

AMENDMENT No. 5

Dated as of January 3, 2024

to

AMENDED and RESTATED POWER SUPPLY AGREEMENT

between

LONG ISLAND LIGHTING COMPANY d/b/a LIPA

and

NATIONAL GRID GENERATION LLC

Dated as of

October 10, 2012

This AMENDMENT No. 5 (the "Amendment") is made and entered into as of January 3, 2024 by and between LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation ("LIPA"), and NATIONAL GRID GENERATION LLC, a New York limited liability company ("GENCO"), to the Amended and Restated Power Supply Agreement, by and between LIPA and GENCO, dated as of October 10, 2012, (as amended, supplemented or otherwise modified from time to time, the "A&R PSA"). LIPA and GENCO are sometimes referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, pursuant to the A&R PSA, GENCO provides LIPA with Capacity, Energy and Ancillary Services from Generating Facilities (as each term is defined in the A&R PSA) located on Long Island, New York at rates set forth, inter alia, in Appendix A to the A&R PSA;

WHEREAS, the "Base Interest Rate," as defined in the A&R PSA, is an agreed-upon component of an annual lump sum surcharge or credit determined pursuant to Section III of Appendix A of the A&R PSA, and the definition of Base Interest Rate in turn depends in part upon London Interbank Offered Rate, or LIBOR rates;

WHEREAS, LIBOR rates have ceased to be published, and GENCO and LIPA have agreed to revise the A&R PSA for the purpose of replacing the LIBOR-based provision.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS

Section 1.1. Definitions. All capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to them in the A&R PSA.

## ARTICLE 2

### AMENDMENT OF THE A&R PSA

Section 2.1. Base Interest Rate. Section VI.E of Appendix A is hereby deleted in its entirety and replaced with the following revised Section VI.E:

E. "Base Interest Rate" means the lesser of (1) the maximum rate of interest permitted by Applicable Law and (2)(a) for interest accruing during the first six months after the date on which a payment was payable hereunder, the Secured Overnight Financing Rate ("SOFR") as published on the website of the Federal Reserve Bank of New York, for each day, and (b) for interest accruing more than six months after the date on which a payment was payable hereunder, the prime interest rate as reported in The Wall Street Journal, plus one percentage point, for each day.

Section 2.2 Appendix I. The first six pages (I-1 through I-6) of Appendix I to the A&R PSA are hereby struck and replaced with pages I-1 through I-6 of Attachment 1 hereto.

## ARTICLE 3

### AMENDMENTS TO A&R PSA

Section 3.1 Amendment to the A&R PSA. The A&R PSA shall be deemed amended as necessary to give effect to the provisions of this Amendment and remains in full force and effect. In the event of conflict between this Amendment and the other provisions of the A&R PSA, the provisions of this Amendment shall prevail.

## ARTICLE 4

### MISCELLANEOUS

Section 4.1 FERC Filing. GENCO shall file this Amendment with FERC requesting acceptance pursuant to Section 205 of the Federal Power Act. LIPA shall file an intervention in support of such filing.

Section 4.2 Effective Date. This Amendment shall be effective upon satisfaction of each of the following conditions (the date upon which all such conditions are satisfied, the "Effective Date"): (i) approval (reasonably satisfactory to LIPA and GENCO) of this Amendment by the New York State Comptroller and the New York State Attorney General; and (ii) acceptance of this

Amendment for filing by the FERC without material modification. The conditions set forth in items (i) and (ii) above are hereinafter referred to as the "Approvals." Upon receipt of the Approvals from the New York State Comptroller and the New York State Attorney General, LIPA shall provide GENCO with copies thereof.

Section 4.3 Additional Matters.

- (a) This Amendment is controlling only with respect to the matters addressed herein and shall not be deemed to have established any precedent, or prejudice either Party's rights or obligations, with regard to any other matters under the A&R PSA or with regard to any extension of the A&R PSA or any successor agreement.
- (b) This Amendment shall be governed, including, without limitation, as to validity, interpretation and effect, by the Laws of the State of New York.
- (c) This Amendment may be executed in two or more counterparts which together shall constitute a single agreement.
- (d) Except as agreed in writing by the Parties, neither Party shall seek, nor shall they support any third person in seeking, to revise the rates, terms or conditions set forth in this Amendment, or challenge the validity of this Amendment, through any means, including without limitation through any application to the Commission pursuant to the provisions of Sections 205, 206 or 306 of the Federal Power Act, as such law may be amended or superseded, or any other provisions thereof. Except as agreed in writing by the Parties, the standard of review for (a) any modification to this Amendment requested by a Party that is not agreed to by both Parties and (b) any modification to this Amendment initiated by the Commission or requested by any party other than a Party to this Amendment will be the public interest standard under the *Mobile Sierra* doctrine as described in *NRG Power Marketing, LLC v Maine Public Utilities Commission*, 130 S. Ct. 693 (2010) and *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008) (construing *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)).

*[Remainder of page left blank for signatures]*

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

LONG ISLAND LIGHTING COMPANY  
d/b/a LIPA

By:

Name: Gary Stephenson

Title: Senior Vice President of  
Power Supply

ACCEPTED BY:  
NATIONAL GRID GENERATION LLC

Name: J. P. Flannery

Title: Vice President, National Grid Generation

STATE OF NEW YORK  
COUNTY OF NASSAU

On the 2<sup>nd</sup> day of January, 2024, before me personally came James P. Flannery, to me known to be the individual described in the foregoing instrument as the Vice President of National Grid Generation LLC, who being sworn did knowledge that he/she executed same on behalf of National Grid Generation LLC and that he/she was authorized to execute same on behalf of National Grid Generation LLC.

Notary Public

(Seal)

BETH P. SANTANELLO  
NOTARY PUBLIC, State of New York  
No. 01SA6197484  
Qualified in Nassau County  
Commission Expires December 1, 2024

APPROVED BY:  
Office of the State Comptroller

Name

Title

Date

APPROVED

DEPT. OF AUDIT & CONTROL

FEB 07 2024

Priscilla Cassidy

FOR THE STATE COMPTROLLER

APPROVED AS TO FORM:  
Office of the New York State Attorney General

Name

Title

Date



## Attachment 1

Updated Appendix I to A&R PSA, LIPA's standard contract clauses: state law requirements

**APPENDIX I**

**NEW YORK STATE REQUIREMENTS**

**LIPA'S STANDARD CONTRACT CLAUSES: STATE LAW REQUIREMENTS**

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

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

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

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

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

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

**NEW YORK STATE EXECUTIVE ORDER NO. 177 (PROHIBITING STATE CONTRACTS WITH ENTITIES THAT SUPPORT DISCRIMINATION) CERTIFICATION.** The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

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The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Contractor hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

**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.

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

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

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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, to the extent permitted by 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.

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

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.** It is the policy of the Authority to provide Minority and Women-Owned Business Enterprises (M/WBEs) the greatest practicable opportunity to participate in the Authority’s contracting activity for the procurement of goods and services. To effectuate this policy, Contractor shall comply with the provisions of this Appendix I and the provisions of Article 15-A of the New York Executive Law. The Contractor will employ good faith efforts to achieve the below-stated M/WBE Goals set for this contract, and will cooperate in any efforts of the Authority, or any government agency which may have jurisdiction, to monitor and assist Contractor’s compliance with the Authority’s M/WBE program.

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Minority-Owned Business Enterprise (MBE) Subcontracting 0%

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

Waivers shall only be considered in accordance with the provisions of Article 15-A of the Executive Law.

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

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

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

If requested, the Contractor shall submit monthly compliance reports regarding its M/WBE utilization activity. Reports are due on the first business day of each month, beginning thirty (30) days after Contract award.

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

**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 I, the terms of this Appendix I shall control.

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

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
One Commerce Plaza  
Albany, New York 12245

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

NYS Department of Economic Development  
Minority and Women's Business Development Division  
One Commerce Plaza  
Albany, New York 12245

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

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

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

(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; and

(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.

**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



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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.

**CONTRACTOR AFFIRMATION OF COMPLIANCE AND CERTIFICATION OF DISCLOSURE.** Contractor 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) and § 139-j (6)(b). Furthermore, Contractor certifies that the information disclosed pursuant to State Finance Law § 139-k (5) is complete true and accurate.

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

**CONTINGENT FEES.** 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.

**NONPUBLIC PERSONAL INFORMATION.** 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.

**IRAN DIVESTMENT ACT CERTIFICATION.** Contractor certifies under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In addition, Contractor agrees that no person on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law will be utilized as a subcontractor on this contract.

**SEXUAL HARASSMENT PREVENTION CERTIFICATION.** In accordance with New York State Finance Law Section 139-L, Contractor certifies that: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of" New York State Labor Law Section 201-g.

**ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

AMENDMENT No. 4

Dated as of September 22, 2022

to

AMENDED and RESTATED POWER SUPPLY AGREEMENT

between

LONG ISLAND LIGHTING COMPANY d/b/a LIPA

and

NATIONAL GRID GENERATION LLC

Dated as of

October 12, 2012

This AMENDMENT No. 4 (the “Amendment”) is made and entered into as of September 22, 2022, by and between LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation (“LIPA”), and NATIONAL GRID GENERATION LLC, a New York limited liability company (“GENCO”), to the Amended and Restated Power Supply Agreement, by and between LIPA and GENCO, dated as of October 12, 2012, (as amended, supplemented or otherwise modified from time to time, the “A&R PSA”). LIPA and GENCO are sometimes referred to herein individually as a "Party" and collectively as the "Parties")

RECITALS

WHEREAS, pursuant to the A&R PSA, GENCO provides LIPA with Capacity, Energy and Ancillary Services from Generating Facilities (as each term is defined in the A&R PSA) located on Long Island, New York;

WHEREAS, the Parties have agreed to amend certain provisions of the A&R PSA regarding Ramp Down and Demolition and Site Remediation Costs, and to resolve certain commercial issues, as memorialized in the “Letter Agreement to Clarify and Settle Ramp Down Rights and Other Issues Under the A&R PSA,” dated April 18, 2022 (the “PSA Letter Agreement”). The PSA Letter Agreement was approved by the New York State Attorney General (on April 28, 2022) and the New York State Comptroller (on June 23, 2022);

WHEREAS, the Parties separately entered into the “Side Letter to Clarify Post Nassau Tax Settlement Administration of LIPA/National Grid Obligations,” dated September 22, 2022

(“Property Tax Letter Agreement”), which updated and clarified certain provisions relating to property taxes under the A&R PSA following the Settlement Agreement between the Long Island Power Authority d/b/a LIPA and Nassau County, dated March 25, 2022 (the “Tax Settlement”); and

WHEREAS, to effectuate the terms of the PSA Letter Agreement and Property Tax Letter Agreement, the Parties agreed to amend certain provisions of the A&R PSA, as herein provided.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS

Section 1.1. Definitions. All capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to them in the A&R PSA.

## ARTICLE 2

### RAMP DOWN

Section 2.1. Ramp Down Capacity Blocks. Section 10.1.3 is hereby deleted in its entirety and replaced with the following revised Section 10.1.3:

10.1.3: *Ramp Down Capacity Blocks.* LIPA may exercise its Ramp Down Option with respect to the following Ramp Down Capacity Blocks of Genco Steam GUs as follows:

Ramp Down Capacity	Units	Earliest Ramp Down Effective Date
1	Barrett Units 1 and/or 2	May 1, 2025
2	Port Jefferson Units 3 and/or 4	May 1, 2025
3	Northport Unit 1	May 1, 2021
4	Northport Unit 2	May 1, 2021
5	Northport Unit 3	May 1, 2021
6	Northport Unit 4	May 1, 2021

Section 2.2 Ramp Down Payment Calculation. As set forth in the PSA Letter Agreement, the Parties agreed to the following with regard to the calculation of the Ramp Down Payment:

(a) Ramp Down Methodology. Pursuant to Appendix A, Section VII (Ramp Down Adjustment) of the A&R PSA, the Parties committed to developing a mutually agreeable methodology for computing (i) the amount of any Ramp Down Payment and (ii) any prospective adjustment to the Monthly Capacity Charge resulting from a Ramp Down. GENCO has developed a revised “Ramp Down Methodology,” dated July 1, 2021 (attached hereto as Schedule A), that clarifies various aspects of the Ramp Down Payment calculation and related items. The Ramp Down Methodology will be used for all Ramp Downs during the Term of the A&R PSA.

(b) Allocation of Administration Costs following Ramp Down. GENCO utilizes a “3-Point Formula” to allocate Generation Administration and National Grid Corporate Allocated and General Administration (“Corporate Administration”) costs to each of the Generating Units. For purposes of calculating the Ramp Down Payment, 50 percent of the allocated Generation Administration costs and 75 percent of the allocated Corporate Administration costs will be used to calculate the operation and maintenance expense component of the Ramp Down Payment. The foregoing allocated costs will also be removed from the Monthly Capacity Charge in accordance with Section 10.2.1 of the A&R PSA.

(c) Ramp Down Tracking Account. For purposes of calculating the value of the Tracking Account described in Section 10.4 of the A&R PSA, the Net Book Value of Northport Unit 1 will not include any allocation of GENCO’s common plant. Accordingly, as of the date of this Amendment, the value of the Ramp Down Tracking Account will be set at \$68,367,685.00.

## ARTICLE 3

### DECOMMISSING COSTS

#### Section 3.1 Genco Ramp Down Elections.

(a) Section 10.2.2(b) of the A&R PSA is replaced in its entirety with the following provision:

“(b) If Genco elects to shut down and mothball or demolish the Generating Facility as of the Ramp Down Effective Date, then, except for the LIPA Property Tax Share for which LIPA shall be solely responsible: (i) Genco shall retain all liabilities and obligations with respect to the Generating Facility, including with respect to decommissioning, mothballing, Demolition and Site Remediation Costs and property taxes, but (ii) with respect to any LIPA-owned assets and facilities associated with the interconnection of the Generating Facility to the T&D System, LIPA shall be responsible for all costs and expenses associated with their

decommissioning, demolition and removal. LIPA shall have the right, exercisable upon written notice to Genco not less than one-hundred eighty (180) days prior to the Ramp Down Effective Date, to purchase the Generating Facility including the related site and all Regulatory Rights for \$1 (in addition to the Ramp Down Payment) and upon such purchase assume all liabilities and obligations, including for property taxes related to the Generating Facility, with respect thereto from and after the Ramp Down Effective Date. Alternatively, if LIPA does not exercise its purchase option, LIPA shall (i) have the option to purchase the Regulatory Rights at their fair market value as agreed upon by the Parties if the Generating Facility has been removed from service and permanently retired and (ii) be entitled to fifty (50%) percent of the net proceeds (after transaction costs), including any proceeds attributable to Regulatory Rights, received by Genco from any sale, transfer or other disposition of the Generating Facility made during the Term in excess of the Generating Facility's Net Book Value, after (x) giving effect to the Ramp Down Payment and (y) deducting the amount of any discount to the Ramp Down Payment made with respect to the Generating Facility pursuant to Appendix G, and (z) deducting Genco's actual demonstrated costs of decommissioning, mothballing, and Demolition and Site Remediation Costs.”

(b) For any Generating Facility that is shut down and mothballed or demolished upon the expiration of the A&R PSA (*i.e.*, Generating Units that do not continue to operate under a successor agreement with LIPA or on a merchant basis), the Parties agree that Genco shall retain all liabilities and obligations with respect to the Generating Facility, including with respect to decommissioning, mothballing, Demolition and Site Remediation Costs and property taxes, but with respect to any LIPA-owned assets and facilities associated with the interconnection of the Generating Facility to the T&D System, LIPA shall be responsible for all costs and expenses associated with their decommissioning, demolition and removal. For Generating Facilities that continue to operate immediately following the expiration of the A&R PSA, the Parties shall bear the costs incurred in connection with the disconnection of such Generating Facilities as provided in the then current NYISO *pro forma* Large Generator Interconnection Agreement or Small Generator Interconnection Agreement, as applicable, set forth in the NYISO Tariff, except to the extent otherwise agreed to by the Parties in a successor agreement.

## ARTICLE 4

### PROPERTY TAXES

Section 4.1 Formula Rate. Section III B of Appendix A to the A&R PSA is replaced in its entirety with the following provision:

B. The Tax True-up shall be calculated as follows: The base year property tax amount will be \$169,114,000; the base amount excludes the property taxes attributable to Far Rockaway and the Glenwood Generating Facilities; the base amount also excludes property taxes for the Glenwood ICs which will be calculated per the allocation

methodology set forth in Appendix K to the Agreement and the base amount will be updated to reflect this allocation. Effective Contract Year 2022, the base property tax amount for each Contract Year will be the prior Contract Year's actual property tax amount recorded on Genco's books increased by 4% and subject to further adjustment for any known and measurable changes for the current Contract Year. The Capacity Charge will be changed each Contract Year to reflect the new base year amount. Any difference between the base year property tax amount and the actual property tax amount recorded on Genco's books in each Contract Year will be deferred by Genco. This deferred amount inclusive of the carrying charge as described herein will be billed or credited to LIPA in the fourth month following the Contract Year being trued-up.

## ARTICLE 5

### AMENDMENTS TO A&R PSA

Section 5.1 Amendment to the A&R PSA. The A&R PSA shall be deemed amended as necessary to give effect to the provisions of this Amendment and remains in full force and effect. In the event of conflict between this Amendment and the other provisions of the A&R PSA, the provisions of this Amendment shall prevail.

## ARTICLE 6

### MISCELLANEOUS

Section 6.1 FERC Filing. GENCO shall file this Amendment with FERC requesting acceptance pursuant to Section 205 of the Federal Power Act. LIPA shall file an intervention in support of such filing.

Section 6.2 Effective Date. This Amendment shall be effective upon satisfaction of each of the following conditions (the date upon which all such conditions are satisfied, the "Effective Date"): (i) approval (reasonably satisfactory to LIPA and GENCO) of this Amendment by the New York State Comptroller and the New York State Attorney General; and (ii) acceptance of this Amendment for filing by the FERC without material modification. The conditions set forth in items (i) and (ii) above are hereinafter referred to as the "Approvals." Upon receipt of the Approvals from the New York State Comptroller and the New York State Attorney General, LIPA shall provide GENCO with copies thereof.

Section 6.3 Additional Matters.

- (a) This Amendment is controlling only with respect to the matters addressed herein and shall not be deemed to have established any precedent, or prejudice either Party's rights or obligations, with regard to any other matters under the A&R PSA or with regard to any extension of the A&R PSA or any successor agreement.
- (b) This Amendment shall be governed, including, without limitation, as to validity, interpretation and effect, by the Laws of the State of New York.



- (c) This Amendment may be executed in two or more counterparts which together shall constitute a single agreement.
- (d) Except as agreed in writing by the Parties, neither Party shall seek, nor shall they support any third person in seeking, to revise the rates, terms or conditions set forth in this Amendment, or challenge the validity of this Amendment, through any means, including without limitation through any application to the Commission pursuant to the provisions of Sections 205, 206 or 306 of the Federal Power Act, as such law may be amended or superseded, or any other provisions thereof. Except as agreed in writing by the Parties, the standard of review for (a) any modification to this Amendment requested by a Party that is not agreed to by both Parties and (b) any modification to this Amendment initiated by the Commission or requested by any party other than a Party to this Amendment will be the public interest standard under the *Mobile Sierra* doctrine as described in *NRG Power Marketing, LLC v Maine Public Utilities Commission*, 130 S. Ct. 693 (2010) and *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008) (construing *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)).

*[Remainder of page left blank for signatures]*

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

LONG ISLAND LIGHTING COMPANY  
d/b/a LIPA

By: [REDACTED]  
Name: Rick Shansky  
Title: Senior Vice President of Power Supply and Wholesale Markets ~~Power Supply~~

ACCEPTED BY:  
National Grid Generation LLC

Name: J. P. Flannery  
Title: V.P. National Grid Generation

STATE OF  
COUNTY OF Nassau ss.:

On the 23<sup>rd</sup> day of September, 2022, before me personally came James P. Flannery, to me known to be the individual described in the foregoing instrument as the Vice President of National Grid Generation LLC, who being sworn did acknowledge that he/she executed same on behalf of National Grid Generation LLC and that he/she was authorized to execute same on behalf of National Grid Generation LLC.

[REDACTED]  
Notary Public

BETH P. SANTANELLO  
NOTARY PUBLIC, State of New York  
No. 01SA6197484  
Qualified in Nassau County  
Commission Expires December 1, 2024

APPROVED BY:  
Office of the State Comptroller

APPROVED AS TO FORM:  
Office of the New York State Attorney General

Name	APPROVED DEPT. OF AUDIT & CONTROL
Title	Nov 15 2022 Randolph McConnach
Date	C000763 FOR THE STATE COMPTROLLER

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

## **SCHEDULE A**

### **RAMP DOWN METHODOLOGY**

## Amended and Restated Power Supply Agreement (“A&R PSA”)

### Methodology for Computing the Amount of Any Ramp Down Payment and the Adjustment to the Monthly Capacity Charge Resulting from a Ramp Down

July 1, 2021

The following methodology shall be used for computing the amount of any Ramp Down Payment and any prospective adjustment to the Monthly Capacity Charge resulting from the Ramp Down of a Unit:

	Annual Capacity Charge Components	Calculation: Year of Ramp Down (Note a)	Calculation: Following Contract Years	Source
A	Net Utility Plant – Direct (including Dense Pack)	NBV of asset will be identified and removed from the Net Utility Plant component of rate base (prorated by days if necessary).	No additional adjustment (Note b)	National Grid Generation (NGG) Plant Reports from Power Plan
B	Net Utility Plant – Allocated	No overt change. Based on the allocation of plant from NGUSA Service Company.	No additional adjustment (Note b)	NGG and NGUSA Service Company Financial Statements
C	M&S and Prepayments	Materials & Supplies (M&S) is Genco's working capital. When unit retires, a reduction amount will be identified and removed from rate base (prorated by days if necessary).  Prepayments relate to property tax prepayments – no adjustment	No additional adjustment (Note b)	M&S - Generation Operations assessment of what items can not be shared with other plants and therefore reduced from capacity charge.
D	Accumulated Deferred FIT & SIT (ADIT)	No overt change. ADIT will be valued based on the remaining net plant in service.	No additional adjustment (Note b)	NGG Financial Statements
E	<b>PTROR Return</b>	Change in return based on changes in components A through D	No additional adjustment (Note b)	
F	Less: Revenue Impact of Cost of Removal (COR) Deduction	No overt change.	No additional adjustment (Note b)	NGG Financial Statements

	Annual Capacity Charge Components	Calculation: Year of Ramp Down (Note a)	Calculation: Following Contract Years	Source
G	Depreciation Expense	Depreciation expense associated with the asset removed as of the ramp down date (prorated by days if necessary).	No additional adjustment (Note b)	NGG Plant Reports from Power Plan
H	<b>Base Labor Costs – Production</b> [Direct Labor + Generation Administration Labor]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<p><b>Allocation by Plant excel file:</b></p> <p>Uses base year O&amp;M allocated to each unit escalated by Labor and Benefits index per the annual capacity charge reset</p> <p><u>Non-outage Labor:</u> 2013 level broken down by asset on O&amp;M Detail \$78M tab</p> <p><u>Outage Labor:</u> Steam &amp; GT Overhaul costs broken down by asset on Stm Ovhl &amp; Prep tab &amp; IC Ovhl &amp; Prep tab</p> <p><u>Generation Administration Labor:</u> total admin labor x modified 3-point formula x 50%</p>
I	<b>Base Benefits Costs - Production</b> [Direct payroll taxes, benefits, incentives + Generation Administration Payroll taxes, benefits & incentives]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<p><b>Allocation by Plant excel file:</b></p> <p>Uses base year O&amp;M allocated to each unit escalated by Labor and Benefits index per the annual capacity charge reset</p> <p><u>Non-Outage Benefits:</u> Base year benefits allocated based on 30.9% of non-outage direct labor.</p> <p><u>Outage Benefits:</u> Steam &amp; GT Overhaul costs allocated by unit x (total direct benefits/total direct O&amp;M costs)</p> <p><u>Generation Administration Payroll Taxes, Benefits &amp; Incentives:</u> total admin benefits x modified 3-point formula x 50%</p>

	Annual Capacity Charge Components	Calculation: Year of Ramp Down (Note a)	Calculation: Following Contract Years	Source
J	<b>Base Labor Costs – Support</b> [Allocated labor, payroll taxes, benefits, incentives]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<b>Allocation by Plant excel file:</b> Allocated Labor and Benefits uses base year amount escalated by Labor & Benefits index per annual capacity charge update: total allocated labor & benefits x modified 3-point formula x 75%
K	<b>Base Benefits Costs – Support</b>	N/A - Adjustment for benefits included in Base Labor Costs – Support line	N/A - Adjustment for benefits included in Base Labor Costs – Support line	N/A - Adjustment for benefits included in Base Labor Costs – Support line
L	Base Property Tax Glenwood Property Tax	Separate mechanism (Article 12 and Appendix A, Section III and Appendix K of A&R PSA)		
M	OPEB Expense	See second amendment to the A&R PSA, Appendix A, Section (1)(G). National Grid will continue to recover these costs in accordance with this section		
N	Pension Expense			
O	401K Match Costs	See Appendix A, Section (1)(G) of the A&R PSA, which allows for LIPA to be billed separately for 401K plan matching contribution.		
P	Transition Obligation	N/A – amortization completed in 2015		



	Annual Capacity Charge Components	Calculation: Year of Ramp Down (Note a)	Calculation: Following Contract Years	Source
Q	Direct – Other [Direct Other and Generation Administration Other]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<b>Allocation by Plant excel file:</b> Uses base year values for Direct Other - NOT ESCALATED <u>Non-outage Direct Other:</u> 2013 level broken down by asset on O&M Detail \$78M tab <u>Outage Direct Other:</u> Steam Overhaul & Prep costs allocated by unit x (total direct other/total direct O&M costs) <u>Generation &amp; Administrative Other (NOT ESCALATED):</u> total admin other x modified 3-point formula x 50%
R	Allocated – Other [Allocated General & Administrative Other]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<b>Allocation by Plant excel file:</b> Allocated General & Administrative Other uses base year amount (NOT ESCALATED): total allocated other x modified 3-point formula x 75%

**Note a:** Adjustment made in annual plant true-up calculation; April 1<sup>st</sup> in year following the ramp down

**Note b:** Once the adjustment is made in the ramp down year the asset will not be included in any future plant reports or impact the reset or true up of the capacity charge for these components

[....] reference in the Allocated by Plant file

**Other Revenue**

Annual Capacity Charge Items	Calculation Year of Ramp Down	Calculation Following Contract Years
Variable Revenue	Unit retired will no longer generate variable revenue	Unit retired will no longer generate variable revenue
Other Revenue	Other revenue related to ramped down will not be included. (prorated by days if necessary)	Other revenue related to ramped down unit will not be included.

### **Common Asset Ramp Down Methodology**

Common assets support the operation of all generating units at a site and general station functions. The common asset ramp down methodology applies to all sites where there are multiple units.

An assessment of Common assets at Northport, Port Jefferson and EF Barret has been conducted. The Common assets in Appendix 1 reflect a broad list of assets that exist at multi-unit stations. The reduction percentage provided in Appendix 1 for Northport applies to a single unit ramp down, regardless of timing of the first unit ramp down. The reduction percentage will need to be re-evaluated in the event of subsequent unit ramp downs due to uncertainty of next unit retirement and its location and proximity to other retired unit(s). If all units at Northport are ramped down, the reduction percentage will be 100%. For Port Jefferson and EF Barrett Steam Stations, the reduction percentage in Appendix 1 apply to a single unit ramp down, regardless of timing of the first unit ramp down. If both units at EF Barrett or Port Jefferson are ramped down, the reduction percentage will be 100%.

The applicable reduction percentage will be applied to the Northport, EF Barrett, and Port Jefferson Common asset rate base on the units' ramp down effective date.

Several gas turbine sites have common asset rate bases. The Common assets function to support multiple units or blocks of multiple units at a given site. As units are ramped down, common assets would be considered for reconfiguration or retirement. National Grid will initiate a similar analysis to determine reduction percentages for gas turbine sites when a formal ramp down notice is provided by LIPA. The reduction percentage will be applied to the gas turbine site Common asset rate base on the ramp down effective date. If all units are ramped down at a gas turbine site, the reduction percentage will be 100%.

### **O&M / A&G Costs Associated with Common Assets, ie. Other**

“Other” costs are associated with the operation and maintenance (O&M) activities on shared or common assets and systems at multi-unit stations. These costs are not directly associated with or assigned to specific units. The Other costs include National Grid labor, contractor services, and materials for work activities that include operation, monitoring, testing, inspections, non-capital replacement, and preventive and demand maintenance. National Grid has evaluated these costs for the Northport, Port Jefferson and EF Barrett Steam Stations. The anticipated reduction in Other costs for single unit ramp down scenarios are included in Appendix 2.

The reduction percentage provided in Appendix 2 for Northport applies to a single unit ramp down, regardless of timing of the first unit ramp down. The reduction percentage will need to be re-evaluated in the event of subsequent unit ramp downs due to uncertainty of next unit retirement and its location and proximity to other retired unit(s). If all units at Northport are ramped down, the reduction percentage will be 100%. For Port Jefferson and EF Barrett Steam Stations, the reduction percentage in Appendix 2 apply to a single unit ramp down, regardless of timing of the first unit ramp down. If both units at EF Barrett or Port Jefferson are ramped down, the reduction percentage will be 100%.

For the purpose of this methodology an analysis of the Other costs was conducted using data from CY 2011. The reduction percentages identified in Appendix 2 (and used in this analysis) will be applied in the Allocation by Plant file to determine the reduction in the capacity charge attributed to O&M.

### RAMP DOWN PAYMENT

In accordance with Section 10.3 of the A&R PSA, the Ramp Down Payment for a steam or other GU shall be calculated as follows:

		Description	EXAMPLE: Steam Unit in Capacity Block in 2021	EXAMPLE: Other Generating Unit
(a)	Net Book Value of facility	Gross Book Value of Plant Less: Accumulated Depreciation Plus: Construction Work in Progress (CWIP) Plus: Completed Construction Not Classified (CCNC) Plus: Retirement Work in Progress (RWIP) Plus: Any Inventory Balance (net of salvage) transferred from working capital used only at the facility = NBV of facility	20,000,000 (13,000,000) 1,000,000 1,500,000  200,000 5,000  = \$9,705,000	1,250,000 (750,000) 100,000 50,000  20,000 1,000  = \$671,000
(b)	Less: Applicable discount	Per Appendix G of the A&R PSA (applicable only to Steam Units in Capacity Block per Article 10.1.3 of the A&R PSA)	- \$3,639,375	- \$0
(c)	Plus: Allocated and Direct O&M expenses	Amount assigned to ramped down unit per the Allocation by Plant excel file; correlates to amount removed from the capacity charge  18 months for Steam Unit 12 months for Other Units	+ \$2,500,000	+ \$700,000
(d)	Equals Ramp Down Payment	Sum of (a) to (c)	= \$8,565,625	= \$1,371,000
(e)	Less: Notional Tracking Account up to the sum of (a) through (c)	Unused balance of NBV of Northport Unit 1 as of May 28, 2013: \$68,367,685  (see following section for additional details)	- \$8,565,625	- \$1,371,000
(f)	Ramp Down Payment net of Notional Tracking Account Amount		= \$0	= \$0

### Notional Tracking Account

The notional tracking account, in accordance with the A&R PSA, is the net book value (as defined in the contract) of Northport Unit 1 as of May 2013. To the extent this value exceeds the sum of items a, b and c, per the table above, when a unit is ramped down then the ramp down payment from LIPA will be 0. This amount can only be used to offset the components used in calculating LIPA's ramp down payment and will not result in any payment to LIPA if a balance remains at the end of the contract or in the event of early termination.

	Northport Steam Asset	N1	N2	N3	N4	Common	FMV Land
Book Cost Total	760,663,541	138,209,489	97,298,192	161,146,403	175,084,080	139,115,216	49,810,160
Accumulated Depreciation Total	456,394,921	77,315,795	67,918,004	99,437,504	125,789,846	85,933,772	-
Northport STeam NBV Total	304,268,619	60,893,694	29,380,188	61,708,899	49,294,234	53,181,444	49,810,160
Book Cost rollforward schedule adjustment (Note 1)		76,156					
Acc. Depreciation rollforward schedule adjustment (Note 1)		1,092,115					
CWIP/RWIP		6,305,720					
Northport Unit 1 NBV Total		68,367,685					

**Note 1:** The Notional Account value of \$68.4M is the N1 NBV derived from the financial system and amended with the rollforward schedule adjustments to establish the Net Utility Plant by location. The Tracking Account value was determined after a detailed review of the Northport Power Station asset book cost and depreciation plant accounting records by National Grid Generation and National Grid Plant Accounting personnel.



## Example of capacity charge adjustment following a unit ramp down



Example of Cap  
Chrg Adj after a Uni

*(print out of the excel file follows on the next page)*

**NG Generation**  
**Capacity Payment Reduction**

		West Babylon		Port Jefferson Unit 3			
		NBV of facility	24,709		19,870,483		
		less: applicable discount ( Only Steam units in capacity block)	-		(12,419,052)		
		plus: O&M expenses (allocated and direct)	536,699		10,792,250		
		= Ramp Down Payment	561,408		18,243,681		
						11.40% Common	
						20.42% Other expense	
For illustrative purposes only; actual values will differ.							
		(h)	Unit Ramp Down	Year 8	Unit Ramp Down	Year 9	
		Contract Year	Adjustments	2021	Adjustments	2022	
		Calendar Year	2020	2021	2021	2022	
			Dec 31, 2020		Dec 31, 2021		
			WEST BABYLON		Port Jefferson Unit #3	Port Jefferson Common	Port Jefferson Unit#3
			GAS TURBINE		STEAM	STEAM	Total
Method	Annual Capacity Charge - excl Dense Packs						
ACTUAL	Net Utility Plant (includes allocated)	381,003,000	(24,709)	380,978,291	(19,870,483)	(3,154,540)	(23,025,024)
ACTUAL	M&S and Prepayments	31,005,157	(4,896)	31,000,261	(2,912,065)	(165,988)	(3,078,052)
ACTUAL_implicit	Accumulated Deferred FIT & SIT - Other	(13,904,264)	2,196	(13,902,068)	1,305,916	74,437	1,380,353
	Budgeted Incremental Net Utility Plant	(9,074,661)	(27,409)	(9,102,069.82)	(21,476,632)	(3,246,091)	(24,722,723)
	PTROR	9.10%	9.10%	9.10%	9.10%	9.10%	9.10%
	Revenue Adjustments:	(802,957)	(2,493)	(827,861)	(1,953,365)	(295,242)	(2,248,607)
	Less: Revenue Impact of COR Deduction	(2,040,420)	0	(2,040,420)	0	0	0
		(6,037)		0			0
ACTUAL	Depreciation Expense (includes common)	60,111,390	-	60,111,390	(3,476,637)	(387,569)	(3,864,206)
	Budgeted Incremental Depreciation Expense	3,374,341					
	Revenue Adjustments:	3,374,341					
Per Allocation by Plant Model	[Outage & Non-outage Direct Labor +Gen Admin Labor] Base Labor	59,868,422		59,660,571			
	Costs (Production)	3.33%					
	Defined Labor Index	100.00%					
	Attrition Factor						
	Revenue Adjustments:	1,927,095	(207,851)		(3,751,821)	(960,096)	(4,711,917)
Per Allocation by Plant Model	[Outage & Non-outage Direct payroll taxes, benefits, incentives + Gen Admin direct PT, Benefits, Incentives] Base Benefits Costs (Production)	18,473,486		18,409,350			
	Costs (Production)	3.33%					
	Defined Labor Index	100.00%					
	Attrition Factor						
	Revenue Adjustments:	594,640	(64,136)		(1,157,691)	(296,254)	(1,453,945)
Per Allocation by Plant Model	[Alloc. Labor, Payroll Taxes, Benefits & Incentives]Base Labor Costs (Support)	11,824,900	(48,351)	11,776,549	(865,080)	(126,605)	(991,684)
	Defined Labor Index	3.33%					
	Revenue Adjustments:	380,630					
Per Allocation by Plant Model	[Alloc. Labor, Payroll Taxes, Benefits & Incentives]Base Benefits Costs (Support)	4,598,366	-	4,598,366	-		
	Defined Labor Index	3.33%					
	Revenue Adjustments:	148,016					
No change	Base Property Tax Escalation Rate	222,542,496	-	222,542,496	-		
		4.00%					
	Revenue Adjustments:	8,559,327					
No change	OPEB Expense	1,050,881	-	1,050,881	-		
	Revenue Adjustments:	-					
No change	Pension Expense	14,503,545	-	14,503,545	-		
	Revenue Adjustments:	-					
No change	401K Match Expense	779,000	-	779,000	-		
	Revenue Adjustments:	-					
No change	Transition Obligation	-	-	-	-		
	Revenue Adjustments:	-					
Per Allocation by Plant Model	[Outage & Non-outage Direct Other & Gen Admin Other] Direct - Other	20,960,307	(182,828)	20,777,479	(834,825)	(109,821)	(944,646)
Per Allocation by Plant Model	[Allocated G&A Other] Allocated - Other	11,672,151	(33,533)	11,638,618	(585,417)	(85,676)	(671,093)
	Rounding	-	0	-	0	0	-
	Other Revenue Adjustments	-	0	-	0	0	-
	Total Revenue Adjustments	14,978,012	(539,192)		(12,624,835)	(2,261,262)	(14,886,098)
	Total Annual Capacity Charge (excl Dense Packs)	460,553,284		460,014,092			445,127,994
Annual Capacity Charge - Dense Packs							
Actual	Revenue Adjustments:						
	Net Utility Plant	67,268,715	0	67,268,715	(1,770,091)		(1,770,091)
	Budgeted Incremental Net Utility Plant	(2,765,385)					
	PTROR	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%
	Revenue Adjustments:	(134,121)	0	3,262,533	(85,849)	-	(85,849)
Actual	Depreciation Expense	2,760,473	0	2,760,473	(112,412)		(112,412)
	Budgeted Incremental Depreciation Expense	(1)					
	Revenue Adjustments:	(1)		0			(112,412)
	Total Dense Pack Capacity Charge	6,023,005	-	6,023,005	(198,261)	-	(198,261)
Glenwood Property Tax ( Per Amendment 8 of PSA)							
No change	Glenwood Property Tax Escalation Rate	27,757,745	0	27,757,745	-	-	-
		4.00%					
	Revenue Adjustments:	1,067,606					
	Total Glenwood Property Tax	27,757,745	-	27,757,745	-		27,757,745
	Total Annual Capacity Charge	494,334,034	-	493,794,842			478,710,483
Total Reduction to Capacity Charge			(539,192)				(15,084,359)

Amounts sourced from Allocation by Plant (AbP); Schedule 1

**Appendix 1 - Northport Common Assets**

<b>Common Assets</b>	<b>Reduction (%)</b>	<b>Notes</b>
Boiler Support Systems	25.00%	Piping, ductwork and insulation that connects the common systems to the unit are removed.
Buildings & Structures	5.00%	Common buildings, paving and structures can not be eliminated. Reduction is in recognition of the potential elimination of minor buildings and structures.
Control Systems	5.00%	Controls and instrumentation associated with common fuel, process waste and process water are maintained. Control Systems that networked the station to the ramped down unit are eliminated.
Critical Spares	0.00%	Critical spares are retained for future use.
Environmental Systems	25.00%	The portion of the system that networked the Continuous Emissions Monitoring System (Station) to the ramped down unit are eliminated.
Fire Protection	25.00%	All outside fire protection is retained. Fire protection that tied the common plant system to the ramped down unit is eliminated.
Fuel Systems	5.00%	All fuel oil transfer, storage and delivery systems are retained. Piping, equipment and insulation connecting the system to the ramped down unit is eliminated.
HVAC	25.00%	HVAC systems are retained except those servicing equipment on a ramped down unit.
Marine Systems & Structures	0.00%	All marine systems and structures such as the offshore platform, docks, bulkheads, intakes and discharge assets are retained.
Operational Technology	25.00%	The network equipment for combustion controls, performance monitoring and data acquisition equipment is retained. Operational Technologies that networked the station to the ramped down unit are eliminated.
Process Water	5.00%	The station demineralizers are retained. The piping and equipment connecting to the ramped down unit is eliminated.
Security and Communications Systems	0.00%	All security and communication systems are retained.
Service Water	25.00%	Service water equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Air Systems	25.00%	Station air equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Electric Systems	25.00%	Station electric equipment, systems and structures will be retained except those supplying production equipment on a ramped down unit.
Tools and Equipment	25.00%	A reduction in office equipment and some tools is anticipated with a unit ramp down.
Process Waste Systems	0.00%	All process waste equipment, systems and structures are retained.
<b>Grand Total</b>	<b>8.78%</b>	

