

AC 1552-S (Effective 4/12)

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
Bureau of Contracts, Floor 11-1
110 State Street
Albany, New York 12236

APPROVED DOCUMENT TRANSMITTAL

Date 3/29/17Dept ID [REDACTED]Contract No. [REDACTED]

Purchase Order No. _____

TO: LIPA

- ☒ Enclosed is an approved contract. Refer to this contract number and Department ID in all correspondence.
- ☐ Enclosed is an approved Amendment No./Change Order No. _____ in the amount of \$ _____.
- ☐ Extension is approved to _____ Amount if applicable \$ _____.
- ☐ Enclosed is an approved purchase order. Refer to this purchase order number and Department ID in all correspondence.
- ☐ Enclosed is an approved purchase order change notice in the amount of \$ _____.

☐ _____

GR

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

DEEPWATER WIND SOUTH FORK, LLC

LONG ISLAND POWER AUTHORITY

By: 

Name: Jeffrey Grybowski

Title: Chief Executive Officer

Date: 2/2/17

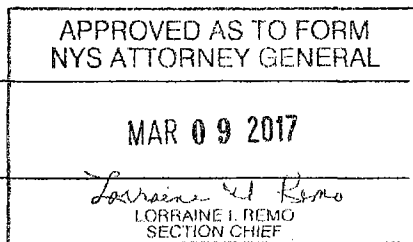
Approved as to Form:
Office of the Attorney General

By: _____

Name: _____

Title: _____

Date: _____

By: Name: ~~Thomas Falcone~~ RICK SHANSKYTitle: ~~Chief Executive Officer~~ Vice President of Operations OversightDate: 2/6/17

Approved:
Office of the State Comptroller

By: 

Name: _____

Title: _____

Date: 3/29/17



Thomas Falcone
Chief Executive Officer
tfalcone@lipower.org
516.719.9821

March 2, 2017

VIA EMAIL AND U.S. MAIL

Mr. Jeffrey Grybowski
Chief Executive Officer
Deepwater Wind South Fork, LLC
56 Exchange Terrace, Suite 300
Providence, RI 02903-1772

Re: Amendment to Pending LIPA and Deepwater Wind PPA

Dear Mr. Grybowski:

Reference is made to the Power Purchase Agreement ("PPA") dated January 25, 2017 between Long Island Power Authority ("LIPA") and Deepwater Wind South Fork, LLC ("Deepwater"). Capitalized terms used in this letter, but not defined, will have the meaning ascribed thereto in the PPA.

The Parties hereby agree to amend the PPA as follows:

- i. Section 15.3 is deleted in its entirety and replaced with the following:

"15.3 Lender(s)

Seller may, subject to Parties' compliance with requirements of this Section 15.3 which compliance shall constitute Buyer's written consent, assign, or grant as security, beneficially or otherwise, its rights under this Agreement to Lenders in connection with any financing of the Project, re-financing or other financing arrangement (through either a collateral or direct assignment and, in the case of a direct assignment, including a sub-assignment back to Seller for the term of the financing); provided, however, that Seller's obligations under this Agreement shall continue in their entirety in full force and effect as the obligations of a principal and not as a surety, and Seller shall remain fully liable for all of its obligations under or relating to this Agreement. Each such assignment and any assignee, purchaser or transferee shall be subject to Buyer's rights and defenses hereunder and under Legal Requirements. Seller shall provide prior notice to Buyer of any such assignment. Buyer shall execute such consents, agreements or similar documents with respect to an assignment hereof to Lender(s) as Lender(s) may reasonably request in connection with the documentation of the financing of the Project(s), including a consent to collateral assignment ("Consent Agreement") in a form reasonably acceptable to Buyer, which shall be in the form of Appendix II. Seller agrees to pay for Buyer's reasonable costs and expenses incurred in response to Seller's and Lender's requests, including attorney and consultant fees. Promptly after granting any such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which

Deepwater PPA Amendment
March 2, 2017
Page 2

Seller's interest under this Agreement has been assigned. Such notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice."

ii. Section 15.9 (New York State Finance Law Section 138) is incorporated in Article 15 following Section 15.8 as follows:

"15.9 New York State Finance Law Section 138

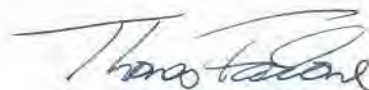
Notwithstanding any other provision of this Article 15, the provisions set forth in New York State Finance Law Section 138 shall apply."

All other terms and conditions of the PPA remain unchanged.

The above amendments to the PPA shall be effective as of January 25, 2017.

Please confirm your acceptance of the foregoing by signing and notarizing below, emailing a scan of your signature to Bobbi O'Conner (boconner@lipower.org), LIPA Deputy General Counsel, and sending three originals to Bobbi's attention.

Best regards,

A handwritten signature in black ink, appearing to read "Thomas Falcone", with a stylized flourish at the end.

Thomas Falcone
Chief Executive Officer

Deepwater PPA Amendment
March 2, 2017
Page 3

ACCEPTED BY:
Deepwater Wind South Fork, LLC


[Name and Title] *Chief Executive Officer*



STATE OF *RI*)
COUNTY OF *Providence*) ss.:

On the 6 day of March, 2017, before me personally came *Jeffrey Grayson* me known to be the individual described in the foregoing PPA as *Chief Executive Officer* of Deepwater Wind South Fork, LLC, who being sworn did acknowledge that he/she executed same on behalf of Deepwater Wind South Fork, LLC and that he/she was authorized to execute same on behalf of Deepwater Wind South Fork, LLC.

 #755696
Notary Public My Commission Expires August 26, 2017

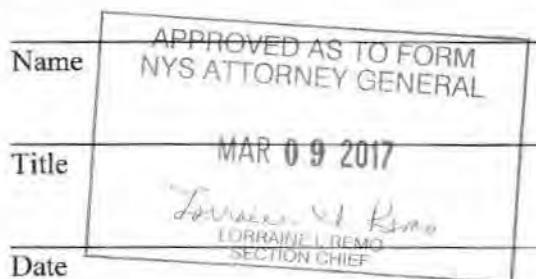
APPROVED BY:
Office of the State Comptroller


Name

Title
Date 3/29/17

9R \$1,624,738,893.00
for

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

Name
Title
Date


EXECUTION VERSION

**POWER PURCHASE AGREEMENT
BETWEEN
LONG ISLAND POWER AUTHORITY
AND
DEEPWATER WIND SOUTH FORK, LLC**

February 6, 2017

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SUPPLEMENTS

SUPPLEMENT 1: STANDARD CLAUSES FOR BUYER'S CONTRACTS

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, dated as of January 25, 2017, is between the Long Island Power Authority, a corporate municipal instrumentality of the State of New York, with its headquarters at 333 Earle Ovington Boulevard, Uniondale, New York 11553 ("Buyer") and Deepwater Wind South Fork, LLC, a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 56 Exchange Terrace, Suite 300, Providence, RI 02905 ("Seller").

WITNESSETH:

WHEREAS, the Long Island Lighting Company d/b/a LIPA ("Company"), a corporation organized and existing under the laws of the State of New York, is a wholly owned subsidiary of Buyer;

WHEREAS, pursuant to the Amended and Restated Operation Services Agreement ("A&R OSA") dated December 31, 2013, as may be restated, amended, modified, or supplemented from time to time, between Company and PSEG Long Island, LLC, PSEG Long Island LLC through its operating subsidiary, Long Island Electric Utility Servco ("Servco"), assumed the responsibility as Buyer's service provider, to operate and manage Buyer's transmission and distribution system and other utility business functions, including Buyer's power supply planning, and Servco's affiliate provides certain services, such as purchasing power and fuel procurement, to Buyer related to these responsibilities;

WHEREAS, Seller intends to construct, own, operate and maintain a wind turbine generating facility with a nominal rating (net of auxiliary power consumption and transmission losses) of approximately 90 MW, to be located in Federal waters on the outer continental shelf within the area described in the BOEM lease OCS-A-0486 (as further described in Appendix I, the "Project");

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, the Delivered Energy, Contract Capacity, Ancillary Services, and Renewable Attributes (each defined below, and, collectively, the "Products"), all in accordance with the provisions of this Agreement; and

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

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

ARTICLE 1: GENERAL DEFINITIONS

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

A&R OSA – has the meaning set forth in the recitals.

Act – means the LIPA Act (Public Authorities Law of the State of New York § 1020 *et seq.*), as amended from time to time.

Affiliate – means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” includes but is not limited to the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or equity interest; provided, however, for purposes of this Agreement, an entity with indirect control of Seller shall not be considered an Affiliate of Seller, except for purposes of Section 12.3.1. A voting interest of ten percent (10%) or more shall create a rebuttable presumption of control.

Aggrieved Party – has the meaning set forth in Section 13.1.

Agreement – means this Power Purchase Agreement, including all appendices and supplements attached hereto and amendments hereto that may be made from time to time in accordance herewith.

Ancillary Services – has the meaning set forth in the NYISO Rules.

Assignment – means the transfer, sale, conveyance, pledge, encumbrance or assignment of this Agreement or any rights, obligations or interests under this Agreement.

Attachment Facilities – means the Connecting Transmission Owner’s Attachment Facilities and the Developer’s Attachment Facilities.

Attribute Deficiency Month – has the meaning in Section 3.1.2(ii).

Average Monthly Capacity – has the meaning in Section 5.2.1.

Bankrupt – means with respect to any Person, such Person: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation

by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a Person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within sixty (60) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) days thereafter; (viii) causes or is subject to any event with respect to it which, under the Legal Requirements of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) above (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

Base Term – has the meaning set forth in Section 2.1.1(a).

Billing Period – has the meaning set forth in Section 7.1.

BOEM – means the U.S. Department of the Interior Bureau of Ocean Energy Management or any successor government agency.

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

Buyer – has the meaning set forth in the preamble.

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


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

Calendar Year – means each consecutive twelve (12) Month period beginning January 1st and ending December 31st.

Capacity – means the capability to generate and deliver Energy, expressed in MW.

Capacity Buydown Amount – means an amount equal to (a) \$150,000/MW, multiplied by (b) the positive difference, if any, between (i) the Expected Capacity, minus (ii) the Contract Capacity.

Capacity Shortfall – has the meaning set forth in Section 3.1.3(i).



Change in Law – means the enactment, adoption, promulgation, modification, suspension, repeal, or judicial determination, after the Execution Date, by any Governmental Authority of any Legal Requirements that materially increases the costs associated with a Party's performance of its obligations hereunder. Neither of the following shall be considered a Change in Law: (a) a new Legal Requirement imposed on the Project that is not applicable generally to electric generating facilities, (b) a change in interpretation or enforcement of any existing Legal Requirement, or (c) any change in the Renewable Energy Standard.

Chronic Underperformance – has the meaning set forth in Section 5.2.1.

Claim – means all third-party claims or actions, threatened or filed, whether groundless, false, fraudulent or otherwise and whether such claim or action is threatened or filed prior to or after the termination of this Agreement, that directly or indirectly relate to the subject matter of an indemnity under this Agreement, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise.

Claiming Party – has the meaning set forth in Section 14.3.

Class Year Interconnection Facilities Study – has the meaning set forth in Attachment X (Standard Large Facility Interconnection Procedures) to the NYISO Tariff.

