 1: FRONT-END TRANSITION PERIOD SERVICES

The PSMMO Service Provider shall perform and support the services set forth below (“Front-End Transition Period Services”) with all such services collectively being referred to as the “Front-End Transition Period Plan”. The PSMMO Service Provider shall:

1. Assist Buyer in establishing performance metrics for the PSMFB Service Provider and management reporting mechanisms;
2. Assist Buyer in developing appropriate interfaces and contract terms with the PSMFB Service Provider, including assisting Buyer in finalizing performance metrics with the PSMFB Service Provider;
3. Procure, develop or adapt, as necessary, the computer systems and other processes necessary to perform the PSMMO Services;
4. Develop in conjunction with Buyer, the PSMFB Service Provider and Servco, the protocols and rules necessary for service integration between the PSMFB Service Provider and Servco;
5. Work closely with Buyer, the PSMFB Service Provider and Servco to understand and learn how to effectively utilize the accounting and other systems used or to be used by Buyer for the purposes of monitoring the PSMFB Services;
6. Perform the PSMMO Services on a simulated basis prior to the Target PSMMO Services Start Date to ensure all mid-office systems and processes are in place and working to Buyer’s satisfaction (this test will be witnessed by Buyer and is subject to Buyer’s approval, such approval not to be unreasonably withheld or delayed);
7. Obtain a thorough knowledge of Buyer’s generating resource base, power purchase and sales rights and obligations (physical and contractual); and
8. Work closely with Buyer in developing the periodic reports for their Executive Risk Management Committee including reporting frequency and exhibits.

PART 2: BACK-END TRANSITION PERIOD SERVICES

The PSMMO Service Provider shall perform and support the services set forth below (“Back-End Transition Period Services”) with all such services collectively being referred to as the “Back-End Transition Period Plan”:

1. Meet with Buyer, the new selected PSMMO service provider and the replacement primary PSMFB office service provider, if any, to discuss:
 - a) Current power contracts (commodity, transmission, distribution, etc.);
 - b) Buyer physical market positions;
 - c) Current load projections and the models and inputs used to produce them;
 - d) Current and recent operating history of the generation units, including all inputs and assumptions being used in the dispatch models;
 - e) Commercial contact information for Buyer’s power suppliers, generation operators and mid-market, regulated entities;
 - f) Operating procedures; and
 - g) Data transfer protocols.
2. Facilitate the transfer of transaction, contract, scheduling and settlement data to the PSM EDM.

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SCHEDULE B
POWER SUPPLY MANAGEMENT MID OFFICE PRICING
AND PAYMENT SCHEDULE

The pricing for the PSMMO Services described in Appendix XIV is contained herein. Additionally, Buyer shall reimburse the PSMMO Service Provider for all actual, reasonable and verifiable travel-related costs incurred in performing the PSMMO Services. The PSMMO Service Provider shall invoice Buyer pursuant to Article 6 of the Agreement.

PART 1: FIXED PRICING FOR PSMMO SERVICES

For the PSMMO Services described in the section “PART 1: FIXED PRICE MID OFFICE SERVICES” of Appendix XIV, Buyer shall pay the PSMMO Service Provider the following:

1. For Contract Year (1) One beginning on the PSMFB Services Start Date and up to the first anniversary of the PSMFB Services Start Date, \$2,450,000 (“PSMMO Services Management Fee”), payable in twelve (12) equal Monthly installments.
2. For each subsequent Contract Year of PSMMO Services the PSMMO Services Management Fee will escalate at the Escalation Rate as defined in Appendix IV Part 2.

PART 2: FIXED PRICING FOR FRONT-END TRANSITION PERIOD SERVICES

For the PSMMO Services provided by the PSMMO Service Provider as described in the section “PART 1: FRONT-END TRANSITION PERIOD SERVICES” of Appendix XIV, Buyer shall pay the PSMMO Service Provider a fixed price of \$2,000,000 according to the milestone payment schedule to be agreed to by the Parties.

PART 3: FIXED PRICING FOR BACK-END TRANSITION PERIOD SERVICES

For the services provided by the PSMMO Service Provider as described in the section “PART 2: BACK-END TRANSITION PERIOD SERVICES”, as may be modified to form the Final Back-End Transition Period Plan, Buyer shall pay the PSMMO Service Provider a

fixed fee of \$75,000 upon the completion of said services as the Back-End Transition Period Payment.