**Appendix 1 - Port Jefferson Common Assets**

Common Assets	Reduction (%)	Notes
Boiler Support Systems	50.00%	Piping, ductwork and insulation that connects the common systems to the unit are removed.
Buildings & Structures	10.00%	Common buildings, paving and structures can not be eliminated. Reduction is in recognition of the potential elimination of minor buildings and structures.
Control Systems	10.00%	Controls and instrumentation associated with common fuel, process waste and process water are maintained. Control Systems that networked the station to the ramped down unit are eliminated.
Critical Spares	0.00%	Critical spares are retained for future use.
Environmental Systems	50.00%	The portion of the system that networked the Continuous Emissions Monitoring System (Station) to the ramped down unit are eliminated.
Fire Protection	50.00%	All outside fire protection is retained. Fire protection that tied the common plant system to the ramped down unit is eliminated.
Fuel Systems	10.00%	All fuel oil transfer, storage and delivery systems are retained. Piping, equipment and insulation connecting the system to the ramped down unit is eliminated.
HVAC	50.00%	HVAC systems are retained except those servicing equipment on a ramped down unit.
Marine Systems & Structures	0.00%	All marine systems and structures such as the unloading platform, docks, bulkheads, intakes and discharge assets are retained.
Operational Technology	50.00%	The network equipment for combustion controls, performance monitoring and data acquisition equipment is retained. Operational Technologies that networked the station to the ramped down unit are eliminated.
Process Water	10.00%	The piping and equipment connecting to the ramped down unit is eliminated.
Security and Communications Systems	0.00%	All security and communication systems are retained.
Service Water	50.00%	Service water equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Air Systems	50.00%	Station air equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Electric Systems	50.00%	Station electric equipment, systems and structures will be retained except those supplying production equipment on a ramped down unit.
Tools and Equipment	50.00%	A reduction in office equipment and some tools is anticipated with a unit ramp down.
Process Waste Systems	0.00%	All process waste equipment, systems and structures are retained.
<b>Grand Total</b>	<b>11.40%</b>	

#### Appendix 1 - EF Barrett Common Assets

Common Assets	Reduction (%)	Notes
Boiler Support Systems	50.00%	Piping, ductwork and insulation that connects the common systems to the unit are removed.
Buildings & Structures	10.00%	Common buildings, paving and structures can not be eliminated. Reduction is in recognition of the potential elimination of minor buildings and structures.
Control Systems	10.00%	Controls and instrumentation associated with common fuel, process waste and process water are maintained. Control Systems that networked the station to the ramped down unit are eliminated.
Critical Spares	0.00%	Critical spares are retained for future use.
Environmental Systems	50.00%	The portion of the system that networked the Continuous Emissions Monitoring System (Station) to the ramped down unit are eliminated.
Fire Protection	50.00%	All outside fire protection is retained. Fire protection that tied the common plant system to the ramped down unit is eliminated.
Fuel Systems	10.00%	All fuel oil transfer, storage and delivery systems are retained. Piping, equipment and insulation connecting the system to the ramped down unit is eliminated.
HVAC	50.00%	HVAC systems are retained except those servicing equipment on a ramped down unit.
Marine Systems & Structures	0.00%	All marine systems and structures such as the unloading platform, docks, bulkheads, intakes and discharge assets are retained.
Operational Technology	50.00%	The network equipment for combustion controls, performance monitoring and data acquisition equipment is retained. Operational Technologies that networked the station to the ramped down unit are eliminated.
Process Water	10.00%	The station demineralizers are retained. The piping and equipment connecting to the ramped down unit is eliminated.
Security and Communications Systems	0.00%	All security and communication systems are retained.
Service Water	50.00%	Service water equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Air Systems	50.00%	Station air equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Electric Systems	50.00%	Station electric equipment, systems and structures will be retained except those supplying production equipment on a ramped down unit.
Tools and Equipment	50.00%	A reduction in office equipment and some tools is anticipated with a unit ramp down.
Process Waste Systems	0.00%	All process waste equipment, systems and structures are retained.
<b>Grand Total</b>	<b>11.65%</b>	

**Appendix 2 - Northport Other Costs**

Other Plant Systems	Reduction (%)	Notes
Boiler / Aux Equipment Total	25.00%	Reduction in the repair of spare motors, pumps & misc. equip, engineering support, and maintenance
Fuel Systems Total	5.00%	Reduction in the maintenance of no-unit specific fuel oil piping
Motors / Pumps Total	0.00%	Dilution pumps and air compressors are needed for continued operation
Operators Total	20.00%	Reduction in the required amount of Operations personnel
Plant Structures Total	0.00%	Paving, lighting, marine structures, landscaping, cesspool and drain maintenance will be required for continued operation
Turbine Total	20.00%	Reduction in condenser cleaning / maintenance activities
WWT Total	0.00%	Waste Water Treatment will be required for continued operation
Engineering Support Total	25.00%	Reduction in the amount of engineering design and support required
Misc. Maintenance Total	25.00%	Reduction in labor and materials required for non-unit specific maintenance
Admin & Training Total	15.00%	Reduction in personnel equates to a reduction in training
Air Emission/Environ Total	0.00%	Routine sampling required for SPDES compliance
Compressors/Air Sys Total	25.00%	Reduction in non-unit specific equipment maintenance
CEMS Total	25.00%	Reduction in networking equipment and software licensing
Corrosion Control Total	0.00%	Cathodic protection required on FOSTs and marine structures
Fire Protection Sys Total	25.00%	Reduction in non-unit specific equipment maintenance
Material Mgmt Total	25.00%	Reduction in materials management labor and consumable materials
Small Tools Total	25.00%	Reduction in the number of small tools required
Spill Cleanup Total	0.00%	Spill response clean up materials and disposal will be required
Water System Total	5.00%	Reduction in non-unit specific equipment maintenance
Main Transformer Total	0.00%	Main / Aux transformer support systems will require continued maintenance.
Safety Total	0.00%	Labor, materials and services will be required to maintain a safe workplace.
<b>Grand Total</b>	<b>14.15%</b>	



**Appendix 2 – Port Jefferson Other Costs**

Other Plant Systems	Reduction (%)	Notes
Boiler / Aux Equipment Total	50.00%	Reduction in the repair of spare motors, pumps & misc. equip, engineering support, and maintenance
Fuel Systems Total	10.00%	Reduction in the maintenance of no-unit specific fuel oil piping
Motors / Pumps Total	0.00%	Air compressors are needed for continued operation
Operators Total	40.00%	Reduction in the required amount of Operations personnel
Plant Structures Total	0.00%	Paving, lighting, marine structures, landscaping, cesspool and drain maintenance will be required for continued operation
Turbine Total	40.00%	Reduction in condenser cleaning / maintenance activities
WWT Total	0.00%	Waste Water Treatment will be required for continued operation
Engineering Support Total	50.00%	Reduction in the amount of engineering design and support required
Misc. Maintenance Total	50.00%	Reduction in labor and materials required for non-unit specific maintenance
Admin & Training Total	30.00%	Reduction in personnel equates to a reduction in training
Air Emission/Environ Total	0.00%	Routine sampling required for SPDES compliance
Compressors/Air Sys Total	50.00%	Reduction in non unit specific equipment maintenance
CEMS Total	50.00%	Reduction in networking equipment and software licensing
Corrosion Control Total	0.00%	Cathodic protection required on FOSTs and marine structures
Fire Protection Sys Total	50.00%	Reduction in non unit specific equipment maintenance
Material Mgmt Total	33.00%	Reduction in materials management labor and consumable materials
Small Tools Total	50.00%	Reduction in the number of small tools required
Spill Cleanup Total	0.00%	Spill response clean up materials and disposal will be required
Water System Total	10.00%	Reduction in non unit specific equipment maintenance
Main Transformer Total	0.00%	Main / Aux transformer support systems will require continued maintenance.
Safety Total	0.00%	Labor, materials and services will be required to maintain a safe workplace.
<b>Grand Total</b>	<b>20.42%</b>	

**Appendix 2 – EF Barrett Costs**

Other Plant Systems	Reduction (%)	Notes
Boiler / Aux Equipment Total	50.00%	Reduction in the repair of spare motors, pumps & misc. equip, engineering support, and maintenance
Fuel Systems Total	10.00%	Reduction in the maintenance of no-unit specific fuel oil piping
Motors / Pumps Total	0.00%	Air compressors are needed for continued operation
Operators Total	40.00%	Reduction in the required amount of Operations personnel
Plant Structures Total	0.00%	Paving, lighting, marine structures, landscaping, cesspool and drain maintenance will be required for continued operation
Turbine Total	40.00%	Reduction in condenser cleaning / maintenance activities
WWT Total	0.00%	Waste Water Treatment will be required for continued operation
Engineering Support Total	50.00%	Reduction in the amount of engineering design and support required
Misc. Maintenance Total	50.00%	Reduction in labor and materials required for non-unit specific maintenance
Admin & Training Total	30.00%	Reduction in personnel equates to a reduction in training
Air Emissoin/Environ Total	0.00%	Routine sampling required for SPDES compliance
Compressors/Air Sys Total	50.00%	Reduction in non unit specific equipment maintenance
CEMS Total	50.00%	Reduction in networking equipment and software licensing
Corrosion Control Total	0.00%	Cathodic protection required on FOSTs and marine structures
Fire Protection Sys Total	50.00%	Reduction in non unit specific equipment maintenance
Material Mgmt Total	33.00%	Reduction in materials management labor and consumable materials
Small Tools Total	50.00%	Reduction in the number of small tolls required
Spill Cleanup Total	0.00%	Spill response clean up materials and disposal will be required
Water System Total	10.00%	Reduction in non unit specific equipment maintenance
Main Transformer Total	0.00%	Main / Aux transformer support systems will require continued maintenance.
Safety Total	0.00%	Labor, materials and services will be required to maintain a safe workplace.
<b>Grand Total</b>	<b>21.55%</b>	





**Rick Shansky**  
Senior Vice President of Power Supply and Wholesale Markets

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April 18, 2022

National Grid Generation LLC  
175 East Old County Road  
Hicksville, New York 11801  
Attn: James P Flannery  
Vice President – Power Generation Operations

RE: LETTER AGREEMENT TO CLARIFY AND SETTLE RAMP DOWN RIGHTS AND OTHER  
ISSUES UNDER THE A&R PSA (“LETTER AGREEMENT”)

Dear Mr. Flannery:

Reference is made to the Amended and Restated Power Supply Agreement, dated as of October 10, 2012 (the “A&R PSA”), by and between LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation (“LIPA”), and NATIONAL GRID GENERATION LLC, a New York limited liability company (“GENCO”). LIPA and GENCO are each individually referred to herein as a “Party” and collectively referred to as the “Parties”. Capitalized terms used herein shall have the meaning given to them in the A&R PSA unless otherwise defined herein.

The A&R PSA provides LIPA with the option to Ramp Down certain Generating Units at different times during the term of the contract. LIPA requests that GENCO waive the restriction within the Ramp Down Option that limits such option to whole capacity blocks, in order to provide additional flexibility regarding the E.F. Barrett and Port Jefferson Generating Facilities. GENCO is agreeable to providing LIPA such flexibility on the terms described in this Letter Agreement.

Additionally, LIPA and GENCO have discussed several billing matters under the A&R PSA that both parties now desire to fully and finally resolve, as well as clarify the Parties’ rights and responsibilities with respect to several matters under the A&R PSA. In recognition of the foregoing, the Parties agree as follow:

1. Capacity Ramp Down Blocks
  - a. Section 10.1.1 of the A&R PSA provides that the Ramp Down Option for Steam GU’s applies only to the blocks of capacity defined in Section 10.1.3 of the A&R PSA (“Block Limitation”).

GENCO agrees to waive the Block Limitation with respect to Ramp Down Capacity Block 1 (Barrett Units 1 and 2) and Block 2 (Port Jefferson Units 3 and 4) to the extent that LIPA elects to Ramp Down one Steam GU at Port Jefferson and/or one Steam GU at Barrett with a Ramp Down Effective Date no earlier than May 1, 2025. As such, the Parties agree to amend Section 10.1.3 of the A&R PSA as follows:

**“10.1.3: Ramp Down Capacity Blocks.** LIPA may exercise its Ramp Down Option with respect to the following Ramp Down Capacity Blocks of Genco Steam GUs as follows:

Ramp Down Capacity	Units	Earliest Ramp Down Effective Date
1	Barrett Units 1 and/or 2	May 1, 2025
2	Port Jefferson Units 3 and/or 4	May 1, 2025
3	Northport Unit 1	May 1, 2021
4	Northport Unit 2	May 1, 2021
5	Northport Unit 3	May 1, 2021
6	Northport Unit 4	May 1, 2021

“

## 2. Ramp Down Payment Calculation

- a. *Ramp Down Methodology.* Pursuant to Appendix A, Section VII (Ramp Down Adjustment), the Parties committed to developing a mutually agreeable methodology for computing (i) the amount of any Ramp Down Payment and (ii) any prospective adjustment to the Monthly Capacity Charge resulting from a Ramp Down. GENCO has developed a revised “Ramp Down Methodology,” dated July 1, 2021 (attached hereto), that clarifies various aspects of the Ramp Down Payment calculation and related items.
- b. The Parties agree that the Ramp Down Methodology will be used for all Ramp Downs during the Term of the A&R PSA.
- c. *Allocation of Administration Costs following Ramp Down.* GENCO utilizes a “3-Point Formula” to allocate Generation Administration and National Grid Corporate Allocated and General Administration costs to each of the Generating Units. For purposes of calculating the Ramp Down Payment, the Parties agree that 50 percent of the allocated Generation Administration costs and 75 percent of the allocated Corporate Administration cost will be used to calculate the operation and maintenance expense component of the Ramp Down Payment. The foregoing allocated costs will also be removed from the Monthly Capacity Charge in accordance with Section 10.2.1 of the A&R PSA.

- d. *Ramp Down Tracking Account.* For purposes of calculating the value of the Tracking Account described in Section 10.4 of the A&R PSA, the Net Book Value of Northport Unit 1 will not include any allocation of GENCO's common plant. Accordingly, as of the date of this letter, the value of the Ramp Down Tracking Account will be set at \$68,367,685.00.

3. Reimbursement of COVID 19 Costs

- a. GENCO incurred \$5,042,554.08 of incremental costs to implement COVID 19-related precautions for supporting the safe and reliable operation of the Generating Facilities from April through July 2020, including costs for cleaning the Generating Facilities and the sequestration of certain GENCO personnel. LIPA agrees that these incremental costs are eligible for reimbursement pursuant to Section 5.1.4 of the A&R PSA.
- b. GENCO will promptly provide (to the extent not already provided) the following documentation as cost support or, if such documentation is not available, substitute documentation deemed suitable by LIPA.
  - i. For Internal Labor: corresponding time reports and/or timesheets.
  - ii. For Vendor Services: invoices and applicable receipts for all costs, and proof of payment.
- c. LIPA shall pay GENCO for these costs within 30 days of the date when LIPA receives from GENCO all cost support documentation described in Section 3(b) of this Letter Agreement.

4. NYS Department of Environmental Conservation ("DEC") Peaker Rule

- a. The DEC has adopted regulations (Subpart 227-3, Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines) that include new air emissions requirements for simple cycle combustion turbines ("Peaker Rule"). GENCO anticipates that capital upgrades (e.g., water injections systems) estimated to cost approximately \$18.2 million are required to keep the following units in compliance with the Peaker Rule: (i) Barrett 1-6 and 8; (ii) Barrett 9-12; (iii) Glenwood 2; and (iv) East Hampton 1 (the "Peaker Rule Investments").
- b. The recovery of the Peaker Rule Investments shall be treated consistently with the recovery of other capital expenditures under the A&R PSA.
- c. Notwithstanding the forgoing, if one or more of West Babylon, Glenwood 1, Glenwood 3, and Shoreham 1 and 2 will be required to operate on or after May 1, 2025, LIPA shall notify GENCO no later than May 1, 2024 and GENCO will begin engineering and installation of temporary water injection systems on these units. The estimated cost for this work is \$6.4 million. Within 30 days of receiving adequate documentation of GENCO's actual compliance costs, LIPA will reimburse GENCO in a lump sum the full amount of actual expenditures to make these units available to operate on May 1, 2025. If water injection systems are not required to comply with the Peaker Rule, then water

injection systems will not be installed and there will be no water injection cost reimbursement to GENCO. Because the investments referenced in this subparagraph (c) are likely to have a short and limited useful life, the parties agree that these costs are recoverable by GENCO under Sections 9.1 and 5.1.4 of the A&R PSA.

5. Decommissioning Costs

- a. The Parties agree to replace Section 10.2.2(b) of the A&R PSA in its entirety with the following:

“(b) If Genco elects to shut down and mothball or demolish the Generating Facility as of the Ramp Down Effective Date, then, except for the LIPA Property Tax Share for which LIPA shall be solely responsible: (i) Genco shall retain all liabilities and obligations with respect to the Generating Facility, including with respect to decommissioning, mothballing, Demolition and Site Remediation Costs and property taxes, but (ii) with respect to any LIPA-owned assets and facilities associated with the interconnection of the Generating Facility to the T&D System, LIPA shall be responsible for all costs and expenses associated with their decommissioning, demolition and removal. LIPA shall have the right, exercisable upon written notice to Genco not less than one-hundred eighty (180) days prior to the Ramp Down Effective Date, to purchase the Generating Facility including the related site and all Regulatory Rights for \$1 (in addition to the Ramp Down Payment) and upon such purchase assume all liabilities and obligations, including for property taxes related to the Generating Facility, with respect thereto from and after the Ramp Down Effective Date. Alternatively, if LIPA does not exercise its purchase option, LIPA shall (i) have the option to purchase the Regulatory Rights at their fair market value as agreed upon by the Parties if the Generating Facility has been removed from service and permanently retired and (ii) be entitled to fifty (50%) percent of the net proceeds (after transaction costs), including any proceeds attributable to Regulatory Rights, received by Genco from any sale, transfer or other disposition of the Generating Facility made during the Term in excess of the Generating Facility's Net Book Value, after (x) giving effect to the Ramp Down Payment and (y) deducting the amount of any discount to the Ramp Down Payment made with respect to the Generating Facility pursuant to Appendix G, and (z) deducting Genco's actual demonstrated costs of decommissioning, mothballing, and Demolition and Site Remediation Costs.”

- b. For any Generating Facility that is shut down and mothballed or demolished upon the expiration of the A&R PSA (*i.e.*, Generating Units that do not continue to operate under a successor agreement with LIPA or on a merchant basis), the Parties agree that Genco shall retain all liabilities and obligations with respect to the Generating Facility, including with respect to decommissioning, mothballing, Demolition and Site Remediation Costs and property taxes, but with respect to any LIPA-owned assets and facilities associated with the interconnection of the Generating Facility to the T&D System, LIPA shall be responsible for all costs and expenses associated with their decommissioning, demolition and removal. For Generating Facilities that continue to operate immediately following the expiration of the A&R PSA, the Parties shall bear the costs incurred in connection with the disconnection of such Generating Facilities as provided in the then current NYISO *pro forma* Large Generator Interconnection Agreement or Small Generator

Interconnection Agreement, as applicable, set forth in the NYISO Tariff, except to the extent otherwise agreed to by the Parties in a successor agreement.

6. East Hampton Project

GENCO has recently completed the East Hampton Sound Mitigation Phase 2 capital project (“East Hampton Project”). The total project cost is \$465,167.00. GENCO has provided detailed cost support and LIPA approves inclusion of the East Hampton Project in the 2021 Contract Year Capital Budget.

7. Interconnection and Site Access Agreements.

In furtherance of Section 7.4 of the A&R PSA, GENCO and LIPA will promptly complete the negotiation and execution of the Standard Large Generator Interconnection Agreement (“LGIA”) for each Generating Site and a Services Agreement. These agreements shall not modify or in any way limit the parties’ rights and obligations under the A&R PSA. The Parties agree that each LGIA shall represent that in the event of early termination of the LGIA as a result of a Ramp Down, each Party shall be responsible for the costs and expenses of its own assets and facilities as described in the amendment to the A&R PSA Section 10.2.2(b) stated in paragraph 5 above.

8. Miscellaneous

- a. This Letter Agreement shall become effective upon receipt of the New York State Comptroller’s approval. Except as discussed herein, the A&R PSA shall remain unchanged and this Letter Agreement shall not in any way affect or release any of the Parties’ contractual rights and remedies under the A&R PSA.
- b. This Letter Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York (without giving effect to conflict of law principles) including, without limitation, as to validity, interpretation and effect.
- c. This Letter Agreement may be executed in two or more counterparts which together shall constitute a single agreement.


*(signature page follows)*

Please sign this Letter Agreement in the space below indicating your agreement with the above.

Sincerely,

LONG ISLAND LIGHTING COMPANY  
D/B/A LIPA

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

  
Rick Shansky  
Senior Vice President, Power Supply  
and Wholesale Markets

Agreed to and Accepted:

NATIONAL GRID GENERATION LLC

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

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

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

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

Please sign this Letter Agreement in the space below indicating your agreement with the above.

Sincerely,

LONG ISLAND LIGHTING COMPANY  
D/B/A LIPA

By: \_\_\_\_\_  
Rick Shanksy  
Senior Vice President, Power Supply  
and Wholesale Markets

Agreed to and Accepted:

NATIONAL GRID GENERATION LLC

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

Name: JAMES F. FLANNERY

Title: Vice President, Generation

Date: April 18, 2022

STATE OF NEW YORK     )

COUNTY OF NASSAU     )

On April 1<sup>st</sup> 2022 before me personally came James P. Flannery, to me known to be the individuals described in the foregoing instrument in his capacity as Vice President of National Grid Generation LLC, the New York limited liability company described in and which executed the foregoing instrument, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.



Notary Public

BETH P. SANTANELLO  
NOTARY PUBLIC, State of New York  
No. 01SA6197484  
Qualified in Nassau County  
Commission Expires December 1, 2024



Approved as to Form:

Office of the Attorney General

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

Approved:

Office of the State Comptroller

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



## Amended and Restated Power Supply Agreement (“A&R PSA”)

### Methodology for Computing the Amount of Any Ramp Down Payment and the Adjustment to the Monthly Capacity Charge Resulting from a Ramp Down

July 1, 2021

The following methodology shall be used for computing the amount of any Ramp Down Payment and any prospective adjustment to the Monthly Capacity Charge resulting from the Ramp Down of a Unit:

	Annual Capacity Charge Components	Calculation: Year of Ramp Down (Note a)	Calculation: Following Contract Years	Source
A	Net Utility Plant – Direct (including Dense Pack)	NBV of asset will be identified and removed from the Net Utility Plant component of rate base (prorated by days if necessary).	No additional adjustment (Note b)	National Grid Generation (NGG) Plant Reports from Power Plan
B	Net Utility Plant – Allocated	No overt change. Based on the allocation of plant from NGUSA Service Company.	No additional adjustment (Note b)	NGG and NGUSA Service Company Financial Statements
C	M&S and Prepayments	Materials & Supplies (M&S) is Genco's working capital. When unit retires, a reduction amount will be identified and removed from rate base (prorated by days if necessary).  Prepayments relate to property tax prepayments – no adjustment	No additional adjustment (Note b)	M&S - Generation Operations assessment of what items can not be shared with other plants and therefore reduced from capacity charge.
D	Accumulated Deferred FIT & SIT (ADIT)	No overt change. ADIT will be valued based on the remaining net plant in service.	No additional adjustment (Note b)	NGG Financial Statements
E	<b>PTROR Return</b>	Change in return based on changes in components A through D	No additional adjustment (Note b)	
F	Less: Revenue Impact of Cost of Removal (COR) Deduction	No overt change.	No additional adjustment (Note b)	NGG Financial Statements

	Annual Capacity Charge Components	Calculation: Year of Ramp Down (Note a)	Calculation: Following Contract Years	Source
G	Depreciation Expense	Depreciation expense associated with the asset removed as of the ramp down date (prorated by days if necessary).	No additional adjustment (Note b)	NGG Plant Reports from Power Plan
H	<b>Base Labor Costs – Production</b> [Direct Labor + Generation Administration Labor]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<p><b>Allocation by Plant excel file:</b></p> <p>Uses base year O&amp;M allocated to each unit escalated by Labor and Benefits index per the annual capacity charge reset</p> <p><u>Non-outage Labor:</u> 2013 level broken down by asset on O&amp;M Detail \$78M tab</p> <p><u>Outage Labor:</u> Steam &amp; GT Overhaul costs broken down by asset on Stm Ovhl &amp; Prep tab &amp; IC Ovhl &amp; Prep tab</p> <p><u>Generation Administration Labor:</u> total admin labor x modified 3-point formula x 50%</p>
I	<b>Base Benefits Costs - Production</b> [Direct payroll taxes, benefits, incentives + Generation Administration Payroll taxes, benefits & incentives]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<p><b>Allocation by Plant excel file:</b></p> <p>Uses base year O&amp;M allocated to each unit escalated by Labor and Benefits index per the annual capacity charge reset</p> <p><u>Non-Outage Benefits:</u> Base year benefits allocated based on 30.9% of non-outage direct labor.</p> <p><u>Outage Benefits:</u> Steam &amp; GT Overhaul costs allocated by unit x (total direct benefits/total direct O&amp;M costs)</p> <p><u>Generation Administration Payroll Taxes, Benefits &amp; Incentives:</u> total admin benefits x modified 3-point formula x 50%</p>

	Annual Capacity Charge Components	Calculation: Year of Ramp Down (Note a)	Calculation: Following Contract Years	Source
J	<b>Base Labor Costs – Support</b> [Allocated labor, payroll taxes, benefits, incentives]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<b>Allocation by Plant excel file:</b> Allocated Labor and Benefits uses base year amount escalated by Labor & Benefits index per annual capacity charge update: total allocated labor & benefits x modified 3-point formula x 75%
K	<b>Base Benefits Costs – Support</b>	N/A - Adjustment for benefits included in Base Labor Costs – Support line	N/A - Adjustment for benefits included in Base Labor Costs – Support line	N/A - Adjustment for benefits included in Base Labor Costs – Support line
L	Base Property Tax Glenwood Property Tax	Separate mechanism (Article 12 and Appendix A, Section III and Appendix K of A&R PSA)		
M	OPEB Expense	See second amendment to the A&R PSA, Appendix A, Section (1)(G). National Grid will continue to recover these costs in accordance with this section		
N	Pension Expense			
O	401K Match Costs	See Appendix A, Section (1)(G) of the A&R PSA, which allows for LIPA to be billed separately for 401K plan matching contribution.		
P	Transition Obligation	N/A – amortization completed in 2015		

	Annual Capacity Charge Components	Calculation: Year of Ramp Down (Note a)	Calculation: Following Contract Years	Source
Q	Direct – Other [Direct Other and Generation Administration Other]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<b>Allocation by Plant excel file:</b> Uses base year values for Direct Other - NOT ESCALATED <u>Non-outage Direct Other:</u> 2013 level broken down by asset on O&M Detail \$78M tab <u>Outage Direct Other:</u> Steam Overhaul & Prep costs allocated by unit x (total direct other/total direct O&M costs) <u>Generation &amp; Administrative Other (NOT ESCALATED):</u> total admin other x modified 3-point formula x 50%
R	Allocated – Other [Allocated General & Administrative Other]	Identified amounts removed from capacity charge (prorated by days if necessary)	Identified amounts removed from capacity charge reset in the year following ramp down (12-month amount)	<b>Allocation by Plant excel file:</b> Allocated General & Administrative Other uses base year amount (NOT ESCALATED): total allocated other x modified 3-point formula x 75%

**Note a:** Adjustment made in annual plant true-up calculation; April 1<sup>st</sup> in year following the ramp down

**Note b:** Once the adjustment is made in the ramp down year the asset will not be included in any future plant reports or impact the reset or true up of the capacity charge for these components

[....] reference in the Allocated by Plant file

**Other Revenue**

Annual Capacity Charge Items	Calculation Year of Ramp Down	Calculation Following Contract Years
Variable Revenue	Unit retired will no longer generate variable revenue	Unit retired will no longer generate variable revenue
Other Revenue	Other revenue related to ramped down will not be included. (prorated by days if necessary)	Other revenue related to ramped down unit will not be included.

### **Common Asset Ramp Down Methodology**

Common assets support the operation of all generating units at a site and general station functions. The common asset ramp down methodology applies to all sites where there are multiple units.

An assessment of Common assets at Northport, Port Jefferson and EF Barret has been conducted. The Common assets in Appendix 1 reflect a broad list of assets that exist at multi-unit stations. The reduction percentage provided in Appendix 1 for Northport applies to a single unit ramp down, regardless of timing of the first unit ramp down. The reduction percentage will need to be re-evaluated in the event of subsequent unit ramp downs due to uncertainty of next unit retirement and its location and proximity to other retired unit(s). If all units at Northport are ramped down, the reduction percentage will be 100%. For Port Jefferson and EF Barrett Steam Stations, the reduction percentage in Appendix 1 apply to a single unit ramp down, regardless of timing of the first unit ramp down. If both units at EF Barrett or Port Jefferson are ramped down, the reduction percentage will be 100%.

The applicable reduction percentage will be applied to the Northport, EF Barrett, and Port Jefferson Common asset rate base on the units' ramp down effective date.

Several gas turbine sites have common asset rate bases. The Common assets function to support multiple units or blocks of multiple units at a given site. As units are ramped down, common assets would be considered for reconfiguration or retirement. National Grid will initiate a similar analysis to determine reduction percentages for gas turbine sites when a formal ramp down notice is provided by LIPA. The reduction percentage will be applied to the gas turbine site Common asset rate base on the ramp down effective date. If all units are ramped down at a gas turbine site, the reduction percentage will be 100%.

### **O&M / A&G Costs Associated with Common Assets, ie. Other**

“Other” costs are associated with the operation and maintenance (O&M) activities on shared or common assets and systems at multi-unit stations. These costs are not directly associated with or assigned to specific units. The Other costs include National Grid labor, contractor services, and materials for work activities that include operation, monitoring, testing, inspections, non-capital replacement, and preventive and demand maintenance. National Grid has evaluated these costs for the Northport, Port Jefferson and EF Barrett Steam Stations. The anticipated reduction in Other costs for single unit ramp down scenarios are included in Appendix 2.

The reduction percentage provided in Appendix 2 for Northport applies to a single unit ramp down, regardless of timing of the first unit ramp down. The reduction percentage will need to be re-evaluated in the event of subsequent unit ramp downs due to uncertainty of next unit retirement and its location and proximity to other retired unit(s). If all units at Northport are ramped down, the reduction percentage will be 100%. For Port Jefferson and EF Barrett Steam Stations, the reduction percentage in Appendix 2 apply to a single unit ramp down, regardless of timing of the first unit ramp down. If both units at EF Barrett or Port Jefferson are ramped down, the reduction percentage will be 100%.

For the purpose of this methodology an analysis of the Other costs was conducted using data from CY 2011. The reduction percentages identified in Appendix 2 (and used in this analysis) will be applied in the Allocation by Plant file to determine the reduction in the capacity charge attributed to O&M.



### RAMP DOWN PAYMENT

In accordance with Section 10.3 of the A&R PSA, the Ramp Down Payment for a steam or other GU shall be calculated as follows:

		Description	EXAMPLE: Steam Unit in Capacity Block in 2021	EXAMPLE: Other Generating Unit
(a)	Net Book Value of facility	Gross Book Value of Plant Less: Accumulated Depreciation Plus: Construction Work in Progress (CWIP) Plus: Completed Construction Not Classified (CCNC) Plus: Retirement Work in Progress (RWIP) Plus: Any Inventory Balance (net of salvage) transferred from working capital used only at the facility = NBV of facility	20,000,000 (13,000,000) 1,000,000 1,500,000  200,000 5,000  = \$9,705,000	1,250,000 (750,000) 100,000 50,000  20,000 1,000  = \$671,000
(b)	Less: Applicable discount	Per Appendix G of the A&R PSA (applicable only to Steam Units in Capacity Block per Article 10.1.3 of the A&R PSA)	- \$3,639,375	- \$0
(c)	Plus: Allocated and Direct O&M expenses	Amount assigned to ramped down unit per the Allocation by Plant excel file; correlates to amount removed from the capacity charge  18 months for Steam Unit 12 months for Other Units	+ \$2,500,000	+ \$700,000
(d)	Equals Ramp Down Payment	Sum of (a) to (c)	= \$8,565,625	= \$1,371,000
(e)	Less: Notional Tracking Account up to the sum of (a) through (c)	Unused balance of NBV of Northport Unit 1 as of May 28, 2013: \$68,367,685  (see following section for additional details)	- \$8,565,625	- \$1,371,000
(f)	Ramp Down Payment net of Notional Tracking Account Amount		= \$0	= \$0

### Notional Tracking Account

The notional tracking account, in accordance with the A&R PSA, is the net book value (as defined in the contract) of Northport Unit 1 as of May 2013. To the extent this value exceeds the sum of items a, b and c, per the table above, when a unit is ramped down then the ramp down payment from LIPA will be 0. This amount can only be used to offset the components used in calculating LIPA's ramp down payment and will not result in any payment to LIPA if a balance remains at the end of the contract or in the event of early termination.

	Northport Steam Asset	N1	N2	N3	N4	Common	FMV Land
Book Cost Total	760,663,541	138,209,489	97,298,192	161,146,403	175,084,080	139,115,216	49,810,160
Accumulated Depreciation Total	456,394,921	77,315,795	67,918,004	99,437,504	125,789,846	85,933,772	-
Northport STeam NBV Total	304,268,619	60,893,694	29,380,188	61,708,899	49,294,234	53,181,444	49,810,160
Book Cost rollforward schedule adjustment (Note 1)		76,156					
Acc. Depreciation rollforward schedule adjustment (Note 1)		1,092,115					
CWIP/RWIP		6,305,720					
Northport Unit 1 NBV Total		68,367,685					

**Note 1:** The Notional Account value of \$68.4M is the N1 NBV derived from the financial system and amended with the rollforward schedule adjustments to establish the Net Utility Plant by location. The Tracking Account value was determined after a detailed review of the Northport Power Station asset book cost and depreciation plant accounting records by National Grid Generation and National Grid Plant Accounting personnel.

## Example of capacity charge adjustment following a unit ramp down



Example of Cap  
Chrg Adj after a Uni

*(print out of the excel file follows on the next page)*

**NG Generation**  
**Capacity Payment Reduction**

		West Babylon		Port Jefferson Unit 3			
		NBV of facility	24,709		19,870,483		
		less: applicable discount ( Only Steam units in capacity block)	-		(12,419,052)		
		plus: O&M expenses (allocated and direct)	536,699		10,792,250		
		= Ramp Down Payment	561,408		18,243,681		
						11.40% Common	
						20.42% Other expense	
For illustrative purposes only; actual values will differ.							
		(h)	Unit Ramp Down	Year 8	Unit Ramp Down	Year 9	
		Contract Year	Adjustments		Adjustments		
		Calendar Year	Dec 31, 2020	2021		2022	
			WEST BABYLON GAS TURBINE		Port Jefferson Unit #3 STEAM	Port Jefferson Common STEAM	Port Jefferson Unit#3 Total
Method	Annual Capacity Charge - excl Dense Packs						
ACTUAL	Net Utility Plant (includes allocated)	381,003,000	(24,709)	380,978,291	(19,870,483)	(3,154,540)	(23,025,024)
ACTUAL	M&S and Prepayments	31,005,157	(4,896)	31,000,261	(2,912,065)	(165,988)	(3,078,052)
ACTUAL_implicit	Accumulated Deferred FIT & SIT - Other	(13,904,264)	2,196	(13,902,068)	1,305,916	74,437	1,380,353
	Budgeted Incremental Net Utility Plant	(9,074,661)	(27,409)	(9,102,069.82)	(21,476,632)	(3,246,091)	(24,722,723)
	PTROR	9.10%	9.10%	9.10%	9.10%	9.10%	9.10%
	Revenue Adjustments:	(802,957)	(2,493)	(827,861)	(1,953,365)	(295,242)	(2,248,607)
	Less: Revenue Impact of COR Deduction	(2,040,420)	0	(2,040,420)	0	0	0
		(6,037)		0			0
ACTUAL	Depreciation Expense (includes common)	60,111,390	-	60,111,390	(3,476,637)	(387,569)	(3,864,206)
	Budgeted Incremental Depreciation Expense	3,374,341					
	Revenue Adjustments:	3,374,341					
Per Allocation by Plant Model	[Outage & Non-outage Direct Labor +Gen Admin Labor] Base Labor	59,868,422		59,660,571			
	Costs (Production)	3.33%					
	Defined Labor Index	100.00%					
	Attrition Factor						
	Revenue Adjustments:	1,927,095	(207,851)		(3,751,821)	(960,096)	(4,711,917)
Per Allocation by Plant Model	[Outage & Non-outage Direct payroll taxes, benefits, incentives + Gen Admin direct PT, Benefits, Incentives] Base Benefits Costs (Production)	18,473,486		18,409,350			
	Costs (Production)	3.33%					
	Defined Labor Index	100.00%					
	Attrition Factor						
	Revenue Adjustments:	594,640	(64,136)		(1,157,691)	(296,254)	(1,453,945)
Per Allocation by Plant Model	[Alloc. Labor, Payroll Taxes, Benefits & Incentives]Base Labor Costs (Support)	11,824,900	(48,351)	11,776,549	(865,080)	(126,605)	(991,684)
	Defined Labor Index	3.33%					
	Revenue Adjustments:	380,630					
Per Allocation by Plant Model	[Alloc. Labor, Payroll Taxes, Benefits & Incentives]Base Benefits Costs (Support)	4,598,366	-	4,598,366	-		
	Defined Labor Index	3.33%					
	Revenue Adjustments:	148,016					
No change	Base Property Tax Escalation Rate	222,542,496	-	222,542,496	-		
		4.00%					
	Revenue Adjustments:	8,559,327					
No change	OPEB Expense	1,050,881	-	1,050,881	-		
	Revenue Adjustments:	-					
No change	Pension Expense	14,503,545	-	14,503,545	-		
	Revenue Adjustments:	-					
No change	401K Match Expense	779,000	-	779,000	-		
	Revenue Adjustments:	-					
No change	Transition Obligation	-	-	-	-		
	Revenue Adjustments:	-					
Per Allocation by Plant Model	[Outage & Non-outage Direct Other & Gen Admin Other] Direct - Other	20,960,307	(182,828)	20,777,479	(834,825)	(109,821)	(944,646)
Per Allocation by Plant Model	[Allocated G&A Other] Allocated - Other	11,672,151	(33,533)	11,638,618	(585,417)	(85,676)	(671,093)
	Rounding	-	0	-	0	0	-
	Other Revenue Adjustments	-	0	-	0	0	-
Total Revenue Adjustments		14,978,012	(539,192)		(12,624,835)	(2,261,262)	(14,886,098)
Total Annual Capacity Charge (excl Dense Packs)		460,553,284		460,014,092			445,127,994
Annual Capacity Charge - Dense Packs							
Actual	Revenue Adjustments:						
	Net Utility Plant	67,268,715	0	67,268,715	(1,770,091)		(1,770,091)
	Budgeted Incremental Net Utility Plant	(2,765,385)					
	PTROR	4.85%	4.85%	4.85%	4.85%	4.85%	4.85%
	Revenue Adjustments:	(134,121)	0	3,262,533	(85,849)	-	(85,849)
Actual	Depreciation Expense	2,760,473	0	2,760,473	(112,412)		(112,412)
	Budgeted Incremental Depreciation Expense	(1)					
	Revenue Adjustments:	(1)	0				
Total Dense Pack Capacity Charge		6,023,005	-	6,023,005	(198,261)	-	(198,261)
Glenwood Property Tax ( Per Amendment 8 of PSA)							
No change	Glenwood Property Tax Escalation Rate	27,757,745	0	27,757,745	-	-	-
		4.00%					
	Revenue Adjustments:	1,067,606					
Total Glenwood Property Tax		27,757,745	-	27,757,745	-		27,757,745
Total Annual Capacity Charge		494,334,034	-	493,794,842			478,710,483
Total Reduction to Capacity Charge			(539,192)				(15,084,359)

Amounts sourced from Allocation by Plant (AbP); Schedule 1

**Appendix 1 - Northport Common Assets**

<b>Common Assets</b>	<b>Reduction (%)</b>	<b>Notes</b>
Boiler Support Systems	25.00%	Piping, ductwork and insulation that connects the common systems to the unit are removed.
Buildings & Structures	5.00%	Common buildings, paving and structures can not be eliminated. Reduction is in recognition of the potential elimination of minor buildings and structures.
Control Systems	5.00%	Controls and instrumentation associated with common fuel, process waste and process water are maintained. Control Systems that networked the station to the ramped down unit are eliminated.
Critical Spares	0.00%	Critical spares are retained for future use.
Environmental Systems	25.00%	The portion of the system that networked the Continuous Emissions Monitoring System (Station) to the ramped down unit are eliminated.
Fire Protection	25.00%	All outside fire protection is retained. Fire protection that tied the common plant system to the ramped down unit is eliminated.
Fuel Systems	5.00%	All fuel oil transfer, storage and delivery systems are retained. Piping, equipment and insulation connecting the system to the ramped down unit is eliminated.
HVAC	25.00%	HVAC systems are retained except those servicing equipment on a ramped down unit.
Marine Systems & Structures	0.00%	All marine systems and structures such as the offshore platform, docks, bulkheads, intakes and discharge assets are retained.
Operational Technology	25.00%	The network equipment for combustion controls, performance monitoring and data acquisition equipment is retained. Operational Technologies that networked the station to the ramped down unit are eliminated.
Process Water	5.00%	The station demineralizers are retained. The piping and equipment connecting to the ramped down unit is eliminated.
Security and Communications Systems	0.00%	All security and communication systems are retained.
Service Water	25.00%	Service water equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Air Systems	25.00%	Station air equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Electric Systems	25.00%	Station electric equipment, systems and structures will be retained except those supplying production equipment on a ramped down unit.
Tools and Equipment	25.00%	A reduction in office equipment and some tools is anticipated with a unit ramp down.
Process Waste Systems	0.00%	All process waste equipment, systems and structures are retained.
<b>Grand Total</b>	<b>8.78%</b>	