Company – has the meaning set forth in the recitals.

Confidential Information – has the meaning set forth in Section 16.1.2.

Confidential Parties – has the meaning set forth in Section 16.1.2.

Connecting Transmission Owner – means Long Island Lighting Company d/b/a LIPA.

Connecting Transmission Owner's Attachment Facilities – has the meaning assigned thereto in the Interconnection Agreement.

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

Consent Agreement – has the meaning set forth in Section 15.3.

Consent(s) – means any approval, acceptance, consent, permit, license, decree, directive, qualification, certificate or other authorization that is required by Seller to own, construct, operate, enroll, register and maintain the Project from any Governmental Authority having jurisdiction, in accordance with applicable Legal Requirements, including all applicable environmental certificates, licenses, permits and approvals.

Contract Capacity – means ninety-seven-point five percent (97.5%) of the combined nameplate capacity of the installed Wind Turbines, which shall not exceed ninety-five and 55/100 (95.55) MW as calculated at the Delivery Point.

Contract Price – means the price in \$/MWh (US\$) set forth in Appendix 4 to be paid by Buyer to Seller in accordance with Sections 7.2.3(i) and (v) as the same may be adjusted pursuant to Section 5.4.

Contract Year – means (i) for the first Contract Year, the period beginning on Project COD and ending on December 31 of the Calendar Year in which Project COD occurs (referred to as Contract Year “0” in Appendix 4) and (ii) each of the consecutive twelve (12) Month periods thereafter through the end of the Term; provided, however, that the final Contract Year shall end on the last Day of the Term.

Costs – means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the transactions contemplated by this Agreement and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the transactions contemplated by this Agreement.

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

Credit Requirements – means, with respect to any Person, that such Person has at least two of the following Credit Ratings: (a) “Baa2” or higher from Moody’s; (b) “BBB” or higher from S&P; or (c) “BBB” or higher from Fitch.

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

Deemed Energy Deliveries – means, for each Reduced Delivery Hour during a Billing Period, the difference, expressed in MWh, between (i) the estimated Energy production from the Project, as set forth in the day-ahead energy production forecast provided to Buyer by the NYISO for each Reduced Delivery Hour in such Billing Period, less any portion of such estimated Energy production that Seller would have been unable to deliver due to scheduled or unscheduled maintenance, a Force Majeure Event or a Forced Outage, without duplication of any estimated Energy production related to a maintenance outage that was reflected in the NYISO

day-ahead estimated production forecast for such Reduced Delivery Hour and (ii) Delivered Energy during such Reduced Delivery Hour.

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

Delivered Energy – means Energy that is generated by the Project and delivered by Seller to Buyer at the Delivery Point measured by Buyer's Metering Devices.

Delivery Point – means the point of interconnection between Developer Attachment Facilities and the Connecting Transmission Owner's Attachment Facilities as set forth in the Interconnection Agreement.

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

Disclosing Party – has the meaning set forth in Section 16.1.2.

Discounted Energy – has the meaning set forth in Section 5.4.

Early Termination Date – has the meaning set forth in Section 6.5.

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

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

Energy – means three-phase, 60-hertz alternating current electric energy (including Test Energy), expressed in MWh.

Energy Delivery Cap – means the maximum amount of Delivered Energy in MWh that can be delivered from the Project to the Delivery Point in any Hour based on limitations as established by the NYISO and as set forth in the Interconnection Agreement, but in no event greater than ninety-five and 55/100 (95.55) MWh per Hour at the Delivery Point.

Energy Payment Adjustments – means, for each Monthly Invoice, amounts due from Buyer to Seller for which Buyer has agreed to pay to Seller under this Agreement, including amounts owed pursuant to Section 3.7, and which are not otherwise included in the definition of Monthly Energy Charge.

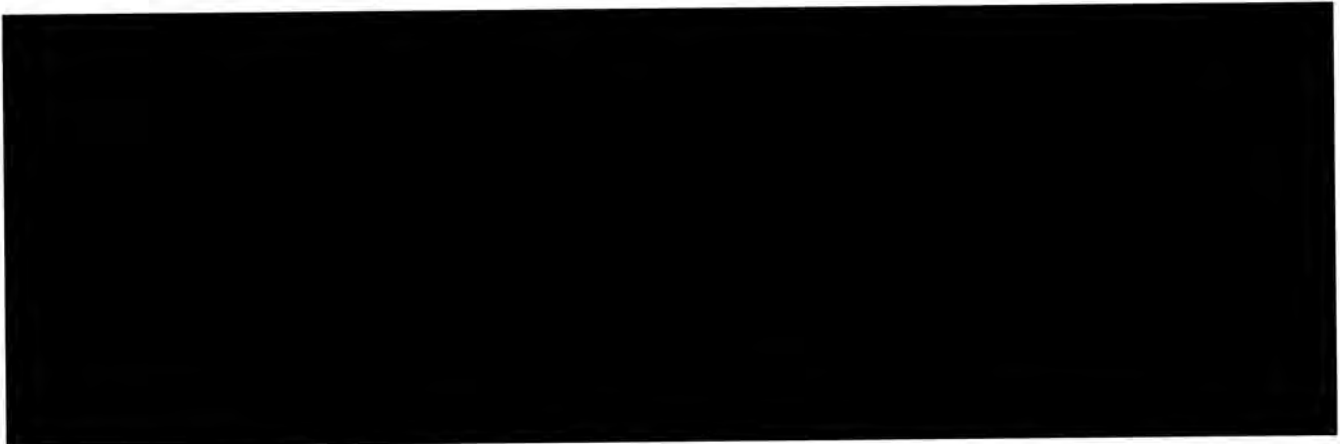
EPT – means Eastern Prevailing Time which shall be Eastern Standard Time or Eastern Daylight Savings Time, as applicable, with respect to any given hour.

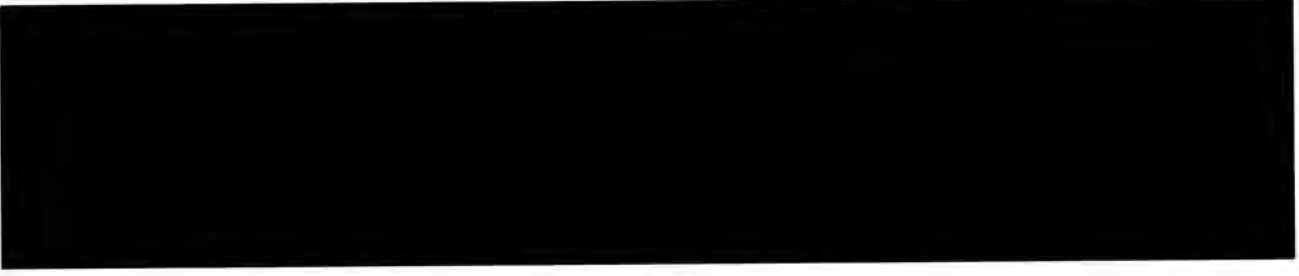
Equitable Defenses – means any defense to an obligation arising under bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally which may be allowed in the discretion of a court before which such bankruptcy, insolvency or creditors' rights proceedings may be pending.

Equivalent Availability – during any Month after Project COD, shall be equal to one hundred percent (100%) multiplied by a fraction where: (1) the numerator is the sum for each hour of such Month of (i) the portion of the Project that is in service and capable of producing and delivering Delivered Energy (expressed in MW of Contract Capacity reduced for partial forced outages or deratings) and (ii) the portion of the Project which is not in service due to (a) a Planned Outage, (b) a Maintenance Outage, (c) a Buyer Event of Default, (d) the Project having been taken out of service at the request of a Governmental Authority, the Connecting Transmission Owner or Buyer (other than as a result of a Forced Outage), (e) Buyer or the Connecting Transmission Owner being unable or unwilling to accept Energy or (f) a Force Majeure Event and (2) the denominator is the sum of the Contract Capacity in every hour of such Month. For the avoidance of doubt, Contract Capacity not capable of generating and delivering Energy due to a Forced Outage if such Forced Outage is not due to (w) a Buyer Event of Default, (x) the Project having been taken out of service at the request of a Governmental Authority, the Connecting Transmission Owner or Buyer, (y) Buyer or the Connecting Transmission Owner being unable or unwilling to accept Energy or (z) a Force Majeure Event, is excluded from the numerator and included in the denominator, and the Equivalent Availability shall not exceed one hundred percent (100%). Notwithstanding the foregoing, solely, for purposes of this calculation, the Equivalent Availability during the Month in which the Project COD occurs is deemed to be ninety-five percent (95%).

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

Event of Default – means a Buyer Event of Default or Seller Event of Default, as applicable.





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

Expected Capacity – means ninety (90) MW at the Delivery Point.

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

Extended Term – has the meaning set forth in Section 2.1.2.

Federal Power Act – means the Federal Power Act, as it may be amended from time to time.

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

Fitch – means Fitch Inc., Fitch Ratings Ltd. and its subsidiaries.

FOIL – has the meaning set forth in Section 16.2.

Force Majeure Event – has the meaning set forth in Section 14.1.

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

Forced Outage – means the removal from service of all or any portion of the Project for emergency reasons or any condition in which the Project is unavailable, in whole or in part, due to an unanticipated failure, including NERC Event Types U1, U2 and U3, as set forth on Appendix 17, and specifically excludes any Maintenance Outage or Planned Outage.

GAAP – means generally accepted accounting principles as established from time to time by the Financial Accounting Standards Board, consistently applied.

Governmental Authority – means (i) any federal, state, local, municipal, or other government, (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power (including the NYISO, FERC, the electrical transmission system operators and NERC), and (iii) any court or governmental tribunal; provided that Buyer and its subsidiaries shall not be included in such definition when acting as purchaser hereunder or the Connecting Transmission Owner pursuant to this Agreement and any related agreement between the Parties hereto.

Governmental Charges – has the meaning set forth in Section 10.2.

Guaranty – means an instrument obligating a guarantor meeting the Credit Requirements to unconditionally guarantee the payment obligations of Seller, which shall be in a form reasonably acceptable to Buyer.

ICAP Supplier – has the meaning set forth in the NYISO Rules.

Indemnified Party – has the meaning set forth in Section 12.3.1.

Indemnifying Party – has the meaning set forth in Section 12.3.1.

Installation Start Date – means the date on which Seller mobilizes installation vessels at the Site.

Interconnection Agreement – means the Large Generator Interconnection Agreement, by and between the Connecting Transmission Owner, Seller and the NYISO, in substantially the form set forth in the NYISO's Open Access Transmission Tariff ("OATT") that governs the interconnection between the Connecting Transmission Owner's Electrical System and the Project; prior to the execution and delivery of the Interconnection Agreement, references in this Agreement shall refer to the form thereof set forth in the NYISO's OATT.

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

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

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

Legal Requirements – means (i) all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, authorizations or Consents, directives, and requirements of all Governmental Authorities, and (ii) NYISO Rules.

Lender – means any Person or agent or trustee of such Person, including any tax equity investor, who provides financing for the Project, including pursuant to one or more lease transactions relating to the Project (including sale-leaseback transactions, synthetic leases or other lease transactions).