SCHEDULE C

PERFORMANCE METRICS

Front/Back Office Standard	Middle Office Responsibility
Scheduling resources against a forecast load	Timely and accurate daily comparison of actual vs. forecast load, to be reported to Buyer on a daily basis
Managing the cost of power against Buyer's budget adjusted based on intra-month conditions (weather, etc.)	Timely and accurate weekly reporting to Buyer of month-to-date metrics of performance vs. standard
Least-cost bidding of load	Timely and accurate daily analysis of day-ahead, real-time, and balancing charge economics, to be reported to Buyer monthly
Forecast fuel prices accurately	Timely and accurate daily reporting of deviations between assumed and actual fuel prices, to be reported to Buyer monthly
Forecast fuel requirements accurately	Timely and accurate daily fuel imbalance costs, to be reported to Buyer monthly
Maximize benefit of Cables	Timely and accurate analysis of hourly metrics on usage of Cross-Sound and Neptune cables, to be reported to Buyer monthly
Bidding in accordance with strategies	Timely and accurate analysis of deviations in actual bids vs. bids consistent with documented strategies, to be reported to Buyer monthly
Accurate bidding	Timely and accurate daily analysis of submitted bids, to be reported to Buyer monthly
Optimized dispatch of Buyer resources (assets, contracts, etc.)	Timely and accurate report of a daily index of dispatch performance, to be reported to Buyer monthly
Obtain capacity and commodity pricing that is advantageous relative to the broad market	Timely and accurate comparison of executed transactions versus market indices, to be reported to Buyer monthly

Front/Back Office Standard	Middle Office Responsibility
Managing within the boundaries of risk limits, transaction policies and compliance with laws and regulations	Timely and accurate detection and reporting of limit, policy and procedure violations as they occur to be reported to Buyer monthly
Confirmation accuracy and aging	<p>Timely and accurate daily sampling of transactions to determine whether they were confirmed within the time standard, to be reported to Buyer monthly</p> <p>Timely and accurate comparison of confirmation details against the transaction details in the trading system, to be reported to Buyer monthly</p>
Settlement accuracy	<p>Timely and accurate shadow calculations reflecting a monthly sample of settlement calculations to be reported to Buyer monthly</p> <p>Timely and accurate monthly reporting to Buyer of error rates</p>
Settlement timeliness	Timely and accurate monthly comparison and reporting to Buyer of deviations from the expected settlement schedule

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SCHEDULE D

SYSTEMS USED TO PROVIDE POWER SUPPLY MANAGEMENT MID OFFICE SERVICES

The PSMMO Service Provider shall purchase, develop, and maintain the necessary hardware, software, any supporting software tools, and any other software applications required to perform the PSMMO Services that the PSMMO Service Provider, in its sole discretion, deems necessary to perform the PSMMO Services. Such software, software tools, and software applications shall meet industry standards and best practices for, among other features, security, maintenance, disaster recovery and system version updates, and may include any of the following:

- a) “Align” (Trade Capture Tool) is a software product from SunGard Data System, Inc. that is the repository for all transactions which is used for, among other things recording trades, position reporting, and performing risk management functions and associated reporting functions such as Mark To Market and confirmations.
- b) “Saturn” (risk management system) is a software product from Abacus Solutions Inc., that may contain a representation of all of Buyer’s generating assets and trade positions which is used to calculate gross margin at risk and various hedge and unhedged metrics.
- c) “CCRM” which is a Counterparty, Contract, Collateral and Credit Management system from House of Code which is used for the daily collateral margining process, collateral management and management of counterparty trading restrictions.
- d) “R” programming language or other custom software developed by and used by PSMMO Service Provider in the calculation of Buyer’s value at risk.
- e) Credit Scoring Model – a credit scorecard will be developed that will recommend credit limits for each counterparty in accordance with Buyer’s credit policy using the counterparty’s financial statements and other relevant information (such as credit ratings) as input.
- f) Microsoft Office Professional by Microsoft Corporation, or comparable software.