**Appendix 1 - Port Jefferson Common Assets**

Common Assets	Reduction (%)	Notes
Boiler Support Systems	50.00%	Piping, ductwork and insulation that connects the common systems to the unit are removed.
Buildings & Structures	10.00%	Common buildings, paving and structures can not be eliminated. Reduction is in recognition of the potential elimination of minor buildings and structures.
Control Systems	10.00%	Controls and instrumentation associated with common fuel, process waste and process water are maintained. Control Systems that networked the station to the ramped down unit are eliminated.
Critical Spares	0.00%	Critical spares are retained for future use.
Environmental Systems	50.00%	The portion of the system that networked the Continuous Emissions Monitoring System (Station) to the ramped down unit are eliminated.
Fire Protection	50.00%	All outside fire protection is retained. Fire protection that tied the common plant system to the ramped down unit is eliminated.
Fuel Systems	10.00%	All fuel oil transfer, storage and delivery systems are retained. Piping, equipment and insulation connecting the system to the ramped down unit is eliminated.
HVAC	50.00%	HVAC systems are retained except those servicing equipment on a ramped down unit.
Marine Systems & Structures	0.00%	All marine systems and structures such as the unloading platform, docks, bulkheads, intakes and discharge assets are retained.
Operational Technology	50.00%	The network equipment for combustion controls, performance monitoring and data acquisition equipment is retained. Operational Technologies that networked the station to the ramped down unit are eliminated.
Process Water	10.00%	The piping and equipment connecting to the ramped down unit is eliminated.
Security and Communications Systems	0.00%	All security and communication systems are retained.
Service Water	50.00%	Service water equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Air Systems	50.00%	Station air equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Electric Systems	50.00%	Station electric equipment, systems and structures will be retained except those supplying production equipment on a ramped down unit.
Tools and Equipment	50.00%	A reduction in office equipment and some tools is anticipated with a unit ramp down.
Process Waste Systems	0.00%	All process waste equipment, systems and structures are retained.
<b>Grand Total</b>	<b>11.40%</b>	

#### Appendix 1 - EF Barrett Common Assets

Common Assets	Reduction (%)	Notes
Boiler Support Systems	50.00%	Piping, ductwork and insulation that connects the common systems to the unit are removed.
Buildings & Structures	10.00%	Common buildings, paving and structures can not be eliminated. Reduction is in recognition of the potential elimination of minor buildings and structures.
Control Systems	10.00%	Controls and instrumentation associated with common fuel, process waste and process water are maintained. Control Systems that networked the station to the ramped down unit are eliminated.
Critical Spares	0.00%	Critical spares are retained for future use.
Environmental Systems	50.00%	The portion of the system that networked the Continuous Emissions Monitoring System (Station) to the ramped down unit are eliminated.
Fire Protection	50.00%	All outside fire protection is retained. Fire protection that tied the common plant system to the ramped down unit is eliminated.
Fuel Systems	10.00%	All fuel oil transfer, storage and delivery systems are retained. Piping, equipment and insulation connecting the system to the ramped down unit is eliminated.
HVAC	50.00%	HVAC systems are retained except those servicing equipment on a ramped down unit.
Marine Systems & Structures	0.00%	All marine systems and structures such as the unloading platform, docks, bulkheads, intakes and discharge assets are retained.
Operational Technology	50.00%	The network equipment for combustion controls, performance monitoring and data acquisition equipment is retained. Operational Technologies that networked the station to the ramped down unit are eliminated.
Process Water	10.00%	The station demineralizers are retained. The piping and equipment connecting to the ramped down unit is eliminated.
Security and Communications Systems	0.00%	All security and communication systems are retained.
Service Water	50.00%	Service water equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Air Systems	50.00%	Station air equipment, systems and structures will be retained except those connecting to the ramped down unit.
Station Electric Systems	50.00%	Station electric equipment, systems and structures will be retained except those supplying production equipment on a ramped down unit.
Tools and Equipment	50.00%	A reduction in office equipment and some tools is anticipated with a unit ramp down.
Process Waste Systems	0.00%	All process waste equipment, systems and structures are retained.
<b>Grand Total</b>	<b>11.65%</b>	



**Appendix 2 - Northport Other Costs**

Other Plant Systems	Reduction (%)	Notes
Boiler / Aux Equipment Total	25.00%	Reduction in the repair of spare motors, pumps & misc. equip, engineering support, and maintenance
Fuel Systems Total	5.00%	Reduction in the maintenance of no-unit specific fuel oil piping
Motors / Pumps Total	0.00%	Dilution pumps and air compressors are needed for continued operation
Operators Total	20.00%	Reduction in the required amount of Operations personnel
Plant Structures Total	0.00%	Paving, lighting, marine structures, landscaping, cesspool and drain maintenance will be required for continued operation
Turbine Total	20.00%	Reduction in condenser cleaning / maintenance activities
WWT Total	0.00%	Waste Water Treatment will be required for continued operation
Engineering Support Total	25.00%	Reduction in the amount of engineering design and support required
Misc. Maintenance Total	25.00%	Reduction in labor and materials required for non-unit specific maintenance
Admin & Training Total	15.00%	Reduction in personnel equates to a reduction in training
Air Emission/Environ Total	0.00%	Routine sampling required for SPDES compliance
Compressors/Air Sys Total	25.00%	Reduction in non-unit specific equipment maintenance
CEMS Total	25.00%	Reduction in networking equipment and software licensing
Corrosion Control Total	0.00%	Cathodic protection required on FOSTs and marine structures
Fire Protection Sys Total	25.00%	Reduction in non-unit specific equipment maintenance
Material Mgmt Total	25.00%	Reduction in materials management labor and consumable materials
Small Tools Total	25.00%	Reduction in the number of small tools required
Spill Cleanup Total	0.00%	Spill response clean up materials and disposal will be required
Water System Total	5.00%	Reduction in non-unit specific equipment maintenance
Main Transformer Total	0.00%	Main / Aux transformer support systems will require continued maintenance.
Safety Total	0.00%	Labor, materials and services will be required to maintain a safe workplace.
<b>Grand Total</b>	<b>14.15%</b>	



**Appendix 2 – Port Jefferson Other Costs**

Other Plant Systems	Reduction (%)	Notes
Boiler / Aux Equipment Total	50.00%	Reduction in the repair of spare motors, pumps & misc. equip, engineering support, and maintenance
Fuel Systems Total	10.00%	Reduction in the maintenance of no-unit specific fuel oil piping
Motors / Pumps Total	0.00%	Air compressors are needed for continued operation
Operators Total	40.00%	Reduction in the required amount of Operations personnel
Plant Structures Total	0.00%	Paving, lighting, marine structures, landscaping, cesspool and drain maintenance will be required for continued operation
Turbine Total	40.00%	Reduction in condenser cleaning / maintenance activities
WWT Total	0.00%	Waste Water Treatment will be required for continued operation
Engineering Support Total	50.00%	Reduction in the amount of engineering design and support required
Misc. Maintenance Total	50.00%	Reduction in labor and materials required for non-unit specific maintenance
Admin & Training Total	30.00%	Reduction in personnel equates to a reduction in training
Air Emission/Environ Total	0.00%	Routine sampling required for SPDES compliance
Compressors/Air Sys Total	50.00%	Reduction in non unit specific equipment maintenance
CEMS Total	50.00%	Reduction in networking equipment and software licensing
Corrosion Control Total	0.00%	Cathodic protection required on FOSTs and marine structures
Fire Protection Sys Total	50.00%	Reduction in non unit specific equipment maintenance
Material Mgmt Total	33.00%	Reduction in materials management labor and consumable materials
Small Tools Total	50.00%	Reduction in the number of small tools required
Spill Cleanup Total	0.00%	Spill response clean up materials and disposal will be required
Water System Total	10.00%	Reduction in non unit specific equipment maintenance
Main Transformer Total	0.00%	Main / Aux transformer support systems will require continued maintenance.
Safety Total	0.00%	Labor, materials and services will be required to maintain a safe workplace.
<b>Grand Total</b>	<b>20.42%</b>	

**Appendix 2 – EF Barrett Costs**

Other Plant Systems	Reduction (%)	Notes
Boiler / Aux Equipment Total	50.00%	Reduction in the repair of spare motors, pumps & misc. equip, engineering support, and maintenance
Fuel Systems Total	10.00%	Reduction in the maintenance of no-unit specific fuel oil piping
Motors / Pumps Total	0.00%	Air compressors are needed for continued operation
Operators Total	40.00%	Reduction in the required amount of Operations personnel
Plant Structures Total	0.00%	Paving, lighting, marine structures, landscaping, cesspool and drain maintenance will be required for continued operation
Turbine Total	40.00%	Reduction in condenser cleaning / maintenance activities
WWT Total	0.00%	Waste Water Treatment will be required for continued operation
Engineering Support Total	50.00%	Reduction in the amount of engineering design and support required
Misc. Maintenance Total	50.00%	Reduction in labor and materials required for non-unit specific maintenance
Admin & Training Total	30.00%	Reduction in personnel equates to a reduction in training
Air Emissoin/Environ Total	0.00%	Routine sampling required for SPDES compliance
Compressors/Air Sys Total	50.00%	Reduction in non unit specific equipment maintenance
CEMS Total	50.00%	Reduction in networking equipment and software licensing
Corrosion Control Total	0.00%	Cathodic protection required on FOSTs and marine structures
Fire Protection Sys Total	50.00%	Reduction in non unit specific equipment maintenance
Material Mgmt Total	33.00%	Reduction in materials management labor and consumable materials
Small Tools Total	50.00%	Reduction in the number of small tolls required
Spill Cleanup Total	0.00%	Spill response clean up materials and disposal will be required
Water System Total	10.00%	Reduction in non unit specific equipment maintenance
Main Transformer Total	0.00%	Main / Aux transformer support systems will require continued maintenance.
Safety Total	0.00%	Labor, materials and services will be required to maintain a safe workplace.
<b>Grand Total</b>	<b>21.55%</b>	

## AMENDMENT

## TO THE AMENDED AND RESTATED POWER SUPPLY AGREEMENT

This Amendment No. 3 ("Amendment") to the Amended and Restated Power Supply Agreement, dated as of October 10, 2012, as amended (the "A&R PSA"), is made January 18, 2018, by and among LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation ("LIPA"), NATIONAL GRID GENERATION LLC, a New York limited liability company ("GENCO") and NATIONAL GRID USA, a Delaware corporation ("NGUSA").

WHEREAS, GENCO is a wholly owned subsidiary of KEYSPAN CORPORATION, a New York corporation ("KEYSPAN"). KEYSPAN, in turn, is a wholly owned subsidiary of NGUSA;

WHEREAS, KEYSPAN and NGUSA intend to complete an internal reorganization (the "Reorganization") pursuant to which KEYSPAN will merge into NGUSA with NGUSA as the surviving entity; and

WHEREAS, KEYSPAN is currently defined as the Guarantor in the A&R PSA. In connection with the Reorganization, the parties desire to substitute NGUSA for KEYSPAN as the Guarantor in the A&R PSA, with the same effect as if NGUSA had been named as the initial Guarantor.

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

1. Amendment of the A&R PSA

- a. Definitions. Article 1 of the A&R PSA is amended to include or replace the following definitions:

**"Credit Support"** means (a) the Guaranty or (b) a Letter of Credit.

**"Credit Support Amount"** means \$5 million.

**"Guarantor"** means National Grid USA and any subsequent guarantor designated by GENCO who (i) is a GENCO Affiliate organized and based in the United States and (ii) satisfies the creditworthiness standards for a Guarantor set forth in Appendix N.

**"Letter of Credit"** means an irrevocable standby letter of credit securing GENCO's obligations hereunder in form and substance reasonably acceptable to LIPA, in a face amount equal to the Credit Support Amount issued by a Letter of Credit Provider.

**"Letter of Credit Provider"** means any letter of credit provider named by GENCO who satisfies the creditworthiness standards for a Letter of Credit Provider set forth in Appendix N.

- b. Credit Enhancement. Section 18.1 of the A&R PSA is struck in its entirety and replaced with the following:

**“18.1 Credit Enhancement in Certain Circumstances.**

**18.1.1 Ownership Maintenance.** GENCO hereby covenants and agrees that at all times during the Term of this Agreement it shall remain an Affiliate of the Guarantor.

**18.1.2 Credit Enhancement.** If at any time during the Term, a Material Decline in the Credit Support Credit Rating should occur, GENCO shall immediately notify LIPA's Representative thereof and, within thirty (30) days after such occurrence, GENCO shall provide credit enhancement of its obligations hereunder, at its sole cost and expense, in the form either of (1) the guarantee (in the form of Appendix M) of all of GENCO's obligations hereunder provided by a Guarantor (“Guaranty”), or (2) a Letter of Credit; provided, however, that if LIPA should draw an aggregate of \$2 million on such Letter of Credit, GENCO shall, within thirty (30) days thereafter, supplement or replace such Letter of Credit with an additional Letter of Credit such that the total amount of such Letters of Credit then available equals the Credit Support Amount.

**18.1.3 Material Decline in the Credit Support Credit Rating.** For purposes of Section 18.1.2, a “Material Decline in the Credit Support Credit Rating” shall be deemed to have occurred if the Guarantor or a Letter of Credit Provider fails to meet the relevant creditworthiness standards set forth in Appendix N. Notwithstanding the foregoing, a Material Decline in the Credit Support Credit Rating shall not be deemed to occur with respect to the Guarantor so long as the Guarantor maintains a consolidated net worth (stockholders’ equity) determined in accordance with GAAP, of at least \$500 million and provides evidence thereof as of the end of each calendar year to LIPA's reasonable satisfaction. GENCO shall immediately notify LIPA of any Material Decline in the Credit Support Credit Rating.”

- c. Events of Default – Credit Support. Section 20.1.1(c) of the A&R PSA is struck in its entirety and replaced with the following:

“(c) Credit Support. Failure of GENCO to provide and maintain in full force and effect as and when required Credit Support in the Credit Support Amount, which failure has not been cured within ten (10) Business Days.”

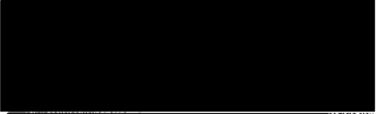
- d. Creditworthiness Standards. The A&R PSA is amended to include a new Appendix N (as set forth in Attachment A hereto) addressing the creditworthiness standards for Guarantors and Letter of Credit Providers.

2. Miscellaneous.


- a. NGUSA Guaranty. Within ten (10) days of the occurrence of the Effective Date, and in any case prior to the consummation of the Reorganization, GENCO shall deliver to LIPA the Guaranty by NGUSA as Guarantor.
- b. Reorganization. Each of GENCO and NGUSA hereby represent and warrant to LIPA that:
  - i. as of the Effective Date and as of the date of the delivery of the Guaranty by NGUSA as Guarantor, NGUSA does and will meet the creditworthiness standards for a Guarantor set forth in Appendix N and is an Affiliate of GENCO;
  - ii. the Reorganization will not be consummated prior to the Effective Date or the delivery of the Guaranty by NGUSA, whichever is later;
  - iii. the Reorganization is not intended to and neither of them is aware of any fact or circumstance that suggests that the Reorganization, now or in the future, may cause a material adverse effect on LIPA.
- c. Indemnification. GENCO shall release, indemnify, defend and hold LIPA harmless from and against any Loss-and-Expense resulting from the breach of the representations in 1(f) above or any material adverse effect on LIPA caused by the Reorganization.
- d. FERC Filing. GENCO shall file this Amendment with FERC requesting acceptance pursuant to Section 205 of the Federal Power Act. LIPA shall file an intervention in support of such filing.
- e. Effective Date. This Amendment shall become effective upon satisfaction of each of the following conditions (the date upon which all such conditions are satisfied, the "Effective Date"): (i) receipt by LIPA of approvals (reasonably satisfactory to LIPA and GENCO) of this Amendment by the New York State Comptroller ("NYSC") and New York Attorney General ("NYAG") (as to form); and (ii) acceptance of this Amendment for filing by the FERC without material modification. LIPA shall provide copies of NYSC and NYAG approvals to GENCO upon receipt.
- f. This Amendment may be executed in two or more counterparts, which together shall constitute a single instrument.
- g. Capitalized terms not defined in this Amendment shall have the meaning attributed to them in the A&R PSA.
- h. Except as expressly amended hereby, the terms and conditions of the A&R PSA shall remain in full force and effect and are hereby ratified, confirmed and incorporated herein.

The parties have caused this Amendment to be executed and delivered by their duly authorized officers or representatives as of the date first above written.


NATIONAL GRID GENERATION LLC

By:   
 Name: CHARLES DE ROSA  
 Title: VICE PRESIDENT, TREASURER

LONG ISLAND LIGHTING COMPANY  
 d/b/a LIPA

By:   
 Name: Rock Shandy  
 Title: Vice President

NATIONAL GRID USA

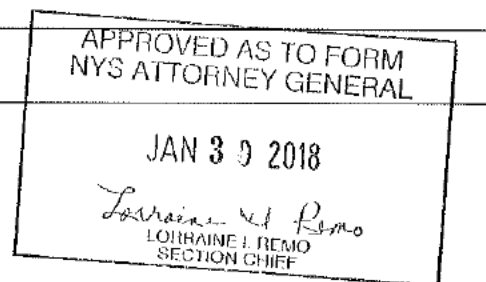
By:   
 Name: CHARLES DE ROSA  
 Title: VICE PRESIDENT, TREASURER

APPROVED BY:  
Office of the State Comptroller

APPROVED AS TO FORM:  
Office of the NY State Attorney General

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_



STATE OF New Jersey )  
COUNTY OF Middlesex ) ss.:

On the 4 day of December, 2017 before me personally came Charles DeRosa, to me known to be the individual described in the foregoing instrument in his capacity as VP Treasurer of NATIONAL GRID GENERATION LLC described in and which executed the foregoing instrument, who being duly sworn did acknowledge that (s)he executed same on behalf of, and that (s)he was authorized to execute same on behalf of the aforementioned entity.

Estrella C. Tindaan  
Notary Public, State of New Jersey  
Qualified in Middlesex County  
My Commission Expires November 27, 2021

  
Notary Public

STATE OF New Jersey )  
COUNTY OF Middlesex ) ss.:

On the 4 day of December, 2017 before me personally came Charles DeRosa, to me known to be the individual described in the foregoing instrument in his capacity as VP Treasurer of NATIONAL GRID USA described in and which executed the foregoing instrument, who being duly sworn did acknowledge that (s)he executed same on behalf of, and that (s)he was authorized to execute same on behalf of the aforementioned entity.

  
Notary Public

Estrella C. Tindaan  
Notary Public, State of New Jersey  
Qualified in Middlesex County  
My Commission Expires November 27, 2021

Attachment A

APPENDIX N

CREDITWORTHINESS STANDARDS FOR GUARANTORS  
AND LETTER OF CREDIT PROVIDERS

Credit Standards for Guarantors:

- Minimum tangible net worth of \$500 Million, and
- Minimum credit rating of investment grade for long-term senior debt from at least two Rating Agencies.

Credit Standards for Letter of Credit Providers:

- A U.S. commercial bank or foreign bank with a U.S. branch;
- Net assets of not less than \$1 Billion; and
- Minimum credit rating of investment grade for long-term senior debt from at least two Rating Agencies.



**AMENDMENT NO. 2**  
**Dated as of May 6, 2016**

**to the**

**AMENDED AND RESTATED POWER SUPPLY AGREEMENT**

**between**

**LONG ISLAND LIGHTING COMPANY d/b/a LIPA**

**and**

**NATIONAL GRID GENERATION LLC**

**Dated as of October 10, 2012**

This Amendment No. 2 Amendment is made and entered into as of May 6, 2016, by and between Long Island Lighting Company d/b/a LIPA, a New York corporation ("LIPA") and National Grid Generation LLC, ("Genco"), to the Amended and Restated Power Supply Agreement by and between LIPA and Genco dated as of October 10, 2012 ("A&R PSA"), as amended by Amendment No. 1, dated January 2, 2013. Genco and LIPA may collectively be referred to herein as the "Parties."

**Recitals**

WHEREAS, Section I.G of Appendix A of the A&R PSA provides that the Capacity Charges payable under the A&R PSA will be adjusted each year to reflect Genco's actuarially determined amounts of Pension and Other Post-Employment Benefits expenses ("P&OPEB expenses");

WHEREAS, pursuant to the A&R PSA, Genco filed with the Federal Energy Regulatory Commission ("Commission") on May 30, 2014, a single-issue filing pursuant to Section 205 of

the Federal Power Act (“FPA”) in Docket No. ER13-1159 setting forth a revised amount of P&OPEB expenses for the 2013 Contract Year (“2013 P&OPEB Rate Reset”);

WHEREAS, LIPA protested the 2013 P&OPEB Rate Reset filing and the Commission accepted that filing subject to refund and established a settlement judge procedure to permit Genco and LIPA to attempt to resolve issues associated with the 2013 P&OPEB Rate Reset without an evidentiary hearing;

WHEREAS, the Parties have entered into a Stipulation and Agreement (the “ER13-1159 Stipulation and Agreement” attached hereto as Exhibit A), which, if it becomes effective, would resolve all issues associated with Genco’s 2013 P&OPEB Rate Reset filing as well as all issues associated with Genco’s P&OPEB Rate Resets for the 2014 and 2015 Contract Years and other obligations of LIPA associated with Genco’s P&OPEB expenses under separate agreements;

WHEREAS, the Parties have agreed to resolve certain issues with respect to Genco’s rights to recover oil additive costs and certain environmental compliance costs (*i.e.*, spill response preparation charges) and the cost of dredging at the Northport Generating Facility and to amend the A&R PSA with respect to such charges and certain other terms; and

WHEREAS, the ER13-1159 Stipulation and Agreement further provides that the Parties will amend the A&R PSA to set forth the method for determining and assessing charges for P&OPEB expenses to be included in Capacity Charges under the A&R PSA (and the commensurate FERC Rate Schedule) beginning with the 2016 Contract Year – the twelve months beginning January 1, 2016 and ending December 31, 2016.

WHEREAS, the Parties acknowledge that Exhibit I of Appendix A of the A&R PSA displays incorrect depreciation rates for Other Production Plant and the Parties have agreed to

amend Exhibit I of Appendix A of the A&R PSA to reflect the depreciation rates intended by the Parties.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE I**

### **Amendment to the Amended and Restated Power Supply Agreement**

1.1 Effective January 1, 2016, Section I.G of Appendix A to the A&R PSA will be replaced with the following:

G. (1) The Pension and Other Post-Employment Benefit ("P&OPEB") expenses to be assessed and recovered from LIPA for the 2013, 2014 and 2015 Contract Years are \$35,812,512, \$19,444,603 and \$29,659,664, respectively.

(2) Beginning with the 2016 Contract Year, and continuing for each Contract Year thereafter, the Capacity Charge will be adjusted through an annual reconciliation filing with FERC on or about July 1, or as soon thereafter as the necessary information becomes available. This annual reconciliation filing will reset the amount of P&OPEB expense included in the Capacity Charge to reflect a lump sum surcharge or credit necessary to reconcile (i) the P&OPEB expenses billed to LIPA for the previous Contract Year, and (ii) the actual P&OPEB expenses for the previous Contract Year. The annual reconciliation filing will also reset the level of P&OPEB expenses to be recovered through the Capacity Charge for the Contract Year in which the filing is made (effective January 1 of such Contract Year) to an amount equal to the actual P&OPEB expenses for the previous Contract Year.

(3) For the 2016 Contract Year, the 2015 Contract Year P&OPEB amounts will remain in effect and will serve as the basis for the first reconciliation filing, which will be made in 2017 to reconcile the 2015 Contract Year P&OPEB Rate Reset amounts with the actual 2016 P&OPEB O&M expenses. This first reconciliation filing will also reset the level of P&OPEB expenses to be recovered through the Capacity Charge for 2017 (effective January 1, 2017) to an amount equal to the actual 2016 Contract Year P&OPEB expenses.

(4) Effective April 1, 2016, Genco will establish and maintain Actuarial Subaccounts for the Long Island P&OPEB Plans for the active and inactive participants assigned to Genco, or Engineering ServeCo. The Actuarial Subaccounts will record the estimated funded status and track and report the funding amounts of the Long Island P&OPEB Plans. Genco will recover the incremental costs of preparing the Actuarial Subaccounts and reporting on the P&OPEB separate valuation results in the P&OPEB costs assessed to LIPA (which incremental costs shall not exceed \$35,000 per year). These incremental costs shall be added to the annual reconciliation filing.

(5) Genco will annually furnish a report to LIPA at least thirty (30) days prior to the annual reconciliation filing described in Sections G(2) & (3) of this A&R PSA, which contains (i) the funded status of the Long Island P&OPEB Plans (ii) the components of the annual ASC 715 expense assigned to Genco or to Engineering ServeCo that are charged through the Capacity Charge, and (iii) a schedule that tracks Accumulated Other Comprehensive Income (AOCI) Amortization.

(6) Unless otherwise agreed, Pension O&M expense amounts and AOCI Amortization recovered through the Capacity Charge and capitalized pension expense will be deposited in the pension trust no less frequently than quarterly. Unless otherwise agreed, OPEB O&M expense amounts and AOCI Amortization recovered through the Capacity Charge and capitalized OPEB expense will be deposited in the OPEB trust(s) no less frequently than quarterly.

1.2 Effective January 1, 2016, the second sentence of Section 4.2 of the A&R PSA is amended to read as follows:

Genco will recover from LIPA all operations and maintenance costs that vary according to the dispatched output of a Generating Facility (including the cost of any oil additives used to reduce maintenance costs) through the Monthly Variable Charge.

1.3 Effective January 1, 2016, paragraph 1(b) in Appendix D of the A&R PSA is replaced with the following:

(b) Costs to comply with Department of the Army Permit Number 8588-M2 for the intake and discharge channels at the Northport Generating Facility (including the cost of dredging, dewatering dredged spoils, purchased sand, if required, and placing and spreading all such sand on Asharoken Beach) associated with the portion of the 45,000 cubic yards required by the permit that is in excess of the

33,000 cubic yards every three years that is deemed to be recovered through the Monthly Capacity Charge (i.e., the additional 12,000 cubic yards every three years).

1.4 Effective January 1, 2016, the following new paragraph is added to Appendix D of the A&R PSA:

1(d) Contractor charges for oil spill removal organization services, including response plans, in compliance with section 4202 of the Oil Pollution Act of 1990.

1.5 Effective May 28, 2013, the first page of Exhibit I to Appendix A of the A&R PSA is replaced with the following:

**EXHIBIT I****DEPRECIATION RATES****STEAM PRODUCTION PLANT**

<b>Account</b>		<b>Depreciation</b>
<b>Number</b>	<b>Description</b>	<b>Rate (%)</b>
311	Structures & Improvements	3.16
312	Boiler Plant Equipment	3.70
314	Turbogenerator Units	2.75
315	Accessory Electric Equipment	1.57
316	Misc. Power Plant Equipment	4.03
	Total Steam Production Plant	3.34


**OTHER PRODUCTION PLANT**

<b>Account</b>		<b>Depreciation</b>
<b>Number</b>	<b>Description</b>	<b>Rate (%)</b>
341.0	Structures & Improvements	3.38
342	Fuel Holders, Producers & Access	3.78
344.0	Generators	3.05
345.0	Accessory Electric Equipment	2.94
346.0	Misc. Power Plant Equipment	2.31
	Total Other Production Plant	3.10


1.6 As set forth in Article II below, the effectiveness of the ER13-1159 Stipulation and Agreement is a condition precedent to the effectiveness of this Amendment. In accordance

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

Long Island Lighting Company  
d/b/a LIPA

By   
Name: Thomas Falcone  
Title: Chief Executive Officer

National Grid Generation LLC

By   
Name: James G. Holodak Jr.  
Title: Vice President

Dated: 9/15, 2016

STATE OF New York

COUNTY OF Kings ) ss.:

On the 15<sup>th</sup> day of September, 2016, before me personally came James G. Holodak, Jr., to me known to be the individual described in the foregoing Agreement as Vice President of National Grid Generation LLC, who being sworn did acknowledge that he/she executed same on behalf of National Grid Generation LLC and that he/she was authorized to execute same on behalf of National Grid Generation LLC.

  
Notary Public

SONYA D. JOHNSON  
Notary Public, State of New York  
Registration #02106007140  
Qualified In Kings County  
My Commission Expires May 18, 2018

C-000835  
763

APPROVED BY:

Office of the State Comptroller



Name

*CMS/4*

Title

*12/20/16*

Date

APPROVED AS TO FORM:

Office of the New York State Attorney General

Name:

Title

Date

APPROVED AS TO FORM  
NYS ATTORNEY GENERAL

OCT 21 2016

*Lorraine I. Remo*  
LORRAINE I. REMO  
PRINCIPAL ATTORNEY





333 Earle Ovington Boulevard  
Suite 403  
Uniondale, NY 11553  
(516) 222-7700 Fax (516) 222-9137  
www.lipower.org

January 2, 2013

**VIA ELECTRONIC MAIL**  
**and OVERNIGHT MAIL**

Mr. John G. Cochrane  
Executive Vice President  
National Grid Generation LLC  
c/o National Grid  
40 Sylvan Road  
Waltham, Massachusetts 02451

Re: Letter Agreement to Amend Section 24.2 of the Amended and Restated Power Supply Agreement, dated October 10, 2012, between the Long Island Lighting Company d/b/a LIPA and National Grid Generation LLC (Contract No. C000763)

Dear Mr. Cochrane:

Reference is made to the Amended and Restated Power Supply Agreement, dated October 10, 2012, ("A&R PSA") between the Long Island Lighting Company d/b/a LIPA ("LIPA") and National Grid Generation LLC ("Genco"). All capitalized terms referenced herein shall have the meaning ascribed to them in the A&R PSA.

The Parties entered into the A&R PSA pursuant to which LIPA has agreed to continue to purchase from Genco, and Genco has agreed to sell to LIPA, the Electricity produced by certain of Genco's Long Island Generating Facilities in order to meet the needs of LIPA's customers, and to also provide for the possible future repowering of certain of Genco's Generating Facilities. The A&R PSA is currently being reviewed by the New York State Attorney General ("NYS AG") and the Office of the New York State Comptroller ("Comptroller").

During the course of the NYS AG's review of the A&R PSA, the NYS AG requested that an amendment be made to the A&R PSA in order for it to continue its review and approval activities of the A&R PSA. Specifically, the NYS AG requested that Section 24.2 (Assignment and Transfer) be amended to insert the phrase, "any other successor", after the word "Authority".

The parties have discussed their desire to amend Section 24.2 of the A&R PSA to include assignment to any other successor to LIPA or the Authority as requested by the NYS AG. Accordingly, the Parties agree to enter into this letter agreement (hereafter referred to as "Amendment No. 1") to amend Section 24.2 to be replaced in its entirety to read as follows:

**"24.2 Assignment and Transfer.** This Agreement may be assigned by either Party hereto only with the prior written consent of the other Party, except that: (1) without the consent of Genco (a) LIPA may make such assignments, create such security interests in its rights hereunder and pledge such monies receivable hereunder as may be required in

connection with its issuance of revenue bonds to finance its business and operations; and (b) LIPA may assign its rights, obligations and interests hereunder, or transfer such rights and obligations by operation of law, to any other Governmental Authority or to a subsidiary of LIPA or the Authority or any other successor provided that the successor entity gives reasonable assurances to Genco that it will be able to fulfill LIPA's obligations hereunder; and (2) without the consent of LIPA, (a) Genco may assign its rights, obligations and interests in this Agreement to the Guarantor or any Affiliate thereof, and (b) Genco may sell, assign or transfer a pecuniary interest in any payment, revenues, proceeds, incentive, profits or income derived from this Agreement to any party."

This letter agreement shall be legally binding and effective upon approval of this letter agreement by (a) the Comptroller; and (b) the New York State Attorney General (as to form).

This letter agreement may be executed in one or more counterparts, each one of which may be considered an original, but all of which together shall constitute one and the same agreement. Except as expressly set forth in this letter agreement, the A&R PSA remains unmodified.

Please confirm Genco's agreement and acceptance to the foregoing by signing in the space provided below and returning a copy to Paul A. DeCotis, Vice President of Power Markets.

Sincerely,  
LONG ISLAND LIGHTING COMPANY  
d/b/a LIPA

By: [Redacted]  
Name: Paul A. DeCotis  
Title: Vice President of Power Markets

Agreed to and accepted:

NATIONAL GRID GENERATION LLC

By: [Redacted]  
Name: JOHN G. COCHRANE  
Title: PRESIDENT  
Date: January 3, 2013

APPROVED BY:  
Office of the State Comptroller

Name	APPROVED DEPT. OF AUDIT & CONTROL
Title	MAR 14 2013
Date	John G. Cochrane STATE COMPTROLLER

APPROVED AS TO FORM:  
Office of the New York State Attorney General

Name	APPROVED AS TO FORM NYS ATTORNEY GENERAL
Title	JAN 07 2013
Date	Louise M. Reno LOUISE M. RENO PRINCIPAL ATTORNEY

cc: National Grid (Via Electronic Mail and/or Fax)  
Colin Owyang, Senior Vice President and General Counsel (Fax 781-907-5701)  
Philip A. DeCicco, Assistant General Counsel (Email at Philip.Decicco2@us.ngrid.com)

LIPA (Via Email)

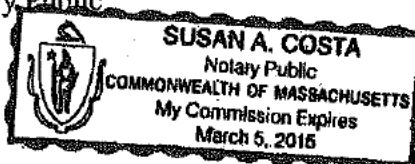
Rick Shansky, Asst. Vice President of Power Resources & Contract Management  
Lynda Nicolino, General Counsel

STATE OF Massachusetts )

COUNTY OF Middlesex )

On January 3, 2013 before me personally came John Cochrane, to me known to be the individuals described in the foregoing instrument in his/her capacity as President, of National Grid Generation LLC, the New York limited liability company described in and which executed the foregoing instrument, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.

Notary Public



STATE OF NEW YORK )

COUNTY OF NASSAU )

On January 3, 2013 before me personally came Paul A. DeCoti, to me known to be the individuals described in the foregoing instrument in his/her capacity as Vice President of Power Markets, of the Long Island Lighting Company d/b/a LIPA, a New York corporation, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.

Notary Public

Tamika S Mendoza  
Notary Public State of New York  
No. 02ME6265084  
Qualified In Suffolk County  
Commission Expires July 09 2016

**AMENDED AND RESTATED POWER SUPPLY AGREEMENT**

between

**LONG ISLAND LIGHTING COMPANY d/b/a LIPA**

and

**NATIONAL GRID GENERATION LLC**

Dated as of October 10, 2012

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## **AMENDED AND RESTATED POWER SUPPLY AGREEMENT**

This AMENDED AND RESTATED POWER SUPPLY AGREEMENT ("Agreement") is entered into as of October 10, 2012 by and between LONG ISLAND LIGHTING COMPANY, d/b/a LIPA, a New York corporation ("LIPA") and wholly-owned subsidiary of the LONG ISLAND POWER AUTHORITY, a corporate municipal instrumentality of the State of New York and a body corporate and politic and political subdivision of the State of New York ("Authority"), and NATIONAL GRID GENERATION LLC, a New York limited liability company ("Genco"). LIPA and Genco are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

### **RECITALS**

WHEREAS, LIPA and Genco, are parties to that certain Power Supply Agreement, dated as of June 26, 1997, as amended ("PSA") pursuant to which Genco provides Capacity, Energy and Ancillary Services (each as hereinafter defined) from specified Genco electric generating facilities on Long Island to LIPA;

WHEREAS, the PSA will expire by its terms on May 28, 2013;

WHEREAS, LIPA has determined that it is in the best interests of LIPA's customers to continue to purchase the Capacity, Energy and Ancillary Services (collectively "Electricity") produced by certain of Genco's Long Island Generating Facilities (as hereinafter defined) on the terms and conditions hereinafter set forth in order to meet the needs of LIPA's customers;

WHEREAS, Genco is willing to continue to produce and sell Electricity to LIPA from such Genco Generating Facilities;

WHEREAS, the Parties also wish to provide for the possible future repowering of certain of Genco's Generating Facilities; and

WHEREAS, the Parties therefore desire to amend and restate the PSA in its entirety on the terms and conditions set forth herein.

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

## ARTICLE 1

### DEFINITIONS

Unless otherwise required by the context in which any defined term appears, the following capitalized terms have the meanings specified in this Article 1.

“**AFUDC**” has the meaning given to that term in Section 5.1.1.

“**AGC**” means the equipment used to control a GU in response to a dispatch signal from the NYISO received approximately every six (6) seconds.

“**Affiliate**” means any Person, directly or indirectly controlling or controlled by another Person or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if the first Person possesses, directly or indirectly, the power to direct, or to cause the direction of, the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, “control” includes the direct or indirect beneficial ownership of fifty (50%) percent or more of the outstanding capital stock, membership interests or other voting securities of a Person. Direct or indirect beneficial ownership of ten (10%) percent or more of such voting securities shall create a rebuttable presumption of control.

“**Agreement**” has the meaning given to that term in the introductory paragraph hereof.

“**Allowed ROE**” means Genco’s allowed regulatory return on equity as part of the revenue requirement underlying the Capacity Charge hereunder as established in filings with and approved by the FERC.

“**Ancillary Services**” has the meaning given to that term by the NYISO Rules.

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

“**Arbitrators**” has the meaning given to that term in Section 20.3.3.

“**Authority**” has the meaning given to that term in the introductory paragraph hereof.

“**Base Treasury Yield**” has the meaning given to that term in Section 4.3.3.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which banks in New York, New York are authorized or obligated by Applicable Law to close.

“**Calendar Year**” means the twelve (12) month period commencing January 1 through and ending December 31.

**“Capacity”** as measured in MW, means the ability to produce Energy, including Installed Capacity and Unforced Capacity, each term as defined by the NYISO Rules.

**“Capacity Charge”** has the meaning given to that term in Section 5.1.1.

**“Catastrophic Failure”** means an event or circumstance (or series of events or circumstances), whether due to a Force Majeure event, equipment failure, defect or operator action or inaction which causes a major failure of a Generating Facility (or GU thereof) rendering it inoperable and requiring material capital expenditures to return the Generating Facility (or GU thereof) to a state of safe and reliable service.

**“Chair”** has the meaning given to that term in Section 20.3.3.

**“Change of Control”** means (i) the acquisition of beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “1934 Act”)) of fifty (50%) percent or more of the outstanding shares of securities or membership interests the holders of which are generally entitled to vote for the election of directors or managers of Genco or the Guarantor, as the case may be (including securities convertible into, or exchangeable for, such securities or rights to acquire such securities or securities convertible into, or exchangeable for such securities (“Voting Stock”)), on a fully diluted basis, by any Person or group of Persons (within the meaning of Section 13 or 14 of the 1934 Act); (ii) any sale, transfer or other disposition of beneficial ownership of fifty (50%) percent or more of the outstanding shares of Voting Stock, on a fully diluted basis, of Genco or the Guarantor, as the case may be; (iii) any sale, lease, assignment, transfer or other disposition of the beneficial ownership in fifty (50%) percent or more of the property, business or assets of Genco or the Guarantor, as the case may be, (iv) a Person other than the current shareholders or members of Genco or the Guarantor, as the case may be, obtains, directly or indirectly, the power to direct or to cause the direction of the management or policies of Genco or the Guarantor, as the case may be, whether through the ownership of capital stock, by contract or otherwise; or (v) any liquidation, dissolution or winding up of Genco or the Guarantor, as the case may be.

**“Commencement Date”** has the meaning given to that term in Section 2.1.

**“Confidential Information”** has the meaning given to that term in Section 22.1.

**“Contract Year”** means the period beginning with January 1 through and ending December 31 in each Calendar Year of the Term, except that the first Contract Year shall begin on the Commencement Date and the last Contract Year shall end on April 30.

**“Contract Year Capital Budget Plan”** has the meaning given to that term in Section 6.2.

**“Contract Year Capital Budget”** has the meaning given to that term in Section 6.3.

**“CPR Rules”** has the meaning given to that term in Section 20.3.3.

**"Day Ahead Market" or "DAM"** has the meaning given to that term in the NYISO Rules.

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

**"Deliver," "Delivered," "Delivering" and "Delivery"** means the provision of Electricity at the Delivery Points of a type known as three-phase alternating current.

**"Delivery Point"** means the low voltage side of each GU's generator step-up transformer or the location as more specifically depicted in the Interconnection Agreement for each of the Generating Facilities.