Letter(s) of Credit – means one or more irrevocable, transferable standby letters of credit governed by the International Standby Practices 1998 (ISP 98) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having at all times (i) net assets of not less than One Billion Dollars (US\$1,000,000,000), and (ii) not less than the following Credit Rating from two of the three specified rating agencies: "A-" from S&P, "A-" from Fitch, and "A3" from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued, which may be drawn at a location in the City of New York, New York. A Letter of Credit will be in an acceptable form if substantially similar to the form attached as Appendix 10 hereto.

Liquidated Damages – means the amounts payable pursuant to Sections 2.3.4, 3.1.3, 3.3, or Appendix 16, as applicable.

Losses – means, with respect to any Party, an amount equal to the net present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of transactions under this Agreement, determined in good faith and using commercially reasonable procedures.

Lump Sum Interconnection Payment – has the meaning set forth in Section 4.3.1.

Maintenance Outage – means NERC Event Types MO and ME, as set forth in attached Appendix 17 and specifically excludes any Forced Outage or Planned Outage.

Minimum Required Consents – has the meaning set forth in Section 2.3.1.

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

Monthly Energy Charge – means, for purposes of the Monthly Invoice to be submitted by Seller to Buyer after the end of each Month pursuant to Section 7.2.3, the amount due and payable by Buyer to Seller, calculated by multiplying the (i) the sum of MWh of Delivered Energy in such Month plus the MWh of Deemed Energy Deliveries in such Month by (ii) the applicable Contract Price set forth in Appendix 4, plus all amounts becoming due in such Month, which may comprise credits for Attribute Deficiency Month, and consistent with the sample Monthly Invoice set forth in Appendix 5, which shall be the consideration for the Delivered Energy and Renewable Attributes delivered in such Month.

Monthly Energy Payment – has the meaning set forth in Section 3.7.2.

Monthly Interconnection Payment – has the meaning set forth in Section 4.3.2.

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

Moody's – means Moody's Investor Services, Inc. or its successor.

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

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

M/WBE/VET – means Minority, Women-Owned, and New York State Service-Disabled Veteran-Owned Business Enterprises, as more fully described in Appendix 16 to this Agreement.

NERC – means the North American Electric Reliability Corporation or any successor thereto.

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

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

Non-Defaulting Party – means the Party that is not the Defaulting Party.

Notice of Default – has the meaning set forth in Section 6.3.

Noticed Party – has the meaning set forth in Section 13.1.

NYISO – means the New York Independent System Operator, Inc. or any successor thereto.

NYISO Markets – means markets administered by the NYISO.

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

NYISO Tariff – means the NYISO Open Access Transmission Tariff and/or the NYISO Market Administration and Control Area Services Tariff or any other tariff applicable to the NYISO, as in effect from time to time.

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

P50 – means that there is an equal chance that the actual net (i.e., net of the losses listed in Schedule 1 to Appendix 3) Energy generation from the Project for a Contract Year will be greater than or less than the Projected Energy Deliveries for such Contract Year.

Party or Parties – means either Buyer or Seller, or both.

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

Permanent Seller Security – has the meaning set forth in Section 9.1.1.

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

Planned Outage – means NERC Event Types PO and PE, as set forth in attached Appendix 17, and specifically excludes any Maintenance Outage or Forced Outage.

Pre-Construction Seller Security – is defined in Section 9.1.1.

Products – has the meaning set forth in the recitals.

Project – means the renewable Energy generating facility, and transmission facilities as described in Appendix 1.

Project COD – has the meaning set forth in Section 3.2.

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Project COD Target Date – means December 1, 2022, or such later date to which the Project COD Target Date shall be extended in accordance with Section 3.2.3.

Projected Energy Deliveries – are set forth in Appendix 3 as may be adjusted pursuant to Section 5.3.2.

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

- A. equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;
- B. sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the Site;
- C. preventive, routine, and non-routine maintenance and repairs are performed on a basis that is reasonably expected to result in reliable, long term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

- D. appropriate monitoring and testing are performed in a manner that is reasonably expected to result in equipment functioning as designed;
- E. equipment is not operated in a reckless manner, in violation of manufacturer's guidelines and warranties or in a manner unsafe to workers, the general public, or the interconnected system or contrary Legal Requirements, including any environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive loading, frequency, polarity, synchronization, and/or control system limits;
- F. equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and designed to function to the maximum extent possible over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions; and
- G. equipment, components, and processes are appropriately permitted with any Governmental Authority and are operated and maintained in accordance with Legal Requirements.

Qualified Person – means (a) Deepwater Wind Holdings, LLC or a wholly-owned subsidiary of Deepwater Wind Holdings, LLC or (b) a Person that is qualified, financially sound and has at least two (2) years' experience and capability involving the ownership and/or operation of utility scale renewable energy facilities of a size equal to or greater than the Project.

Reactive Power – has the meaning set forth in the NYISO Tariff.

REC – means renewable energy certificate units that fully comply with the Renewable Energy Standard, offered and delivered as performance during the Term of this Agreement, such that one REC shall be associated with each MWh of Delivered Energy.

Receiving Party – has the meaning set forth in Section 16.1.2.

Reduced Delivery Hour – means any hour during which Seller was ready, willing and able to deliver Energy to the Delivery Point, but Buyer's ability to accept delivery of Energy at the Delivery Point and/or Seller's ability to produce Energy was reduced below the Energy Delivery Cap as a result of a Buyer Event of Default and/or any action or inaction by the Connecting Transmission Owner; provided that any hour during which Buyer's reduced ability to accept delivery of Energy and/or Seller's ability to produce Energy resulted from any Force Majeure Event affecting the Connecting Transmission Owner's Electrical System or any scheduled or unscheduled maintenance at or affecting the LIPA 9L-East Hampton Substation conducted in accordance with Prudent Utility Practice shall not be a Reduced Delivery Hour; and further provided that Seller actually delivered the maximum amount of Energy Buyer was able to accept during such hour.

Regulatory Event – has the meaning set forth in Section 12.8.

Reimbursable Interconnection Costs – has the meaning set forth in Section 4.3.

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

Renewable Energy Standard – means that portion of the New York State Clean Energy Standard adopted by the New York Public Service Commission on August 1, 2016 pursuant to Order Adopting a Clean Energy Standard covering wind and other renewable energy projects, as such standard may be revised, supplemented or replaced by any successor provision of New York State law, regulation or policy from time to time.

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

SEC – has the meaning set forth in Section 16.7.

Security Amount – means the amount of the applicable Seller Security.

Seller – has the meaning set forth in the preamble.

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

Seller Interest Rate – means ten percent (10%).

Seller Security – has the meaning set forth in Section 9.1.1.

Seller's Conditions – means the conditions for Project COD, as set forth in Section 3.2.1.

Seller's Metering Devices – has the meaning set forth in Section 3.15.1.

Site – means the Project premises described in Appendix 1.

State Comptroller – means the New York State Office of the State Comptroller.

Station Service Energy – means Energy consumed by the Project.

Substitute Owner – has the meaning set forth in the Consent Agreement.

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

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

Term – means the Base Term, as may be extended pursuant to Section 2.1.2, and, if applicable, the Extended Term.

Termination Payment – has the meaning set forth in Section 6.5.

Test Energy – means Energy generated by the Project before Project COD.

Title – has the meaning set forth in Section 3.6.

Unacceptable Condition – has the meaning set forth in Section 2.3.2(b).

Wind Turbine – means each wind turbine generating system that is included as part of the Project, including its tower, pad transformer, controller system and the associated equipment, as identified and further described in Appendix 1.

Year – means a period of 365 consecutive days, or 366 consecutive days if such period includes a February 29.

1.2 Construction Unless otherwise indicated, (i) defined terms include the plural as well as the singular; (ii) any agreement defined or referred to herein includes each amendment, modification and supplement thereto and waiver, approval and consent in respect thereof as may become effective from time to time and includes references to all Appendices, Exhibits, Schedules and other attachments thereto and instruments, agreements or other documents incorporated therein; (iii) any term defined by reference to any instrument, agreement or other document has such meaning set forth in such document as of the date hereof and unless expressly amended, such meaning shall remain in effect whether or not such document is subsequently amended, modified or terminated; (iv) a reference to any law or Legal Requirement includes any amendment, modification or successor thereto; (v) a reference to any Person includes its

permitted successors and assigns; (vi) all references to Appendices, Articles, Sections, Schedules and Exhibits shall mean and refer to the respective Appendices, Articles, Sections, Schedules and Exhibits in or attached to this Agreement or any document in which such reference appears; (vii) the words “include,” “includes” and “including” are not limiting and shall be deemed to be followed by the words “without limitation” whether or not in fact followed by such words or words of like import; (viii) the terms “hereof,” “herein,” “hereunder” and comparable terms refer to this entire Agreement with respect to which such terms are used and not to any particular Article, Section or subdivision hereof; and (ix) the word “day” means a “Day” as defined herein and includes each calendar day including Saturdays, Sundays and holidays.

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ARTICLE 2: TERM

2.1 Term

2.1.1 This Agreement shall become effective on the Effective Date. Buyer shall give Seller written notice within five (5) Business Days after the occurrence of the Effective Date.

(a) The term of this Agreement shall begin on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of Project COD, unless terminated earlier in accordance with the terms hereof (the "Base Term"); provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and, provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations hereunder unless such obligations have been terminated as provided herein.

(b) The Base Term may be extended as set forth in Section 2.1.2 below.

2.1.2 Buyer shall have an option to extend this Agreement (such extension, the "Extended Term") for five (5) Years by providing Seller written notice of Buyer's election at least thirty-six (36) Months prior to the end of the Base Term; provided, however, that, in the event Seller reasonably determines, in accordance with Prudent Utility Practice, that the Project is unable to operate for the duration of the proposed Extended Term or requires any upgrades, refurbishment or capital expenditures that are unacceptable to Seller, in its sole discretion, then Seller may decline such option by providing Buyer written notice of Seller's determination no later than six (6) Months following Seller's receipt of Buyer's election notice, in which case this Agreement shall terminate at the expiration of the Base Term. If Buyer exercises such option and Seller does not decline such option, then the Contract Price shall be the price in \$/MWh set forth in Appendix 4 and the Projected Energy Deliveries shall be the amounts set forth in Appendix 3, in each case, applicable in the event the Term is extended pursuant to this Section 2.1.2. The terms and conditions of this Agreement shall apply during the Base Term and the Extended Term.