**"Demolition and Site Remediation Costs"** means the costs and expenses reasonably and necessarily incurred to demolish a Generating Facility and associated facilities and remediate and restore the related site in accordance with Applicable Law, net, however, of any (a) site restoration or remediation costs which Genco may have recovered through rates and accumulated interest on any reserves carried by Genco for site restoration costs, if any, for such Generating Facility whether pre-funded for Asset Retirement Obligations or through a similarly designated or general reserve or contingency account, and (b) tax credits, grants and other governmental support or assistance secured by Genco (for which Genco shall use its commercially reasonable efforts to obtain) for such purpose.

**"Dependable Maximum Net Capability" or "DMNC"** means the maximum net output of a GU over a continuous time period, as periodically determined through tests established and conducted according to NYISO Rules.

**"Dispatch Limitations"** has the meaning given to that term in Section 3.4(e).

**"Dispatch Request"** means any direction LIPA or the NYISO gives to Genco for the purpose of initiating, adjusting, controlling or suspending the production of Energy or Ancillary Services by any of the Generating Facilities, including the issuance of base points by the NYISO.

**"Dispute"** means any dispute arising out of or relating to this Agreement, the performance of a Party's obligations hereunder, or the breach, termination or validity thereof.

**"EDM"** has the meaning given to that term in Section 3.9.4.

**"Early Termination Date"** has the meaning given to that term in Section 2.2.

**"Electricity"** has the meaning given to that term in the Recitals.

**“Eligible Repowering Block”** has the meaning given to that term in Section 11.2.

**“Energy”** means 60Hz three-phase alternating-current electricity measured in MWh.

**“Environmental Laws”** means any Applicable Law or Governmental Rule (including consent decrees and administrative orders), which regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean up, removal, encapsulation, enclosure, abatement or disposal of any Hazardous Substances, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq., the Toxic Substance Control Act, 125 U.S.C. Sections 2601, et seq., the Clean Water Act, 33 U.S.C. Sections 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C., Section 5101, the Clean Air Act, 42 U.S.C. Sections 74091, et seq., their state analogues and any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, or order regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substances.

**“Event of Default”** has the meaning given to that term in Sections 20.1.1 and 20.2.1.

**“Excess Profits”** means with respect to a Ramped Down Generating Facility that Genco elects to continue to operate following the Ramp Down Effective Date, the revenue from the sale of Capacity, Energy and Ancillary Services produced by the Ramped Down Generating Facility for a Calendar Year (or portion thereof) following the Ramp Down Effective Date that exceeds Genco's regulatory revenue requirement for such Generating Facility, including with respect to capital additions only those made to the Ramped Down Generating Facility following the Ramp Down Effective Date, assuming a return on equity equal to the then applicable Allowed ROE component of the Capacity Charge for such Calendar Year.

**“Excluded Units”** has the meaning given to that term in Section 7.5.

**“FAA”** has the meaning given to that term in Section 20.3.7.

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

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

**“FPA”** means the Federal Power Act, as amended.

**“Five Year Capital Improvement Plan”** has the meaning given to that term in Section 6.2.

**“Fuel”** means the fuel, whether natural gas or fuel oil, for operating the Generating Facilities.

**"Fuel Delivery Point"** means with respect to (a) natural gas, the point at which the LDC's natural gas pipeline delivery system is connected to the pipeline within the Generating Facility that distributes natural gas to the Generating Facility's GU(s), and (b) fuel oil, the fill point at which the fuel delivery vehicle connects to the unloading pipe(s) at the Generating Facility.

**"Fuel Specifications"** means (a) the specifications for the quality of the Fuel oil, as set forth in Appendix H and (b) pipeline quality with respect to natural gas Fuel.

**"GAAP"** means U.S. Generally Accepted Accounting Principles, consistently applied, as the same may be in effect from time to time.

**"Genco Gas Metering Equipment"** has the meaning given to that term in Section 14.2.1.

**"Genco Representative"** has the meaning given to that term in Section 15.2.

**"Generating Facilities"** means the electric generating facilities owned by Genco and listed on Appendix C hereto, including: (a) all systems, structures, equipment and appurtenances associated with each Generating Facility's operation and forming a part thereof; (b) permanent administrative offices and building structures housing Generating Facility equipment; (c) site improvements such as roads, drainage, fencing and landscaping; and (d) structures, pipelines and equipment for: (i) the delivery of Fuel from the Fuel Delivery Point to the Generating Facility; (ii) the transport of water, waste water and other waste disposal; and (iii) other materials, supplies and commodities required to operate the Generating Facility. Each Generating Facility may contain one or more Generating Units. Except where the context otherwise requires, the term "Generating Facility" as used herein also or alternatively, as the case may be, refers to each Generating Unit thereof, as appropriate.

**"Generating Facility Sites"** means each parcel of land upon which each Generating Facility is situated, together with the land contiguous thereto, owned by Genco (or its predecessor) as of the Commencement Date.

**"Generating Unit" or "GU"** means each separately designated electric generator and associated combustion unit and turbine (boiler/steam turbine, combustion turbine, or diesel engine), as applicable, including associated auxiliary equipment, which can be operated independently from any other such unit at the same Generating Facility.

**"Governmental Authority"** means (a) any federal, state local, municipal, or other government, (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power (including, for the avoidance of doubt, the NYISO, FERC, the NPCC and any FERC-designated Electric Reliability Organization such as NERC) with respect to the Generating Facilities, and (c) any court, governmental tribunal or arbitration panel, other than LIPA or the Authority.



**“Governmental Rule”** means any permit or any law, statute, act, regulation, code, ordinance, rule, judgment, order, decree, directive, requirement, guideline or any similar decision or determination, or any Governmental Authority's official interpretation or administration of any of the foregoing, excluding any acts of LIPA and the Authority, that governs or affects the Generating Facilities.

**“Guarantor”** means KeySpan Corporation.

**“Guaranty”** has the meaning given to that term in Section 18.1.2.

**“Hazardous Substances”** means any substance that is defined or listed in, or otherwise classified pursuant to, any Environmental Law, including materials listed in 49 C.F.R. §172.101 and materials defined as hazardous substances pursuant to Section 101(14) of CERCLA, as a “hazardous substance,” “extremely hazardous substance,” “hazardous material,” “hazardous waste,” “infectious waste,” “medical waste,” “toxic substance,” “toxic pollutant,” or any other formulation intended to classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, or reproductive toxicity; and pollutants, effluents, residues, contaminants, asbestos, petroleum (including all petroleum-related products, by-products, and wastes), polychlorinated biphenyls, urea formaldehyde, radon gas, methane gas, radioactive materials (including any source, special nuclear, or by-product material), explosives, chlorofluorocarbons, lead or lead-based materials, and any other substance whose presence could be detrimental to property, health, or the environment.

**“Interconnection Agreement”** has the meaning given to that term in Section 7.4.

**“LDC Gas Metering Equipment”** has the meaning given to that term in Section 14.2.1.

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

**“Legal Holiday”** means New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve, or other such days as the Parties may mutually agree, from time to time.

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

**“LIPA”** has the meaning given to that term in the introductory paragraph hereof.

**“LIPA Fault”** means any breach, failure of compliance, or nonperformance by LIPA of its obligations hereunder or any negligence or willful misconduct by LIPA under this

Agreement (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier, or independent contractor of LIPA) that materially and adversely affects Genco's performance or Genco's rights or obligations under this Agreement.

**"LIPA's Gas Metering Equipment"** has the meaning given to that term in Section 14.2.1.

**"LIPA's Metering Equipment"** has the meaning given to that term in Section 14.1.1.

**"LIPA Property Tax Share"** has the meaning given to that term in Section 12.1(b).

**"LIPA Representative"** has the meaning given to that term in Section 15.1.

**"Local Distribution Company" or "LDC"** means the natural gas distribution utility (currently KeySpan Gas East Corporation d/b/a/ National Grid) that delivers natural gas received on an interstate pipeline to the Generating Facilities.

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

**"Material Decline in Guarantor's Credit Rating"** has the meaning given to that term in Section 18.1.3.

**"Merger Agreement"** means the Agreement and Plan of Merger by and among BL Holding Corp., LIPA, the Authority and LIPA Acquisition Corp dated as of June 26, 1997.

**"Monthly Ancillary Service Charge"** has the meaning given to that term in Section 5.1.3.

**"Monthly Capacity Charge"** has the meaning given to that term in Section 5.1.1.

**"Monthly Capacity Payment Adjustment Charge"** has the meaning given to that term in Section 5.1.4.

**"Monthly RGGI Charge"** has the meaning given to that term in Section 5.1.6.

**"Monthly Variable Charge"** has the meaning given to that term in Section 5.1.2.

**"Monthly Variable Payment Adjustment Charge"** has the meaning given to that term in Section 5.1.5.

**"MW"** means a megawatt of Capacity.

**"MWh"** means a megawatt hour of Energy.

**“NERC”** means the North American Electric Reliability Corporation and any successor organization thereto.

**“Net Book Value”** means for a GU or Generating Facility, as applicable, the Gross Book Value of Plant, Less Accumulated Depreciation (as defined in Appendix A) plus Construction Work In Progress (CWIP), Completed Construction Not Classified (CCNC), Retirement Work In Progress (RWIP) and any Inventory Balance (net of salvage value) transferred from Working Capital that can be used only at such Generating Facility or GU. The preceding values will be GU specific where required by Ramp Down Capacity Blocks or other provisions of this Agreement. The Plant and Inventory Balances set forth on Genco's financial statements shall be recorded in accordance with GAAP. The Net Book Value of a Generating Facility shall be subject to LIPA's review of Genco's related supporting documentation (including related workpapers) therefor in reasonable detail, as LIPA may reasonably request, and resolution of any Dispute with respect thereto pursuant to the dispute resolution provisions of Section 20.3.

**“NPCC”** means the Northeast Power Coordinating Council and any successor organization thereto.

**“NYISO”** means the New York Independent System Operator Inc. and any successor organization thereto.

**“NYISO Rules”** means the NYISO's Market Administration and Control Area Services Tariff, Open Access Transmission Tariff, and all manuals, guides, technical bulletins and mandatory rules thereunder and any successor provisions thereto.

**“Other GU”** has the meaning given to that term in Section 10.1.1.

**“PPA”** has the meaning given to that term in Section 11.3.

**“PSA”** has the meaning given to that term in the Recitals.

**“Party”** or **“Parties”** has the meaning given to those terms in the introductory paragraph hereof.

**“Party Appointed Arbitrators”** has the meaning given to that term in Section 20.3.3.

**“Performance Guarantees”** has the meaning given to that term in Section 5.2.

**“Person”** means, unless otherwise specified, any individual, corporation, firm, company, trust, business trust, legal entity, general partnership, limited partnership, joint venture, association, joint-stock company, limited liability company, unincorporated organization, government or any agency or political subdivision thereof or other entity, including a Governmental Authority.

**“Prudent Utility Practice”** means any of the practices, methods and acts engaged in or recognized as common practice within the electric utility 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 Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods or acts expected within the electric power industry to accomplish the desired results, having due regard for, among other things, manufacturers' operating instructions, the preservation of manufacturers' warranties, the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement.

**"Ramp Down"** has the meaning given to that term in Section 10.1.

**"Ramp Down Capacity Block"** has the meaning given to that term in Section 10.1.1.

**"Ramp Down Effective Date"** has the meaning given to that term in Section 10.1.1.

**"Ramp Down Notice"** has the meaning given to that term in Section 10.1.2.

**"Ramp Down Option"** has the meaning given to that term in Section 10.1.1.

**"Rate Reopener"** has the meaning given to that term in Section 4.4

**"Rating Agencies"** means Moody's Investors Service, Inc., Standard and Poor's Ratings Services and Fitch Ratings, Inc. and any of their respective successors.

**"Regulatory Rights"** means all environmental, regulatory and emission reduction credits and allowances, energy injection and CRIS rights and similar rights and credits associated with a Generating Facility and the related Generating Facility Site.

**"Remote Starting Capability"** means equipment installed at an internal combustion Generating Facility that allows it to be started from LIPA's designated control room without on-site staffing.

**"Repowering"** has the meaning given to that term in Article 11.

**"Repowering Option"** has the meaning given to that term in Section 11.1.

**"Repowering Payment"** has the meaning given to that term in Section 11.9.

**"Restricted Generating Facility"** has the meaning given to that term in Section 10.2.2(c).

**"Retirement Effective Date"** has the meaning given to that term in Section 13.1.

**"Retirement Eligible"** means with respect to a Generating Facility or GU thereof that such Generating Facility or GU thereof can be permanently removed from service without creating a "Reliability Need" as defined in Attachment Y of the Open Access Transmission Tariff of the NYISO.

**“Retirement Payment”** has the meaning given to that term in Section 13.1.

**“RFP”** has the meaning given to that term in Section 11.3.

**“RGGI”** has the meaning given to that term in Section 9.3.

**“Schedule F Rights”** has the meaning given to that term in Section 10.2.2(c).

**“Service Area”** means the counties of Suffolk and Nassau and that portion of the Rockaway Peninsula in the County of Queens constituting the Authority’s electric franchise area as of the Commencement Date. “Service Area” does not include the Villages of Freeport, Rockville Centre, and Greenport.

**“Steam GU”** means the Barrett Units 1 & 2, Port Jefferson Units 3 & 4 and Northport Units 1-4.

**“Summer Operating Period”** means the six (6) month period commencing May 1 through and ending October 31.

**“System Emergency”** means any abnormal system condition that requires automatic or immediate manual action to prevent or limit loss of transmission facilities or generation resources that could adversely affect the reliability of an electric system.

**“System Pre-Emergency”** means a condition which, in accordance with Prudent Utility Practice and as may be specified by the NYISO Rules, reasonably could be expected, if permitted to continue, to contribute to a System Emergency or to a degraded operating condition.

**“T&D System”** means the electric transmission and distribution system located in the Service Area which provides the means for transmitting and distributing Electricity to LIPA’s customers.

**“Term”** has the meaning given to that term in Section 2.1.

**“Tracking Account”** has the meaning given to that term in Section 10.4.

**“Unit Heat Rate”** means the Btu of fuel per kilowatt hour of net generation.

**“Weighted Cost of Capital”** means Genco’s FERC allowed and approved debt interest rate multiplied by .5 plus Genco’s after-tax Allowed ROE multiplied by .5; provided, however, that the .5 weighting factor shall be subject to adjustment by the FERC pursuant to the Rate Reopener.

**“Winter Operating Period”** means the six (6) month period commencing November 1 and ending April 30.

## ARTICLE 2

### TERM

**2.1 General; Effectiveness.** The term of this Agreement ("Term") shall commence on, but not earlier than, 12:00 a.m. Eastern Time on May 28, 2013 and shall end at 11:59 p.m., Eastern Time on April 30, 2028, unless earlier terminated by LIPA as provided in Section 2.2. Notwithstanding the foregoing, this Agreement shall not become effective and legally binding upon Parties until it has been (a) approved by the New York State Comptroller and the New York Attorney General and (b) accepted for filing by the FERC pursuant to Section 205 of the FPA and the rules and regulations of the FERC thereunder, which approvals and acceptance for filing shall be reasonably satisfactory to the Parties. The date upon which this Agreement becomes effective and legally binding is referred to hereafter as the "Commencement Date".

**2.2 Early Termination.** Notwithstanding Section 2.1, LIPA shall have the right, exercisable in its sole discretion, to terminate the Agreement upon not less than two (2) years' prior written notice to Genco; provided, however, that any such termination may be effective no earlier than April 30, 2025 and thereafter may be effective only as of any subsequent April 30 as LIPA shall specify in its termination notice (an "Early Termination Date").

**2.3 Survival.** The rights and obligations of the Parties pursuant to Sections 5.3, 5.4, Article 9, Sections 10.2, 10.3, 10.4, Article 11, Article 12, Sections 16.1, 16.2, 17.1.2, 17.1.4, Article 19, Sections 20.3, 20.4, Article 22 and Article 24 and the Set Off Rights and Records provisions set forth in Appendix I 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. At the conclusion of the Term, all other obligations of the Parties shall terminate unless extended or otherwise survive as provided herein.

## ARTICLE 3

### POWER SUPPLY

**3.1 Sale and Delivery of Electricity.** During the Term of this Agreement, except as otherwise provided herein, Genco agrees to sell and Deliver to LIPA and LIPA agrees to purchase and accept Delivery from Genco, as follows:

**3.1.1 Capacity.** Genco will sell and provide to LIPA all the Capacity (MW) from the Generating Facilities in accordance with the terms and conditions of this Agreement.

**3.1.2 Energy.** Genco will sell and Deliver to LIPA all the Energy it produces from the Generating Facilities in response to Dispatch Requests in accordance with the terms and conditions of this Agreement.

**3.1.3 Ancillary Services.** Genco will sell and provide to LIPA all the Ancillary Services provided by the Generating Facilities in accordance with this Agreement.

**3.2 Regulation.** Genco will seek and maintain all necessary regulatory approvals from Governmental Authorities required for the provision of service to LIPA as provided for and contemplated by this Agreement. LIPA shall provide Genco with such assistance and support as is reasonably required in connection with Genco obtaining and maintaining such regulatory approvals, and the Parties shall provide each other with information, data, reports and analysis in their possession as may be reasonably requested in connection with the foregoing.

**3.3 Fuel.** LIPA will provide Fuel at its own expense to the Fuel Delivery Points in accordance with the Fuel Specifications in order to enable Genco to generate Energy from the Generating Facilities. LIPA shall arrange for Fuel oil to be tested prior to delivery to demonstrate compliance with the Fuel Specifications. In the event that Fuel (oil or natural gas) meeting the Fuel Specifications for any Generating Facility is not available on commercially reasonable terms, LIPA may, with Genco's approval (which may not be unreasonably withheld or delayed), provide a substitute Fuel that is substantially in compliance with the Fuel Specifications. In the event Genco does not approve such substitution, LIPA shall have no further obligation to provide Fuel for such Generating Facility during the period in which Fuel meeting the Fuel Specifications is not available on commercially reasonable terms, and such Generating Facility shall be considered unavailable for Dispatch Requests (or partially unavailable in the event of dual Fuel operation where only one Fuel is unavailable) during such period. Such periods of unavailability shall be excluded for purposes of calculating compliance with the Performance Guarantees; but only if the Generating Facility was available to generate Energy during such period. Once Fuel has been delivered to the Fuel Delivery Point, Genco shall be responsible for Fuel storage, holding, processing and handling, including taking such actions consistent with Prudent Utility Practice to prevent leaks, spills, loss, damage, theft, seizure or destruction of Fuel and assuring that the Fuel Genco handles and stores remains in compliance with the Fuel Specifications. Title to Fuel, however, shall remain with LIPA, which shall have the right to dispose of Fuel until burned by a Generating Facility. Genco shall maintain sufficient oil storage capacity at each Generating Facility site to enable the Generating Facilities to produce Electricity in accordance with the Performance Guarantees, considering anticipated demand, the availability of natural gas, and the time required to obtain oil deliveries. Genco shall consult with LIPA as to the appropriate amount of storage capacity.

**3.4 Dispatch of Generating Facilities.**

(a) Genco shall produce Energy and Ancillary Services in accordance with Dispatch Requests. Where applicable, Genco shall implement NYISO Dispatch Requests through AGC at the Generating Facilities. Should the AGC equipment become inoperable, Genco shall manually follow the NYISO base points and directions and use commercially reasonable efforts to restore the AGC as soon as practicable. For Generating Facilities without AGC, Genco shall manually implement LIPA's Dispatch Requests.

(b) Notwithstanding the provisions of Section 3.4(a), in the event that Remote Starting Capability at any internal combustion GU becomes inoperable, Genco shall, upon receiving notice of such failure, staff the relevant Generating Facility Site as follows: (1) if at the time of notification of failure, the GU has already been bid into the NYISO Day Ahead Market for the following day and the Hour Ahead Market for the day in which the failure occurs; (2) during heat waves and other periods of anticipated system

stress as determined through consultation with LIPA; (3) at all other times, only the Barrett, Holtsville and Wading River sites during normal business hours and at LIPA's request up to a total of two (2) shifts per day (including weekends) for the lesser of the duration of the inoperability of the Remote Starting Capability or two (2) weeks. In addition, Genco shall provide staffing for any longer duration or at other sites as LIPA may request, provided that LIPA shall reimburse Genco for its reasonable incremental labor costs.

(c) Should Genco fail timely to meet a Dispatch Request as a result of the failure of Remote Starting Capability due to a failure of the communication system from LIPA's control room, such non-performance will not be included for measurement purposes with respect to the UCAP Guarantee (as described in Appendix F).

(d) Genco may, consistent with Prudent Utility Practice, override the automatic generation, reactive power and load frequency control equipment if Genco deems it necessary to preserve the safety and integrity of its Generating Facilities or in order to react to System Emergencies and System Pre-Emergencies.

(e) Except when required to respond to System Emergencies and System Pre-Emergencies, or as otherwise requested by LIPA or the NYISO for reliability reasons, LIPA will cause Dispatch Requests to conform to the limitations set forth in Appendix E, including but not limited to, minimum loadings, ramp rates, minimum down time, internal combustion loadings and start-up times on the Generating Facilities ("Dispatch Limitations"). LIPA shall not be liable for any NYISO Dispatch Request that fails to conform to the Dispatch Limitations provided that LIPA has accurately communicated the applicable Dispatch Limitations to the NYISO. In such event, Genco shall comply with the NYISO Dispatch Request consistent with Prudent Utility Practice. Genco will provide LIPA with written notice as promptly as practicable in the event Genco determines that Prudent Utility Practice requires changes to the Dispatch Limitations, either on a short-term or long-term basis. By way of example, such changes may be required due to conditions such as equipment problems, opacity and voltage regulation. Absent such change, Genco will confirm the continued applicability of the prevailing Dispatch Limitations within ten (10) days following the beginning of each Contract Year. Genco shall demonstrate to the reasonable satisfaction of LIPA and the NYISO that any changes to the Dispatch Limitations as set forth in Appendix E conform to applicable NYISO Rules.

(f) Genco will operate the Generating Facilities within their voltage capability curves as provided by the original equipment manufacturer, and as controlled by the unit's voltage control system and protective relaying system subject to the requirements of the applicable Interconnection Agreement.

**3.5 Maintenance Scheduling.** Genco will furnish to LIPA a five (5) year maintenance outage schedule for each Generating Facility not later than ninety (90) days prior to the commencement of each Contract Year. Genco will (i) schedule maintenance outages and perform maintenance activities in accordance with the NYISO Rules, and (ii) consult with LIPA, to the extent reasonably practicable, so as to coordinate maintenance outages for the Generating Facilities with maintenance outages for other generating facilities under contract to LIPA; provided that any incremental costs or savings solely and directly resulting from changes to the



otherwise applicable maintenance outage schedule for the Generating Facilities shall be paid by or credited to LIPA as applicable. If and to the extent that Genco demonstrates that such changes would adversely impact Genco's ability to meet one or more Performance Guarantees, and LIPA nonetheless requests such changes, then any such adverse impact actually realized shall not be taken into account in the determination of any performance penalty payments thereunder. Genco may not schedule major maintenance outages during June, July and August, except in the case of System Emergency or System Pre-Emergency, in response to unusual circumstances in accordance with Prudent Utility Practice or unless the Parties otherwise agree. The Parties recognize that certain nonscheduled routine maintenance will be conducted from time to time, as required, for the purpose of inspection, cleaning and/ or repair of power plant equipment. Genco will use commercially reasonable efforts to schedule and implement such outages during off peak periods and will provide LIPA with as much advance notice as is practicable under the circumstances when such maintenance is required. Genco shall advise LIPA of all outages (both planned and unplanned) as soon as practicable by means of an information technology system designated by LIPA. Any such information technology system shall be at no incremental cost to Genco.

**3.6 Dependable Maximum Net Capability (DMNC) Testing.** Genco will perform capacity tests on its Generating Facilities to determine the DMNC rating, consistent with NYISO Rules.

**3.7 Power Plant Electric Use.** The Parties recognize and agree that the Generating Facilities require electricity for operating auxiliary systems. LIPA and Genco shall cooperate to arrange for such station service electricity to be provided by the GUs located at each Generating Facility to the extent permitted by NYISO Rules. If and to the extent that station service cannot be fully provided by each Generating Facility itself, LIPA and Genco shall arrange for such station service electricity to be provided at commercially reasonable rates pursuant to NYISO Rules or LIPA's electric tariff, as applicable. Charges for such station service power will be borne by LIPA to the extent that gross generation from a Generating Facility is injected into the T&D System and station service electricity is withdrawn from the T&D System for use in the Generating Facility. If and to the extent that Genco is charged for any station service power pursuant to NYISO Rules for LIPA's electric power, such charge shall be recovered by Genco, without any markup thereto, through the Monthly Variable Payment Adjustment Charge.

**3.8 Performance Guarantees.** The Parties have established certain Performance Guarantees applicable to Genco's operation of the Generating Facilities. The Performance Guarantees are set forth in Appendix F.

**3.9 Operational Information.**

**3.9.1 General.** Genco shall provide to LIPA in a timely fashion all information regarding the performance characteristics and operational status (projected and actual) of the Generating Facilities that Genco has in its possession and which LIPA or NYISO may reasonably require. In the event NYISO Rules require LIPA or Genco to provide information regarding the Generating Facilities that Genco does not possess, Genco shall use commercially reasonable efforts to obtain such information. LIPA shall reimburse Genco for any reasonable incremental cost which Genco incurs in obtaining

such information that LIPA is required to provide under NYISO Rules. Genco shall bear the cost of obtaining any such information that it is required to provide under NYISO Rules.

**3.9.2 Regulatory Requirements.** LIPA and Genco shall provide each other with any documents or evidence reasonably required to satisfy NERC or NPCC or other internal or external auditors, reliability organizations and regulatory agencies that the Generating Facilities are in compliance with NERC reliability standards and NPCC requirements. LIPA and Genco will notify the other as reasonably in advance as practicable of any action to be taken that is reasonably expected to jeopardize the other's compliance with NERC reliability standards, and will cooperate with each other to support continued compliance with NERC regulatory standards and NPCC requirements.

**3.9.3 Operating Procedures.** LIPA and Genco shall mutually develop operating procedures related to communication, testing and other operational matters necessary, appropriate or advisable to carry out this Agreement and as may be required by Prudent Utility Practice.

**3.9.4 Information Integration.** Genco shall collect and transmit data over LIPA's communication network with respect to the operational aspects of the Generating Facilities, including energy output, fuel input, environmental emissions, and bidding parameters, in a manner and configuration that is fully compatible with LIPA's Enterprise Data Management technical architecture ("EDM") as it may exist from time to time. Genco shall be responsible for the costs of developing cost estimates for implementing any required changes to its data collection, communication and information technology systems and equipment to the extent necessary to comply with the foregoing requirement. LIPA shall approve implementation of the project and shall be responsible for the implementation costs thereof up to an amount upon which the Parties shall mutually agree. If and to the extent that annual maintenance costs of the new Genco systems exceed \$25,000, LIPA will pay these costs through the Monthly Variable Charge. Genco shall be responsible for all other ongoing costs associated with maintaining its communication and information technology systems and equipment and shall participate in the power supply management partners meetings to remain familiar with and maintain the EDM documents.

## **ARTICLE 4**

### **RATES - GENERALLY**

**4.1 Capacity, Energy and Ancillary Services.** The rates that LIPA shall pay to Genco for Capacity, Energy and Ancillary Services from the Generating Facilities (subject to adjustment as hereinafter provided) shall be as more specifically set forth in Article 5.

**4.2 Rates Inclusive.** The Capacity Charge will include fixed operations and maintenance costs. Genco will recover from LIPA operations and maintenance costs that vary according to the dispatched output of a Generating Facility through the Monthly Variable Charge. The operations and maintenance costs recovered through the Capacity and Monthly Variable Charges

shall include Genco's currently known regulatory compliance costs; provided, however, that those compliance costs listed in Appendix D shall be recovered as set forth therein. In addition to the items set forth in Appendix D, Genco shall be entitled to recover any additional prudently incurred environmental compliance costs that may arise subsequent to the setting of the charges herein through the Monthly Capacity Payment Adjustment Charge or the Monthly Variable Payment Adjustment Charge, as appropriate, based on the nature of the environmental compliance cost incurred. In such event, Genco shall demonstrate that such compliance costs are incremental to the fixed or variable operations and maintenance costs already recovered through the Capacity Charge or Monthly Variable Charge.

**4.3 ROE Reopener.** Commencing with the start of the fourth (4th) Contract Year, Genco and LIPA shall each have the right to file an application with the FERC to adjust the then prevailing Allowed ROE component of the Monthly Capacity Charge hereunder if, but only if, the following conditions precedent to the Parties' right to make such a filing are satisfied and subject to the further limitations set forth in this Section 4.3.

**4.3.1 Initial ROE Adjustment.** During the fourth (4th) through and including the sixth (6th) Contract Years of the Term, a Party may file such an application with the FERC to adjust the Allowed ROE in the event that the average weekly yield on 10-year U.S. Treasury Bonds for any three (3) consecutive month period during such Contract Years exceeds or falls below the Base Treasury Yield (as such term is defined below) by more than two hundred fifty (250) basis points.

**4.3.2 Subsequent ROE Adjustment.** From and after the beginning of the seventh (7th) Contract Year through the remainder of the Term, a Party may file such an application with the FERC if the average weekly yield on 10-year U.S. Treasury Bonds for any three (3) consecutive month period following the start of the seventh (7th) Contract Year exceeds or falls below the Base Treasury Yield by more than two hundred (200) basis points.

**4.3.3 Base Treasury Yield.** For purposes of this Section 4.3, the term "Base Treasury Yield" shall mean the average weekly yield on 10-year U.S. Treasury Bonds for the three (3) consecutive month period ending May 31, 2013; provided, however, that if the Monthly Capacity Charge hereunder is adjusted pursuant to either this Section 4.3 or a Rate Reopener pursuant to Section 4.4, then the Base Treasury Yield shall mean the average weekly yield on 10-year U.S. Treasury Bonds for the consecutive three (3) month period ending on the last day of the month immediately preceding the month during which the new Monthly Capacity Charge becomes effective.

**4.3.4 Limitation on FERC Filing.** The Party filing an application with the FERC pursuant to Section 4.3 shall seek only to change the Monthly Capacity Charge only by the revenue amount required to reflect the changed Allowed ROE, including related taxes, as applied to the then applicable rate base. In addition, the application shall specify the proposed new Allowed ROE and shall demonstrate either that (a) in the case of a Genco filing to increase the Allowed ROE, the proposed new Allowed ROE is just and reasonable within the meaning of Section 205 of the FPA or (b) in the case of a

LIPA filing to lower the Allowed ROE, that the existing Allowed ROE is unjust and unreasonable within the meaning of Section 206 of the FPA. The application may not propose to change any other component of the revenue requirement used to determine the Monthly Capacity Charge or the Monthly Variable Charge. The other Party may oppose the proposed change in the Allowed ROE and provide evidence of mitigating factors that would reduce the amount of the proposed change.

**4.4 Rate Reopener.** Commencing with the start of the sixth (6th) Contract Year, Genco shall have the right to file (but on one occasion only) an application with the FERC seeking a rate increase pursuant to Section 205 of the FPA ("Rate Reopener"). Genco may propose in such Rate Reopener any change or modification to the revenue requirement underlying the Monthly Capacity Charge or Monthly Variable Charge (including the then Allowed ROE), and LIPA shall have the right to challenge any such proposed change or modification.

**4.5 No Other Rate Reset.** Genco and LIPA hereby agree that except as specifically provided in Section 4.3 and Section 4.4 and elsewhere in this Agreement, the rates to be paid for Capacity, Energy and Ancillary Services and the components thereof shall not be subject to reset or adjustment other than as provided in Appendix A, and each Party hereby irrevocably waives and relinquishes any right it may have to apply to the FERC for any change or adjustment in such rates pursuant to any provision of the FPA or the rules and regulations of the FERC thereunder.

## ARTICLE 5

### PURCHASE PRICE AND PAYMENT

**5.1 Rate Components.** Except as otherwise specifically provided in this Agreement, LIPA shall pay Genco for Electricity delivered pursuant to this Agreement at the prices calculated as set forth in Appendix A and Appendix B hereof. During the Term, LIPA will make monthly payments to Genco consisting of an amount equal to the (a) the Monthly Capacity Charge, (b) the Monthly Variable Charge, (c) the Monthly Ancillary Service Charge, (d) the Monthly Capacity Payment Adjustment Charge, (e) the Monthly Variable Adjustment Charge and (f) the Monthly RGGI Charge.

**5.1.1 Monthly Capacity Charge.** The Monthly Capacity Charge (the "Monthly Capacity Charge") shall equal 1/12 of the annual Capacity charge (the "Capacity Charge") as set forth in Appendix A hereto. The annual Capacity Charge is designed to compensate Genco for its fixed costs of producing Electricity from the Generating Facilities (including associated common costs) including: (a) return on investment, and depreciation for the undepreciated cost of the Generating Facilities, (b) completed capital additions approved in accordance with Section 6.3, including an Allowance for Funds Used During Construction ("AFUDC"), (c) insurance, (d) income taxes (federal, state, local, net or gross), (e) property and all other taxes, (f) fixed operations and maintenance costs, including an allowance for scheduled major maintenance and overhauls and (g) administrative costs. The annual Capacity Charge will exclude necessary costs of demolition, environmental remediation costs related to demolition,

and site restoration (other than as part of Genco's depreciation charge) which Genco shall bear except as otherwise provided in this Agreement.

**5.1.2 *Monthly Variable Charge.*** The Monthly Variable Charge (the "Monthly Variable Charge") will be based on the variable operations and maintenance costs as set forth in Appendix A, multiplied by the net MWh generated by the Generating Facilities. The variable operations and maintenance costs include those materials, supplies and maintenance costs, environmental fees or charges, and labor costs, if any, which vary directly with the amount of Energy generated by such Generating Facilities. Variable operations and maintenance costs shall not include any costs recovered through the Monthly Capacity Charge or charges for starts, fired hours of operation and fuel swaps defined in Appendix B. As provided in Section 3.3, LIPA shall be responsible for providing the Fuel required to operate the Generating Facilities for the purpose of providing Energy to LIPA and, accordingly, there will be no charge for Fuel pursuant to this Agreement.

**5.1.3 *Monthly Ancillary Service Charge.*** LIPA will pay for any documented incremental costs incurred by Genco in providing Ancillary Services to LIPA, if any such services are required by LIPA which are not otherwise compensated by LIPA through the Monthly Capacity Charge or the Monthly Variable Charge or otherwise (the "Monthly Ancillary Service Charge"). As provided in Section 3.3, LIPA shall provide the Fuel required to operate the Generating Facilities for the purpose of providing Ancillary Services and, accordingly, there will be no charge for Fuel pursuant to this Agreement. Genco may include the Monthly Ancillary Services Charge as a separate line item on the Monthly Variable Charge invoice.

**5.1.4 *Monthly Capacity Payment Adjustment Charge.*** The Monthly Capacity Payment Adjustment Charge (the "Monthly Capacity Payment Adjustment Charge") will provide for (a) LIPA's payment to Genco of non-variable related expenses, net of insurance proceeds, that could not reasonably be forecasted and included in the Monthly Capacity Charge and are substantially outside the control of Genco, including extraordinary uninsured damage from storms and other acts of God, Catastrophic Failure of one or more units of a Generating Facility as provided in Section 13.1, and environmental compliance costs of a fixed nature as provided in Section 4.2 (for events that were not planned for and not of a type covered by any contingency in the applicable budget), (b) any applicable true-up adjustments as set forth in Appendix A, (c) Ramp Down and Repowering Payments as set forth in Articles 10 and 11, and (d) other similar payments as provided in this Agreement. The foregoing charges shall not include any capital expenditures required as a result of such events, which shall be included in rate base, subject to approval by LIPA as provided in Article 6. Genco may include the Monthly Capacity Payment Adjustment Charge as one or more separate line items on the Monthly Capacity Charge invoice.

**5.1.5 *Monthly Variable Payment Adjustment Charge.*** The Monthly Variable Payment Adjustment Charge (the "Monthly Variable Payment Adjustment Charge") will provide for the payment of starts, fired hours of gas turbine base and peak mode operation, and fuel swaps defined in Appendix B after meeting the threshold levels

established therein and the costs of environmental compliance as provided Section 4.2 (for events that were not planned for and not of a type covered by any contingency in the applicable budget) to the extent not otherwise included in the Monthly Capacity Payment Adjustment Charge or the Monthly RGGI Charge. Charges incurred for starts, fired hours of gas turbine base and peak mode operation and swaps after meeting the threshold levels will be billed (such bills to be complete and in sufficient detail for LIPA to determine the accuracy thereof) in total to LIPA by Genco immediately following the month incurred in accordance with Section 5.3. Genco may include the Monthly Variable Payment Adjustment Charge as one or more separate line items on the Monthly Variable Charge invoice.

**5.1.6 Monthly RGGI Charge.** The Monthly RGGI Charge shall consist of the charges for RGGI compliance determined in accordance with Section 9.3.

**5.2 Performance Guarantees.** Any penalty payments incurred by Genco pursuant to the Performance Guarantees set forth in Appendix F hereof will be calculated no less frequently than annually and deducted from the Monthly Capacity Charge.

**5.3 Payment.** Genco will submit a monthly invoice to LIPA for the Monthly Capacity Charge not later than the first (1st) Business Day of the month for Capacity provided during the month, consistent with the provisions in Section 5.1. Genco will also submit monthly invoices to LIPA for the Monthly Variable Charge, and any other charges that may be required, by the fifth (5th) Business Day following the month of service, consistent with the provisions in this Article 5. Payment of the Monthly Capacity Charge invoiced amounts shall be due and payable by LIPA on the later of the tenth (10th) Business Day of the month or ten (10) Business Days after LIPA's receipt of the monthly invoice. Payment of the Monthly Variable Charge invoiced amounts and any other invoices shall be due and payable by LIPA on the later of the first (1st) Business Day following the nineteenth (19th) of the month or ten (10) Business Days of LIPA's receipt of such invoices.

All such payments shall be made in the form of immediately available funds by wire transfer to a bank or financial institution specified by Genco or in such other form as may be reasonably requested by Genco. The wired funds will be deemed timely paid if received by the close of business on or before the due date of such payment.

**5.4 Late Payment.** Any undisputed invoiced amount not paid by LIPA by the due date thereof will bear interest from the invoice due date at the Default Interest Rate. Disputed amounts ultimately determined to be payable to Genco shall bear interest from the invoice date at the Default Interest Rate.

## ARTICLE 6

### BUDGETS

**6.1 Operations and Maintenance Budget.** Genco shall annually prepare and submit to LIPA no later than ninety (90) days prior to the beginning of each Contract Year an operations and maintenance budget for such year. Such budget shall be submitted for informational purposes only and shall not require or be subject to LIPA approval.

**6.2 Five Year Capital Improvement Budgets.** Genco shall annually prepare and submit to LIPA not less than one hundred eighty (180) days prior to the beginning of each Contract Year a preliminary five (5) year capital improvement plan (including total estimated costs of each capital project and projected plant closures) for LIPA's review to enable LIPA to prepare and forecast Capacity charges under this Agreement. Genco shall annually prepare and submit to LIPA not less than ninety (90) days prior to the beginning of each Contract Year a final proposed five (5) year capital improvement plan (a "Five Year Capital Improvement Plan") for LIPA's review. Each Five Year Capital Improvement Plan shall, among other things, consist of a proposed budget for the upcoming Contract Year (a "Contract Year Capital Budget Plan") and preliminary plans for each of the four (4) succeeding Contract Years. The Five Year Capital Improvement Plan shall also include Genco's forecast of allocated service company net utility plant for the same period, together with an explanation of the reason(s) for any projected increases or decreases to such plant. For the Contract Year Capital Budget Plan applicable to the immediately upcoming Contract Year, Genco shall provide sufficient technical and financial justification for each planned capital expenditure as would be required by Prudent Utility Practice or as LIPA may otherwise reasonably require. Such Contract Year Capital Budget Plan shall justify to LIPA's reasonable satisfaction that each expenditure is required to maintain legal and regulatory compliance, personnel and public safety, electric system or GU reliability, or improve plant efficiency. In support of the foregoing, Genco shall provide a detailed explanation of the purpose and need for each proposed project in the Contract Year Capital Budget Plan and a benefit/cost analysis for all reliability or efficiency projects, justifying each such project by the economic benefits such project is expected to produce over the remainder of the Term.

**6.3 Budget Review.** LIPA shall review each Contract Year Capital Budget Plan and may approve all or any portion of the proposed capital expenditures in its sole discretion and in accordance with Prudent Utility Practice. As soon as reasonably practicable following LIPA's receipt of the proposed Contract Year Capital Budget Plan from Genco, LIPA shall provide Genco with any requested changes, additions, deletions or revisions as well as requests for any additional information and level of detail LIPA believes reasonably necessary to conduct its review. The Genco Representative and LIPA Representative will employ reasonable efforts to agree upon each Contract Year Capital Budget Plan as promptly as possible following LIPA's receipt of any additional information it has requested from Genco. Notwithstanding the foregoing, LIPA may approve individual projects so that work can proceed thereon during the budget review process. Genco will request a target approval date for each project contained in the Contract Year Budget Plan based on its engineering, procurement and implementation schedule; LIPA will use its reasonable efforts to approve or disapprove of each project by the target approval date. The approved expenditures (a "Contract Year Capital Budget") shall be effective throughout the Contract Year, subject to modifications as provided in Section 6.5. It is the intent of the Parties that the amounts provided in each approved Contract Year Capital Budget for capital expenditures will be sufficient to enable Genco to meet or surpass the Performance Guarantees set forth in Appendix F and to otherwise maintain the Generating Facilities in good working order consistent with Prudent Utility Practice; provided that LIPA shall have the final right, subject to Section 6.4, to determine whether Genco should proceed with specific capital projects.

**6.4 Failure To Adopt Contract Year Budget.** If the Parties are unable to reach agreement concerning all or any portion of a Contract Year Capital Budget as contemplated in

Section 6.3, those portions of the Contract Year Capital Budget that are in dispute for such Contract Year shall be resolved pursuant to the dispute resolution provisions set forth in Article 20. Those portions of the Contract Year Capital Budget not in dispute, however, shall become effective, and Genco shall be entitled to proceed during the pendency of dispute resolution proceedings with any disputed capital expenditure projects that it believes are required to maintain legal compliance, personnel and public safety or electric system reliability.

**6.5 Capital Improvement Budget Performance.** Genco will promptly notify LIPA when the cost of any approved capital project is anticipated to increase or actually increases by more than ten (10%) percent. Genco will provide to LIPA, on a quarterly basis, a reasonably detailed report of actual and projected total capital improvement costs (capital plus removal) versus the total approved capital budget. For approved projects with budgets greater than \$250,000, such report shall include a detailed explanation outlining any projected variations that exceed +/- 10% of total project budget. Upon not less than thirty (30) days written notice to Genco, LIPA may, in its sole discretion, suspend or terminate any such capital improvement project which LIPA deems to have exceeded a reasonable cost, in which case LIPA shall reimburse Genco for its approved expenditures and related reasonable wind down costs incurred in connection with such project. Genco will promptly notify LIPA when an event occurs, or is anticipated to occur, which would result in any required unbudgeted capital expenditures. As soon as practical, Genco will provide an explanation and estimate of such unforeseen incremental costs to LIPA in accordance with the information requirements set forth in Section 6.2 as well as National Grid U.S. Sanctioning procedures. LIPA will review and respond to such explanation within sixty (60) days after receipt of the request and all reasonably required supporting information. If the Parties are unable to reach agreement, the dispute shall be resolved pursuant to the dispute resolution provisions set forth in Article 20.

## ARTICLE 7

### GENERATING FACILITY SITES

**7.1 Interference Compensation.** In the event that LIPA's construction or operation of a new generating unit at a Generating Facility Site materially interferes with either the physical operation of the Generating Facility on that site or with Genco's environmental compliance with respect to that Generating Facility, LIPA shall compensate Genco for the additional costs and losses which Genco directly incurs as a result of such interference.

**7.2 Generating Facilities.** During the Term, except for any Generating Facility which has been Ramped Down, Repowered or retired and then only subject to the provisions of Articles 10, 11 and 13 hereof, respectively, Genco may not sell or otherwise assign or dispose of all or any part of the Generating Facilities or any interest therein except for (i) liens securing bona fide debt or other encumbrances incurred in the ordinary course of business or (ii) capital leases unless LIPA shall have given its prior written consent thereto, which LIPA may grant or withhold in its sole discretion.

**7.3** [Reserved].

**7.4 Interconnection.** The Parties shall take such actions and execute such agreements and other documents as may be necessary or appropriate to provide for the continued interconnection



of the Generating Facilities to the T&D System in accordance with LIPA's Tariff for Electric Services, NYISO Rules and FERC requirements ("Interconnection Agreements"). The Parties will cooperate with one another to assure compliance with the testing and calibration requirements for the relays that interconnect the GUs to the T&D System. LIPA will reimburse Genco pursuant to Section 5.1.4 as applicable, for any LIPA or NYISO charges incurred by Genco under the Interconnection Agreements for construction and operation of transmission reinforcements required by NYISO or LIPA to maintain Capacity Resource Interconnection Service for the Delivery of Electricity from the Generating Facilities onto the T&D System.

**7.5 Excluded Units.** In consideration for excluding the E.F. Barrett IC Unit 7 and the Montauk Diesel Units 2-4 (collectively, the "Excluded Units") from the Capacity which LIPA is purchasing hereunder, LIPA shall pay to Genco an amount equal to the aggregate Net Book Value of the Excluded Units as of May 28, 2013, plus the Demolition and Site Remediation Costs applicable to each Excluded Unit as then reasonably estimated by the Parties. LIPA shall take such actions as necessary to make the Montauk Diesel Units 2-4 Retirement Eligible as of May 3, 2013. Genco shall provide LIPA with balance sheets (together with supporting documentation in reasonable detail) showing the Net Book Value of each Excluded Unit as of February 28, 2013, and LIPA shall pay Genco a lump sum amount equal to such aggregate February 28, 2013 Net Book Value, plus such estimated Demolition and Site Remediation Costs, not later than May 28, 2013. As promptly as practicable after May 28, 2013, Genco shall provide LIPA with updated balance sheets (together with supporting documentation in reasonable detail) showing the Net Book Value of each Excluded Unit as of May 28, 2013. Not later than thirty (30) Business Days after LIPA's receipt of the May 28, 2013 balance sheets and supporting documentation, LIPA shall pay Genco the amount, if any, by which the May 28, 2013 aggregate Net Book Value is greater than, and Genco shall refund to LIPA the amount, if any, by which the May 28, 2013 aggregate Net Book Value is less than, the February 28, 2013 aggregate Net Book Value of the Excluded Units. Notwithstanding the foregoing, if LIPA provides Genco with written notice within such thirty (30) Business Day period that LIPA objects to the final Net Book Value calculation, the matter shall be resolved pursuant to the dispute resolution provisions set forth in Article 20. If the actual Demolition and Site Remediation Costs are less than the estimated amount paid by LIPA, then Genco shall refund the difference to LIPA within ten (10) Business Days following the documentation thereof. Genco, however, shall be responsible for and shall bear any Demolition and Site Remediation Costs in excess of the Parties' estimate.

## ARTICLE 8

### STORM RESTORATION

**8.1 Storm Declaration.** A storm restoration condition shall be deemed to exist when LIPA requests Genco personnel to assist in restoring storm caused damage to the T&D System. LIPA shall promptly notify Genco of a storm restoration condition.

**8.2 Responsibility During Storm Condition.** Personnel designated by Genco (in its sole discretion) will be made available to perform storm restoration duties for LIPA upon LIPA's request, as contemplated above; provided, however, that Genco will follow the same storm restoration practice currently followed by Genco to make Genco employees available. LIPA will pay for the incremental costs incurred by Genco in providing storm restoration services in

accordance with this Agreement; personnel costs will be paid in accordance with Genco's personnel salary scale (including any overtime premiums) consistent with the personnel salary cost basis used to establish fixed operation and maintenance costs in the Capacity Charge in accordance with this Agreement. LIPA will also coordinate and pay any incremental costs related to storm restoration training (e.g., car lease, equipment, meals, etc.). This cost will be reimbursed by LIPA either through an adjustment in the Monthly Variable Charge as contemplated herein or through another mutually agreed-upon method.

**8.3 Termination of Obligation.** Genco's obligations pursuant to this Article 8 shall cease to be effective as of the expiration date of the current term of the Amended and Restated Management Services Agreement, as amended, dated as of January 1, 2006.

## ARTICLE 9

### ENVIRONMENTAL CONSIDERATIONS

**9.1 Environmental Compliance.** Genco shall comply in all material respects with all Applicable Laws including all Applicable Laws regulating or affecting any spill, discharge, or release of any Hazardous Substances into or upon any of its land, air, surface water, ground water, or improvements located thereon and shall take all action required (including any investigation, study, sampling and testing, cleanup, removal and remediation) by Governmental Authorities having jurisdiction to remedy any notice of violation or non-compliance issued by such entity, with regard to air emissions, water discharges, noise emissions, hazardous discharges, or any other environmental, health, or safety problems affecting the Generating Facilities. LIPA will reimburse Genco for all reasonably incurred costs, including those related to any Legal Proceedings, related to such compliance pursuant to Sections 5.1.2 and 5.1.4. Genco's liability to LIPA for nonperformance of this Section 9.1 shall be limited to liabilities under Article 19, and its recoverability from LIPA for environmental compliance to the extent allowed under Article 19 shall be limited to the extent set forth in Article 19.

**9.2 NO<sub>x</sub>, SO<sub>x</sub> and CO<sub>2</sub> Emission Credits/Allowances.** Genco shall apply to the Generating Facilities all NO<sub>x</sub>, SO<sub>x</sub> and CO<sub>2</sub> and other air emission and other environmental credits and allowances owned by Genco or otherwise attributable to the Generating Facilities. The cost of such credits or allowances, if any, shall be recovered without markup as set forth in Section 4.2. In the event Genco wishes to sell or otherwise dispose of any credits or allowances, the cost of which has not been charged to LIPA and which Genco reasonably determines are in excess of those needed for the operation of the Generating Facilities, Genco shall give written notice thereof to LIPA as far in advance as reasonably practicable so that LIPA may submit a bid to purchase such credits or allowances should it desire to do so. Genco shall pay LIPA sixty-seven (67%) percent of the proceeds from any sale or other disposition of such excess credits and Genco shall be entitled to retain the remaining thirty-three (33%) percent thereof. If Genco is incorrect in its foregoing determination, Genco shall be responsible for any difference between the sale price and the replacement price; provided, however, that LIPA shall be responsible for two-thirds (2/3) of the cost of the replacement credits or allowances at their original sale price. Sales of emission credits or allowances created or saved as a result of the turbine upgrades and new emission controls at the Northport and Port Jefferson Generating Facilities shall be treated in the manner set forth in Appendix A. If Genco wishes to sell or otherwise dispose of any

credits or allowances (including RGGI allowances as provided in Section 9.3), the cost of which has been charged to LIPA, and which Genco reasonably determines is in excess of the credits or allowances reasonably needed for the operation of the Generating Facilities, then one hundred (100%) percent of the proceeds from such sale or disposition shall be credited to LIPA under this Agreement. As promptly as practicable, but in any event within thirty (30) days after any sale or disposition, Genco shall provide LIPA with a statement in reasonable detail setting forth the calculation of the sale proceeds.

**9.3 RGGI.** With respect to Genco's compliance with the Regional Greenhouse Gas Initiative ("RGGI"), Genco, either directly or through an agent, shall purchase RGGI allowances for the Generating Facilities' participation in quarterly auctions and through secondary market purchases. Genco shall purchase RGGI allowances pursuant to the procedures set forth in Appendix J. LIPA shall reimburse Genco for the costs of such purchases pursuant to Section 9.1.

## ARTICLE 10

### CAPACITY RAMP DOWN

**10.1 Capacity Ramp Down Option.** During the Term, LIPA shall have the right, exercisable in its sole discretion, to reduce ("Ramp Down") all or any portion of Generating Facility capacity which LIPA is obligated to purchase from Genco pursuant to the terms of this Agreement as provided in this Article 10.

**10.1.1 Exercise of Option.** LIPA may exercise its Ramp Down option ("Ramp Down Option") with respect to any (but not a portion) of the blocks of Genco Steam GU capacity set forth in Section 10.1.3 below (each a "Ramp Down Capacity Block") with such Ramp Down to be effective on (but not earlier than) or at any time after the date corresponding to such Ramp Down Capacity Block ("Ramp Down Effective Date"). LIPA may also exercise its Ramp Down Option with respect to any or all of the other Generating Facilities subject to this Agreement ("Other GUs") to be effective, at any time on (but not earlier than) or at any time after May 1, 2015 (other than the Glenwood IC Units 1-3 which LIPA may Ramp Down to be effective on or after May 1, 2014). The effective exercise of the Ramp Down Option shall be subject to LIPA's making the Ramp Down Payment to Genco as provided in Section 10.3. Notwithstanding the foregoing, no Ramp Down of a Steam GU or Other GU shall become effective unless and until the Steam GU or Other GU in question is Retirement Eligible.

**10.1.2 Notice.** In order to exercise its Ramp Down Option, except as otherwise provided in Section 11.11(c)(i), LIPA must give written notice to Genco for a Steam GU not later than two (2) years prior to the Ramp Down Effective Date designated in such notice; with respect to any or all of the Other GUs, LIPA may exercise its Ramp Down Option at any time upon not less than one (1) year's prior written notice to Genco (each a "Ramp Down Notice"). Each Ramp Down Notice shall identify the Ramp Down Capacity Block or the Other GU, as the case may be, which LIPA elects to Ramp Down and the Ramp Down Effective Date of the Ramp Down. LIPA may rescind a

Ramp Down Notice at any time up to (x) twelve (12) months prior to the designated Ramp Down Effective Date for a Steam GU and (y) six (6) months prior to the designated Ramp Down Effective Date for an Other GU; provided, however, that if LIPA rescinds a Ramp Down Notice, it shall reimburse Genco for Genco's demonstrated, reasonably incurred direct costs related to the rescinded Ramp Down.

**10.1.3 Ramp Down Capacity Blocks.** LIPA may exercise its Ramp Down Option with respect to the following Ramp Down Capacity Blocks of Genco Steam GUs as follows:

Ramp Down Capacity Block	Units	Earliest Ramp Down Effective Date
1	Barrett Units 1 and 2	May 1, 2016/18*
2	Port Jefferson Units 3 and 4	May 1, 2016/18*
3	Northport Unit 1	May 1, 2021
4	Northport Unit 2	May 1, 2021
5	Northport Unit 3	May 1, 2021
6	Northport Unit 4	May 1, 2021

\* LIPA may exercise its Ramp Down Option, at its election, for either the Barrett or Port Jefferson Ramp Down Capacity Blocks (but not both) with a Ramp Down Effective Date beginning May 1, 2016, and both such Blocks with a Ramp Down Effective Date beginning May 1, 2018.

**10.2 Obligations Post-Ramp Down.** Following LIPA's exercise of its Ramp Down Option with respect to a Generating Facility, the related rights and obligations of the Parties shall be as follows:

**10.2.1 Capacity Purchase.** From and after the Ramp Down Effective Date on which a Generating Facility is Ramped Down, except as provided under Section 10.2.2(b), LIPA shall have no further right or obligation to purchase or pay for Capacity from, or the associated costs of, that Generating Facility pursuant to this Agreement for the remainder of the Term, and the Ramped Down Generating Facility shall be removed for all purposes from this Agreement (and the Capacity and other charges hereunder shall be appropriately adjusted as provided elsewhere herein) for the remainder of the Term.

**10.2.2 Genco Ramp Down Elections.** Not later than ninety (90) days following its receipt of a Ramp Down Notice, Genco shall provide LIPA with written notice

whether after the Ramp Down Effective Date Genco will either (i) continue operation of the Generating Facility or (ii) shut down and either mothball or demolish the Generating Facility commencing on the Ramp Down Effective Date.

(a) If Genco elects to continue operation of the Ramped Down Generating Facility following the Ramp Down Effective Date:

(i) LIPA shall have no further liability or obligation from and after the Ramp Down Effective Date for any Demolition and Site Remediation Costs in connection with any demolition and site restoration associated with the Generating Facility or the related site, operation and maintenance costs, capital improvements, environmental compliance and remediation costs, property taxes or other costs, expenses or liabilities arising from and after the Ramp Down Effective Date;

(ii) For any given Contract Year during the Term, LIPA shall be entitled to receive fifty (50%) percent of the amount of any Excess Profits earned by the Ramped Down Generating Facility from its operation during such Contract Year; provided, however, that LIPA's entitlement to its share of such Excess Profits shall not be applicable until Genco has first recovered an amount of Excess Profits equal to the amount of any discount deducted from the otherwise applicable Ramp Down Payment made with respect to such Generating Facility pursuant to Appendix G; and

(iii) LIPA shall be also entitled to fifty (50%) percent of any amount of net proceeds (after related transaction costs), including proceeds attributable to any Regulatory Rights received by Genco from any sale, transfer or other disposition of the Generating Facility during the Term, which proceeds are in excess of an amount equal to (x) the Generating Facility's Net Book Value after giving effect to the Ramp Down Payment, plus (y) the amount of any discount previously deducted from the applicable Ramp Down Payment with respect to such Generating Facility pursuant to Appendix G; that Genco has not previously recovered in Excess Profits generated by the Generating Facility pursuant to subparagraph (ii) above.

(b) If Genco elects to shut down and mothball or demolish the Generating Facility as of the Ramp Down Effective Date, then, except for the LIPA Property Tax Share for which LIPA shall be solely responsible, Genco shall retain all liabilities and obligations with respect to the Generating Facility, including with respect to decommissioning, mothballing, Demolition and Site Remediation Costs and property taxes. LIPA shall have the right, exercisable upon written notice to Genco not less than one-hundred eighty (180) days prior to the Ramp Down Effective Date, to purchase the Generating Facility including the related site and all Regulatory Rights for \$1 (in addition to the Ramp Down Payment) and upon such purchase assume all liabilities and obligations, including for property taxes related to the Generating Facility, with respect thereto from and after the Ramp Down Effective Date. Alternatively, if LIPA does not exercise its purchase option, LIPA shall (i) have the option to purchase the Regulatory Rights at their fair market value as agreed upon by the Parties if the Generating Facility has been removed from service and

permanently retired and (ii) be entitled to fifty (50%) percent of the net proceeds (after transaction costs), including any proceeds attributable to Regulatory Rights, received by Genco from any sale, transfer or other disposition of the Generating Facility made during the Term in excess of the Generating Facility's Net Book Value, after (x) giving effect to the Ramp Down Payment and (y) deducting the amount of any discount to the Ramp Down Payment made with respect to the Generating Facility pursuant to Appendix G, and (z) deducting Genco's actual demonstrated costs of decommissioning, mothballing, and Demolition and Site Remediation Costs.

(c) If following the Ramp Down of a Generating Facility, LIPA exercises either (i) its purchase option under paragraph (b) above or (ii) its right to purchase the site on which the Generating Facility was located pursuant to Schedule F to the Merger Agreement ("Schedule F Rights"), LIPA may, among its other rights, elect to contract with a third party, or Genco, to repower or otherwise construct new generation on such Ramped Down Generating Facility site; provided, however, that with respect to the Steam GUs, the Holtsville CT Units 1-10, and the Barrett CT Units 1-6, 8, and 9-12 only (each a "Restricted Generating Facility"), if LIPA wishes to initiate a repowering of such Ramped Down Generating Facility during the three (3) year period commencing with the Ramp Down Effective Date, LIPA shall employ the Repowering Option procedure as provided in Article 11; provided further, however, that such three (3) year restriction shall in no event apply to any Restricted Generating Facility which is Ramped Down following a Repowering suspension or termination pursuant to Section 11.11.

(d) In the event LIPA exercises its Schedule F Rights, LIPA shall pay to Genco an amount equal to the higher of (i) Genco's documented Demolition and Site Remediation Costs and (ii) the fair market value of the Generating Facility site LIPA is acquiring, determined in accordance with LIPA's Schedule F Rights.

**10.3 Ramp Down Payment.** The Ramp Down Payment for each Steam GU and for each Other GU shall be the Net Book Value of the Generating Facility as of the Ramp Down Effective Date of its Ramp Down (a) less the applicable discount as provided in Appendix G, (b) plus an amount equal to the operating and maintenance expenses (both allocated and direct) for (x) eighteen (18) months in the case of a Steam GU and (y) one (1) year in the case of an Other GU, but in each case only until the end of the Term or the Early Termination Date, whichever shall first occur.

At LIPA's election, it may pay Genco the Ramp Down Payment in either (a) a lump sum on the Ramp Down Effective Date or (b) installments over the remaining Term of this Agreement, together with interest at Genco's Weighted Cost of Capital, to the extent the payment obligation is not offset against the then available Tracking Account balance.

**10.4 Ramp Down Tracking Account.** A notional account ("Tracking Account") is hereby established in the amount of the Net Book Value of the Northport Unit 1 Generating Facility (including for the avoidance of doubt, the Net Book Value of the Turbine Upgrades and New Emission Controls – as such upgrades and controls are defined in Appendix A – of the Northport Unit 1) as of May 28, 2013. Genco shall provide LIPA with its calculation (together with workpapers and other supporting documentation in reasonable detail) of such Net Book Value

not later than July 1, 2013. LIPA shall notify Genco within thirty (30) Business Days following receipt of the Net Book Value calculations whether LIPA agrees with or objects to any aspect thereof. In the event LIPA notifies Genco of an objection, unless the Parties are able to resolve LIPA's objections within thirty (30) Business Days, the matter shall be submitted for dispute resolution pursuant to Section 20.3. Should LIPA elect to either Ramp Down, Repower or retire a Generating Facility as provided in this Agreement, LIPA shall be entitled to apply the amount of the Tracking Account to offset the amount of the related Ramp Down Payment, Repowering Payment or Retirement Payment, as the case may be, otherwise payable to Genco hereunder to the extent of the remaining balance in the Tracking Account, but not in excess of the amount of Ramp Down Payment, Repowering Payment or Retirement Payment being applied. The Tracking Account may only be utilized as an offset or credit against LIPA's Ramp Down, Repowering and Retirement Payment obligations hereunder and LIPA shall not have any rights or entitlement to receive distributions therefrom in the event there is a remaining balance in the Tracking Account at the end of the Term or upon the Early Termination Date.

## ARTICLE 11

### REPOWERING OPTION

**11.1 General.** LIPA shall have the option, exercisable at any time during the Term in its sole discretion ("Repowering Option") to direct Genco to repower any or all of the Eligible Repowering Blocks of Generating Facilities in accordance with the process set forth in this Article 11.

**11.1.1 Repowering.** A "Repowering" shall entail among other things, replacing part or all of each GU of a Generating Facility within an Eligible Repowering Block with new generating equipment or entire unit(s) at the selected Eligible Repowering Block site. Depending upon the configuration of the Repowered Generating Facility and other site-specific factors, Repowering of a Generating Facility may commence before the Generating Facility is removed from service. Repowering of the Generating Facility units within an Eligible Repowering Block may be commenced after the expiration of the Term provided that LIPA has exercised its Repowering Option prior to the expiration of the Term. In the event LIPA exercises a Repowering Option, the rights and obligations of Genco and LIPA with respect to the corresponding Repowering shall nevertheless survive the expiration of the Term.

**11.2 Eligible Repowering Blocks.** LIPA may from time to time during the Term exercise its Repowering Option in the manner provided in this Article 11 with respect to any or all of the following capacity blocks of Generating Facilities (each an "Eligible Repowering Block"):

Block 1 – Port Jefferson Steam Units 3 (195 MW) and 4 (197 MW)

Block 2 – E.F. Barrett Steam Units 1 (200 MW) and 2 (196 MW)

Block 3 – Northport Steam Unit 1 (375 MW)

Block 4 – Northport Steam Unit 2 (375 MW)

Block 5 – Northport Steam Unit 3 (375 MW)

Block 6 – Northport Steam Unit 4 (375 MW)

Block 7 – Holtsville CT Units 1-5

Block 8 – Holtsville CT Units 6-10

Block 9 – Barrett CT Units 1-6 and 8

Block 10 – Barrett CT Units 9-12

LIPA's exercise of a Repowering Option must provide for the Repowering of all (and not a portion) of the Generating Facility units within the related Eligible Repowering Block.

**11.3 Repowering Cost Assessment.** Prior to LIPA exercising its Repowering Option with respect to an Eligible Repowering Block, Genco will advise LIPA of the expected capital cost of such Repowering based on the results of a competitive procurement process ("RFP") conducted by Genco for the engineering, equipment procurement, and construction for the Repowering of that Eligible Repowering Block. Genco shall provide LIPA with the results of the RFP and its evaluation thereof as promptly as possible following completion of the RFP process, and in any event within thirty (30) days following the conclusion thereof. At or prior to that time, Genco shall also provide LIPA with proposed terms (including prices) and a proposed form of Power Purchase Agreement ("PPA") for LIPA's review and consideration in order for LIPA to assess whether to exercise its Repowering Option. Genco shall commence the RFP process for Block 1 and Block 2 no later than thirty (30) days following the Commencement Date. The RFP process for the remaining Blocks will only be initiated upon LIPA's written request. It is understood and agreed by the Parties that LIPA's consideration and analysis of whether to exercise a Repowering Option will involve, among other things, a comparison of the total all-in cost of a Repowering, including demolition of the existing facilities on the site, the cost of any necessary restoration, the construction of new facilities (including the cost of transmission upgrades and gas delivery system investments and other PPA payments) as compared to the cost (including the cost of transmission upgrades and gas delivery system investments) of new On-Island generation resources.

**11.3.1 RFP Budget.** Genco shall develop a detailed budget for any incremental internal costs of Genco and third party costs expected to be incurred in the conduct of each RFP. Such budget shall be subject to the mutual agreement of the Parties. LIPA shall reimburse Genco for one-half of the costs incurred and included within the approved budget, and Genco shall be responsible for the balance of such costs as well as any RFP costs incurred in excess of the budget; provided, however, that if the Repowering is completed, LIPA will reimburse Genco for Genco's portion of RFP costs at the time the Repowered Generating Facility is placed in service. The RFP budget may be adjusted by mutual agreement of Genco and LIPA in the event of changes in scope within the RFP.

**11.4 Exercise of Repowering Option.** LIPA may exercise its Repowering Option with respect to an Eligible Repowering Block upon written notice to Genco at any time until the



expiration of (a) the applicable price commitment (as the same may have been extended) contained in the proposal selected in response to the RFP and (b) the expiration of the Term, whichever shall first occur. LIPA's exercise of a Repowering Option shall be subject, however, to LIPA and Genco first reaching agreement on a mutually acceptable PPA and a Retirement Effective Date, as well as consideration by LIPA of such other economic, system resource and other factors as LIPA shall in its sole discretion consider relevant. It is understood and agreed that LIPA shall have no obligation to proceed with exercise of a Repowering Option, which decision shall be in LIPA's sole discretion.

**11.5 Power Purchase Agreement.** For each Eligible Repowering Block for which LIPA proposes to exercise its Repowering Option, LIPA and Genco shall negotiate in good faith and as promptly as practicable enter into a PPA pursuant to which LIPA would agree, upon completion and commercial operation of the Repowered Generating Facility within such Eligible Repowering Block, to purchase the Repowered Generating Facility's capacity, associated energy and ancillary services. LIPA's exercise of a Repowering Option shall be subject, among other things, to execution of a mutually acceptable PPA and receipt of all necessary board and regulatory approvals for the PPA, which regulatory approvals shall be reasonably satisfactory to the Parties.

**11.6 Project Management.** Genco shall serve as the owner and project manager for the Repowering of any Generating Facility repowered pursuant to LIPA's exercise of its Repowering Option. LIPA and Genco shall form a project management committee with equal representation from both Parties. The committee shall monitor all aspects of the Repowering, including demolition, site preparation and any legally required remediation, and the design, construction, equipment procurement and start-up of the Repowered Generating Facility. The Repowering shall be conducted on an "open book" and fully transparent basis with respect to its costs. LIPA shall have full and complete audit rights and its payment obligations shall be consistent with the findings and recommendations and opinions of the audit.

**11.7 Financing.** Genco shall have responsibility for financing the costs of the Repowering which may include third party equity at Genco's discretion. It is anticipated that such financing costs shall be included in the capacity charges to be paid under the PPA.

**11.8 Demolition and Site Remediation Costs.** The Generating Facility within an Eligible Repowering Block to be repowered shall be demolished and the related site shall be remediated, to the extent required by Applicable Law. Genco shall be entitled to recover from LIPA its demonstrated Demolition and Site Remediation Costs over the term of the PPA unless LIPA elects to pay such costs in a lump sum, in which event such costs shall be excluded from the PPA. Genco covenants and agrees to use its commercially reasonable efforts to obtain all available tax credits, credits and governmental support and assistance to offset Demolition and Site Remediation Costs.

**11.9 Repowering Payment.** In the event LIPA exercises a Repowering Option, LIPA shall continue to pay Capacity charges for each Generating Facility within the related Eligible Repowering Block until the Eligible Repowering Block is taken out of service for purposes of the Repowering. An Eligible Repowering Block may not be removed from service pursuant to this Article 11 unless and until it is Retirement Eligible. Upon its exercise of a Repowering

Option with respect to an Eligible Repowering Block, LIPA shall be obligated to make a repowering payment ("Repowering Payment") to Genco equal to the Net Book Value of the Generating Facility to be Repowered as of the date of its removal from service for purposes of being Repowered, less any applicable discount as provided in Appendix G hereto. At its election, LIPA may make the Repowering Payment to Genco in either (a) a lump sum on the date the Generating Facility is removed from service, or (b) in installments over such period under the PPA as the Parties shall mutually agree, together with interest thereon at Genco's Weighted Cost of Capital. LIPA may, however, utilize any remaining balance in the Tracking Account as an offset to a Repowering Payment obligation.

**11.10 Federal and State Repowering Incentives.** In the event of the enactment of Federal or New York State legislation providing tax or other economic incentives or benefits for repowering electric generating stations, LIPA shall be entitled to, and Genco shall pass through to LIPA under the PPA, the full benefit of such incentives applicable to any Repowered Generating Facility under this Agreement. Genco shall use commercially reasonable efforts to obtain the benefits of such incentives.

**11.11 Termination; Make Whole Payments.**

(a) LIPA shall have the right, exercisable in its sole discretion, to suspend or terminate a Repowering upon written notice to Genco at any time as hereinafter provided. In the event LIPA suspends or terminates a Repowering of a Generating Facility prior to completion of the Repowering, LIPA shall reimburse Genco for (x) Genco's out-of-pocket costs incurred from unaffiliated, third-party contractors and consultants, including contract termination, wind-down and decommissioning costs and (y) Genco's documented incremental internal operation and maintenance costs, in each case incurred solely in support of Repowering (and not otherwise recovered under this Agreement), together with any unreimbursed costs of Genco incurred in conducting the RFP. Genco shall use its commercially reasonable efforts to mitigate all such contract termination, wind-down and decommissioning costs. The related Demolition and Site Remediation Costs jointly agreed to and incurred following LIPA's exercise of the Repowering Option shall be paid by LIPA subject, however, to reimbursement by Genco from the net proceeds of any future sale or other disposition of the Generating Facility assets and related site to a third party or to a Genco Affiliate during the Term.

(b) Genco may upon written notice to LIPA elect to suspend or terminate a Repowering at any time, in which event Genco shall remain responsible for all project-related Demolition and Site Remediation Costs and development costs and expenses. Any such notice shall describe in reasonable detail the technical, economic, legal or regulatory developments which, in Genco's good faith judgment, have caused the Repowering to no longer be practical.

(c) If either Party suspends or terminates a Repowering, then, in such event:

(i) If the Generating Facility has not yet been shut down, LIPA may, at its option, either (x) direct that the Generating Facility continue operating

under the terms of this Agreement or (y) Ramp Down the Generating Facility with a Ramp Down Effective Date of not earlier than the applicable Ramp Down Notice period for such Generating Facility as set forth in Section 10.1.2 or the planned retirement date under the Repowering plan for such Generating Facility, whichever shall last occur; provided, however, that notwithstanding the foregoing (1) the Ramp Down Effective Date may in no event occur sooner than the earliest date for Ramp Down of the relevant Capacity Block set forth in Section 10.1.3, and (2) if a Repowering termination notice is given more than one (1) year following LIPA's exercise of its Repowering Option pursuant to Section 11.4, then the Ramp Down Notice periods shall be reduced to one (1) year for a Steam GU and six (6) months for an Other GU. LIPA shall notify Genco which such option LIPA has elected either (i) together with its notice to suspend or terminate the Repowering or (ii) within sixty (60) days following LIPA's receipt of written notice from Genco suspending or terminating the Repowering, as the case may be.

(ii) If the Generating Facility has already been taken out of service, the Generating Facility shall be deemed to have been Ramped Down six (6) months following its shut down date. LIPA shall continue to have the obligation to make the Repowering Payment pursuant to Section 11.9 to the extent not already paid and shall have such rights and obligations (other than to make a Ramp Down Payment) with respect to such Generating Facility as would be applicable with respect to a Ramped Down Generating Facility under this Agreement; provided, however, that LIPA's purchase option as provided in Section 10.2.2(b) shall extend for one hundred eighty (180) days from the date it either (i) notifies Genco to terminate the Repowering or (ii) receives Genco's written notice terminating the Repowering, as the case may be.

## ARTICLE 12

### PROPERTY TAXES

**12.1 General; LIPA Property Tax Share.** With respect to any Generating Facility that (x) LIPA has exercised its option to Ramp Down during the Term and Genco has elected to shut down and mothball or demolish, (y) is retired due to a Catastrophic Failure or Legal Compliance as provided in Section 13.1 and Section 13.2, respectively, or (z) for which a Repowering is terminated, as described in Section 11.11, LIPA and Genco shall bear the ongoing property taxes as follows (unless LIPA exercises its option to purchase the Ramped Down, retired or proposed to be Repowered Generating Facility in which case LIPA shall be responsible for all property tax payments from and after the Ramp Down Effective Date or the Retirement Effective Date, as the case may be):

(a) With respect to a Steam GU, LIPA shall be responsible for reimbursement of the property taxes paid by Genco attributable to (i) the remainder of the Calendar Year in which the Ramp Down Effective Date or the Retirement Effective Date, as the case may be, occurs, and (ii) for the succeeding three (3) Calendar Years thereafter or until the end of the Term or the Early Termination Date, whichever shall first occur;

(b) With respect to an Other GU, LIPA shall be responsible for reimbursement of the property taxes paid by Genco attributable to (i) the remainder of the Calendar Year in which the Ramp Down Effective Date or the Retirement Effective Date, as the case may be, occurs, and (ii) for the succeeding two (2) Calendar Years thereafter or until the end of the Term or the Early Termination Date, whichever shall first occur (LIPA's obligations pursuant to paragraphs (a) and (b) being the "LIPA Property Tax Share"); and

(c) Genco shall be responsible for one hundred (100%) percent of the property tax payments attributable to a Generating Facility which has been Ramped Down, retired or for which a Repowering has been terminated, in each case beginning with the day following the date on which the LIPA Property Tax Share obligation terminates.

(d) Responsibility for the payment of aggregate property taxes with respect to each Generating Facility Site and the Generating Facility and other improvements located thereon shall be allocated between the Parties responsible for payment of such property taxes pursuant to subsections (a), (b) and (c) above on the one hand and any other owners of property located at the Generating Facility Site (including the Parties) on the other hand using the methodology set forth in Appendix K hereto.

(e) The tax allocation methodology to be employed pursuant to subsection (d) and set forth in Appendix K shall continue to apply to the allocation between the Parties of property taxes for the former Glenwood and Far Rockaway generating facility sites.

**12.2 Tax Challenges.** Genco shall, where appropriate, file challenges to the property tax assessments for each Generating Facility as of the commencement of the Term of this Agreement and shall prosecute such challenges diligently and in good faith. Genco shall consult with LIPA prior to entering into any settlement of a property tax challenge which may reasonably be expected to affect LIPA property tax payment obligations hereunder. Genco shall refund to LIPA its allocable share of any reduction of LIPA's property tax payments made with respect to a Generating Facility resulting from a successful challenge. Recognizing that such challenges may extend beyond the time frames covered by the LIPA Property Tax Share period, the Parties agree to share the reasonable costs of prosecuting such challenges on an equitable basis based on the benefits accruing to each Party.

## **ARTICLE 13**

### **RETIREMENT**

**13.1 Retirement Upon Catastrophic Failure.** In the event of a Catastrophic Failure of a Generating Facility, Genco shall as promptly as practicable determine the actions necessary to restore the Generating Facility to safe and reliable service. Genco shall submit to LIPA, as promptly as practicable under the circumstances, a proposal for capital repairs and other actions necessary to so restore the Generating Facility to safe and reliable service in accordance with Prudent Utility Practice. If, following its review of Genco's proposal, LIPA provides written notice to Genco that LIPA does not approve Genco's proposed capital repair expenditure proposal (which LIPA may elect in its sole discretion), Genco shall retire and decommission the

Generating Facility. Upon the effective date of such retirement, which shall be deemed to be two (2) years with respect to a Steam GU and one (1) year for an Other GU, following the date of LIPA's notice or the date it becomes Retirement Eligible, whichever shall later occur (a "Retirement Effective Date"), LIPA shall pay Genco the Ramp Down Payment (less any applicable discount as provided in Appendix G) applicable to such Generating Facility (to the extent the payment obligation is not offset against the available balance in the Tracking Account) and Demolition and Site Remediation Costs and any other necessary costs associated with retiring such Generating Facility (the "Retirement Payment"). LIPA shall also be responsible for the LIPA Property Tax Share with respect to such retired Generating Facility. LIPA at its option may make the foregoing payments (other than payment of the LIPA Property Tax Share which LIPA shall pay when invoiced by Genco) to Genco immediately following the decision to retire such Generating Facility or in accordance with a mutually agreeable installment payment schedule over the remaining Term of this Agreement, including interest at Genco's Weighted Cost of Capital. Alternatively, LIPA shall have the option, exercisable upon written notice to Genco not later than sixty (60) days following LIPA's notification to Genco to retire the Generating Facility, to purchase the Generating Facility for \$1 (in addition to the applicable Ramp Down Payment) and assume all such Demolition and Site Remediation Costs and other liabilities and obligations, including property taxes, with respect to such retired Generating Facility.

**13.2 Retirement For Legal Compliance Requirements.** Genco shall promptly advise LIPA at any time that Genco determines that capital improvements to a Generating Facility are required in order for the Generating Facility to comply with existing or newly adopted environmental and/or other applicable legal requirements. In such event, Genco shall provide LIPA with a detailed analysis and assessment of such compliance requirements and their applicability to the Generating Facility, the capital improvements and costs thereof to achieve compliance with such requirements, and the costs of adopting alternative courses of action. If, after review of Genco's assessment, LIPA notifies Genco that LIPA does not wish to proceed with Genco's proposed capital expenditures to bring such Generating Facility into compliance (which LIPA may elect in its sole discretion), Genco shall proceed to retire and decommission the Generating Facility on a mutually agreeable date, but in no event later than the date on which the Generating Facility would cease to be in compliance with such applicable legal requirements or earlier than the date when the Generating Facility is Retirement Eligible. In such event, as provided in Section 13.1, LIPA shall be obligated to make the Retirement Payment, be responsible for the LIPA Property Tax Share and have a purchase option with respect to such Generating Unit.

## ARTICLE 14

### METERING

#### 14.1 Electric Metering.

**14.1.1 Electric Metering Equipment.** Genco at its own expense (but subject to cost recovery through rates pursuant to Article 5) shall own, test, operate and maintain industry standard revenue meters and instrument transformers; shall install metering mounting equipment; shall install and maintain a dedicated datalink for telemetry purposes to measure

electricity Delivered to LIPA by Genco. Such equipment (the "Metering Equipment") shall be procured, tested, installed, operated and maintained by Genco, or Genco's designee, in accordance with Prudent Utility Practice. LIPA shall not breach the integrity of the wiring or instrument transformers for any reason. LIPA, at its own expense, may own, install and maintain other meters and associated equipment for purposes of measuring Electricity Delivered from Genco ("LIPA's Metering Equipment").

**14.1.2 Testing of Metering Equipment.** Genco shall test the Metering Equipment for accuracy every two (2) years or at any time within thirty (30) days after a written request by LIPA if LIPA reasonably believes the metering measurement accuracy of the Metering Equipment is inaccurate by two (2%) percent. At LIPA's option, such tests may be witnessed by a LIPA representative. Metering measurement accuracy between ninety eight (98) and one hundred and two (102%) percent shall be deemed acceptable. In the event any Metering Equipment is found outside the acceptable limits of accuracy specified in the prior sentence, it shall be immediately repaired, calibrated or replaced. Upon completion of any examination, maintenance, repair, calibration or replacement of any Metering Equipment, such equipment shall be, sealed by Genco.

**14.1.3 Meter Reading.** Meter readings shall be conducted every month or as otherwise mutually agreed by the Parties.

**14.1.4 Metering Inaccuracies.** When, as the result of a test pursuant to Section 14.1.2, the Metering Equipment is found to be inaccurate by more than two (2%) percent or the Metering Equipment is otherwise functioning improperly, the correct amount of Electricity Delivered to LIPA for the period during which such inaccurate measurements were made, shall be determined as follows:

(a) Genco and LIPA may mutually agree to use the readings of LIPA's Metering Equipment, if any, to calculate the correct amount of Electricity Delivered. LIPA shall furnish the most recent test and calibration documentation for LIPA's metering equipment. If LIPA's meters are utilized, an adjustment for transmission and transformation losses shall be made to such meter readings, as applicable; and

(b) If LIPA's Metering Equipment has not been installed, or if it is found to be unacceptable, then the Parties shall jointly prepare an estimate of the correct reading on the basis of available information, including the assumption that if the duration of the metering inaccuracy cannot be determined, such duration shall be deemed to have persisted for fifty (50%) percent of the time between the last meter reading and the discovery of the inaccuracy.