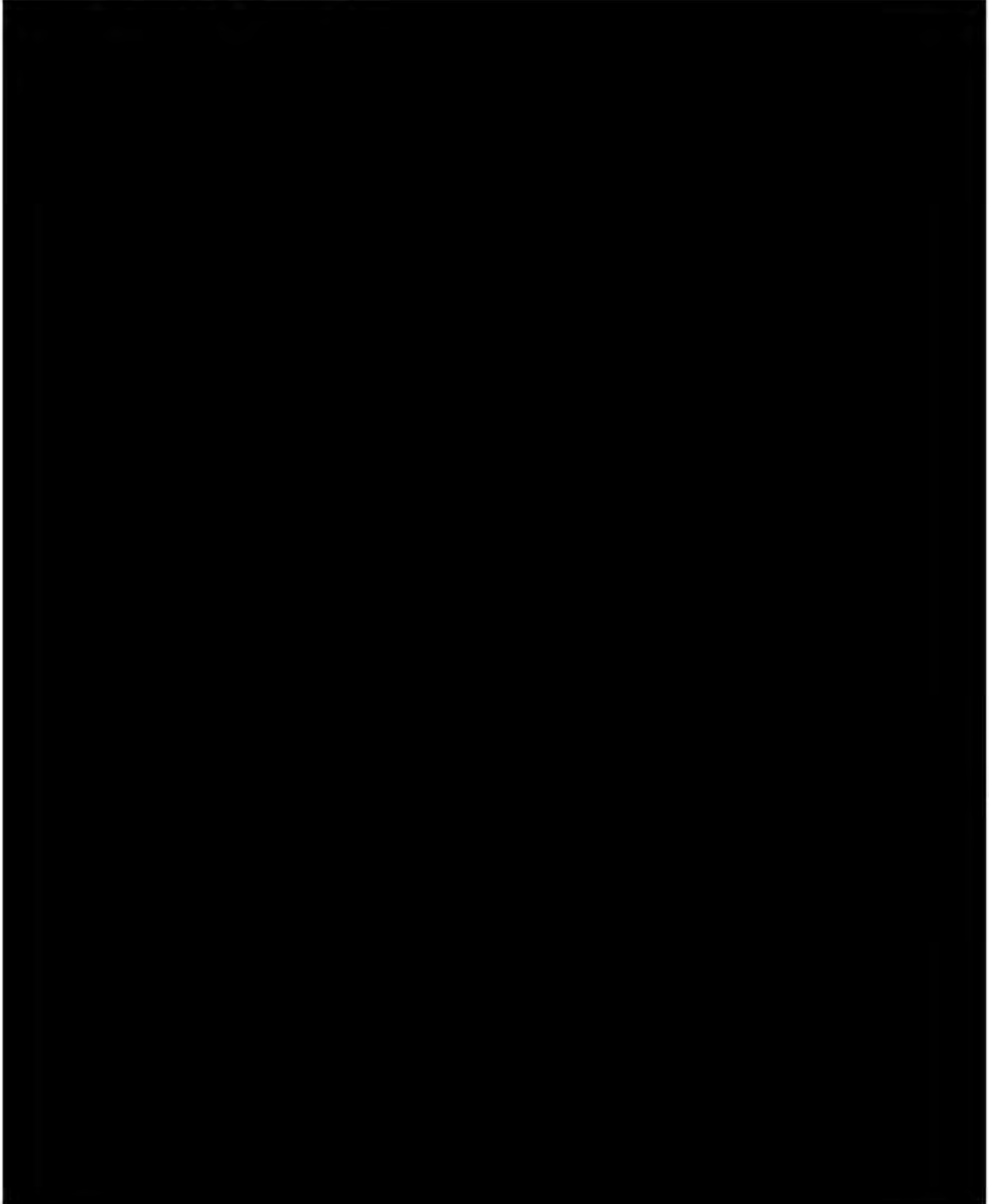
2.1.3 Buyer's obligation to purchase and receive Energy during the Term shall be subject, after Project COD, to Seller's delivery of Products in accordance with the provisions of this Agreement.

2.2 Opinion of Counsel

Seller shall deliver to Buyer an opinion of counsel (which may be an opinion of its in-house counsel) within thirty (30) Days after Seller receives written notice from Buyer stating that the Effective Date has been achieved, in a form and substance reasonably satisfactory to Buyer, containing the opinions that this Agreement has been duly and validly executed and delivered by

Seller, and that this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against it in accordance with its terms, subject to customary assumptions, qualifications and exceptions.

2.3 Early Termination





2.4 Effective Date

Notwithstanding anything herein, this Agreement shall be null and void and the Parties shall have no obligation to each other hereunder if the Effective Date has not occurred on or before the date which is one hundred and eighty (180) Days following the Execution Date unless such failure is excused as a result of the occurrence of one or more Excused Failure Days or unless otherwise mutually agreed by the Parties in writing.

2.5 Cooperation

The Parties shall reasonably cooperate in the preparation and the prosecution of all applications for Consents required in connection with this Agreement.

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ARTICLE 3: OBLIGATIONS AND DELIVERIES

3.1 Delivery, Sale and Purchase of Products

Seller shall sell and deliver to Buyer at the Delivery Point all Delivered Energy and Ancillary Services produced by the Project during the Term, sell and make available to Buyer all Contract Capacity, and convey to Buyer all Renewable Attributes associated with and attributable to such Energy, and Buyer shall purchase all such Products. Buyer shall accept and purchase from Seller and pay the applicable Contract Price set forth in Appendix 4 for all Delivered Energy and pay the applicable Contract Price set forth in Appendix 4 for Deemed Energy Deliveries in the corresponding Contract Year, subject to the provisions of Section 5.3, and accept and purchase from Seller all Contract Capacity in the corresponding Contract Year, subject to the provisions of Section 5.1. Unless otherwise expressly specified herein, Seller shall accept the Contract Price as full payment by Buyer for all Products provided to Buyer by the Project. The Parties' respective obligations to sell and deliver, and receive and pay for, the Products or the Deemed Energy Deliveries under this Agreement shall commence on Project COD. For the avoidance of doubt, the applicable Contract Price for the Products shall be the prices set forth in Appendix 4.

3.1.1 Delivered Energy

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

(ii) Seller shall not schedule or deliver, and Buyer is not obligated to accept or pay for any deliveries of Delivered Energy at the Delivery Point in excess of the Energy Delivery Cap during any period.

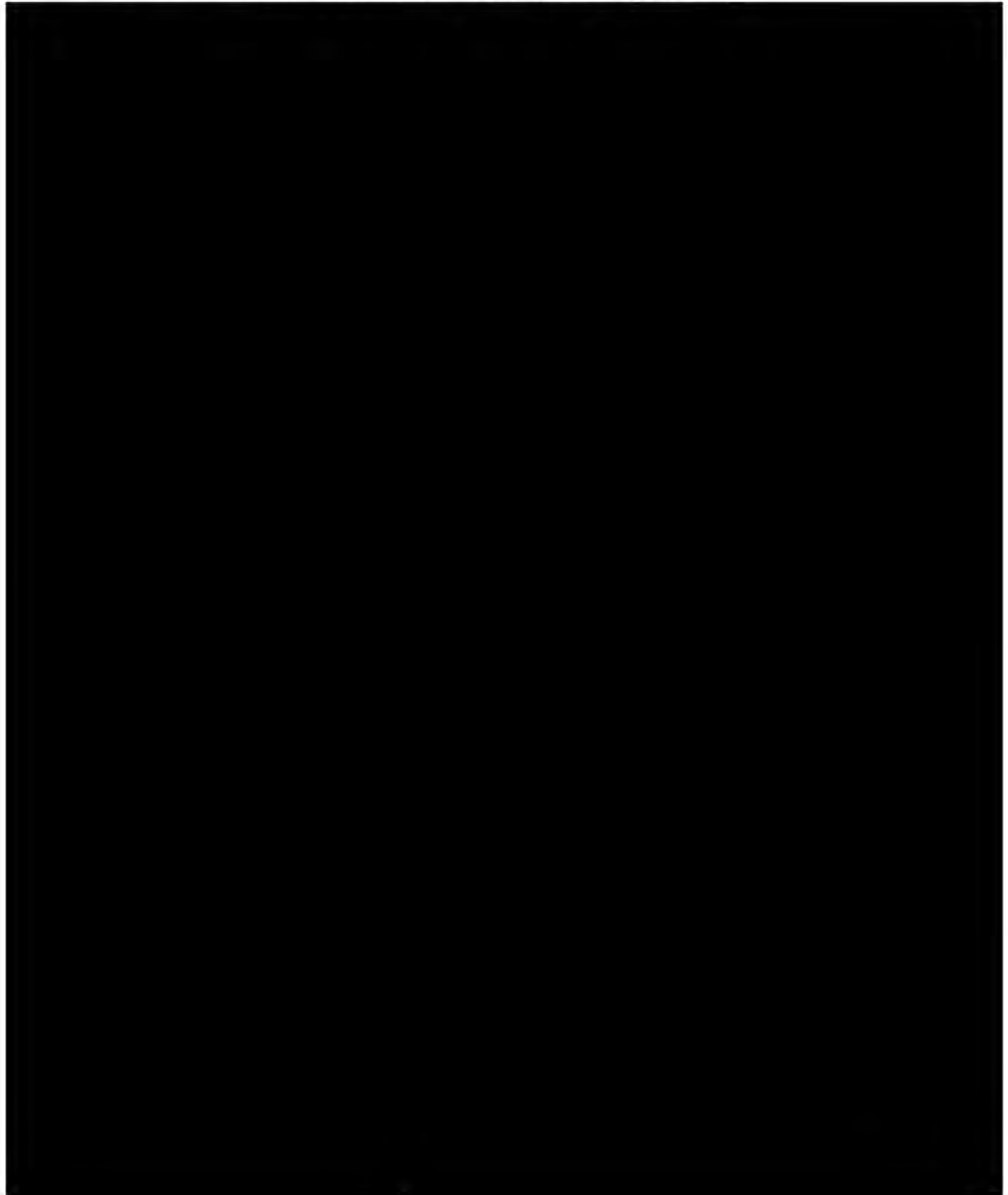
3.1.2 Renewable Attributes

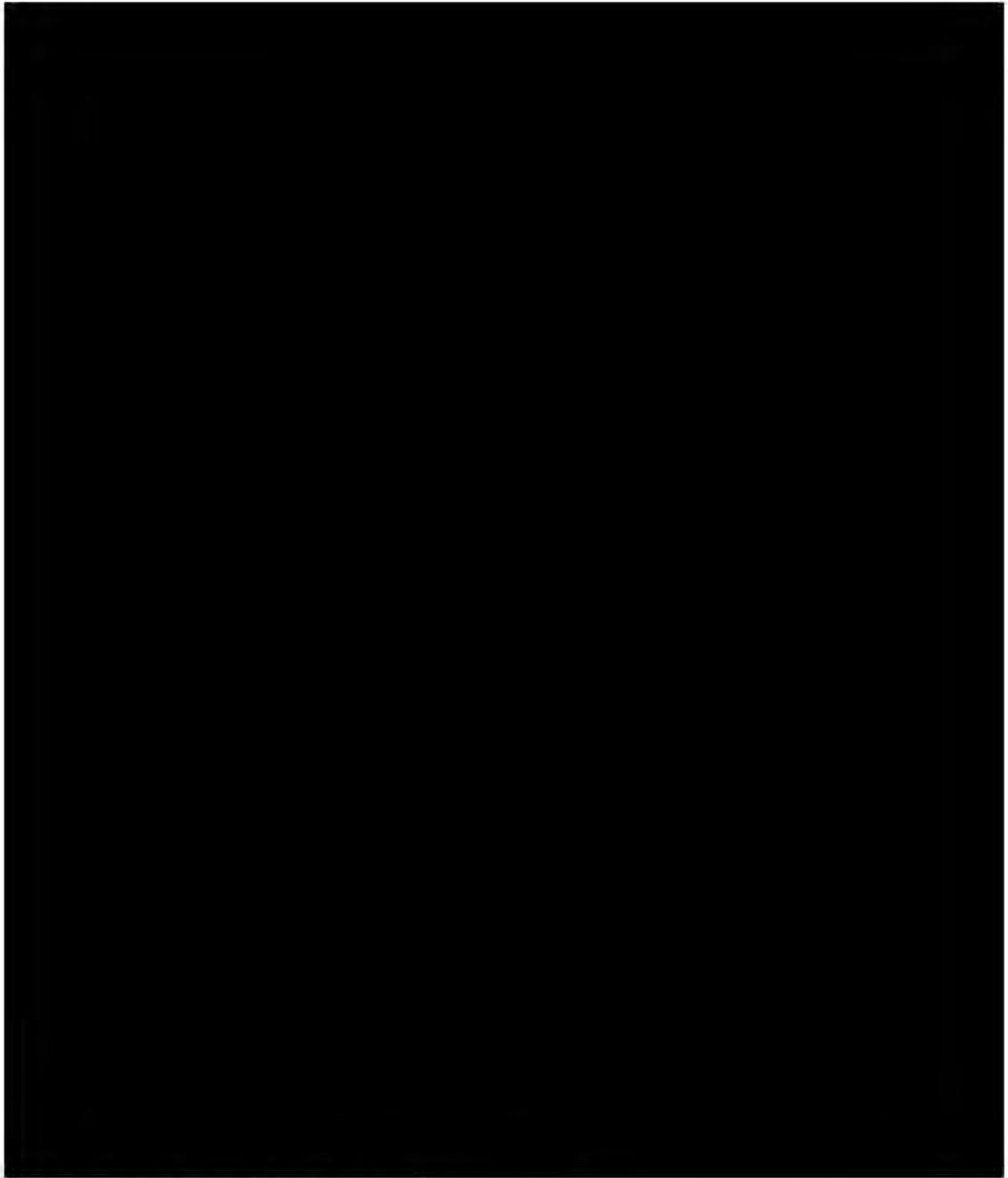
(i) For each Month during the Term, all Renewable Attributes associated with the Energy made available by Seller during such Month shall be transferred from Seller to Buyer through their inclusion on the Certification and Assignment of Rights Form (attached as Appendix 6), which shall accompany each Monthly Invoice. Should Buyer create, sanction, adopt or begin participation in a tracking system for accounting for generation attributes or certificates associated with generation in the New York Control Area, Buyer shall give Seller written notice thereof, together with instructions and any necessary forms, and thereafter such transfer will also include the delivery of the attributes or certificates associated with each Renewable Attribute, at the earliest time such certificates or attributes become available for delivery, to Buyer.

(ii) In the event that Renewable Attributes associated with Delivered Energy for any Month are not delivered with the Monthly Invoice for such

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

3.1.3 Failure to Achieve Expected Capacity on Project COD





3.1.4 Installation, Operation and Maintenance

Seller shall proceed with engineering, construction/installation and implementation of the Project using Prudent Utility Practices and in a manner that will allow for achievement of Project COD by the Project COD Target Date. Seller shall be solely responsible for obtaining all Consents, the development, construction, installation, operation and maintenance of the Project, including provision of necessary workforce, equipment, spare parts and supplies. If applicable, Seller shall provide all fuel and materials and any emissions credits or other allowances required for operation of the Project. Seller shall maintain the Project in good operating condition in accordance with Prudent Utility Practices. Seller shall ensure that the Project and its provision of Energy

and Contract Capacity under this Agreement conforms to all applicable NYISO Rules, all applicable rules for the Connecting Transmission Owner's Electrical System, and the Operating Instructions.

3.1.5 Site Control

Seller shall be solely responsible to obtain all necessary easements or licenses to effectuate Site control for the Project including the Developer Attachment Facilities throughout the Term.

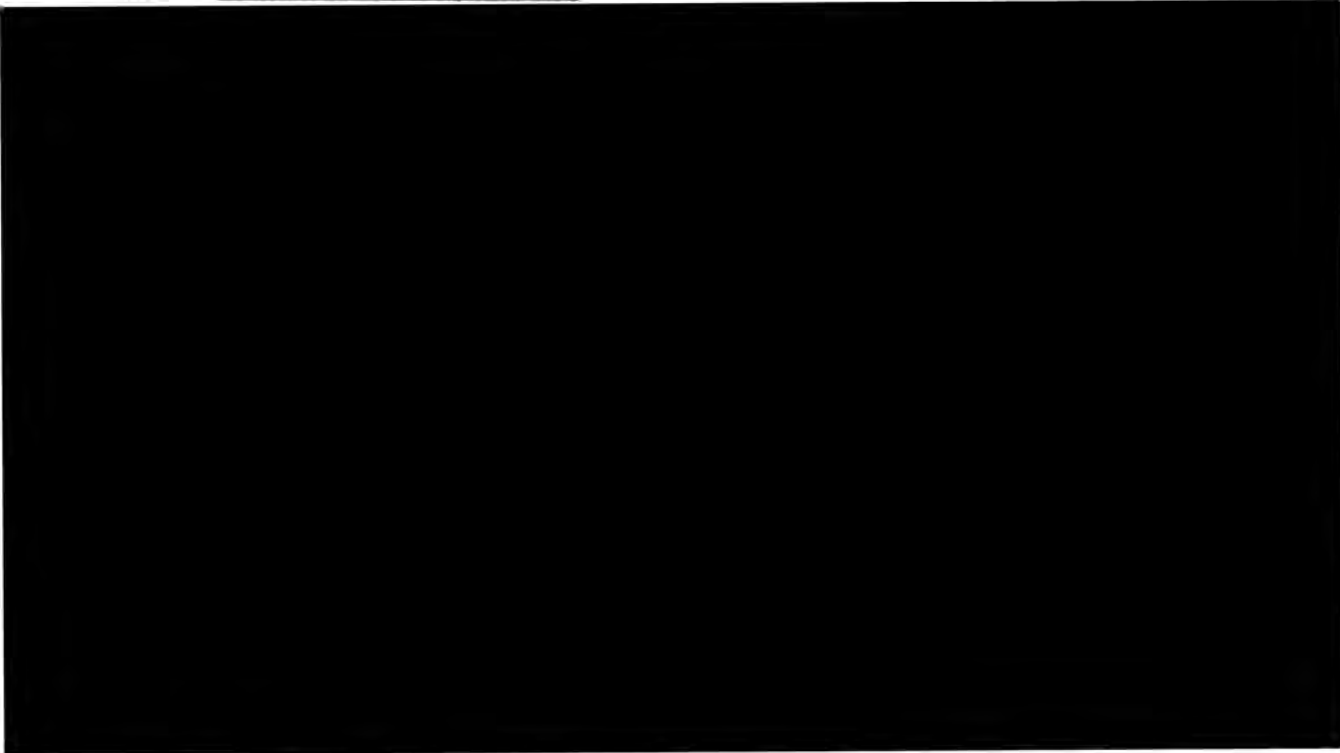
3.1.6 Ancillary Services

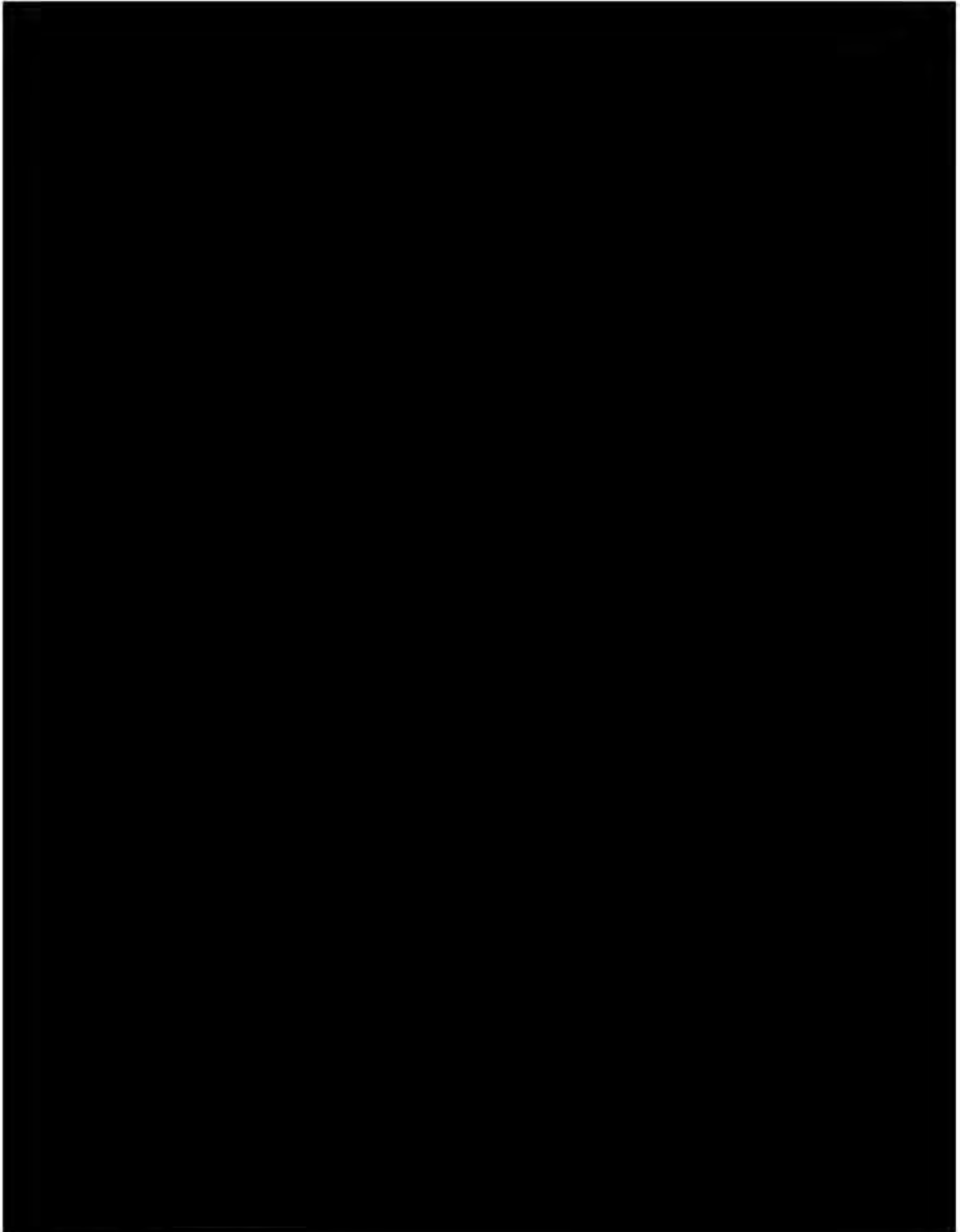
When Seller is delivering Energy and Capacity to Buyer, Reactive Power shall be provided by Seller upon request by Buyer or the Connecting Transmission Owner within the capabilities of the Project to the extent consistent with Seller's other obligations under this Agreement and the Interconnection Agreement. To the extent that Seller delivers and sells to Buyer any Ancillary Services produced by the Project, including Reactive Power, Buyer shall be entitled to the benefits of any such sales. Accordingly, to the extent Seller receives a payment from the NYISO pursuant to the Interconnection Agreement for Reactive Power provided from the Project, Seller shall credit Buyer with an amount equivalent to such payment (net of taxes, costs or other liabilities incurred by Seller in connection with such payment) on the subsequent Monthly Invoice submitted to Buyer. For the avoidance of doubt, Buyer's payment for Ancillary Services is included in the Contract Prices included in Appendix 4.