## **14.2 Gas Metering.**

**14.2.1 Gas Metering Equipment.** LIPA at its own expense and in accordance with the LDC's gas tariffs shall arrange for the LDC to own, operate and maintain industry standard revenue grade meters to measure gas fuel delivered to the Generating Facilities by the LDC on behalf of LIPA (the "LDC Gas Metering Equipment") and Genco at its own expense (included in the charges provided in Article 5) shall own, operate and maintain industry standard

meters to measure natural gas transported to each of the gas-fueled GUs as needed to measure natural gas consumption or verify Generating Facility gas consumption measured by the LDC Gas Metering Equipment (the "Genco Gas Metering Equipment"). All such equipment shall be installed, operated and maintained by the LDC or Genco, as the case may be, in accordance with prudent gas utility practice. LIPA shall not breach the integrity of the wiring or piping for any reason. LIPA, at its own expense, may own, install and maintain other meters and associated equipment for purposes of measuring gas delivered to the Generating Facilities ("LIPA's Gas Metering Equipment").

**14.2.2 Testing of LDC Gas Metering Equipment.** Genco shall cooperate with the LDC's testing of the LDC Gas Metering Equipment which the LDC may perform periodically or at LIPA's request. At LIPA's option, such tests shall be witnessed by a LIPA representative. Metering measurement accuracy between ninety-eight (98%) percent and one-hundred two (102%) percent shall be deemed acceptable. In the event any such LDC Metering Equipment is found outside the acceptable limits of accuracy as set forth in the immediately preceding sentence, Genco shall cooperate with the LDC in the immediate repair, recalibration or replacement of such LDC Metering Equipment. Upon completion of any examination, maintenance, repair, recalibration or replacement of any such LDC Gas Metering Equipment, Genco shall seal such equipment.

**14.2.3 Gas Meter Reading.** Meter readings shall be conducted each month during the Term, or as otherwise mutually agreed by the Parties.

**14.2.4 Gas Metering Inaccuracies.** When, as the result of a test pursuant to Section 14.2.2, the LDC Gas Metering Equipment is found to be inaccurate by more than two (2%) percent or the LDC Gas Metering Equipment is otherwise functioning improperly, the correct amount of natural gas delivered to the affected Generation Facility for the period during which such inaccurate measurements were made, shall be determined as follows:

(a) Genco and LIPA may mutually agree to use the readings of Genco's or LIPA's Gas Metering Equipment, if any, to calculate the correct amount of natural gas as delivered. Genco or LIPA, as the case may be, shall furnish the most recent test and calibration documentation for its Gas Metering Equipment. Adjustments for supercompressibility (following AGA standards) and base pressure should be made to such meter readings, as applicable.

(b) If neither Genco's nor LIPA's Gas Metering Equipment can provide accurate measurements for the period in question, then the Parties shall jointly prepare an estimate of the correct reading on the basis of available information, including the assumption that if the duration of the metering inaccuracy cannot be determined, such duration shall be deemed to have persisted for fifty (50%) percent of the time between the last meter reading and the discovery of the inaccuracy.

**14.3 Oil Fuel Measurement.** Genco will perform monthly Fuel oil tank gauging to determine the amount of Fuel oil in storage at each Generating Facility. The gauging will occur on a pre-determined date prior to the end of the month. Usage from the gauging date

until the last calendar day of the month will be calculated based on the average monthly Heat Rate at each Generating Facility and the actual generation between the gauging date and the end of such month. This calculated amount will be subtracted from the oil in storage on the gauging day to determine the oil in storage on the last day of the month. Fuel oil deliveries during each month will be measured at the time of delivery. The difference between the oil in storage at the beginning and end of the month will be added to the oil deliveries received during the month to calculate the net oil consumed for the month, in accordance with the current methodology of calculating Generating Facility Fuel oil consumption. The Parties recognize and agree that changes in Generating Facility operation may necessitate mutually agreeable modifications to the foregoing procedure. Upon reasonable advance notice to Genco, LIPA may independently gauge Fuel in the oil tanks. Genco shall provide LIPA with such reasonable access and cooperation as LIPA may require for this purpose.

## **ARTICLE 15**

### **DESIGNATION OF REPRESENTATIVES**

**15.1 LIPA Representative.** Within five (5) Business Days after the execution of this Agreement, LIPA shall select a Representative ("LIPA Representative") to act for and on behalf of LIPA on all matters concerning this Agreement for which LIPA has authorized the Representative to act. LIPA will advise Genco as to the scope of such authorization. LIPA shall promptly notify Genco in writing of LIPA's Representative selection and any subsequent replacement thereof.

**15.2 Genco Representative.** Within five (5) Business Days after the execution of this Agreement, Genco will select a Representative ("Genco Representative"), subject to LIPA's approval, who will act for and on behalf of Genco in all matters concerning this Agreement for which Genco has authorized such agent to act. Genco shall advise LIPA of the scope of such authorization. Genco shall promptly notify LIPA in writing of Genco's Representative selection and any subsequent replacement thereof.

## **ARTICLE 16**

### **REPORTS**

**16.1 General.** Not later than twenty (20) Business Days following the end of each month, Genco shall submit to LIPA a report summarizing for the preceding month the Energy Delivered and Fuel burned for all Generating Facilities, together with such other available performance indicators as LIPA may reasonably request. In addition, not later than twenty (20) Business Days following the end of each calendar quarter, in conjunction with the quarterly Capital Budget report required by Section 6.5, Genco shall report to LIPA on the status of maintenance on the Generating Facilities and such other information as LIPA may reasonably request.

**16.2 O&M Reports.** Genco shall provide LIPA with such information, documents, materials and periodic (but not less often than annually) reports as LIPA shall reasonably request with respect to the direct operation and maintenance costs incurred by the Generating Facilities and Genco shall provide other related financial information, including workpapers and other supporting documents, which LIPA determines are



necessary or appropriate for LIPA to verify or confirm components of the Capacity Charge. In addition, Genco shall prepare and provide LIPA with an annual report detailing Genco's actual operation and maintenance costs for each Generating Facility and comparing such costs, including variance explanations, to the Contract Year operation and maintenance budget. Such report shall be prepared in the same format as Genco submits for ratemaking purposes, and shall also reconcile such operation and maintenance costs with the costs Genco reports on its FERC Form 1.

**16.3 Other Information.** Upon LIPA's reasonable request, Genco shall promptly submit to LIPA any other information in Genco's possession concerning the Generating Facilities, including information regarding (a) projected short and long term maintenance schedules and costs, (b) planned Capacity improvements and capital additions to the Generating Facilities, including environmental compliance modifications and (c) Fuel usage. If such requested information is not in Genco's possession, Genco will obtain and prepare such information, to the extent possible, and LIPA shall be responsible for all additional reasonable costs incurred to obtain and prepare such information.

**16.4 Litigation; Permit Lapses.** Promptly upon becoming aware thereof, each Party shall provide the other Party with written notice of (and, upon request, copies of any relevant non-privileged documents in the Party's possession relating to): (a) any material litigation, claims, disputes or actions actually filed, or any material litigation, claims, disputes or actions which are threatened, concerning, in each case, this Agreement or the Generating Facilities; (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 material threatened action regarding the same in this Agreement or the Generating Facilities; (c) any dispute with any Governmental Authority relating to this Agreement or the Generating Facilities; and (d) without regard to their materiality, all penalties or notices of violation issued by any Governmental Authority relating to this Agreement or the Generating Facilities.

## ARTICLE 17

### GENERAL SERVICE REQUIREMENTS

#### 17.1 General Service Requirements.

**17.1.1 Standard of Performance.** In performing its obligations under this Agreement, Genco shall operate in accordance with Prudent Utility Practice and all Governmental Rules and shall seek to minimize costs in accordance with Prudent Utility Practice and Governmental Rules.

**17.1.2 Limitation of Liability.** Genco liability for any failure to comply with Section 17.1.1 shall be limited to the performance penalties provided in Section 3.8, and Appendix F, except as set forth in Article 19.

**17.1.3 Accounting Controls.** Genco shall provide all accounting, booking, and administrative services in connection with all costs received by Genco and charged to LIPA pursuant to this Agreement, such accounting to be consistent with the FERC Uniform System of Accounts and GAAP. In areas of conflict, FERC accounting principles shall apply. All books

and records upon which any rates or charges under this Agreement are based shall be made available by Genco for audit by LIPA.

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

**17.1.5 Insurance.** Genco shall maintain an insurance program with respect to the Generating Facilities and its activities under this Agreement similar in all material respects to the program described in Appendix L. On or prior to the Commencement Date, Genco shall provide to LIPA certificates of insurance evidencing that Genco has obtained the required coverage set forth in Appendix L. Such certificates shall provide for a minimum of thirty (30) days advance notice to LIPA of any cancellation or material change in such insured coverage.

## ARTICLE 18

### CREDIT ENHANCEMENT

#### 18.1 Credit Enhancement in Certain Circumstances.

**18.1.1 Ownership Maintenance.** Genco hereby covenants and agrees that at all times during the Term of this Agreement it shall remain an Affiliate of the Guarantor.

**18.1.2 Credit Enhancement.** If at any time during the Term, a Material Decline in the Guarantor's Credit Rating should occur, Genco shall immediately notify LIPA's Representative thereof and, within thirty (30) days after such occurrence, Genco shall provide credit enhancement of its obligations hereunder, at its sole cost and expense, in the form either of (1) an unconditional guarantee of all of Genco's obligations hereunder provided by a corporation or financial institution whose long-term senior debt is rated not less than investment grade by at least two (2) of the Rating Agencies in the form of Appendix M hereto, ("Guaranty") or (2) an irrevocable standby letter of credit securing Genco's obligations hereunder in form and substance reasonably acceptable to LIPA, in a face amount of \$4 million provided by a financial institution whose long-term senior debt is rated investment grade by at least two (2) of the Rating Agencies; provided, however, that if LIPA should draw an aggregate of \$2 million on such letter of credit, Genco shall, within thirty (30) days thereafter, supplement or replace such letter of credit with an additional letter of credit such that the total amount of such letter of credit then available equals \$4 million.

**18.1.3 Material Decline in the Guarantor's Credit Rating.** For purposes of Section 18.1.2, a "Material Decline in the Guarantor's Credit Rating" shall be deemed to have occurred under the following circumstances: If (1) Guarantor fails to maintain an investment

grade credit rating from at least two (2) Rating Agencies for its senior long-term debt (or if it has no such securities rated, its corporate credit rating) or (2) in the event the Guarantor does not have long-term senior debt outstanding which has a credit rating by two (2) Rating Agencies or a corporate credit rating from two (2) Rating Agencies, the Guarantor shall seek a credit rating for the Guarantor from two (2) Rating Agencies, and such ratings are not an investment grade rating from at least two (2) Rating Agencies. Notwithstanding the foregoing, a Material Decline in the Guarantor's Credit Rating shall not be deemed to occur so long as the Guarantor maintains a consolidated net worth (stockholders equity) determined in accordance with GAAP, of at least \$500 million and provides evidence thereof as of the end of each calendar year to LIPA's reasonable satisfaction. Genco shall immediately notify LIPA of any Material Decline in the Guarantor's Credit Rating.

## **ARTICLE 19**

### **ALLOCATION OF RISK OF CERTAIN COSTS AND LIABILITIES.**

Except to the extent due to LIPA Fault (as determined by either a final non-appealable order or judgment of a court of competent jurisdiction (including administrative tribunals) or a final non-appealable binding arbitration decision), Genco shall be responsible and liable to LIPA for, and shall not be entitled to reimbursement or cost recovery under Article 5 or otherwise from LIPA for any Loss-and-Expense incurred by Genco:

(a) due to any gross negligence or willful misconduct by Genco during the Term in carrying out its obligations hereunder; or

(b) due to any violation of or failure of compliance with Applicable Law by Genco (except as provided below) during the Term which materially and adversely affects

(i) the condition or operations of the T&D System or the Generating Facilities,

(ii) the financial condition of LIPA,

(iii) the performance or ability of Genco to perform its obligations under this Agreement, or

(iv) the cost of providing electric service to the customers of the T&D System,

provided, however, that Genco shall not be responsible or liable to LIPA under this clause (b) with respect to any violation of, failure to comply with, or liability under, Environmental Laws for which LIPA or Genco may be strictly liable provided that Genco acted in a manner consistent with Prudent Utility Practice. Notwithstanding the foregoing, Genco shall in all respects be liable for any fine or penalty arising by reason of any violation of or failure of compliance with Applicable Law for acts or omissions of Genco not consistent with Prudent Utility Practice, or

(c) due to any criminal violation of Applicable Law by Genco; or

(d) due to an event which would otherwise permit recovery of a cost under Section 5.1.4 (Monthly Capacity Payment Adjustment Charge) of an excess capital expenditure under Section 6.5, that is incurred by reason of actions or omissions of Genco not consistent with Prudent Utility Practice.

Any such action or omission identified in (a), (b), (c) or (d) shall be determined by either a final non-appealable order or judgment of a court or regulatory body of competent jurisdiction (including administrative tribunals) or a final non-appealable binding arbitration decision and shall be attributable to Genco for purposes of the preceding sentence whether it is attributable to Genco or to any officer, member, agent, employee or representative of Genco or any Affiliate and any contractor, subcontractor of any tier.

The provisions of this Article 19 are intended to modify Genco's right to receive payments under Article 5 and Article 9.

## ARTICLE 20

### DEFAULT, REMEDIES AND DISPUTE RESOLUTION

#### 20.1 Events of Default by Genco.

**20.1.1 *Events of Default.*** Each of the following shall constitute an Event of Default on the part of Genco:

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

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

(c) Credit Enhancement. Failure of Genco to provide and maintain in full force and effect as and when required, the Credit Enhancement as provided in Article 18, which failure has not been cured within ten (10) Business Days;

(d) Change of Control. A Change of Control of either Genco or the Guarantor shall have occurred;

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

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

#### **20.1.2 LIPA's Remedies for Genco Default.**

(a) Upon the occurrence of an Event of Default by Genco under paragraphs (a) or (b) of Section 20.1.1, this Agreement shall immediately terminate without further action by LIPA.

(b) Upon the occurrence of an Event of Default by Genco under paragraph (c), (d), or (f) of Section 20.1.1, LIPA may terminate this Agreement upon not less than fifteen (15) Business Days written notice to Genco.

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

#### **20.2 Events of Default by LIPA.**

**20.2.1 Events of LIPA Default.** Each of the following shall constitute an Event of Default on the part of LIPA:

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

(b) Voluntary Bankruptcy. The written admission by LIPA that it is bankrupt, or the filing by LIPA of a voluntary petition under the Federal Bankruptcy Code,

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

(c) Failure to Pay. The failure of LIPA to pay undisputed amounts owed to Genco under this Agreement within forty five (45) days following the due date for such payment; and

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

#### **20.2.2 Genco Remedies for LIPA Default.**

(a) Upon the occurrence of an Event of Default by LIPA under paragraphs (a) or (b) of Section 20.2.1, this Agreement shall immediately terminate without further action by Genco.

(b) Upon the occurrence of an Event of Default under paragraph (c) of Section 20.2.1, Genco may terminate this Agreement upon not less than fifteen (15) Business Days written notice to LIPA.

(c) Following any Event of Default by LIPA under paragraph (d) of Section 20.2.1, Genco may terminate this Agreement upon not less than ninety (90) Business Days written notice to LIPA provided that LIPA has neither challenged in an appropriate forum Genco's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time, but not more than sixty (60) days, from receipt of the notice given pursuant to this clause (c) (but if LIPA shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as LIPA cures such default within one hundred and twenty (120) days from its receipt of such notice).

#### **20.3 Additional Remedies for Breach.**

**20.3.1 General.** Subject to the provisions of Sections 20.3.2 through 20.3.9 and 20.4 hereof, the Parties agree that, in addition to the other remedies they may have under this Agreement, in the event that either Party breaches any obligation under this Agreement or any representation or warranty made by either Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity it may have to enforce the payment of any damages recoverable in accordance with this Agreement or the specific performance of such obligation hereunder and such right to recover damages or to be reimbursed

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

**20.3.2 *Dispute Resolution Negotiation.*** The Parties shall attempt to resolve any Dispute promptly by first referring the Dispute to their respective designated executives having authority to resolve the Dispute. Any Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Within five (5) days after receipt of the notice, the receiving Party shall submit to the other Party a written response. The notice and response shall include a statement of that Party's position and a summary of arguments supporting that position. Within five (5) days after receipt of the initial notice, the Parties' designated senior executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deems necessary, to attempt through diligent, good faith negotiations to resolve the Dispute. The Parties' designated senior executives shall endeavor to complete the negotiation process within ten (10) days after the receipt of the Dispute notice. All negotiations and discussions pursuant to this Section 20.3.2 shall be confidential and shall be treated as compromise settlement discussions and negotiations for purposes of Federal Rule of Evidence 408 and any applicable New York state evidence rules and shall not be used or offered as evidence in any subsequent proceeding.

**20.3.3 *Arbitration.*** Any Dispute (other than a Dispute which is subject to the exclusive jurisdiction of the FERC under the FPA) which has not been resolved by negotiation as provided in Section 20.3.2 within twenty (20) days after the receipt of the Dispute notice above shall be finally resolved by binding arbitration within sixty (60) days after the appointment of arbitrators (or as soon thereafter as practicable) in accordance with the CPR Rules for Non-Administered Arbitrations ("CPR Rules") then currently in effect, except to the extent such rules are inconsistent with the terms of this Agreement, in which case the provisions of this Agreement shall govern. Either Party may commence arbitration of a Dispute by delivering written notice in accordance with the CPR Rules to the other Party which includes a statement of that Party's position and a summary of arguments supporting that position. The arbitration shall be conducted by three (3) arbitrators ("Arbitrators") with each Party to designate one (1) arbitrator reasonably experienced in electric power supply matters. The Parties' designated arbitrators are hereinafter referred to as the "Party Appointed Arbitrators." The Party Appointed Arbitrators, within five (5) Business Days of receiving notice of their appointment will select a third arbitrator ("Chair"), who shall be impartial and experienced in electric power supply and related matters. The Chair shall be the chairperson of the panel of Arbitrators. In the event no such agreement can be reached, the CPR Rules shall govern the appointment of the Chair.

**20.3.4 *Provisional Relief.*** Either Party may, without prejudice to any negotiation or arbitration procedures commenced pursuant to Sections 20.3.2 and 20.3.3, proceed in the New York State Supreme Court, Nassau County, to seek to obtain provisional judicial relief if, in the such Party's sole discretion, such action is necessary to avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of such negotiation or arbitration.

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

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

**20.3.7 Awards.** The Arbitrators shall have no authority to award damages other than the prevailing Party's damages specifically recoverable under and subject to the liability limitations provided in this Agreement plus interest at the Default Interest Rate from the date such damages were incurred. The Arbitrators may award reasonable attorneys' fees and costs of the arbitration. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16 (the "FAA"), and judgment upon the award rendered by the Arbitrators may be entered by any court having jurisdiction thereof.

**20.3.8 Grounds for Judicial Review.** Any award made by the Arbitrators with respect to any Dispute pursuant to the dispute resolution procedures in Section 20.3.3 may be vacated, modified or corrected by a court only on the grounds permitted under the provisions of Sections 10 and 11 of the FAA.

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

#### **20.4 Liability Limitation for Certain Damages.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER GENCO NOR LIPA NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, TRUSTEES, MEMBERS, AGENTS, EMPLOYEES OR AFFILIATES SHALL BE LIABLE, WHETHER IN CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, AND STRICT LIABILITY), OR OTHERWISE, FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHICH ARISE FROM, RELATE TO OR ARE



CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OF OR FAILURE TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER EXCEPT FOR SUCH DAMAGES PAYABLE TO A THIRD PARTY IN RESPECT OF A THIRD PARTY CLAIM.

## ARTICLE 21

### FORCE MAJEURE

#### 21.1 Force Majeure.

**21.1.1 Events Constituting Force Majeure.** As used in this Agreement, Force Majeure means any act, event, or condition that causes delay in or failure of performance of obligations under this Agreement, or otherwise materially and adversely affects a Party's ability to perform, if such act, event or condition (i) is beyond the reasonable control of the Party relying thereon, (ii) is not the result of the willful misconduct or negligent act or omission of such Party, and (iii) is not an act, event or condition, the risk or consequence of which such Party expressly assumed under this Agreement, including but not limited to:

(a) acts of God, accident, flood, sabotage, fire, epidemic, earthquake, or similar occurrence, act of public or foreign enemy, war and other hostilities, invasion, blockade, insurrection, rebellion, riot and disorder, strikes or labor disturbances, general arrest or restraint of government and people, civil disturbance or similar occurrence; or

(b) entry of an injunctive or restraining order or judgment of any Governmental Authority, if such order or judgment is not the result of the act, or failure to act, of a party or its subcontractors or suppliers; or

(c) suspension, termination, interruption of, or failure to obtain any permit required or necessary for the construction, operation or maintenance of the Generating Facilities, provided such suspension, termination, interruption or failure is not the result of the action or inaction of a Party relying thereon or its subcontractors or suppliers.

Notwithstanding the foregoing, neither the failure of a subcontractor or supplier to perform its obligations to LIPA or Genco, which failure is not itself caused by a Force Majeure event with respect to such subcontractor or supplier, nor financial difficulty suffered by LIPA or Genco or any subcontractor, supplier or vendor in performing its obligations, shall be deemed a Force Majeure event.

**21.1.2 Event of Force Majeure.** Except for the obligations of either Party to make payments of amounts due to the other Party, either Party shall be excused from performance and shall not be considered to be in default in respect of any obligation under this Agreement to the extent that a failure of performance of such obligation shall be due to Force Majeure. If either Party's ability to perform its obligations under this Agreement is affected by a Force Majeure, the Party claiming such inability shall: (i) promptly notify the other Party of such Force Majeure and its cause and confirm the same in writing within five (5) Business Days of discovery of the event or circumstances constituting such Force Majeure; (ii) immediately supply such available information about the event or circumstances constituting the Force Majeure and the cause

thereof as is reasonably requested by the other Party; and (iii) immediately initiate removal of the cause of the Force Majeure or, if immediate removal is not possible, to mitigate the effect thereof.

**21.1.3 Scope.** The suspension of performance due to a Force Majeure shall be of no greater scope and no longer duration than that which is necessary. The excused Party shall use its reasonable best efforts to remedy its inability to perform.

## ARTICLE 22

### PROPRIETARY INFORMATION

**22.1 Confidential Information.** The Parties hereby acknowledge that they may have a proprietary interest in certain information that may be furnished pursuant to the provisions of this Agreement ("Confidential Information"). Subject to the terms of this Agreement (including the permitted disclosures described below), each Party shall maintain in confidence all Confidential Information provided by the other Party, and shall not disclose such Confidential Information to any third party except to those related parties and subcontractors as are necessary to the disclosing Party's activities under this Agreement, and strictly on a need-to-know basis. In maintaining confidentiality of another Party's Confidential Information, each Party shall exercise the same degree of care that it exercises with its own confidential information and in no event less than a reasonable degree of care.

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

(b) In the event LIPA receives a request from the public for the disclosure of any information designated as Confidential Information by Genco pursuant to paragraph (a) above, LIPA (1) shall use reasonable efforts, consistent with Applicable Law, to provide notice to Genco of the request prior to any disclosure, and (2) shall use reasonable efforts, consistent with Applicable Law, to keep in confidence and not disclose such information unless it is entitled to do so pursuant to the provisions of Section 22.3. Genco shall indemnify, hold harmless and defend LIPA against all Loss-and-Expense incurred from the withholding from public disclosure of information designated as Confidential Information by Genco or otherwise requested by Genco to be withheld.

**22.3 Permitted Disclosures.** Notwithstanding any confidential or proprietary designation thereof by a Party, a Party may disclose the following: (1) information which is known to that Party without any restriction as to disclosure or use at the time it is furnished, (2) information which is or becomes generally available to the public without breach of any agreement,

(3) information which is received from a third party without limitation or restriction on such third party or at the time of disclosure, and (4) following notice to the disclosing Party pursuant to Section 22.2(b), information which, in the opinion of counsel, is required to, be or may be disclosed under any Applicable Law, including the New York Freedom of Information Law, an order of a court of competent jurisdiction, or a lawful subpoena.

## ARTICLE 23

### REPRESENTATIONS AND WARRANTIES

**23.1 Representations and Warranties of LIPA.** LIPA hereby represents and warrants to Genco that:

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

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

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

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

**23.1.5 No Legal Prohibition.** Subject to the receipt of the required consents set forth in Section 23.1.6, there is no Applicable Law in effect on the date hereof which would prohibit the execution, delivery or performance by LIPA of this Agreement and the transactions contemplated hereby.

**23.1.6 No Consent.** No consent or authorization of, filing with, notice to, or other act by or in respect of any Governmental Authority or any other Person is required in connection with the execution and delivery by LIPA or, as of the date hereof the performance by LIPA of its obligations hereunder except for (i) approval of the New York State Attorney General, (ii) approval of the New York State Comptroller and (iii) acceptance of this Agreement for filing by the FERC under Section 205 of the FPA and the rules and regulations of the FERC thereunder.

**23.2 Representations and Warranties of Genco.** Genco hereby represents and warrants to LIPA that:

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

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

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

**23.2.4 No Litigation.** As of the date hereof, other than those which Genco has previously disclosed to LIPA in writing, there is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Authority, pending or, to Genco's knowledge, threatened against Genco which, if determined adversely to Genco, would materially and adversely affect the validity or enforceability of this Agreement, or which would materially and adversely affect the performance by Genco of its obligations hereunder.

**23.2.5 No Legal Prohibition.** Subject to the FERC's acceptance of this Agreement for filing under the FPA, there is no Applicable Law in effect on the date hereof which would prohibit the execution, delivery or performance by Genco of this Agreement and the transactions contemplated hereby.

**23.2.6 No Consent.** No consent or authorization of, filing with, notice to, or other act by or in respect of any Governmental Authority or any other Person is required in connection with the execution and delivery by Genco or, as of the date hereof, the performance by Genco of its

obligations hereunder other than acceptance of this Agreement for filing by the FERC under Section 205 of the FPA and the rules and regulations of the FERC thereunder.

## ARTICLE 24

### MISCELLANEOUS

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

**24.2 Assignment and Transfer.** This Agreement may be assigned by either Party hereto only with the prior written consent of the other Party, except that: (1) without the consent of Genco (a) LIPA may make such assignments, create such security interests in its rights hereunder and pledge such monies receivable hereunder as may be required in connection with its issuance of revenue bonds to finance its business and operations; and (b) LIPA may assign its rights, obligations and interests hereunder, or transfer such rights and obligations by operation of law, to any other Governmental Authority or to a subsidiary of LIPA or the Authority provided that the successor entity gives reasonable assurances to Genco that it will be able to fulfill LIPA's obligations hereunder; and (2) without the consent of LIPA, (a) Genco may assign its rights, obligations and interests in this Agreement to the Guarantor or any Affiliate thereof, and (b) Genco may sell, assign or transfer a pecuniary interest in any payment, revenues, proceeds, incentive, profits or income derived from this Agreement to any party.

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

**24.4 Non-Discrimination.** Genco shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex or, with respect to otherwise qualified individuals, disability. Genco will take all actions reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin or, with respect to otherwise qualified individuals, disability. Such action shall include, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. Genco shall impose the non-discrimination provisions of this Section 24.4 by contract on all subcontractors hired to perform work in connection with this Agreement and shall take all reasonable actions necessary to enforce such provisions. Genco will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Section 24.4.

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

With copy to: National Grid Generation LLC  
c/o National Grid  
40 Sylvan Road  
Waltham, Massachusetts 02451  
Colin Owyang, Senior Vice President and General Counsel  
Facsimile: (781) 907-5701

With copy to: Long Island Power Authority  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attention: General Counsel  
Facsimile No: (516) 222-9137

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

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

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

**24.10 No Third Party Beneficiaries.** Except as specifically set forth herein, neither Party to this Agreement shall have any obligation to any third party as a result of this Agreement.

**24.11 Counterparts.** The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument, and thereafter, each counterpart shall be deemed an original instrument.

**24.12 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 the result of the preparation, substitution or other event of negotiation, drafting or execution hereof.

**24.13 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to any applicable principles of conflicts of law that would require this Agreement to be governed by and construed in accordance with the laws of another jurisdiction.

**24.14 Captions; Appendices.** Titles or captions of the articles contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit,

extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof.

**24.15 Non-Recourse.** Except as otherwise agreed, neither Party shall have any recourse against any Affiliate of the other Party, or the successors and assigns of such Affiliate and each Party expressly waives its rights of recourse against, and releases from liability, the other Party's Affiliates. Each Party shall look solely to the other Party, and the assets thereof, to effect recovery of such Party's claims against the other Party.

**24.16 Severability.** The invalidity or unenforceability of any provision of this Agreement shall be determined only by a court of competent jurisdiction, and the Parties hereby agree to negotiate an equitable adjustment to the invalid or unenforceable provisions with a view toward effecting the purposes of this Agreement; the validity or enforceability of the remaining provisions or portions or applications thereof, shall not be affected thereby.

**24.17 Rules of Interpretation.** The terms and provisions of this Agreement shall be interpreted and construed as follows: (a) words of the masculine gender shall include corresponding words of the feminine or neuter genders and vice versa; (b) the plural shall include the singular and vice versa; (c) unless the context indicates otherwise, all references hereto to Articles, Sections, paragraphs, exhibits, schedules, and Appendices shall refer, respectively, to the Articles, Sections, paragraphs, exhibits, schedules and Appendices of this Agreement; (d) the words "includes" or "including" mean "including, but not limited to" and are not limiting; (e) any reference to any agreement, a contract or any other document means the same as it may be amended, modified, supplemented or replaced from time to time, unless otherwise noted; (f) any reference to a Person includes such Person's successors and assigns; and (g) all references to days are references to calendar days unless specified as Business Days.

**24.18 State Law Requirements.** The provisions set forth in Appendix I relate to requirements imposed upon and/or applicable to LIPA and Genco by New York State law and policies. These provisions are hereby deemed incorporated in this Agreement at this place. To the extent of any conflict between any other provision of this Agreement and Appendix I, Appendix I shall control. Genco shall comply with such terms and conditions during the Term.



IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

LONG ISLAND LIGHTING COMPANY d/b/a  
LIPA

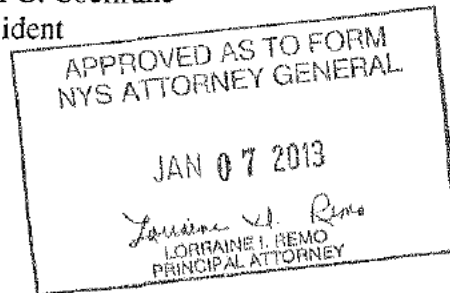
By:  
Name:  
Title:

[REDACTED]

NATIONAL GRID GENERATION LLC

By:  
Name: John G. Cochrane  
Title: President

[REDACTED]



Commonwealth  
STATE OF Massachusetts )

COUNTY OF Middlesex )

On October 12, 2012 before me personally came John G. Cochrane, to me known to be the individuals described in the foregoing instrument in his/her capacity as President, of National Grid Generation LLC, the New York limited liability company described in and which executed the foregoing instrument, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.



[Redacted Signature]

Notary Public

STATE OF NEW YORK )

COUNTY OF NASSAU )

On October 12, 2012 before me personally came Michael D. Henry to me known to be the individuals described in the foregoing instrument in his/her capacity as Chief Operating Officer, of the Long Island Lighting Company d/b/a LIPA, a New York corporation, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.

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

[Redacted Signature]

Notary Public

**AMENDED AND RESTATED POWER SUPPLY AGREEMENT  
APPENDICES**

Appendix A	Formula Rate
Appendix B	Monthly Variable Adjustment Charge
Appendix C	Generating Facilities
Appendix D	Environmental Compliance Costs
Appendix E	Minimum Loadings, Ramp Rates, Start-Up & Scheduled Shutdown Time
Appendix F	Performance Guarantees
Appendix G	Ramp Down Payment Discounts
Appendix H	Fuel Specifications
Appendix I	LIPA's Standard Contract Clauses: State Law Requirements
Appendix J	Regional Greenhouse Gas Initiative Procedures
Appendix K	Allocation Methodology for Property Taxes at Generating Facility Sites
Appendix L	Insurance Requirements
Appendix M	Form of Guaranty Agreement

## APPENDIX A

### FORMULA RATE

This Appendix provides the manner of setting the Monthly Capacity Charge and the Monthly Variable Charge and the Monthly Capacity Charge for Turbine Upgrades and Emissions Controls for each of the Contract Years under the Agreement. The Final Contract Year will be a partial calendar year and the assessment of the then applicable revenue requirement through the Monthly Capacity Charge and the Monthly Capacity Charge for Turbine Upgrades and Emissions Controls will be prorated accordingly.

#### I. Monthly Capacity Charge:

A. The Monthly Capacity Charge shall be 1/12th of the annual Capacity Charge. In addition, the Monthly Capacity Charge for the fourth month of each Contract Year after the first Contract Year shall include any true-up adjustment due under Sections III of this Appendix. The Monthly Capacity Charge for any partial months shall be prorated on a daily basis for such month.

B. The annual Capacity Charge for the first Contract Year shall be \$415,293,000. For each Contract Year thereafter, the annual Capacity Charge shall be equal to the prior year's annual Capacity Charge plus the sum of the following adjustments:

- (1) Budgeted Incremental Net Utility Plant, times PTROR;
- (2) Budgeted Incremental Depreciation Expense;
- (3) Labor Cost Index Adjustment (Production);
- (4) Labor Cost Index Adjustment (Support);
- (5) Benefit Cost Index Adjustment (Production);
- (6) Benefit Cost Index Adjustment (Support);
- (7) Rebased property tax amount described in Section III-B below; and
- (8) Rebased pension and other post-employment benefit expenses as described in Section I-G below.

C. Positive adjustments shall be added to the revenue requirement to be collected through the Capacity Charge; negative adjustments shall be subtracted from such revenue requirement.

D. The annual Capacity Charge assumes a federal income tax rate of 35.00% and a state income tax rate of 8.63%, which together equate to an effective combined tax rate of 40.61%. If the statutory federal or state income tax rate changes at any time during the Term, the new tax rates will be automatically incorporated into the formula and the effect of

the statutory change will be reflected in the annual Capacity Charge concurrently with the statutory change.

E. The annual Capacity Charge shall also include property tax expense as set forth in Paragraph III.B. below.

F. The level of federal and state income tax expense included in the cost of service for each Contract Year will reflect a deduction for the cost of removal equal to (\$5.744 million). This amount comprises an amount for removal cost spending of (\$8.621 million) net of an amortization add-back amount of (\$2.877 million) that is reflected in depreciation expense. The net amount of the deduction will be reconciled each Contract Year to the actual removal cost deduction reflected in Genco's calculation of actual federal and state income tax expense which shall consist of the actual removal cost spending net of the actual amortization add back calculated by Genco's tax department. The difference will be multiplied by the Genco effective tax rate for the applicable Contract Year (the effective tax rate set forth in Paragraph 1.D above) and then divided by  $(1 - \text{the effective Genco tax rate})$  to convert the change in the removal cost deduction to a change in revenue requirements. The change in revenue requirements will be added to or subtracted from the Plant Additions True-up calculated in Appendix A, Section III-C below.

G. The Pension and Other Post-Employment Benefit ("P&OPEB") expenses included in the cost of service for the first Contract Year are \$32,995,000, including \$779,000 for 401K match, \$19,804,000 for OPEBs and \$12,412,000 for Pension (based on 2012 P&OPEB expenses; 2013 levels will be determine in June 2013, or as soon thereafter as the actuarial data becomes available). For each Contract Year, the Capacity Charge will be adjusted through a single purpose filing with the FERC in mid-year to reflect the actuarially determined amounts of P&OPEB expense for that Contract Year. Genco shall fund its P&OPEBs at no less than the actuarial expense level to the extent it can do so on a tax-effective basis. The Capacity Charge described in I(B) above does not include the 401(k) plan matching contribution which will be separately billed to LIPA.

H. The Depreciation Rates in the Monthly Capacity Charge, as described in Section VI below, are as set forth in Exhibit 1 to this Appendix.

I. The Capacity Charge shall initially be based on (i) a Genco capital structure consisting of 50% debt and 50% equity and (ii) a Genco cost of debt of 4.72%.

J. This Section I is not applicable to the capital investments for Turbine Upgrades and New Emissions Controls described in Sections IV and VIII.

## II. Monthly Variable Charge:

The Monthly Variable Charge is \$0.90 per MWH of net generation of Genco generating units delivered to LIPA during each month.

### III. True-up Adjustments:

A. In the fourth month following the end of each Contract Year, an annual lump sum surcharge or credit will be due from or to LIPA, as the case may be, for the Tax True-up and the Plant Additions True-up. Plant Additions True-Up surcharges or credits will include a carrying charge calculated as described below. With respect to the Tax True-up portion of the surcharge or credit, the surcharges or credits shall include a carrying charge equal to the Base Interest Rate. The carrying charge will be applied on the full amount of the True-up as of July 1<sup>st</sup> of the Contract Year through the due date of the lump sum surcharge or credit. With respect to the Plant Additions True-up portion of the surcharge or credit, interest at Genco's PTROR will be applied to the outstanding amount computed as of the end of the Contract Year from the first day after the close of the Contract Year through the due date of the lump sum surcharge or credit.

B. The Tax True-up shall be calculated as follows: The base year property tax amount will be \$177,690,000 (based on the escalated property taxes for the Generating Facilities in 2013, subject to update by Genco prior to the Commencement Date; the base amount excludes the property taxes attributable to Far Rockaway and the Glenwood Generating Facilities; the base amount also excludes property taxes for the Glenwood ICs which will be calculated per the allocation methodology set forth in Appendix L to the Agreement and the base amount will be updated to reflect this allocation). The base property tax amount for each Contract Year will be the prior year's property tax amount in base rates increased by 4%, which escalation rate is subject to update by Genco prior to the Commencement Date. The Capacity Charge will be changed each Contract Year to reflect the new base year amount. Any difference between the base year property tax amount and the actual property tax amount recorded on Genco's books in each Contract Year will be deferred by Genco. This deferred amount inclusive of the carrying charge as described herein will be billed to LIPA in the fourth month following the Contract Year being trued-up.

C. The Plant Additions True-up shall be the sum of:

- (1) Actual Incremental Depreciation Expense (including allocated actual incremental depreciation expense on Service Companies' assets) minus Budgeted Incremental Depreciation Expense (including allocated budgeted incremental depreciation expense on Service Companies' assets);
- (2) Actual Incremental Net Utility Plant (including allocated actual incremental Service Companies' net utility plant) minus Budgeted Incremental Net Utility Plant (including allocated budgeted incremental Service Companies' net utility plant), times (ii) PTROR as defined in section VI below; and
- (3) the amount of any adjustment derived pursuant to Section I-F hereof.

### III. True-up Adjustments:

A. In the fourth month following the end of each Contract Year, an annual lump sum surcharge or credit will be due from or to LIPA, as the case may be, for the Tax True-up and the Plant Additions True-up. Plant Additions True-Up surcharges or credits will include a carrying charge calculated as described below. With respect to the Tax True-up portion of the surcharge or credit, the surcharges or credits shall include a carrying charge equal to the Base Interest Rate. The carrying charge will be applied on the full amount of the True-up as of July 1<sup>st</sup> of the Contract Year through the due date of the lump sum surcharge or credit. With respect to the Plant Additions True-up portion of the surcharge or credit, interest at Genco's PTROR will be applied to the outstanding amount computed as of the end of the Contract Year from the first day after the close of the Contract Year through the due date of the lump sum surcharge or credit.

B. The Tax True-up shall be calculated as follows: The base year property tax amount will be ~~\_\$177,690,000 (based on the escalated property taxes for the Generating Facilities in 2013, subject to update by Genco prior to the Commencement Date)~~ \$169,114,000; the base amount excludes the property taxes attributable to Far Rockaway and the Glenwood Generating Facilities; the base amount also excludes property taxes for the Glenwood ICs which will be calculated per the allocation methodology set forth in Appendix L to the Agreement and the base amount will be updated to reflect this allocation). The base property tax amount for each Contract Year will be the prior year's property tax amount in base rates increased by 4%, which escalation rate is subject to update by Genco prior to the Commencement Date. The Capacity Charge will be changed each Contract Year to reflect the new base year amount. Any difference between the base year property tax amount and the actual property tax amount recorded on Genco's books in each Contract Year will be deferred by Genco. This deferred amount inclusive of the carrying charge as described herein will be billed to LIPA in the fourth month following the Contract Year being trued-up.

C. The Plant Additions True-up shall be the sum of:

- (1) Actual Incremental Depreciation Expense (including allocated actual incremental depreciation expense on Service Companies' assets) minus Budgeted Incremental Depreciation Expense (including allocated budgeted incremental depreciation expense on Service Companies' assets);
- (2) Actual Incremental Net Utility Plant (including allocated actual incremental Service Companies' net utility plant) minus Budgeted Incremental Net Utility Plant (including allocated budgeted incremental Service Companies' net utility plant), times (ii) PTROR as defined in section VI below; and
- (3) the amount of any adjustment derived pursuant to Section I-F hereof.