3.1.7 Line Losses and Auxiliary Power Requirement

Seller shall be solely responsible for line losses to the Delivery Point and auxiliary power requirements of the Project.

3.2 Conditions for Project COD





3.2.2 Progress Reports

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

describing the progress of construction/installation of the Project, including, prior to Project COD, any events of material significance to Seller's ability to meet the Project COD Target Date.

3.2.3 Milestones; Effective Date

(i) Each of the Minimum Required Consents Application Target Date, Minimum Required Consents Receipt Target Date, Target Installation Start Date and Project COD Target Date shall be extended for each Excused Failure Day day-for-day or for such longer period as may be reasonably required as a matter of equity if access to the Site is limited due to weather or sea state conditions. Any one Day on which the conditions for an Excused Failure Day occur shall count as only one Excused Failure Day, regardless of the nature of such circumstances.

(ii) If the Effective Date occurs after March 31, 2017, then the Contract Price shall be the price in \$/MWh set forth in Appendix 4 applicable in such event.

3.2.4 Commercial Operation Date Notice

Upon the achievement of the conditions set forth in Section 3.2.1, Seller shall deliver to Buyer an officer's certificate stating that the conditions set forth in Section 3.2.1 have been achieved.

3.2.5 Testing

Prior to achieving commercial operation, Seller shall conduct or cause to be conducted all tests required by Sections 3.2.1(i)(a) and 3.2.1(i)(c) in accordance with Prudent Utility Practices.

3.3 COD Liquidated Damages

(i) If Seller does not achieve Project COD by the Project COD Target Date other than for reasons beyond Seller's control, then Seller shall pay to Buyer as Liquidated Damages an amount equal to three hundred dollars (\$300) per MW multiplied by the Expected Capacity per Day for each Day of delay following the Project COD Target Date up to a maximum amount equivalent to three hundred sixty-five (365) Days of delay; provided that Seller's obligation to pay such Liquidated Damages not previously accrued shall terminate on the date on which Seller satisfies the conditions set forth in Section 3.2.1.

(ii) If Seller has not achieved Project COD by three hundred sixty-five (365) Days following the Project COD Target Date, Buyer shall have the right to promptly terminate this Agreement by written notice to Seller, and Buyer shall be entitled to Liquidated Damages in the amount of the Seller Security required to be delivered pursuant to Section 9.1.1.

(iii) Buyer's right to Liquidated Damages pursuant to Section 3.3(i) and right to terminate this Agreement pursuant to Section 3.3(ii) with the payment by Seller of Liquidated Damages pursuant thereto, shall be Buyer's sole and exclusive remedy if Seller fails to achieve Project COD following the Project COD Target Date.

(iv) Liquidated Damages due under this Section 3.3 will be paid by Seller to Buyer pursuant to the provisions of Article 7.

3.4 Buyer's Resale of Products

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

3.5 Good and Marketable Title; No Encumbrances

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

3.6 Seller's Responsibility Related to Renewable Attributes

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

3.7 Renewable Energy Standard Costs; Future Renewable Attributes

3.7.1 Seller shall ensure that the Project complies with applicable Renewable Energy Standard eligibility rules and requirements, if any; provided that such compliance obligation shall be subject to Seller's recovery from Buyer of all actual, reasonable, and verifiable capital costs incurred by Seller in connection with such compliance as an Energy Payment Adjustment. Prior to incurring any expenditures for such compliance costs, Seller shall (i) provide notice to Buyer when it becomes aware of the need to make

such expenditures, and (ii) advise Buyer as to the nature, estimated cost, and timing of the capital expenditure required for compliance. Buyer shall have sixty (60) Days to review such advice and may approve or not approve Seller's incurring such capital expenditures including the timing of such expenditures; provided, that (i) Seller shall only be required to comply with the Renewable Energy Standard eligibility rules and requirements for which Buyer authorizes recovery of the related compliance costs, if any, and (ii) Seller shall have no obligation to comply with any Renewable Energy Standard eligibility rules and requirements unless and until Buyer approves the recovery of the related capital expenditures.

3.7.2 If Buyer approves the incurrence of capital expenditures by Seller pursuant to Section 3.7.1 above and such costs (i) are less than or equal to \$500,000, then Buyer shall reimburse Seller for such costs as a lump sum payment to be made within one (1) month after the incurrence of such costs or (ii) exceed \$500,000, then Buyer may choose to reimburse such costs to Seller either through (a) equal Monthly Energy Payments beginning one (1) month following the incurrence of such costs as described below; or (b) a lump sum payment to be made within one (1) month after the incurrence of such costs. "Monthly Energy Payment" shall mean levelized monthly payments of interest and principal based on (a) the remaining months in the Base Term, or if the Parties have agreed to extend the Term of the Agreement pursuant to Section 2.1.2, then the remaining months in the Term; (b) the dollar amount of reimbursable capital costs pursuant to Section 3.7.1; and (c) the Seller Interest Rate divided by twelve (12).

3.7.3 The Parties acknowledge and agree that as of the Execution Date Seller is committing to furnish to Buyer and Buyer is committing to accept from Seller all available Renewable Attributes, but the presently-available Renewable Attributes include only the RECs related to the Renewable Energy Standard; however, Renewable Attributes which exist or are created after the Execution Date, including Renewable Attributes which are created with the Renewable Energy Standard may be recognized by a Governmental Authority after the Execution Date. In such event, Buyer may elect to have such future Renewable Attributes transferred by Seller and accepted by Buyer pursuant to the terms and conditions set forth in this Agreement by providing written notice to Seller. If Buyer elects to effect the transfer of such future Renewable Attributes from Seller, then all actual, out-of-pocket costs reasonably incurred by Seller in connection with effecting such transfer shall be recoverable by Seller from Buyer as an Energy Payment Adjustment. Seller shall make commercially reasonable efforts to accommodate any reasonable request of Buyer to effect any modification or improvement to the Project in order to qualify for the availability of any such future Renewable Attributes; provided that (i) all actual, out-of-pocket costs reasonably incurred by Seller in connection with effecting such modification or improvement, including any capital costs or increased operating costs, shall be recoverable by Seller from Buyer as an Energy Payment Adjustment and (ii) such modification or improvement shall not (a) violate any Consent, Legal Requirement or contract, (b) void any warranties (including any manufacturer's warranties) or otherwise cause Seller to fail to comply with its obligations set forth in Section 12.15, (c) adversely affect the terms of any insurance coverage described in Appendix 9 or otherwise maintained for the Project or (d)

adversely impact the safety, technical performance or design life of the Project or the Project's availability or ability to generate or deliver the Products.

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

3.7.5 Seller shall not assign, sell, transfer, pledge, or encumber any such future Renewable Attributes to any Person other than Buyer.

3.8 Renewable Energy Standard

Buyer's obligations under this Agreement are expressly conditioned on Seller ensuring that the Project complies with applicable Renewable Energy Standard eligibility rules and requirements, if any, in accordance with and subject to Section 3.7.1.

3.9 Buyer's Rights Related to Renewable Attributes

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

3.10 Outages

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

3.10.2 Seller shall make commercially reasonable efforts consistent with Prudent Utility Practices to minimize the occurrence and duration of Forced Outages. Upon the occurrence of a Forced Outage, Seller shall notify Buyer as soon as practicable and shall notify Buyer upon the conclusion of the Forced Outage. Seller shall provide such notice pursuant to the terms of the Operating Instructions.

3.11 Development of Operating Instructions

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

3.12 Test Energy

To the extent Seller delivers Test Energy to Buyer at the Delivery Point prior to Project COD, Seller will deliver the quantity of Test Energy generated by the Project in accordance with the provisions of this Agreement. To the extent that any Renewable Attributes are available with Test Energy, such Renewable Attributes will be transferred to Buyer in accordance with the provisions of this Agreement.

3.13 Station Service Energy

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

3.14 No Immunity Claim

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

3.15 Buyer's Metering Device

3.15.1 The Buyer's Metering Device used to measure the Delivered Energy sold by Seller to Buyer under this Agreement and to monitor and coordinate operation of the Project shall be owned, installed, and maintained by Buyer. Buyer shall provide Seller access, for Seller's use only and subject to Article 16 hereof, to Buyer's Metering Device during Business Days upon reasonable notice. Buyer's Metering Device shall be located at the Delivery Point. Buyer shall inspect and test Buyer's Metering Device upon installation and at least annually thereafter. Buyer shall provide Seller with reasonable notice of, and permit a representative of Seller to witness and verify, such inspections and tests, provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer's safety standards. Upon request by Seller, Buyer shall perform additional inspections or tests of Buyer's Metering Device

and shall permit a qualified representative of Seller to inspect or witness the testing of Buyer's Metering Device; provided, however, that Seller shall not unreasonably interfere with or disrupt the activities of Buyer and shall comply with all of Buyer's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Seller, unless upon such inspection or testing Buyer's Metering Device is found to register inaccurately by more than the allowable limits established in Section 3.16, in which event the expense of the requested additional inspection or testing shall be borne by Buyer. If requested by Seller in writing, Buyer shall provide copies of any inspection or testing reports to Seller. Seller may elect to install and maintain, at its own expense, metering devices (the "Seller's Metering Devices") in addition to the Buyer's Metering Device installed and maintained by Buyer, which installation and maintenance shall be performed in a manner acceptable to Buyer. Seller, at its own expense, shall inspect and test the Seller's Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable notice of, and permit a representative of Buyer to witness and verify, such inspections and tests; provided, however, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Upon request by Buyer, Seller shall perform additional inspections or tests of the Seller's Metering Devices and shall permit a qualified representative of Buyer to inspect or witness the testing of Seller's Metering Devices, provided, however, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Buyer, unless, upon such inspection or testing, Seller's Metering Devices are found to register inaccurately by more than the allowable limits established in Section 3.16, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Buyer in writing, Seller shall provide copies of any inspection or testing reports to Buyer. If Buyer's Metering Device, or Seller's Metering Devices, is found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense.

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

3.16 Adjustment for Inaccurate Meters

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

3.16.1 In the event that Buyer's Metering Device is found to be defective or inaccurate, the Parties shall use Seller's Metering Devices, if installed, to determine the amount of such inaccuracy, provided, however, that Seller's Metering Devices have been tested and maintained in accordance with the provisions of Section 3.15. If the Seller's Metering Devices are installed on the low side of Seller's step-up transformer, the Seller's Metering Devices data shall be adjusted for losses. In the event that Seller did not install Seller's Metering Devices, or Seller's Metering Devices are also found to be inaccurate by more than one percent (1.0%), the Parties shall estimate the amount of the necessary adjustment on the basis of Delivered Energy during periods of similar operating conditions when the Buyer's Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

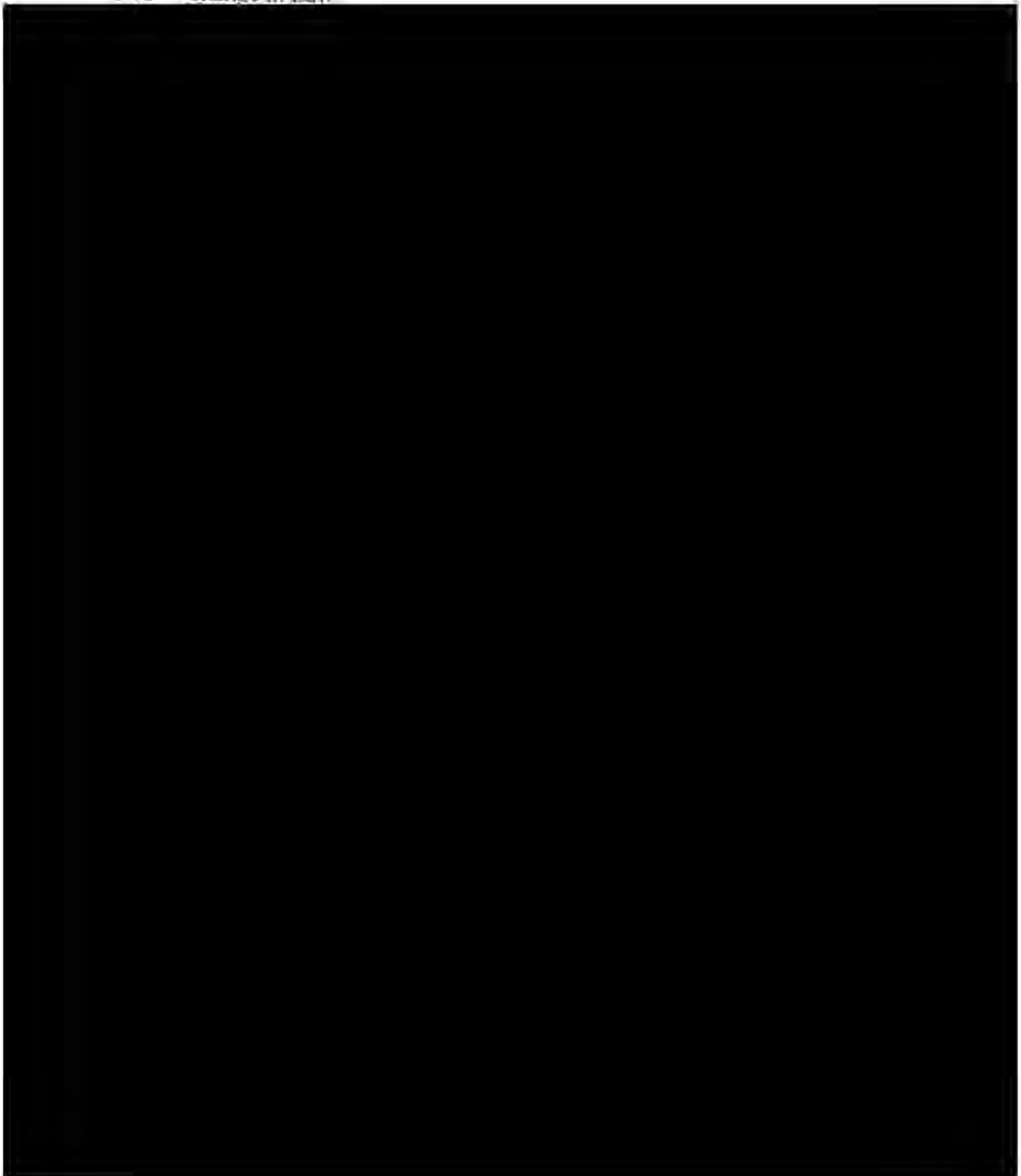
3.16.2 In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Buyer's Metering Device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

3.16.3 To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article 3 to re-compute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. Such computation and methodology shall be shared with Seller and the Parties shall use good faith efforts to reach mutual agreement on this calculation. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Seller in the case of a payment to be made by Buyer to Seller, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

3.17 Monitoring

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

3.18 Change in Law



3.19 Buyer's Access to Records

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

3.20 Seller as Owner of the Project

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

3.21 Seller as ICAP Supplier

Seller shall at all times comply with all NYISO Rules applicable to ICAP Suppliers including those related to submitting data pertaining to Intermittent Power Resources. Buyer shall have the right to review all such data submitted to the NYISO.

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ARTICLE 4: INTERCONNECTION ARRANGEMENTS

4.1 General

The Parties shall cooperate to make all arrangements, execute all agreements, and make commercially reasonable efforts to cause the Electrical Interconnection Facilities to be completed on or before the Installation Start Date. Buyer shall make commercially reasonable efforts to take those actions within its regulatory authority to cause the Connecting Transmission Owner to execute the Interconnection Agreement with a term ending no earlier than the last day of the Term. Seller shall cooperate with all reasonable requests of Buyer to provide information with respect to the interconnection process.

4.2 Operation and Maintenance of Electrical Interconnection Facilities

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

4.3 Reimbursement of Interconnection Costs

Seller shall be responsible for timely payment of all Interconnection Costs as and when incurred and invoiced. Buyer shall reimburse Seller for Interconnection Costs in excess of \$500,000 in the aggregate ("Reimbursable Interconnection Costs") by one of the two options described in Sections 4.3.1 and 4.3.2 below.

4.3.1 Buyer shall reimburse Seller for Reimbursable Interconnection Costs paid by Seller to the Connecting Transmission Owner either, at Buyer's sole option, through (a) two hundred and forty (240) equal Monthly Interconnection Payments beginning one (1) month from Project COD as described below; or (b) a lump sum payment to be made within one (1) month after the Project achieves Project COD ("Lump Sum Interconnection Payment").

4.3.2 "Monthly Interconnection Payment" shall mean levelized monthly payments of interest and principal based on (a) two hundred and forty (240) payments; (b) the dollar amount of Reimbursable Interconnection Costs; and the Seller Interest Rate divided by twelve (12).

I. Figure 4.3.2 – Example of calculation of Monthly Interconnection Payment:

For example, if

Reimbursable Interconnection Costs = \$1,000,000

Number of Payments = 240

Seller Interest Rate = 10.0%

Seller Interest Rate divided by 12 = 0.83%

Monthly Interconnection Payment = \$9,650.22

2. Ninety (90) Days prior to the Project COD Target Date, Seller will provide Buyer with a statement of the estimated Reimbursable Interconnection Costs and the estimated Monthly Interconnection Payment. Buyer will have thirty (30) Days following receipt of Seller's estimated Reimbursable Interconnection Costs to notify Seller which reimbursement methodology under Section 4.3.1 will be used.

3. Cooperation. Buyer and Seller shall cooperate and act in good faith in the implementation of the Project. Such cooperation shall include timely responses to reasonable requests for information and the reasonable coordination of the activities of both Parties and their respective third parties regarding the design and construction of the Project and the Electrical Interconnection Facilities.

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ARTICLE 5: AVAILABILITY, UNDERPERFORMANCE, DISCOUNTED ENERGY

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5.1 Availability

5.1.1 Commencing with the Month in which Project COD occurs and continuing throughout the Term, Seller shall calculate and provide to Buyer a written report setting forth the Equivalent Availability for each Month as soon as practicable after the end of such Month, but in no event later than thirty (30) Days after the end of such Month.

5.2 Chronic Underperformance

5.2.1 Commencing at the end of the third (3rd) Contract Year, Buyer shall have the option to terminate this Agreement as provided herein in the event the Project fails to maintain an average Equivalent Availability in any consecutive twenty-four (24) Month period ("Average Monthly Capacity") that is equal to at least fifty percent (50%) ("Chronic Underperformance"). If Chronic Underperformance occurs, Buyer may terminate this Agreement by delivering written notice to Seller of its election to exercise such termination right within ninety (90) Days after the end of the consecutive twenty-four (24) Month period in which such Chronic Underperformance occurred. Prior to exercising any such right of termination, Buyer shall confer with Seller to determine whether Seller is willing to take additional steps to cure such Chronic Underperformance. Buyer shall have the right in its sole discretion to determine whether to accept any such additional steps to remediate such Chronic Underperformance or to exercise its termination rights. If Buyer elects to grant Seller additional time to remediate the Chronic Underperformance, it shall give Seller written notice of its election and Seller shall have an additional six (6) Months to achieve an Average Monthly Capacity equal to at least fifty percent (50%); provided that, if remedying such Chronic Underperformance requires repairs or other corrective actions that are not reasonably capable of being executed with the cranes installed on the Wind Turbines' foundations or the Wind Turbines' internal service cranes, then, so long as Seller has submitted to Buyer a plan to remedy such Chronic Underperformance within such additional six (6) Month period and is otherwise exercising diligent efforts to remedy such Chronic Underperformance, Seller shall have an additional eighteen (18) Months to achieve an Average Monthly Capacity equal to at least fifty percent (50%). In the event that Seller fails to achieve an Average Monthly Capacity equal to at least fifty percent (50%) within such additional period, then Buyer shall have the right to terminate this Agreement pursuant to Section 6.5. Termination of this Agreement pursuant to this Section 5.2.1 shall have no effect on the Interconnection Agreement. For the avoidance of doubt, as long as the average Equivalent Availability in any consecutive twenty-four (24) Month period is equal to at least fifty percent (50%), Buyer may not terminate this Agreement pursuant to this Section 5.2.1 with respect to the average Equivalent Availability for such twenty-four (24) Month period.

5.2.2 Notwithstanding anything to the contrary herein, the Parties agree that Buyer's sole and exclusive remedy for any Chronic Underperformance during any Month throughout the Term shall be Buyer's termination rights set forth in Section 5.2.1;

provided, however, that, if a Seller Event of Default has occurred, then, in addition to the foregoing remedies but without duplication of recovery, Buyer may also pursue its remedies pursuant to Sections 6.5 and 6.6.

5.3. Annual Energy Production

5.3.1 [REDACTED] sets forth Seller's good faith Projected Energy Deliveries for each Contract Year based on the assumed technical and other specifications and design layout of the Project and the Site as of the Execution Date. The assumptions underlying the projection for each Contract Year are set forth on Schedule 1 to [REDACTED]

5.3.2 On or before the date which is one hundred and twenty (120) days after Project COD, Seller, on written notice to Buyer, may adjust the Projected Energy Deliveries to take into account the actual as-installed and as-tested specifications for the Project and actual operating experience to date. Each of the items listed on Schedule 1 to Appendix 3, except for expected weather variations, shall be updated by Seller and Seller shall provide to Buyer an explanation of any variation in the Projected Energy Deliveries.



5.4. Discounted Energy

In each Contract Year, the price for each MWh of Delivered Energy in excess of [REDACTED] hundred five percent (105%) of the annual quantity of Projected Energy Deliveries as set forth in Appendix 3 for such Contract Year ("Discounted Energy") shall be the Contract Price applicable for such Contract Year multiplied by zero point two (0.2).