D. This Section III is not applicable to the capital investments for Turbine Upgrades and New Emissions Controls described in Sections IV and VIII.

IV. Monthly Capacity Charge For Turbine Upgrades and New Emission Controls:

A. LIPA shall pay a Monthly Capacity Charge for Turbine Upgrades and New Emission Controls equal to 1/12th of the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls for each Contract Year. The Annual Capacity Charge for Turbine Upgrades and New Emission Controls in any Contract Year shall be the sum of the following costs attributable to the Turbine Upgrades and New Emission Controls, subject to true-up for actual costs as set forth in Section IV.B below:

- (1) Depreciation expense for the Turbine Upgrades and New Emission Controls based on the applicable composite depreciation rate for the related property unit;
- (2) Construction work in progress for the Turbine Upgrades and New Emission Controls will reflect an AFUDC rate of 4.85%, with all such rates reflecting 100% tax exempt debt financing; and
- (3) Net utility plant for the Turbine Upgrades and New Emission Controls will be multiplied by a rate of return of 4.85%, with such rate reflecting 100% tax exempt debt financing;

and provided that recovery of the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for any affected generation unit (except for Northport Unit No. 1 ("Northport 1")) for any Contract Year shall not exceed the Available Fuel and Emissions Savings, which shall be the sum of (a) the Fuel and Emissions Savings attributable to these items during such Contract Year, as calculated in accordance with Section VIII ("Annual Fuel and Emissions Savings"); and (b) any Excess Fuel and Emissions Savings which are the cumulative difference between the Annual Fuel and Emissions Savings from previous Contract Years and the Actual Annual Capacity Charges (including Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls) recovered for such Contract Years ("Excess Fuel and Emissions Savings"). To the extent that the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls in any Contract Year exceeds the Available Fuel and Emission Savings in such Contract Year, the excess shall be deferred for potential recovery, with the same tax exempt rate of return referred to in Section IV.A.2 above, subject to the procedures set forth in Sections IV.D and IV.E below. The Annual Capacity Charge for Turbine Upgrades and New Emissions Controls at Northport 1 will be computed and assessed without regard to the Available Fuel and Emissions Savings attributable to the Turbine Upgrades and New Emissions Controls installed at Northport 1.



B. At least 60 days prior to the beginning of each Contract Year, a Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls will be calculated in the manner set forth above based on the budgeted level (using a 13 Month Average) of net utility plant for the Turbine Upgrades and New Emission Controls forecast to be included in rate base during such Contract Year (sum of Sections IV.A.1 and IV.A.2 above). The Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls shall be true-up for such Contract Year based on actual net utility plant costs (using a 13 Month Average), and the same tax exempt rate of return referred to in Section IV.A.2 above shall be applied to the true-up calculation. If such Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls is higher than the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls, a lump sum true-up payment shall be made by LIPA to Genco within four (4) months after the end of such Contract Year. If the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls is lower than the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls, a lump sum true-up payment shall be made by Genco to LIPA within four (4) months after the end of such Contract Year. Any such lump sum true-up payment shall include interest at the above-referenced tax exempt rate of return from July 1<sup>st</sup> of the subject Contract Year until the date of payment.

C. For all affected Generating Units (except Northport 1), upon expiration of each Contract Year, the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for such Contract Year will be compared to the Available Fuel and Emission Savings. In the event that the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls exceeds the Available Fuel and Emission Savings, Genco shall refund the difference to LIPA within four (4) months after the end of such Contract Year. Any such refund shall include interest at the above-referenced tax exempt rate of return from July 1<sup>st</sup> of the subject Contract Year until the date of payment, and such difference in Capacity Charges shall be deferred for potential future recovery in accordance with Sections IV.E and IV.F below.

D. In the event that the Available Fuel and Emission Savings exceed the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for such Contract Year, LIPA shall pay the difference, up to the amount of any Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls (defined in Section IV.E below), to Genco within four (4) months after the end of such Contract Year, and such payment shall reduce the Excess Fuel and Emission Savings to be carried over to future Contract Years as well as the Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls that remain subject to future recovery in accordance with Sections IV.E and IV.F below.

E. To the extent that Actual Annual Capacity Charges for Turbine Upgrades and New Emission Controls are not recovered in any Contract Year because they exceed the Available Fuel and Emission Savings for such Contract Year, such unrecovered amount shall

be deferred and accumulated, and referred to as "Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls" (which includes interest at the tax exempt rate of return in Section IV.A.2 above).

F. At the end of the Term, LIPA shall pay to Genco, not later than four (4) months after the expiration of the Term, a lump sum payment equal to the remaining Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls, but only to the extent of the remaining Excess Fuel and Emission Savings.

V. Reopeners:

A. Allowed ROE.

The Monthly Capacity Charge reflects an Allowed ROE of 9.75%. During the Term, Genco and LIPA shall have the right to petition FERC to adjust the Allowed ROE as provided in Section 4.3.

B. Rate Reopener.

Genco may propose a Rate Reopener as provided in Section 4.4 of the PSA Extension. The ROE proposed as part of such Rate Reopener shall not be subject to the provisions governing the Allowed ROE reopener as set forth in Section 4.3 of the PSA.

VI. Definitions:

For purposes of this Appendix A, the following capitalized terms shall have the meaning specified below. Capitalized terms defined in Article 1 of the Agreement shall otherwise apply to this Appendix A.

A. "Accumulated Deferred Federal and State Income Taxes" means the sum of the plant related operating depreciation deferred tax asset or liability reserves as recorded on Genco's and the Service Companies' books and records under the Federal Energy Regulatory Commission Uniform System of Accounts and Generally Accepted Accounting Principles. The phrase "operating depreciation deferred tax asset or liability reserves" refers to the portion of the deferred federal and state income tax asset or liability reserves associated with (1) the difference between (a) the sum of the net tax basis of the plant assets and (b) the net book basis of Genco's and the Service Companies' plant assets, times (2) the statutory federal and state income tax rate.

B. "Approved Net Plant Additions" means aggregate capital additions approved under Article 6 and placed in service, plus capital additions not included in an approved Capital Improvement Budget at the beginning of a Contract Year but later approved by LIPA (but not including cost overruns on items included in a budget approved by LIPA), minus aggregate scheduled retirements.

C. "Actual Incremental Depreciation Expense" means the sum of the 12 monthly calculations of actual Approved Net Plant Additions, times 1/12th of the Composite Depreciation Rate by type.

D. "Actual Incremental Net Utility Plant" means the sum of (1) the 13 Month Average of actual Approved Net Plant Additions, minus (2) the 13 Month Average of the excess of ending accumulated depreciation reserve over beginning accumulated depreciation reserve, and plus (3) the 13-Month Average of the difference between the ending and beginning Accumulated Deferred Federal and State Income Taxes.

E. "Base Interest Rate" means the lesser of (1) the maximum rate of interest permitted by Applicable Law and (2)(a) for interest accruing during the first six months after the date on which a payment was payable hereunder, 6 months LIBOR, and (b) for interest accruing more than six months after the date on which a payment was payable hereunder, the prime interest rate plus one percentage point, in each case as six month LIBOR or the prime interest rate as reported in The Wall Street Journal for each day.

F. "Budgeted Incremental Depreciation Expense" means the sum of the 12 monthly calculations for the Contract Year of scheduled monthly Approved Net Plant Additions, times 1/12th of the Composite Depreciation Rate by type.

G. "Budgeted Incremental Net Utility Plant" means (1) the 13 Month Average of Approved Net Plant Additions, minus (2) the 13-Month Average of the excess of ending accumulated depreciation reserve over beginning accumulated depreciation reserve, plus (3) the 13-Month Average of the difference between the ending and beginning Accumulated Deferred Federal and State Income Taxes.

H. "Composite Depreciation Rate" means the annual rate to be applied to gross plant to determine annual depreciation expense. The appropriate rate for each item of steam production plant, other production plant, common plant and electric general plant is set forth on the attached Exhibit I.

I. "Defined Labor and Benefits Index" means the percentage change for the twelve month period ending on the preceding September 30 for the Employment Cost Index for wages and salaries, Private Industry, not seasonally adjusted for the Northeast (Service No. CIU20200000002101) as published by the United States Bureau of Labor Statistics.

J. "Labor Cost Index Adjustment (Production)" and "Benefit Cost Index Adjustment (Production)" for each Contract Year means the sum of (1) the base labor and benefit costs for the prior Contract Year and (2) the product of the Defined Labor Index times the prior Contract Year base labor and benefit costs. The base year labor costs (Production) for the first Contract Year will be \$49,976,000 and the base year benefit costs (Production) for the first Contract Year will be \$15,421,000. The sum of the prior Contract Year base labor and

benefits costs (production) and the Labor Cost Index Adjustment (production) and Benefit Cost (production) for a year shall be the "prior Contract Year base labor and benefit costs" used for the following Contract Year's adjustment.

K. "Labor Cost Index Adjustment (Support)" and "Benefit Cost Index Adjustment (Support)" for each Contract Year means the sum of (1) the base labor and benefit costs for the prior Contract Year and (2) the product of the Defined Labor Index times the prior Contract Year base labor and benefit costs. The base year labor costs (support) for the first Contract Year will be \$9,871,000 and the base year benefit costs (support) for the first Contract Year will be \$3,800,000. The sum of the prior Contract Year base labor costs (support) and benefit costs (support) and the Labor Cost Index Adjustment (Support) and Benefit Cost Index Adjustment (Support) for a year shall be the "prior Contract Year base labor and benefit costs" used for the following Contract Year's adjustment.

L. "PTROR" means pre-tax return on rate base which shall be 10.57% for each Contract Year unless modified pursuant to Section 4.4 or 4.5. PTROR assumes a federal income tax rate of 35 percent and a state income tax rate of 8.63%. If the statutory federal or state income tax rate changes at any time during the contract life, the new tax rate will be automatically incorporated into the formula and the effect of the statutory change will be reflected into the PTROR concurrently with the statutory change.

M. "13-Month Average" means a monthly average developed by (1) taking the sum of (a) the first through eleventh monthly amounts to be averaged, (b) one-half of the twelfth monthly amount to be averaged, and (c) one-half of the prior year's twelfth monthly amount to be averaged and (2) dividing the sum in (1) by 12.

N. "Service Companies" means Genco's affiliates that provide services to Genco.

O. "Turbine Upgrades and New Emission Controls" means the Dense Pack turbine efficiency improvement systems and related equipment installed at Northport Unit Nos. 1, 2, 3 and 4; and the advanced NO<sub>x</sub> control systems installed at the Northport and Port Jefferson power plants pursuant to the 4<sup>th</sup> Amendment to the original PSA.

## VII. Ramp Down Adjustment:

Nothing herein shall be construed to predetermine the amount to be paid by LIPA to Genco under Article 10 of the Agreement if LIPA exercises its Ramp Down Option. In addition, the Monthly Capacity Charge for the remaining capacity shall be adjusted as a result of the Ramp Down.

No later than July 1, 2013, the Parties will develop a mutually agreeable methodology for computing the amount of any Ramp Down Payment and any prospective adjustment to the Monthly Capacity Charge resulting from a Ramp Down.

### VIII. Methodology for Calculating Annual Fuel and Emission Savings:

The following methodology shall be used to calculate the Annual Fuel and Emissions Savings associated with the Turbine Upgrades and New Emission Controls for purposes of Section IV above.

A. Fuel Savings. In the three-month period preceding the Turbine Upgrade outage, a turbine test will be conducted to determine the turbine efficiency for the unit. Within three (3) months after completion of the Turbine Upgrade, a turbine test will be conducted in accordance with Genco's existing turbine test procedures entitled, "Modified Turbine Test Procedure for Fossil Fueled Steam Generating Units" (current rev. December 7, 2009), to determine the as-modified turbine efficiency. LIPA and its consultants shall have the right to review all test procedures, witness all tests and review and approve all calculations associated with the baseline and as-modified tests, all such approvals not to be unreasonably withheld.

The percentage improvement in turbine efficiency will be multiplied by the overall unit heat rate to determine the BTU/KWh savings attributable to the Turbine Upgrades (e.g., 3% x 10,000 BTU/KWh = 300 BTU/KWh). At the end of each calendar year, the total number of MWh (megawatt hours) generated by the unit will be multiplied by the BTU/MWh savings calculated from the turbine efficiency testing described above to determine the total BTU savings for the year. The total BTUs saved as a result of the Turbine Upgrades will be multiplied by such year's average fuel cost (\$/10<sup>6</sup> BTU) for the unit to determine the annual fuel cost savings.

$$\text{Fuel cost savings} = \text{Total BTU savings} \times \text{Avg Fuel Cost (\$/10}^6 \text{ BTU)}$$

B. Emissions Savings – Turbine Upgrades. In order to determine the emissions avoided and emission credits saved as a result of the Turbine Upgrades, the achieved efficiency improvement following the installation of Turbine Upgrades on each Northport unit in BTUs/MWh (as calculated in accordance with Section A) shall be multiplied by the number of MWh produced for the calendar year at such unit and then multiplied by the average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission rate (in lbs/mmBTU) at such unit as determined by certified Continuous Emissions Monitoring Systems ("CEMs") records divided by 2000 (lbs/ton).

The value of such NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> Emission Savings shall be determined by multiplying the annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission savings in tons from all Northport units modified with Turbine Upgrades by the average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission credit price for all applicable NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission regulatory cap and trade programs. The average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission price for such programs shall be as reported in "Air Daily" or other similar trade publication as mutually agreed by the parties.

C. Emissions Savings – New Emissions Controls. In order to determine the effectiveness of, and the emission credit savings attributable to the New Emissions Controls, the NO<sub>x</sub> emission rate in lbs/MWh shall be measured using the plant's certified CEMs before and after the application of the NO<sub>x</sub> control technology on each unit. Such measurements shall be made on both natural gas fuel and fuel oil at the identical steady load over a three-hour period, pursuant to the then in effect Environmental Protection Agency regulations. LIPA and its consultants shall have the right to review all test procedures, witness all tests and confirm all calculations associated with the baseline and as-modified tests. The difference in NO<sub>x</sub> emission rate in lbs/MWh for each fuel at each unit shall be established as the achieved emission rate reduction for each unit and each fuel. The total tons of NO<sub>x</sub> emission avoided and the corresponding emission credits saved each year following the application of NO<sub>x</sub> emission control technology on each shall be calculated as follows at the end of each Contract Year:

Achieved emission rate reduction on gas (lbs/MWh) times the number of MWh produced on gas plus the achieved emission rate reduction on oil times the number of MWh produced on oil divided by 2000 (lbs/ton).

The value of such NO<sub>x</sub> emission savings shall be determined by multiplying the annual NO<sub>x</sub> emission savings in (tons) from all units modified by New Emission Controls by the average annual NO<sub>x</sub> emission credit price for all applicable NO<sub>x</sub> emission regulatory cap and trade programs. The average annual NO<sub>x</sub> emission price for such programs shall be as reported in "Air Daily" or other similar trade publication as mutually agreed upon by the Parties.

D. Annual Fuel and Emission Savings. Annual Fuel and Emission Savings will be calculated as follows:

Sum of the savings from (A) Fuel Savings, (B) Emission Savings - Turbine Upgrades and (C) Emission Savings - New Emission Controls.

Annual Fuel and Emission Savings = A + B + C

IX. Genco Passthrough Costs Recoverable Through Monthly Capacity Payment Adjustment Charge and Monthly Variable Payment Adjustment Charge:

All costs for Genco expenses that are identified in the Agreement as not being included in the Monthly Capacity Charge and Monthly Variable Charge and recoverable through either the Monthly Capacity Payment Adjustment Charge or the Monthly Variable Payment Adjustment Charge shall be billed to LIPA at Genco's actual cost. RGGI compliance costs will be billed to LIPA at Genco's actual cost through the Monthly RGGI Charge.

**EXHIBIT I****DEPRECIATION RATES****STEAM PRODUCTION PLANT**

<b>Account Number</b>	<b>Description</b>	<b>Depreciation Rate (%)</b>
311	Structures & Improvements	3.16
312	Boiler Plant Equipment	3.70
314	Turbogenerator Units	2.75
315	Accessory Electric Equipment	1.57
316	Misc. Power Plant Equipment	4.03
	Total Steam Production Plant	3.34

**OTHER PRODUCTION PLANT**

<b>Account Number</b>	<b>Description</b>	<b>Depreciation Rate (%)</b>
341.0	Structures & Improvements	3.16
342	Fuel Holders, Producers & Access	3.70
344.0	Generators	2.75
345.0	Accessory Electric Equipment	1.57
316	Misc. Power Plant Equipment	4.03
346.0	Total Other Production Plant	3.34

## COMMON PLANT CATEGORIES

Account Number	Description	Depreciation Rate (%)
303.1	<u>Miscellaneous Intangibles:</u>	
	Capitalized Software:	
	Group 1 - 5 year amortization	20.00
	Group 2 - 7 year amortization	14.28
	Group 3 - 10 year amortization	10.00
	<u>Office Building:</u>	
390.0	Structures and Improvements	2.54
	<u>General:</u>	
391.0	Office Furniture and Equipment	4.39
	Laboratory equipment	2.88
397.0	Communication Equipment	5.99
398.0	Miscellaneous Equipment	<u>3.91</u> 4.86
	<u>Data Processing:</u>	
391.0	Sub-accounts .2 - .8	11.44
	<u>Transportation:</u>	
392.0		8.01
	<u>Stores Equipment:</u>	
393.0		3.79
	<u>General Shops:</u>	
394.0	Tools, shop, and garage equipment	3.40
	<u>Power Operated Equipment:</u>	
396.0		7.87

Note: These common plant depreciation rates are applicable to Genco-owned common plant; depreciation rates for the allocated common plant of Genco affiliates will be subject to periodic adjustment consistent with GAAP.



## ELECTRIC GENERAL PLANT

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390.0	Structures & Improvements	2.42
391.0	Office Furniture and Equipment	11.34
392.0	Transportation Equipment	7.92
393.0	Stores Equipment - Operating Stores	3.80
394.0	Tools, Shop and Garage Equipment	3.15
395.0	Laboratory Equipment	2.71
396.0	Power Operated Equipment	7.90
397.0	Communication Equipment	5.99
398.0	Miscellaneous Equipment	<u>3.79</u>

Total Electric General Plant

## **APPENDIX B**

### **MONTHLY VARIABLE ADJUSTMENT CHARGE**

The following Monthly Variable Adjustment Charges are applicable during the term of the Agreement for start-ups exceeding the annual threshold:

**Table 1A – Start-Up Charges for Steam Units**

<b>Class</b>	<b>Charge Per Start</b>	<b>Annual Threshold</b>
Northport Plant	\$26,431	38
Barrett and Port Jefferson Plants	\$12,500	52

Note: The Charge Per Start numbers are preliminary results from the AER study and remain subject to revision upon completion of the study and the Parties' mutual agreement as to the results of the study.

**Table 2A - Charges for Base Load Operation for Internal Combustion Units**

<b>Class</b>	<b>Charge Per Gross MWH Above Threshold</b>	<b>Annual Threshold (Gross MWH)</b>
Holtsville 1-10 Jets	\$10.38	37,228
Barrett 9-12 Jets	\$13.35	26,399
East Hampton, Shoreham 2 Jets	\$16.39	2,864
East Hampton Diesels	\$9.79	907
Barrett 1-6, 8 Frame 5's	\$18.02	6,636
Glenwood 1, Port Jefferson, Northport, Southampton and Southold frame 5's	\$18.02	1,334
Glenwood 2&3, West Babylon Frame 7A's	\$7.03	5,723
Shoreham 1 Frame 7A	\$11.57	823
Wading River 1-3 Frame 7EA's	\$4.26	44,664

## APPENDIX B

### MONTHLY VARIABLE ADJUSTMENT CHARGE

The following Monthly Variable Adjustment Charges are applicable during the term of the Agreement for start-ups exceeding the annual threshold:

**Table 1A – Start-Up Charges for Steam Units**

Class	Charge Per Start	Annual Threshold
Northport Plant	<del>\$26,431</del> <u>32,819</u>	38
Barrett and Port Jefferson Plants	<del>\$12,500</del> <u>15,461</u>	52

~~Note: The Charge Per Start numbers are preliminary results from the AER study and remain subject to revision upon completion of the study and the Parties' mutual agreement as to the results of the study.~~

**Table 2A - Charges for Base Load Operation for Internal Combustion Units**

Class	Charge Per Gross MWH Above Threshold	Annual Threshold (Gross MWH)
Holtsville 1-10 Jets	\$10.38	37,228
Barrett 9-12 Jets	\$13.35	26,399
East Hampton, Shoreham 2 Jets	\$16.39	2,864
East Hampton Diesels	\$9.79	907
Barrett 1-6, 8 Frame 5's	\$18.02	6,636
Glenwood 1, Port Jefferson, Northport, Southampton and Southold frame 5's	\$18.02	1,334
Glenwood 2&3, West Babylon Frame 7A's	\$7.03	5,723
Shoreham 1 Frame 7A	\$11.57	823
Wading River 1-3 Frame 7EA's	\$4.26	44,664

**Table 3A - Charges for MWH Production at Peak Load**

<b>Class</b>	<b>Charge Per Gross MWH</b>
Holtsville 1-10 Jets	\$32.49
Barrett 9-12 Jets	\$40.05
East Hampton, Shoreham 2 Jets	\$49.17
East Hampton Diesels	N/A
Barrett 1-6, 8 Frame 5's	\$54.08
Glenwood 1, Port Jefferson, Northport, Southampton and Southold frame 5's	\$54.08
Glenwood 2&3, West Babylon Frame 7A's	\$21.09
Shoreham 1 Frame 7A	\$34.71
Wading River 1-3 Frame 7EA's	\$12.78

**TABLE 4A - Charges for Fuel Swaps**

<b>Individual Units</b>	<b>Fuel Swaps Per Day</b>	<b>Fuel Swaps Per Year*</b>	<b>Cost Per Swap</b>
Northport Unit	1	1-50	No Charge
Northport Unit	2-4	51-200	\$325
Northport Unit	>4	>200	\$4,025
Barrett or Port Jefferson Unit	1-2	1-33	No Charge
185 MW Unit	3-4	34-140	\$110
185 MW Unit	>4	>140	\$1,040

\*As computed in accordance with the procedure below.

**PROCEDURE FOR DETERMINATION OF MONTHLY  
VARIABLE PAYMENT ADJUSTMENT CHARGE**

1. After the end of each calendar month, Genco will submit a report to LIPA which sets forth the actual number of starts for the Steam GUs; hours of operation, MWh energy production, peak hours and MWh for Other GUs (internal combustion units); and number of Fuel Swaps (defined below) for each class of Generating Unit identified in this Appendix B for the preceding calendar month and cumulative for the Contract Year through the preceding calendar month.
2. In each monthly report, Genco will compare the cumulative number of starts per class, MWh of energy production by class or number of Fuel Swaps by unit to the corresponding thresholds presented in this Appendix B.
3. All thresholds except daily Fuel Swap thresholds are annual thresholds. Cumulative actual values used to compare to threshold values will reset to zero annually.
4. If cumulative actual values for number of starts by class, MWh energy production by class, or number of Fuel Swaps by unit is less than or equal to the threshold, no charge will apply for that preceding month.
5. In the first month in which cumulative actual values for number of starts, MWh energy production or number of Fuel Swaps exceeds the threshold, Genco will compute the difference between the cumulative actual value and threshold value, then multiply the difference by the charges presented in the corresponding table in this Appendix B.
6. For each month subsequent to the first month in a given Calendar Year when a particular threshold has been exceeded, Genco shall, to the extent that a particular threshold for a particular GU or class has been exceeded, multiply the actual number of starts in excess of the threshold, MWh energy production or number of Fuel Swaps in that month by the charges set forth in the corresponding table in this Appendix B.
7. For internal combustion GUs, all MWh energy production at peak load will be multiplied by peak load charges as presented in Appendix B without regard to a threshold. Peak load MWh will be calculated by integrating the unit MWh for the actual time period that a unit is in peak operating mode, as required by LIPA's system operator.
8. The actual number of starts shall not include any unit restarts following a forced outage caused by a Fuel Swap. A "Fuel Swap" shall be deemed to have occurred when any Northport or 185MW GU (i) goes from 100% firing of one fuel type to 100% firing of another fuel type (e.g., gas to oil) or (ii) a unit goes from dual fuel to 100% of any one fuel type. A change from 100% fuel firing to dual fuel will not be considered a Fuel Swap.

9. Fuel Swap thresholds per GU have been established on a daily and annual basis. The number of Fuel Swaps used to determine if the annual threshold has been exceeded shall be reduced by any Fuel Swaps exceeding the daily thresholds.

10. These charges will be invoiced to LIPA monthly in accordance with Section 5.1.5 of the Agreement.

## APPENDIX C

### GENERATING FACILITIES

Generating Facilities and Units	Name Plate Rating(MW)
<b>Steam Units</b>	
Northport 1	375
Northport 2	375
Northport 3	375
Northport 4	375
Port Jefferson 3	175
Port Jefferson 4	175
E.F. Barrett 1	175
E.F. Barrett 2	175

Generating Facilities and Units	Name Plate Rating(MW)
<b>Internal Combustion Units</b>	
E. F. Barrett 1-6, 8	126
E.F. Barrett 9-12	167
Holtsville 1-10	567
Wading River 1-3	239
Shoreham 1	53
Shoreham 2	19
Glenwood 1	16
Glenwood 2-3	110
East Hampton 1	21
East Hampton 2-4	6
Northport G-1	16
Port Jefferson G-1	16
W. Babylon 4	52
Southhold 1	14
Southampton 1	12

## **APPENDIX D**

### **ENVIRONMENTAL COMPLIANCE COSTS**

1. The following environmental compliance costs shall be recovered through the Monthly Capacity Payment Adjustment Charge:

- (a) The incremental cost of required residual oil storage tank inspections, provided that such tanks are required to remain in service pursuant to Section 3.3; and provided further, that the costs of any non-capital tank repairs and of cleaning tanks being permanently removed from service shall be borne by Genco as part of its fixed operations and maintenance costs, while any related capital repair costs shall be recovered pursuant to Section 6.5.
- (b) Dredging costs (including contractor charges and cost of sand, if required) to comply with regulatory requirements for the intake and discharge channels at the Northport Generating Facility in excess of what Genco would otherwise expect to incur to support normal operations (i.e., the removal of approximately 11,000 cubic yards per year).
- (c) Legal and consultant costs (including Service Companies' labor costs for providing environmental support services) incurred to assess, comply with or challenge regulatory proceedings or compliance requirements associated with cooling water discharge permits, except that such costs incurred in contemplation or furtherance of a capital project required for such compliance shall be included in the cost of the project and recovered pursuant to Article 6.

2. The cost of providing demineralized water for NOx control at the Holtsville and Wading River Generating Facilities shall be recovered through the Monthly Variable Payment Adjustment Charge.

3. RGGI compliance costs shall be recovered through the Monthly RGGI Charge as set forth in Appendix J.



## **APPENDIX E**

### **MINIMUM LOADINGS, RAMP RATES, START-UP & SCHEDULED SHUTDOWN TIME**

**Table 1 Minimum Loadings**

<b>Unit</b>	<b>Minimum Loadings</b>
Northport	100 MW Net
Port Jefferson	40 MW Net
E. F. Barrett	40 MW Net

**Table 2 Ramp Rate**

<b>Unit</b>	<b>Ramp Rates</b>
Northport	4 MW/Minute
Port Jefferson	2 MW/Minute
E. F. Barrett	2 MW/Minute

**Table 3 Start-Up Times**

<b>Unit</b>	<b>Cold&gt;90 hours</b>	<b>Warm</b>	<b>Hot&lt;24 Hours</b>
Northport	30 hours	12 hours	8 hours
Port Jefferson	24 hours	12 hours	8 hours
E. F. Barrett	24 hours	12 hours	8 hours

**Table 4 Minimum Down Time**

Units	Minimum Down Time
Northport	48 Hours
Port Jefferson	48 Hours
E. F. Barrett	48 Hours

**Table 5 Internal Combustion Loading <sup>1</sup>**

Unit	Base Load MW	Peak Load MW
Holtsville 1-5 (CI eng.)	48.0	53.0
Holtsville 6-10 (CID eng.)	45.6	54.9
Wading River 1-3	74.0	81.0
Southold	12.6	14.5
Port Jefferson	13.9	15.7
East Hampton G.T.	17.0	19.6
East Hampton Diesels 2,3,4	2.0	2.0
Southampton	10.1	11.6
Shoreham-1	41.3	46.5
Shoreham-2	14.0	17.9
Barrett 1-6, 8	14.7	16.5
E. F. Barrett 9-12	36.0	39.2
Glenwood 1	13.9	15.7
Glenwood 2,3	43.7	50.9
West Babylon	41.3	46.5
Northport	13.9	15.7

<sup>1</sup> Ratings listed above are based on operation at an ambient temperature of 80°F. Actual loading limits will be determined by adjusting the values listed above to actual ambient temperature using manufacturers' temperature vs. load curves.

## **APPENDIX F**

### **PERFORMANCE GUARANTEES**

Performance Guarantees will be implemented by measuring Genco's actual performance with regard to (i) the thermal efficiency of the Steam GUs ("Heat Rate Guarantee") and (ii) the unforced capacity ("UCAP") of the GUs ("UCAP Guarantee"). To implement the Heat Rate Guarantee, the Parties will measure the actual fuel consumption of the Steam GUs against an input-output curve for each class of Steam GU. To implement the UCAP Guarantee, the Parties will measure actual system annual UCAP against an aggregate numerical performance level established for the GUs. Genco's unexcused failure to meet such minimum performance levels during a Contract Year will result in financial penalties as described below.

- a. The performance levels for each of the guarantees will initially be as set forth herein and will be subject to reset for the period commencing January 1, 2016 and every three years thereafter (each three-year period a "Measurement Period"), only in the event any penalties were incurred by Genco for a particular guarantee during the immediately preceding Measurement Period. Otherwise, the performance level for each such guarantee shall remain as-is for the next Measurement Period. Performance Guarantees will also be reset in the event of the Ramp Down or Retirement of any GU; and to recognize significant physical modifications to any applicable GU, that are expected to result in an improvement or reduction in performance levels e.g. turbine replacement, cooling towers, etc. In such case, the Performance Guarantee reset will occur in the month following such a Ramp Down or physical modification and will begin to apply in that same month.
- b. Under the Heat Rate Guarantee, Genco warrants that aggregate annual fuel consumption for the Steam GUs will be no greater than the level calculated in accordance with this section. Should such aggregate annual fuel consumption be greater than the guaranteed level, Genco will make a penalty payment to LIPA equal to one-half of the cost of the excess fuel consumed, computed as described below. There will be a maximum annual heat rate penalty of \$1 million (to be pro-rated for the first and last Contract Year of the Term by the number of months in such Contract Year).
  - ii. As described herein, actual fuel consumption and guaranteed maximum fuel consumption will be calculated on a monthly basis for the Steam GUs. Guaranteed maximum fuel consumption for a particular month will be based on an input-output curve for each of the two classes of Steam GUs (Northport and Barrett/Port Jefferson) and the actual dispatch of the Steam GUs during that month.
  - iii. The form of the Heat Rate Guarantee input-output curves and the accompanying criteria to be used in this guarantee are as explained below.

Monthly guaranteed maximum fuel consumption for each Steam GU equals the sum of the hourly maximum guaranteed fuel consumption for all hours in the month that the GU generates at or above its Minimum Dispatch MW (shown in the table below) plus the Allowed DTH/Start multiplied by the number of start-ups in the month that followed outages of at least 24 hours in duration. For each hour during which a Steam GU operates at or above its Minimum Dispatch MW, the hourly maximum guaranteed fuel consumption =  $1.01 * (A + B * MW + C * MW^2) * \text{DOF} * \text{Seasonal Factor}$

Where the parameters are as follows:

- Base coefficients = A, B and C
- Dispatch Operating Factors = DOF
- MW = Actual Net Generation for Hour
- Seasonal Factor = adjustments to compensate for uncontrollable variable: sea water temperature

Unit Class	Base Coefficients			Base DOFs	Allowed	
	A	B	C		Min Disp. MW	DTH/Start
NPT Dense Pack	328.079	8.54110	0.001807	1.0000	20	3030
PJ/EFB	184.015	8.68568	0.004700	1.0130	10	1515

To be updated after installation of NPT 2 Dense Pack, per agreed Dense Pack adjustment methodology

Seasonal Factors (to multiply Base by monthly)					
Jan	Feb	Mar	Apr	May	Jun
0.995	0.995	0.995	0.995	1.000	1.000
Jul	Aug	Sep	Oct	Nov	Dec
1.005	1.010	1.010	1.005	1.000	0.995

- iii. A minimum participation threshold has been established for each Generating Facility Site. Should the monthly net generation for a particular Generating Facility Site be less than the threshold amount for that Generating Facility Site, the Generating Facility Site will not be included in that month's calculation. The minimum participation thresholds are as follows:

Monthly Site Min Gen MWH	
NPT	75,000
PJ	25,000
EFB	25,000

- iv. The Actual Fuel Burn is the sum of actual fuel burns for each participating Generating Facility Site, as determined in paragraph (iii) above, except that actual oil consumption shall be expressed in Gas Equivalent MMBtu by multiplying the MMBtu of oil consumption by 1.04 (the "Gas Conversion Factor") to account for differences in Steam GU efficiency when burning oil versus natural gas.

- v. Each month, a variance shall be calculated as the difference between the aggregate (i.e., sum of all applicable Steam GUs) guaranteed fuel consumption and the aggregate actual fuel consumption. At the end of each Contract Year, the monthly variances (whether positive or negative) shall be added to yield the annual variance. If the annual variance is negative (i.e., the actual fuel consumption exceeds the guaranteed level), the excess fuel cost will be calculated by multiplying the annual variance by LIPA's weighted-average cost (\$/MMBtu ) of fuel (both gas and oil, as applicable) for the applicable Steam GUs in the Contract Year.
- c. Genco further guarantees that the aggregate Unforced Capacity (UCAP) of the GU's will be no less than the UCAP Guarantee established for each calendar year. For purposes of both measured and guarantee values, the UCAP of each individual GU will be the product of  $(1 - \text{EFORD})$  multiplied by DMNC (based on a 75/25 summer/winter weighted average). Genco will make a penalty payment to LIPA in the event the measured UCAP is lower than the UCAP Guarantee. The UCAP penalty will be \$60,000 for every MW that the measured UCAP is lower than the UCAP Guarantee, up to the maximum UCAP penalty of \$2 million (to be pro-rated for the first and last Contract Year of the Term by the number of months in such Contract Year).

The UCAP Guarantee for 2013-2015 will be the UCAP calculated utilizing the average actual DMNC results and average actual EFORD results for the three (3) test periods prior to the first Contract Year (2013), less a performance increment of 1.25% of this value. The performance increment will remain at 1.25% for 2014 and will be 1.5% for 2015 and through the remaining term of the contract. If and when the UCAP Guarantee is reset, the guarantee will be based on the average of the most recent 3 prior test periods.

- i. The initial guarantee will utilize actual summer DMNCs, with power recovery where applicable, from the summers of 2010, 2011 and 2012.
- ii. The initial guarantee will utilize actual winter DMNCs from the winters of 2009-2010, 2010-2011 and 2011-2012.
- iii. For a given guarantee year, winter DMNC from the period ending in that calendar year will apply.
- iv. The initial guarantee will utilize EFORDs for the calendar years of 2010, 2011 and 2012, except that such EFORDs will be adjusted to exclude the effect of outages of internal combustion units caused by failure of Remote Starting Capability as a result of a loss of communication lines.
- d. Genco will meet with LIPA on a quarterly basis to report DMNC and EFORD performance status by GU. A formal agenda with supporting documentation will be prepared and followed for each meeting. This agenda will include the analysis and discussion of:
  - i. Year-to-date Actual Winter and Summer DMNC by GU.

- ii. Year-to-date and 12-Month Ending EFORD by GU.
- iii. For GU's that are significantly below their target DMNC (~10% or more), the likely causes of the shortfall will be presented. Suggested remedial actions will be provided for discussion.
- iv. For GU's with higher than desired EFORD, Genco will present the likely causes of the most significant outages and derates that are contributing to the high EFORD. Suggested remedial actions will be provided for discussion.
- v. In general, a 12 month ending EFORD over 7% will be the threshold for a Steam GU requiring analysis, while an EFORD over 35% will be the threshold for any Other GU. Any GU with a significant short term change in EFORD will also be discussed.

In the event that Genco incurs the maximum penalty under any of the Performance Guarantees for all years within a Measurement Period, then the maximum penalty for that Performance Guarantee will be increased by \$1 million for the next Measurement Period. In the event that Genco incurs no penalty under a Performance Guarantee for all years within a Measurement Period, then the maximum penalty for that Performance Guarantee will be decreased by \$1 million for the next Measurement Period; provided, however, in no case shall the maximum penalty for each guarantee be reduced below its original amount (i.e., \$1 million or \$2 million, respectively), except for any pro rating that may apply.

Further computational details will be developed by the Parties as required. The Parties will address any inconsistencies between the administration of the incentive/disincentive mechanisms during Contract Year 15 of the PSA and the administration of the Performance Guarantees during Contract Year 1 of this Agreement.

## **APPENDIX G**

### **RAMP DOWN PAYMENT DISCOUNTS**

In the event LIPA elects to exercise its Ramp Down Option with respect to a Capacity Block as provided in Section 10.1.3 of the Agreement, the Net Book Value included as part of the Ramp Down Payment for such Capacity Block shall be discounted by the percentages set forth below.

<b><u>Year of Ramp Down Effective Date</u></b>	<b><u>Discount Factor</u></b>
Through December 31, 2018	00.0%
2019	12.5%
2020	25.0%
2021	37.5%
2022	50.0%
2023-2028	62.5%

## APPENDIX H

### FUEL SPECIFICATIONS

0.7% Sulfur No. 6 Oil

#### Product (Quality) Specifications

	<u>Specification</u>	<u>ASTM Method of Measurement</u>
Ash, % by Weight, Max.	0.10	D-482
BS&W, % by Vol., Max.	1.0 (1)	D-1796
BTU/Gal.(per Delivery) BTU/Gal.Wgt.Avg.for Contract Period (Calorific Guarantee)	Report	D-240 D-240 (Bomb Method)
Flash Point, Deg. F, Min.	150	D-93
Free Water Test (Before Discharge)	None(2)	Bacon Bomb
Gravity, API at 60 Deg. F. Minimum	8.5 Npt 9.0 Pt.Jeff.	D-287
Hydrogen Sulfide (H <sub>2</sub> S) - Vapor, PPM, Max.	10	Drager Tube
Pour Point, Deg. F, Max.	60 Npt 100 Pt. Jeff.	D-97
Sodium, PPM, Max.	70	D-5863-SoL/DIL
Sulfur, Max. % by wgt.	0.7(4)	D-4294
Viscosity, SFS @ 122°F, Max. SUS @ 100°F, Min.	300 45	D-445/D-2161 D-445/D-2161

Temperature, Delivered, Deg. F, Min (3)

Fuel Supplier shall supply Product that is homogeneous hydrocarbon oils, free from contaminants, including but not limited to polypropylene, inorganic acids, excessive amounts of solid or fibrous foreign matter (such as metallic fragments), olefin gas oil, olefin tar bottoms, reclaimed/reprocessed oil, chemical washes and styrenes. Fuel Supplier shall not blend with the Product any waste, reclaimed oil, or any hazardous wastes, as such hazardous wastes are defined in 40 CFR Part 261 and 6 NYCRR Part 371.



- (1) If the BS&W (Bottom Sediment and Water), as reported on the Inspector's discharge quality analysis, is in excess of 0.5%, the quantity of Product delivered will be reduced by the percentage of BS&W in excess of 0.5%.
- (2) Fuel Supplier shall not discharge any Vessel cargo tank/compartament that contains free water. Such water shall be segregated from the Product before Product discharge. Fuel Supplier shall store any and all such water on the Vessel and will be responsible for the proper and legal disposal thereof.
- (3) At the time of Commencement of Discharge at the Northport Delivery Point or the Alternate Delivery Point, the temperature of Product delivered must be no less than 120° F. At the time of Commencement of Discharge at the Port Jefferson Delivery Point, the temperature of Product delivered must be no less than 120° F or 30°F above the pour point, whichever is greater.
- (4) The Product must conform with the Federal EPA New Source Specification for sulfur content in fuel. The sulfur content must not exceed 0.4 pounds per one million BTU's. Fuel Supplier's compliance with the EPA New Source Specifications will be determined by multiplying the actual weight of the Product in pounds per gallon by its sulfur content in percent by weight and dividing the result by the actual BTU's per gallon expressed in millions of BTU's.

Example: (a) 0.7% sulfur by weight

7.578 pounds per gallon (API gravity 24.0)

147,000 BTU per gallon (of delivered Product)

$$\frac{0.007 \times 7.578}{0.147000} = 0.361 \text{ pounds of sulfur per million BTUs (Acceptable)}$$

Example: (b) 0.8% sulfur by weight

7.578 pounds per gallon (API gravity 24.0)

146,500 BTU per gallon (of delivered Product)

$$\frac{0.008 \times 7.578}{0.146500} = 0.414 \text{ pounds of sulfur per million BTU's (Nonconforming)}$$

1.0% Sulfur No. 6 Oil

**Product (Quality) Specifications**

	<u>No. 6 Fuel Oil</u>	<u>ASTM Method of Measurement</u>
Ash %, by wgt. Max.	0.10	D-482
BS&W, %, by vol, Max.(1)	1.0	D-1796
BTU/Gal (Per Delivery)	Report	D-240
BTU/Gal., Wgt. Average for Contract Period(Calorific Guarantee)		D-240 (Bomb method)
Flash Point, Deg.F, Min.	150	D-93
Free Water Test(2) (Before Discharge)	None	Bacon Bomb
Gravity, API, at 60 Deg.F, Min.	8.5 Npt 9.0 Pt.Jeff.	D-287
Hydrogen Sulfide (H <sub>2</sub> S) - Vapor, PPM, Max.	10	Drager Tube
Pour Point, Deg.F, Max.	60 Npt 100 PJ	D-97
Sodium, (ppm), Max 288/74	70	5863-00/IP-288/74
Sulfur, % by wgt. Max.	1.0	D-4294
Viscosity, SFS at 122° F, Max	300	D-445/D-2161
SUS at 100° F, Min.	150	D-445/D-2161
Temperature, Delivered, Deg.F,Min. (3)		

Fuel Supplier shall supply Product that is homogeneous hydrocarbon oils, free from contaminants, including but not limited to polypropylene, inorganic acids, excessive amounts of solid or fibrous foreign matter (such as metallic fragments), olefin gas oil, olefin tar bottoms, reclaimed/reprocessed oil, chemical washes and styrenes. Fuel Supplier shall not blend with the Product any waste, reclaimed oil, or any hazardous wastes, as such hazardous wastes are defined in 40 CFR Part 261 and 6 NYCRR Part 371.

- (1) If the BS&W (Bottom Sediment and Water), as reported on the Inspector's discharge quality analysis, is in excess of 0.5%, the quantity of Product delivered will be reduced by the percentage of BS&W in excess of 0.5%.
- (2) Fuel Supplier shall not discharge any Vessel cargo tank/compartments that contains free water. Such water shall be segregated from the Product before Product discharge. Fuel Supplier shall store any and all such water on the Vessel and will be responsible for the proper and legal disposal thereof.
- (3) At the time of Commencement of Discharge at the Northport Delivery Point or the Alternate Delivery Point, the temperature of Product delivered must be no less than 120°F. At the time of Commencement of Discharge at the Port Jefferson Delivery Point, the temperature of Product delivered must be no less than 120°F or 30°F above the pour point, whichever is greater.

Product Specifications  
0.37% Sulfur  
No.6 Residual Fuel Oil

	<u>E. F. Barrett</u>	<u>ASTM</u> <u>Method of</u> <u>Measurement</u>
Ash, % by wgt., Max	0.10	D-482
BS&W, % by vol., Max(1)	1.0	D-1796
Calorific Guarantee BTU/Gal., Contract Period Wtd. Average	Report	D-240 Bomb Method
Flash Point, °F, Min	200	D-93
Free Water Test <sup>(2)</sup> (before discharge)	None	Bacon Bomb
Gravity, API, @ 60°F, Min	10.1	D-287
Max	28.0	D-287
H <sub>2</sub> S - Vapor, ppm, Max.	10	Drager Tube
Pour Point, °F, Max(3)	100	D-97
Sodium, ppm, Max	70	D-5863-SOL/DIL
Sulfur content, % by weight, max.	0.37	D-4294
Viscosity, SFS @ 122°F, Max	300	D-445/D2161
SFS @ 100°F, Min	45	D-445/D2161

Fuel Supplier shall supply Product that is homogeneous hydrocarbon oils, free from contaminants, including but not limited to polypropylene, inorganic acids, excessive amounts of solid or fibrous foreign matter (such as metallic fragments), olefin gas oil, olefin tar bottoms, reclaimed/reprocessed oil, chemical washes and styrenes. Fuel Supplier shall not blend with the Product any waste, reclaimed oil, or any hazardous wastes, as such hazardous wastes are defined in 40 CFR Part 261 and 6 NYCRR Part 371.

- (1) If the BS&W (bottom Sediment, and Water), as reported on the Inspector's discharge quality analysis, is in excess of 0.5%, the quantity of Product delivered will be reduced by the percentage of BS&W of 0.5%.
- (2) Fuel Supplier shall not discharge any Vessel cargo tank/compartments that contains free water. Such water shall be segregated from the Product before Product discharge. Fuel Supplier shall store any and all such water on the Vessel and will be responsible for the proper and legal disposal thereof.
- (3) At the time of Commencement of Discharge at the E.F. Barrett Delivery Point, the temperature of Product delivered must be no less than 120°F or 30°F above the pour point, whichever is greater.

**National Grid Requirements for Kerosene - Barge Delivery  
Holtsville Gas Turbine Site**

	ASTM Method	Specification	
		Min	Max
API Gravity	D4052/D287/1298	37.0	
BTU/lb.	D240/D4809	Report	
BTU/gal.	D240/D4809	Report	
Carbon Residue Ramsbottom 10%	D524		0.15
Cetane Index	D976	40.0	
Color - Dyed Red		Yes / No	
Corrosion, Copper Strip	D130	1A	1B
Dist. IBP Deg. F	D86	325	
10%		348	400
50%		Report	
90%			550
End Point			572
Flash Point, Deg. F	D56/D3828	123	
Freezing Point, Deg. C (F)	D2386		-30 C, (- 22 F)
Lead, Mg/kg (ppm)	D3605		0.5
Particulates, mg/L	D2276/D5452		5.0
Sodium, Mg/Kg (ppm)	D3605		0.6
Sulfur, % by weight	D1266/D2622		0.04
Vanadium, Mg/Kg (ppm)	D3605		0.5
Visc. cSt @ 100 Deg F	D445	1.4	2.2
Water & Sediment, %	D1796/D2709		0.1

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**National Grid Requirements for No. 2 Oil and Ultra Low Sulphur Diesel (ULSD)**

**Applicable Units:**

**Wading River, East Hampton GT and East Hampton Diesel, West Babylon,  
Shoreham GT 1, 2, Glenwood 1, 2, and 3, Port Jefferson 1, Northport APG, EF  
Barrett 1-12**

		ASTM No.	Specification	
			Min.	Max.
API, Gravity		D4052/ D287/1298	30.0	
Ash, % by Weight		D482		0.01
BTU/lb.		D240		Report
BTU/Gal.		D240		Report
Carbon Res. Ramsbottom 10%		D524		0.2
Cetane Index		D976/D4737	40	
Cloud Point, <b>Sep-Mar</b>	C	D2500		-10
	F			+15
Cloud Point, <b>Apr-Aug</b>	C	D2500		-7
	F			+20
Color - Dyed Red				Yes/No
Corrosion, Copper Strip		D130		Class 1B
Distillation	IBP, F	D86		400
	10%, F			
	50%, F			535
	90%, F			650
	End Point, F			700
			135	
Flash Point,	F	D93	F	
Lead	PPM	D3605		0.5
Oxy Stability,	Accel Method	D2274		1.5
	mg/100 ml			
Particulates,	mg/L	D2276		10.0
Pour Point, <b>Sep-Mar</b>	C	D97		-18
	F			0
Pour Point, <b>Apr-Aug</b>	C	D97		-12
	F			+10
Sodium,	PPM	D3605		0.6
Sulfur,	% by weight			
	Wading River, GT	D2622/D4294		0.25
	All Other Sites			0.37
Vanadium,	PPM	D3605		0.5
Viscosity	cST @ 100 F	D445	0.5	4.0
Water & Sediment, %		D1796/D2709		0.1

Report - No specifications to meet are required. Perform test as noted and report results

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# **National Grid Kerosene Requirements for:**

**Units: Southampton GT, Southold GT**

## **\* Properties Guaranteed by Colonial 55 grade specifications**

	ASTM Method	Specification	
		Min	Max
* API Gravity	D4052/D287/1298	37.0	
* Ash	D482		0.01
* BTU/lb.	D240/D4809	Report	
BTU/gal.	D240/D4809	Report	
Calcium, (ppm)	D3605		2.0
Carbon Residue,(100% sample)	D524		1.0
* Carbon Residue(10% Ramsbottom)	D524		0.15
* Cetane Index	D976/D4737	40.0	
* Color - Dyed Red***		Report	
* Corrosion, Copper Strip	D130	1A	1B
Demulsification, (minutes)	D1401		20.0
* Dist. IBP Deg. F	D86	325	
10%		348	400
50%		Report	
90%			550
End Point			572
* Flash Point, Deg. F	D56/D93/D3828	123	200
* Freezing Point, Deg. C (F)	D2386		-30 C, (-22 F)
Hydrogen content. %	D1018/D3701/D5291	12.7	
Lead, Mg/kg (ppm)	D3605		0.5
Nitrogen (Fuel- Bound)	D4629/D5762		0.015 % by weight
Particulates, mg/l - (gal to litre - J. Kost 12/01/06)	D2276/D5452		2.6
Sodium, Potassium, and Lithium(Combined),Mg/Kg(ppm)	D3605		0.2
* Sulfur, % by weight	D1266/D2622		0.04
Vanadium, Mg/Kg (ppm)	D3605		0.5
* Visc. cSt @ 100 Deg F	D445	1.4	2.2
Water & Sediment, %	D1796/D2709		0.1

### **Notes**

"Viscosity" Colonial 55 spec min is 1.0

Report - No specifications to meet are required. Perform test as noted and report results

\*\*\*Use of any dyes or additives must conform to MIL-S-53021 A.

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## **APPENDIX I**

### **NEW YORK STATE REQUIREMENTS**

#### **LIPA'S STANDARD CONTRACT CLAUSES: STATE LAW REQUIREMENTS**

##### **Attachment A**

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

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

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

**COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the New York State Finance Law (the "State Finance Law"), if this contract exceeds \$50,000, it shall not be valid, effective or binding upon LIPA until it has been approved by the State Comptroller and filed in his office.

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

**NON-DISCRIMINATION REQUIREMENTS.** 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.

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

**INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, Contractor agrees, as a material condition of the contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (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 – 7<sup>th</sup> 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 – 2<sup>nd</sup> 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:

(b) 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;

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

(d) 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; and

(e) 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.

**Non-Collusive Bidding Certification**  
**Required by Section 2878 of the Public Authorities Law**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

**[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]**

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

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IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES

LEGAL RESIDENCE

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**President**

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**Secretary**



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**Treasurer**

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**President**

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**Secretary**

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**Treasurer**

**Identifying Data:**

**Potential Consultant:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City, Town, etc.** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\_\_\_\_\_  
If applicable, Responsible Corporate Officer Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**Joint or combined bids by companies or firms must be certified on behalf of each participant:**

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

By \_\_\_\_\_  
(Name)

By \_\_\_\_\_  
... (Name)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City and State

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes\_\_\_ or No\_\_\_

If yes:

(2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes\_\_\_ or No\_\_\_

\_\_\_\_\_  
**Signature**

**Offerer Disclosure of Prior Non-Responsibility Determinations**

\*\*\*\*\*

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the procurement contract in the previous four years? (Please circle):

No

Yes

2. If yes, was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j? (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If yes, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

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

5. Has any Governmental Entity or other governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

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\_\_\_\_\_

Offerer certifies that all information provided to the Long Island Power Authority with respect to State Finance Law § 139-k in complete, true and accurate.

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

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

### **CONTINGENT FEE CERTIFICATION**

In accordance with section F.2 of Article II of the Long Island Power Authority "Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts" (the "Guidelines"), Proposer, by submission of this proposal certifies the following with respect to the payment of contingent fees:

Proposer has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Long Island Power Authority 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

Proposer will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Long Island Power Authority.

\*\*\*\*\*

FAILURE TO PROVIDE THIS CERTIFICATION WILL BE GROUNDS FOR DISQUALIFICATION IN THE PROCUREMENT PROCESS.

VIOLATION OF EITHER (1) OR (2) OF THIS CERTIFICATION SHALL RESULT IN:

- (i) disqualification of Proposer from the procurement process; and
- (ii) prohibition of the Proposer from being awarded any contract for a period of three years from the commencement of the procurement process.

\*\*\*\*\*

Certified as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of person, firm or corporation

By \_\_\_\_\_  
(Name and Title)

**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: \_\_\_\_\_ +  
<http://www.esd.ny.gov/mwbe.html>

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.

- C. 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 10<sup>th</sup> 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:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

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.

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.

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.

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: \_\_\_\_\_

## APPENDIX J

### **REGIONAL GREENHOUSE GAS INITIATIVE PROCEDURES**

As required by Article 9 of the Agreement, Genco shall comply with the Regional Greenhouse Gas Initiative ("RGGI") for the term of the Agreement (or until the earlier termination of the RGGI) by participation in quarterly RGGI auctions and through secondary market purchases (through its affiliate National Grid Energy Trading Services ("NGETS") or any successor thereto, or other party designated by Genco to provide the services described below). Accordingly, LIPA shall reimburse Genco for its carbon dioxide ("CO<sub>2</sub>") allowance purchase costs and associated carrying costs, as required by Article 9 of the Agreement.

#### **1. STRATEGY:**

The strategy for purchasing required CO<sub>2</sub> allowances for the Generation Units covered under the Agreement is generally as follows:

1. NGETS will purchase CO<sub>2</sub> allowances consistent with actual and projected need in an effort to minimize associated carrying costs. NGETS will propose for each quarterly auction a strategy in furtherance of such objective, so as to enable Genco to obtain CO<sub>2</sub> allowances over the applicable regulatory compliance period (the "Compliance Period") adopted by the New York Department of Environmental Conservation ("DEC"). The Parties, however, also recognize that having the flexibility to gradually build up a compliance bank of CO<sub>2</sub> allowances to adequately cover corresponding emissions before the Compliance Period expires is important and will facilitate meeting compliance requirements.
2. Each quarter's CO<sub>2</sub> allowances purchases will be based in part on prior actual emissions and MAPS modelling projections and may be reasonably adjusted (up or down) during succeeding RGGI auctions or by secondary market purchases based on actual emission variances from these reference points.
3. The task oriented details of cross-organizational responsibilities related to Genco's acquisitions of CO<sub>2</sub> allowances are set forth below. LIPA, Genco and NGETS may, from time to time, review such details and modify same to the extent the parties mutually agree.

#### **2. PROCUREMENT AND BILLING:**

The RGGI auction bidder requirements are to post a security deposit (or other form of guaranty), in advance, to participate in each scheduled RGGI auction. As a matter of past practice, Genco has used the posting of a security deposit in the RGGI bidding process to cover anticipated auction expenditures. LIPA and Genco will use the following procedures for (a) posting the security deposit, and (b) effecting LIPA's reimbursement of Genco's costs:

- (a) At least five (5) Business Days prior to each scheduled security deposit posting, NGETS will notify LIPA of NGETS's auction bidding strategy, including estimates of projected allowance needs, the quantity of allowances for which a bid will be placed, along with (i) the bid pricing structure, and (ii) the amount of the security deposit required to support same ("Auction Plan Notice"). Due to the evolving nature of emission credit markets, the information contained in the Auction Plan Notice may be further refined by NGETS prior to the posting of the security deposit.
- (b) At least two Business Days prior to each such security deposit posting, LIPA will, in writing, acknowledge its agreement with the Auction Plan Notice, or advise NGETS of any LIPA concerns or objections thereto, which NGETS shall take into account in finalizing its bidding strategy, bid and/or the calculation of the security deposit. LIPA's failure to so notify NGETS within such two (2) Business Days period will be deemed LIPA acceptance of such Auction Plan Notice.
- (c) In accordance with the requirements of RGGI and each auction, and as determined by NGETS, NGETS will arrange for the posting of the security deposit, and NGETS will submit its bid for CO<sub>2</sub> allowances.
- (d) If at any time during the Compliance Period NGETS determines that bidding strategy modifications are warranted, NGETS will promptly notify LIPA of same.
- (e) LIPA shall have the option to fund the security deposits in advance of such auctions in lieu of reimbursing Genco for such costs, and in the event that LIPA so elects, LIPA will deposit the appropriate security deposit funds in an account designated by Genco prior to the required security posting deadline. LIPA shall notify NGETS of such intentions at least five (5) Business Days prior to each applicable security deposit posting deadline. NGETS will then submit bids as previously described herein. If after the close of the corresponding bid, the actual CO<sub>2</sub> allowances purchased cost less than the amount of the security deposit posted by LIPA, Genco will cause the return of the remaining balance of the security deposit to LIPA within two (2) Business Days of NGETS's receipt thereof from the auction agent.
- (f) From time to time, NGETS, in its reasonable discretion, consistent with Prudent Utility Practice, may use secondary market sources to acquire required CO<sub>2</sub> allowances in order to maintain allowance balances adequate to cover the current quarter's projected emissions. In such an event, NGETS will notify LIPA of such plan at least five (5) Business Days prior to plan execution. In conjunction with such notification, NGETS shall provide LIPA with supporting documentation containing, at a minimum, the rationale for making such purchases, the expected

quantity, unit price, and total cost of CO<sub>2</sub> allowances to be purchased; and the expected premium or discount to be paid compared to clearing prices in recent RGGI Auctions and prices in the secondary market reported by brokers. Upon receipt of such notification and supporting documentation, LIPA will review the materials and notify NGETS within five (5) Business Days of any concern it has with NGETS' planned purchases of CO<sub>2</sub> allowances from secondary market sources. LIPA's failure to so notify NGETS within five (5) Business Days will be deemed LIPA acceptance of such planned purchase. In the event LIPA expresses a concern with such planned purchase, the Parties shall promptly meet and confer to resolve such concern.

- (g) The costs and expenses associated with the purchase of CO<sub>2</sub> allowances consumed by the Generating Units covered under the Agreement will be paid for by LIPA pursuant to Article 9 of the Agreement; provided, however, that Genco shall invoice LIPA separately from the Monthly Capacity Charge and Monthly Variable Charge for CO<sub>2</sub> allowances purchased and consumed, which billing will include carrying charges on all funds that are advanced by or on behalf of Genco to acquire CO<sub>2</sub> allowances for the Generating Units covered under the Agreement, irrespective of whether such purchased allowances have been consumed. Such costs and expenses shall include all reasonable third party costs (e.g., NGETS) incurred by Genco for preparing the bidding strategy, auction participation and accounting/billing.
- (h) Recognizing that Genco's CO<sub>2</sub> allowance inventory constitutes an addition to Genco's working capital allowance in its rate base, the carrying charge rate on such funds to be advanced and disbursed by Genco will be at Genco's pre-tax rate of return ("PTROR"), established under Appendix A of the Agreement and shall begin to accrue with respect to each such security deposit or secondary purchase, as of the date Genco posts or causes the posting of a security deposit for a RGGI auction, or remits payment to a secondary market purveyor of CO<sub>2</sub> allowances, as the case may be. Invoicing and payment dates shall be the same as specified for the Monthly Variable Charge in Section 5.1.5 of the Agreement. Late payments of any and all balances due under Genco's invoices shall continue to accrue at PTROR until paid in full.
- (i) Accounting for the consumption of the CO<sub>2</sub> allowances will assume that such allowances are consumed on a "first-in, first-out" basis.
- (j) LIPA reserves the right to pay Genco any amounts not yet billed by Genco for CO<sub>2</sub> allowances Genco has purchased and consumed. Such payment by LIPA will include PTROR carrying charges (as determined above) from the date the

security deposit was posted by Genco or its affiliate up to the date of payment by LIPA.

- (k) Subsequent sales by NGETS of CO<sub>2</sub> allowances purchased by Genco are not anticipated. To the extent, however, any excess CO<sub>2</sub> allowances are sold, 100 percent of the net proceeds received from such sales shall be paid to LIPA by NGETS or Genco, as applicable.

### 3. REPORTING:

It is agreed and understood that LIPA has, and shall have, various reporting needs with respect to the acquisition of, and payment for, CO<sub>2</sub> allowances for the Generating Units covered under the Agreement, which Genco and NGETS shall address as follows:

- (a) NGETS will provide LIPA with copies of the submitted RGGI bids within five (5) Business Days of each such RGGI auction in which NGETS participates.
- (b) NGETS will provide LIPA with a summary of the CO<sub>2</sub> allowances purchases that result from each RGGI auction within five (5) Business Days of each such RGGI auction in which NGETS participates.
- (c) NGETS will provide to LIPA a monthly summary of all secondary market purchases of CO<sub>2</sub> allowances.
- (d) Genco will report monthly the cumulative total LIPA allowance liability and LIPA allowance inventory position for the Compliance Period. Genco will report monthly on LIPA allowance liability regardless of whether the allowance inventory covers such liability.
- (e) Genco will report the quantities of each Generating Unit's actual CO<sub>2</sub> emissions to LIPA on a monthly basis subject to a quarterly true-up based on the final Continuous Emissions Monitoring data submission and Environmental Protection Agency approval.
- (f) Genco will provide such additional reports as LIPA may reasonably request; provided LIPA provides Genco with fifteen (15) Business Days advance written notice of such request.



## **APPENDIX K**

### **ALLOCATION METHODOLOGY FOR PROPERTY TAXES AT GENERATING FACILITY SITES**

The following allocation methodology shall be used for purposes of allocating property taxes among assets located at the Generating Facility Sites in instances where property taxes for such assets are assessed on one common tax bill but the Parties are financially responsible for sub-sets of those assets (by reason of ownership of the assets or contractual commitments). For example, the Parties intend that this process will be used to allocate property taxes at the Generating Facility Sites among the Ramp Down units and any other utility assets at each site, including other generation or utility assets for which LIPA is contractually obligated to reimburse Genco for the associated property taxes.

The allocation process shall consist of (i) the appraiser selection process, and (ii) the appraisal. This allocation process shall first be used for purposes of allocating the property taxes for the tax year that covers the period following the expiration of LIPA's obligation to pay property taxes at a Generating Facility, and shall continue to be used by the Parties (and their respective successors and assigns) with respect to the Generating Facility Site until such time as LIPA is no longer financially responsible for any portion of the property taxes on a common tax bill.

#### **1. Appraiser Selection.**

(A) LIPA and Genco shall jointly select, retain and pay for mutually-agreeable appraisers, with the related costs shared (50/50) between the Parties. Selection must be completed within the time frame set forth in the appraisal schedule contained in Attachment 1 (the "Appraisal Schedule"). The real estate appraiser must be (i) nationally or regionally recognized, (ii) from a reputable firm, and (iii) a certified general real estate appraiser; and in the case of the utility appraiser, be from a consulting firm highly experienced and qualified in the field of public utility valuation. A list of mutually agreeable appraisers is set forth on Attachment 2 (this list may be updated from time-to-time to add/remove appraisers as the Parties may mutually agree). The Parties shall commence the appraiser selection process immediately upon LIPA's notification of its intent to Ramp Down a Generating Facility or as soon as reasonably practicable under the circumstances.

(B) Genco and LIPA shall retain both a qualified real estate appraiser and a utility appraiser from the list on Attachment 2.

a. The utility appraiser shall prepare an appraisal as of the applicable tax status dates of the utility assets at the Generating Facility Sites.

b. The real estate appraiser shall appraise, in fee simple absolute, the market value as of the applicable tax status dates of the land and improvements at the Generating Facility Sites.

(C) Genco and LIPA shall obtain and review the following information from the appraiser prior to final selection:

c. details on the process the appraisers will use for completing the appraisal;

d. the appraisers' credentials, which shall demonstrate knowledge of utility assets and/or industrial property transactions, relevant work experience and references;

e. details on any additional resources the appraisers will require in order to complete the appraisals; and

f. a complete listing of information the appraisers will need from Genco and LIPA to complete the appraisal.

(D) Should LIPA or Genco present a good-faith objection to the continued use of a particular appraiser prior to the start of the appraisal process for a particular tax year, the Parties agree to select another mutually-agreeable appraiser from Attachment 2 within a reasonable time.

2. Appraisal Procedure. For each tax year, the Parties shall utilize the following procedure:

(A) LIPA and Genco, in coordination with the appraisers, shall finalize the list of materials needed by the appraisers to complete the appraisals. All information shall be provided to the appraisers and assembled by Genco and LIPA jointly.

(B) There will be a conference among the Parties and the appraisers, at a mutually agreeable date, to respond to any questions that the appraisers may have. The appraisers shall distribute draft reports for factual review before such conference. No conference with the appraisers shall take place without the presence of both Genco and LIPA's representatives.

(C) Within the time period set forth in the Appraisal Schedule, the real estate appraiser shall prepare a self-contained fee simple appraisal report in which he/she will set forth the fair market value of the land and improvements at the Generating Facility Sites.

(D) Within the time period set forth in the Appraisal Schedule, the utility appraiser shall prepare an appraisal report in which he/she will set forth the reproduction cost new, less all forms of depreciation, including physical depreciation and functional and economic obsolescence, of the utility assets.

(E) Upon completion of the appraisals, each appraiser shall share the results with LIPA and Genco, which shall be used as the basis for allocating financial responsibility for property taxes in the applicable tax year. The allocation of the property taxes between the land, improvements and various utility assets at each of the Generating Facility Sites shall be based on the relative fair market value of such land, improvements and utility assets at the Generating Facility Site as determined by the appraisers on the applicable tax status dates, in accordance with the methodology described below in Section 3. An illustrative calculation is attached hereto as Attachment 3.

### 3. Appraisal Methodology.

(A) In completing the appraisals, the appraisers shall consider, as appropriate, the following:

(i) The physical condition of the assets, land and improvements on the relevant taxable status dates;

(ii) Any assets or liabilities associated with the utility assets, land and improvements that would affect the value of said utility assets, land and improvements;

(iii) An analysis of sale of comparable assets and land; and

(iv) Appropriate valuation methodologies.

(B) The appraisals shall conform to the Uniform Standards of Professional Appraisal Practice (USPAP).

(C) "Fair market value" for purposes of these appraisal methodologies shall be defined as follows:

(i) for land and improvements, as the most probable price, as of the specified dates, more fully described below, in cash or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, assuming neither is under duress; and

(ii) for utility assets, as reproduction cost new less all forms of depreciation and obsolescence.

4. Dispute Resolution. Any dispute arising out of or relating to the implementation of the allocation process shall be resolved in accordance with the dispute resolution procedures set forth in Section 20.3 of the Agreement.

**APPRAISAL SCHEDULE**

<b>Task</b>	<b>Due Date</b>
Parties jointly hire the appraisers.	Not less than 6 months prior to the start of the applicable tax year
Both Parties assemble documents required by the appraisers.	Not less than 4 months prior to the start of the applicable tax year
Conference with the appraisers; appraisers to share drafts of appraisal reports with the Parties.	Not less than 3 months prior to the start of the applicable tax year
Appraisers complete appraisal effort and exchange with the Parties.	Prior to the start of the applicable tax year.

**APPRAISERS**

The Parties who are acceptable to Genco and LIPA as appraisers are as follows:

**Utility**

Michael J. Diedrich, PE, ASA, CDP  
AUS Consultants  
8555 West Forest Home Avenue, Suite 201  
Greenfield, WI 53228  
(414) 529-5755

**Land**

Stephen Deutsch, IFA, CSA-G

Matthew J. Guzowski, MAI

Goodman – Marks Associates  
170 Old Country Road, Suite 501  
Mineola, New York 11501  
(516) 248-9777

**Attachment 3****SAMPLE CALCULATION**

Appraisal - Valued as of 1/5/2012; the appraisal would be the basis for relevant market value for tax year 7/1/2012 - 6/30/2013 (School) and Calendar Year 2013 for General.

**First Tax Year**

Assume assessor values assets as follows (\$ in millions):

**Example Only**

Category on Property Tax Bill	Appraisal Amount	Relative Appraised MV	School Tax 7/1/12-6/30/13 (Only used 5/28/13- 6/30/13)	General Tax 1/1/13-12/31/13  (Only used 5/28/13- 12/31/13)
Utility property tax allocated as follows:				
Steam Generating Unit	\$90.0	50.0%	\$7.3	\$3.0
IC Generating Units	<u>90.0</u>	<u>50.0%</u>	<u>7.3</u>	<u>3.0</u>
	<u>\$180.0</u>	<u>100.0%</u>	<u>\$14.5</u>	<u>\$6.0</u>
Commercial for Land allocation:				
Land related to Steam Units	\$3.0	75.0%	\$0.4	\$0.3
Land related to IC Units	<u>1.0</u>	<u>25.0%</u>	<u>0.1</u>	<u>0.1</u>
	<u>\$4.0</u>	<u>100.0%</u>	<u>\$0.5</u>	<u>\$0.4</u>
Other Commercial Properties Allocation				
T&D Property	\$0.1	95.0%	\$0.0	\$0.0
Gas Property	0.0	4.0%	0.0	0.0
Other Genco Property - Steam Unit related	0.0	0.5%	0.0	0.0
Other Genco Property - IC Unit related	<u>0.0</u>	<u>0.5%</u>	<u>0.0</u>	<u>0.0</u>
	<u>\$0.1</u>	<u>100.0%</u>	<u>\$0.1</u>	<u>\$0.1</u>

## APPENDIX L

### INSURANCE

Commencing with the Commencement Date and at all times throughout the Term of this Agreement except as expressly provided below, Genco shall cause to be maintained the types and amounts of insurance required by this Appendix L. Such insurance shall be placed with responsible and reputable insurance companies which have an A.M. Best rating of at least "A-". Genco shall give LIPA prompt notice of any material alteration to any of such insurance coverages, but in no event later than thirty (30) Days after it learns of such material alteration.

#### 1. Insurance Policies and Limits:

##### 1.1 Insurance Policies and Limits:

The following insurance policies with respect to this Agreement and the Generating Facilities are in effect on the Commencement Date:

<b>Policy</b>	<b>Coverage</b>	<b>Limits</b>	<b>Additional Insured</b>
"All Risk" Property Fixed Locations	Property damage coverage for losses. Policy Aggregate Deductible \$7.5 million	Replacement Cost of damaged property up to \$1.0 billion.	LIPA and the Long Island Power Authority
Automobile Liability	Third party bodily injury or property damage arising out of the ownership, maintenance, or use of any auto.	\$35,000,000 per occurrence, in excess of a \$3,000,000 self insured retention.	LIPA and the Long Island Power Authority
Excess Liability	General Liability Program \$3M Self Insured Retention	\$35,000,000 per occurrence, in excess of a \$3,000,000 self insured retention.	LIPA and the Long Island Power Authority
Workers Compensation		\$1 million primary with statutory coverage for excess	

#### 2. General Provisions.

##### 2.1 Evidence of Coverage:

Genco shall, within thirty (30) Days following the Commencement Date of this Agreement, and within five (5) Days after each reasonable request by LIPA, provide certificates of insurance to LIPA's insurance consultant for all insurance policies required hereunder.

##### 2.2 Additional Insureds:

With the exception of Workers' Compensation coverage, LIPA and the Long Island Power Authority shall be included as an additional insured, and any other party reasonably requested by LIPA shall be named as additional insured for occurrences arising out of or in connection with this Agreement with respect Sections 1.1 of this Appendix L, as their interests may appear. With respect to Workers' Compensation and Employer's Liability, LIPA and any other party reasonably requested by LIPA, shall be named as Alternate Employer; provided that, Genco's insurance shall not include coverage for LIPA's employees or any employee of any other party requested by LIPA.

2.3 Waiver of Subrogation:

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

2.4 Severability of Insureds:

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

2.5 Primary Insurance:

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

2.6 Notice of Cancellation:

Genco shall provide LIPA with copies of any notices of cancellation or material alteration of any insurance policy required by this Appendix L, within thirty (30) Days of receipt of such notice by Genco.

2.7 Deductibles:

Any and all deductible amounts under policies provided by Genco pursuant to this Appendix L shall (as between Genco and LIPA) be assumed by, for the account of, and at the sole risk of Genco; subject, however, to (i) the charges set forth in



Article 5 of the Agreement and (ii) the allocations of risk and liability pursuant to Article 19.

3. Genco Disclosure and Cooperation:

Where Genco is providing insurance coverage for the benefit of LIPA, procuring insurance at the request of LIPA, and/or securing coverage at the expense of LIPA, Genco shall furnish an exact copy of said policies, upon LIPA's request.

## **APPENDIX M**

### **FORM OF GUARANTY AGREEMENT**

This Guaranty Agreement (the "Guaranty") is made by KEYSPAN CORPORATION (the "Guarantor"), a corporation organized and existing under the laws of the State of New York, in favor of LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation ("LIPA"), a wholly-owned subsidiary of the LONG ISLAND POWER AUTHORITY (the "Authority"), a corporate municipal instrumentality of the State of New York and a body corporate and politic and a political subdivision of the State of New York. Defined terms used herein and not defined have the meanings assigned to them in the Agreement (defined below).

### **RECITALS**

WHEREAS, National Grid Generation, LLC, a limited liability company organized and existing under the laws of the State of New York ("Genco"), and LIPA are parties to that certain Amended and Restated Power Supply Agreement, dated as of October 10, 2012, (as the same may be modified, amended, supplemented or extended, the "Agreement") pursuant to which Genco has agreed to sell to LIPA, and LIPA has agreed to purchase from Genco, certain Capacity, Energy and Ancillary Services (each as defined in the Agreement) from specified Genco electric generating facilities on Long Island; and

WHEREAS, the Guarantor is the parent company of Genco, and will receive benefits from Genco's execution and performance of the Agreement and has agreed to enter into this Guaranty to provide assurance for Genco's performance of its obligations under the Agreement and to induce LIPA to enter into the Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally, irrevocably and absolutely guarantees the performance of Genco's obligations arising under the Agreement, as it may be amended or modified by agreement between Genco and LIPA from time to time (together with any and all reasonable costs and expenses, including reasonable attorneys' fees and expenses, incurred by LIPA in enforcing its rights under this Guaranty other than costs and expenses that LIPA incurs in performing any of its obligations under the Agreement, the "Guaranteed Obligations"). In addition, the Guarantor shall reimburse LIPA for all sums paid to LIPA by Genco with respect to such Guaranteed Obligations which LIPA is subsequently required to return to Genco or a representative of Genco's creditors as a result of Genco's bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding.

2. **Guaranty Absolute.** (a) The liability of the Guarantor under this Guaranty shall be absolute, irrevocable and unconditional irrespective of:

(b) any modification, extension or waiver of any of the terms of the Agreement in accordance with the terms thereof;

(c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other agreement or instrument executed in connection therewith;

(d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any set-off against any of said liabilities, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by LIPA to exercise, in whole or in part, any right or remedy held by LIPA with respect to the Agreement or any transaction under the Agreement; or

(f) any change in the existence, structure or ownership of the Guarantor or Genco, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Genco or its assets.

This Guaranty constitutes a guaranty of payment and performance when due and not of collection, and the Guarantor specifically agrees that it shall not be necessary or required that LIPA exercise any right, assert any claim or demand or enforce any remedy whatsoever against Genco, the Guarantor or any other person liable for the performance of the Guaranteed Obligations either before or as a condition to the obligations of the Guarantor hereunder. Notwithstanding any provision to the contrary herein, the Guarantor shall have the benefit of and the right to assert any and all legal or equitable rights or defenses against the claims of LIPA that are available to Genco, as well as those legal or equitable rights or defenses that would have also been available to the Guarantor if the Guarantor had been in the same contractual position as Genco under the Agreement other than (a) defenses arising from the insolvency, reorganization or bankruptcy of Genco, (b) defenses expressly waived in this Guaranty, and (c) defenses previously asserted by the Genco in a prior action against Genco for claims regarding the same disputed matter to the extent such defenses have been finally resolved in LIPA's favor by an arbitration award under the Agreement or a final, non-appealable court order. All sums payable by the Guarantor hereunder shall be paid by wire transfer of immediately available funds to the account designated by LIPA.

3. **Unconditional Obligations.** The obligations of the Guarantor under this Guaranty are independent of any obligations of Genco under the Agreement, and an action may be brought and prosecuted against the Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Genco, or whether Genco is joined in any such action or actions. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives, any circumstance that constitutes a legal or equitable discharge under applicable law of the Guarantor or a surety other than satisfaction in full of the Guaranteed Obligations.

4. **Waiver.** The Guarantor hereby waives:

(a) notice of acceptance of this Guaranty, notice of the creation or existence of any of the Guaranteed Obligations and notice of any action by LIPA in reliance hereon or in connection herewith;

(b) notice of the entry into the Agreement between Genco and LIPA and notice of any amendments, supplements or modifications thereto; or any waiver of consent under the Agreement, including waivers of the payment and performance of the obligations thereunder;

(c) notice of any increase, reduction or rearrangement of Genco's obligations under the Agreement;

(d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice of any other kind with respect to the Guaranteed Obligations; and

(e) any requirement that suit be brought against, or any other action by LIPA be taken against, or any notice of default or other notice be given to, or any demand be made on, Genco or any other Person, or that any other action be taken or not taken as a condition to the Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against the Guarantor.

Notwithstanding any provision to the contrary herein, Guarantor shall have the right to make inquiry of LIPA or any other Person to ascertain the amount of the Guaranteed Obligations at any time, and Guarantor shall be entitled to receive any and all notices required to be given in connection with this Guaranty or the Guaranteed Obligations, including those notices required as a condition to the enforcement of the Guaranteed Obligations.

5. **Subrogation.** Unless and until the Guaranteed Obligations are paid in full, notwithstanding any payment or payments made by the Guarantor under this Guaranty or any set-off or application of funds of the Guarantor by LIPA, the Guarantor shall not be entitled to be subrogated to any of the rights of LIPA against Genco or any collateral security or guaranty or right of offset held by LIPA for the payment of the Guaranteed Obligations, nor shall the Guarantor seek or be entitled to seek any contribution or reimbursement from LIPA in respect of payments made by the Guarantor under this Guaranty.

6. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon delivery, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, or personally delivered or by facsimile transmission. Notices shall be sent to the following addresses:

If to LIPA:

Long Island Lighting Company d/b/a LIPA  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attention: Vice President of Power Markets  
Facsimile No: (516) 222-9137

with a copy to:

Long Island Lighting Company d/b/a LIPA  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attention: General Counsel  
Facsimile No: (516) 222-9137

If to the  
Guarantor:

KeySpan Corporation  
One Metrotech Center  
Brooklyn, New York 11201  
Attention: General Counsel  
Facsimile: [To come.]

7. **No Waiver; Remedies.** Except as to applicable statutes of limitation, no failure on the part of LIPA to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

8. **Assignment; Successors and Assigns.** Neither the Guarantor nor LIPA shall assign its rights hereunder without the prior written consent of the other party, and any assignment without such prior written consent shall be null and void and of no force or effect, except that LIPA may assign this Guaranty and its rights hereunder or transfer such rights by operation of law, to any other governmental entity or to a subsidiary of LIPA or the Authority. This Guaranty shall be binding upon and inure to the benefit of each party hereto and their respective successors and permitted assigns.

9. **Amendments, Etc.** No amendment of this Guaranty shall be effective unless in writing and signed by the Guarantor and LIPA. No waiver of any provision of this Guaranty or consent to any departure by the Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by LIPA. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

10. **Caption.** The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty.

11. **Representation and Warranties.** The Guarantor represents and warrants as follows:

(a) the Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty;

(b) the execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene (i) the Guarantor's organizational documents, (ii) any contractual restriction binding on the Guarantor or its assets or (iii) Applicable Law;

(c) this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles;

(d) no consent of any Person is required for the due execution, delivery and performance by the Guarantor of this Guaranty that has not been obtained;

(e) there is no claim now pending before or, to the best of the Guarantor's knowledge, threatened against it by, any Governmental Body or arbitral tribunal that is reasonably likely to have a material adverse effect on the Guarantor's ability to perform its obligations under this Guaranty;

(f) no bankruptcy, reorganization or insolvency proceedings are pending by or against the Guarantor, as debtor; and

(g) the Guarantor meets the creditworthiness standards required for guarantors in the Agreement.

12. **Term.** This Guaranty shall remain in full force and effect from the Effective Date until all of the later of (a) the date on which the Guaranteed Obligations have been fully paid or performed or (b) the date on which the Agreement is terminated pursuant to the terms thereof.

13. **GOVERNING LAW.** THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD OR REFERENCE TO THE CONFLICT OF LAWS PRINCIPLES OF ANY JURISDICTION.

14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

15. **Severability.** If any provision of this Guaranty shall be prohibited, invalid or unenforceable under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty, which will be enforceable to the fullest extent permitted by Applicable Law.

16. **Entire Agreement.** This Guaranty constitutes the entire agreement and understanding between the Guarantor and LIPA with respect to the Guaranteed Obligations and supersedes and replaces in its entirety any and all guaranties previously issued by the Guarantor to LIPA with respect to the Guaranteed Obligations, or any part of them.

17. **Counterparts.** This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative effective as of this \_\_\_\_ day of \_\_\_\_\_, 2012.

KEYSPAN CORPORATION

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