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ARTICLE 6: EVENTS OF DEFAULT; REMEDIES**6.1 Seller Events of Default**

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

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

6.1.2 any representation or warranty made by Seller herein or in any certificate delivered to Buyer pursuant to this Agreement is false or misleading in any material respect when made or when deemed made or repeated and such error has a (a) material and adverse effect on the ability of any Party to perform its obligations under this Agreement and (b) material adverse impact on Buyer’s realization of benefits for which this Agreement provides;

6.1.3 except for any failure that (a) constitutes a separate Seller Event of Default, (b) consists of Seller’s failure to reach Project COD by the Project COD Target Date, (c) constitutes Chronic Underperformance or (d) consists of Seller’s failure to perform obligations to provide Delivered Energy after Project COD, the failure by Seller to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within forty-five (45) Days after written notice; provided that if such failure is not reasonably capable of being cured within forty-five (45) Days after such written notice, and if Seller has commenced and is exercising diligent efforts to remedy such failure, then such additional period of time, not to exceed one hundred twenty (120) additional Days, as shall be required to remedy such failure with the exercise of diligent efforts; provided further however, that during such cure periods, any Day on which Seller or its contractors may not reasonably commence or continue such cure activities due to offshore weather conditions or due to seasonal limitations on offshore work pursuant to prudent marine safety and operating practices or insurance underwriters’ restrictions, whether or not any such delay may constitute a Force Majeure Event, shall not be counted toward the foregoing cure periods;

6.1.4 Seller becomes Bankrupt;

6.1.5 Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement if such failure is not remedied within ninety (90) Days after written notice;

6.1.6 failure by Seller to transfer to Buyer rights to the RECs and/or Renewable Attributes in conformity with this Agreement and such failure is not remedied within fifteen (15) Business Days after written notice (or within a commercially reasonable period of time if such transfer cannot be accomplished within fifteen (15) Business Days

after such written notice and Seller is exercising diligent efforts to promptly comply with the requirements applicable to any such transfer);

6.1.7 subject to Section 3.7.1, failure of the Project to maintain eligibility consistent with the Renewable Energy Standard requirements in conformity with Section 3.8;

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

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

6.2 Buyer Events of Default

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

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

6.2.2 any representation or warranty made by Buyer herein or in any certificate delivered to Seller pursuant to this Agreement is false or misleading in any material respect when made or when deemed made or repeated and such error has a (a) material and adverse effect on the ability of any Party to perform its obligations under this Agreement and (b) material adverse impact on Seller’s realization of benefits for which this Agreement provides;

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

6.2.4 Buyer becomes Bankrupt; or

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

6.3 Notice and Opportunity to Cure

Upon actual discovery of an Event of Default, the Party claiming the occurrence of an Event of Default shall provide the alleged Defaulting Party with written notice of the alleged Event of Default and any remedy sought ("Notice of Default"). If such Notice of Default is to Seller, Buyer shall provide concurrent notice to each Lender. The alleged Defaulting Party shall have forty-five (45) Days to cure any Event of Default that is not subject to notice and cure periods under Sections 6.1 or 6.2, as applicable. If the Defaulting Party chooses to cure such Event of Default and the Event of Default cannot be reasonably cured within such forty-five (45) Day period, then, upon Defaulting Party's written notice to the Non-Defaulting Party delivered within forty-five (45) Days of the date of Notice of Default, the cure period shall be extended by up to an additional one hundred thirty-five (135) Days or the amount of time reasonably necessary to complete the cure, whichever is less, provided that the Defaulting Party diligently pursues efforts to cure such Event of Default during such extension period and the notice contains the explanation of the need for extended cure period in reasonable detail.

6.4 Waiver; Duty to Mitigate

The failure of the Non-Defaulting Party to exercise its remedies under this Article 6 within six (6) Months after becoming aware of an Event of Default shall result in the waiver of such Event of Default for purposes of this Agreement. The Non-Defaulting Party has a duty to mitigate damages arising out of an Event of Default, which duty shall survive termination of this Agreement.

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

If a Seller Event of Default or a Buyer Event of Default shall have occurred and is continuing beyond expiration of the cure period set forth in Sections 6.1, 6.2 or 6.3, as applicable, and has not been waived in accordance with Section 6.4 or if Buyer is entitled to terminate this Agreement pursuant to Section 5.2.1, the Non-Defaulting Party shall have the right, upon providing written notice to the Defaulting Party within thirty (30) Days of learning of such Seller Event of Default or Buyer Event of Default (except as otherwise provided for in this Agreement), (i) to designate a Day when this Agreement shall terminate, which shall be no earlier than the Day after expiration of the cure period set forth in Sections 6.1, 6.2 or 6.3, as applicable, and no later than one hundred eighty (180) Days thereafter ("Early Termination Date"), to accelerate all amounts owing between the Parties and to determine in a commercially reasonable manner the Non-Defaulting Party's Losses and Costs, net of any and all amounts due from the Non-Defaulting Party to the Defaulting Party with respect to deliveries of Products or other matters under this Agreement completed prior to the Early Termination Date, which shall be the termination payment due from and payable by the Defaulting Party as provided in Section 6.6 (the "Termination Payment"), (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance in accordance with Section 6.8. The Defaulting Party shall not be entitled to receive payment of any Termination Payment.

6.6 Notice of Payment of Termination Payment

As soon as practicable after an Early Termination Date has been established pursuant to Section 6.5, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount and a calculation of the Termination Payment due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party to the Non-Defaulting Party within five (5) Business Days after such notice is effective.

6.7 Disputes With Respect to Termination Payment

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's notice provided under Section 6.6, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Such dispute shall be settled in accordance with the dispute resolution process set forth in Article 13.

6.8 Suspension of Performance

Notwithstanding any other provision of this Agreement, if a Seller Event of Default or a Buyer Event of Default shall have occurred and is continuing beyond expiration of the cure period set forth in Sections 6.1, 6.2 or 6.3, as applicable, and has not been waived in accordance with Section 6.4, the Non-Defaulting Party shall have the right (i) upon written notice to the Defaulting Party, to suspend performance under this Agreement provided, however, in no event shall any such suspension continue for longer than twenty (20) Business Days unless an Early Termination Date shall have been declared and notice thereof given pursuant to Section 6.5, and (ii) to exercise any remedy available at law or in equity, subject to Article 8.

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ARTICLE 7: PAYMENT

7.1 Billing Period

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

7.2 Invoices

All invoices presented by either of the Parties shall be in the form of the sample Monthly Invoice as set forth in Appendix 5.

7.2.1 Liquidated Damages

(i) Early Termination Liquidated Damages Amounts. Buyer shall prepare and submit an invoice to Seller for any Liquidated Damage amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Section 2.3.4.

(ii) Capacity Shortfall Damages Amounts. Buyer shall prepare and submit an invoice to Seller for any Liquidated Damage amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Section 3.1.3.

(iii) COD Liquidated Damages Amounts. Buyer shall prepare and submit an invoice to Seller for any Liquidated Damage amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due pursuant to Section 3.3.

7.2.2 Interconnection Costs

After Project COD, Seller shall prepare and submit to Buyer a single invoice for the accumulated Reimbursable Interconnection Costs pursuant to Article 4. Such statement shall show the nature, amount and payee, if any, of the Reimbursable Interconnection Costs paid and incurred by Seller and shall be the basis for determining the Lump Sum Interconnection Payment or Monthly Interconnection Payment in accordance with Article 4.

7.2.3 Monthly Invoice

(i) Monthly Energy Charge. Commencing with the Month in which Project COD occurs and continuing throughout the Term, Seller shall prepare and submit to Buyer a Monthly Invoice for Delivered Energy and Deemed Energy Deliveries. Each Monthly Invoice that includes the Monthly Energy Charge shall be accompanied by the calculation thereof in accordance with Appendix 4 and

shall be consistent with Appendix 5 and shall take into account the provisions for Discounted Energy in Section 5.4. As specified in Section 3.1.2, all such invoices that include a Monthly Energy Charge shall be accompanied by a completed Certification and Assignment of Rights Form provided as Appendix 6 hereto which shall be deemed to satisfy the eligibility requirements under the Renewable Energy Standard. Buyer may request Seller to otherwise demonstrate the transfer of the Renewable Attributes as reasonably requested by Buyer at Buyer's expense.

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

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

(iv) Monthly Interconnection Payment or Lump Sum Interconnection Payment. If the lump sum payment option is selected pursuant to Section 4.3.1(a), then the first Monthly Invoice issued pursuant to Section 7.2.3 shall include the Lump Sum Interconnection Payment calculated in accordance with Section 7.2.3 as a separate line item on the Monthly Invoice. If the levelized payment option is selected pursuant to Section 4.3.1(b), then each Monthly Invoice issued pursuant to Section 7.2.3 shall include the amount required to be paid for the Monthly Interconnection Payment calculated in accordance with Section 7.2.2 as a separate line item on the Monthly Invoice until the two hundred forty (240) Monthly Interconnection Payments have been made.

(v) Test Energy. To the extent Seller delivers Test Energy to Buyer from the Project as set forth in Section 3.12, Buyer shall pay the Monthly Energy Charge for such Test Energy and Seller shall furnish to Buyer in the Monthly Invoice the amounts of such Test Energy together with a calculation of the amount due to Seller pursuant to Section 3.12.

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

7.3 Timeliness of Payment

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the thirtieth (30th) Day after receipt of the invoice or, if such Day is not a Business Day, then on the next Business Day. Such thirtieth (30th) Day after receipt of the invoice, or such following Business Day, shall

be the date on which the amounts invoiced therein shall be due for all purposes of this Agreement. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.4 Disputes and Adjustments of Invoices

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

7.5 Payment Obligation

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

7.6 Buyer Prepayment

7.6.1 On or before the date that is twelve (12) Months before the Project COD Target Date, Buyer may, by written notice to Seller, offer to prepay a specified portion of the Projected Energy Deliveries in a lump sum payment due at Project COD, on terms and conditions to be agreed between Buyer and Seller; provided that Seller has no obligation to agree to such prepayment offer. Such prepayment structure would not increase the economic obligations of Buyer to pay for Delivered Energy beyond the terms set forth in the Agreement, but shall only provide for an alternative method to pay for a portion of the Projected Energy Deliveries. Upon receipt of such offer notice from Buyer, Buyer and Seller agree to discuss the terms and conditions of such prepayment, an amendment to the Agreement to document such terms and conditions and a security agreement pursuant to which Seller would grant a first lien and security interest in the Project assets to Buyer to secure Buyer's rights to receive the prepaid Delivered Energy; provided that Buyer and Seller, in their sole discretion, may end such discussions at any time and are under no obligation to enter into such amendment to the Agreement or such security agreement.

7.6.2 The failure of the Parties to agree on the prepayment terms and conditions, enter into an amendment to the Agreement to document such terms and conditions or enter into a security agreement granting a security interest in the Project assets in favor of Buyer, for any reason, including the failure of Lenders or tax equity investors to agree or consent to such terms and conditions or documentation, shall not affect this Agreement

and this Agreement shall remain in full force and effect on the terms and conditions set forth herein and neither Party has any obligation or liability to the other, including for expenses, damages, specific performance or otherwise, for failing or refusing to enter into a prepayment or for failing or refusing to agree to any terms and provisions thereof. In the event the Parties reach an agreement on a prepayment and execute an amendment to this Agreement effectuating such prepayment, Seller agrees to cooperate, at Buyer's cost and expense, with Buyer to enable Buyer to raise capital or issue debt securities to obtain the prepayment funds.

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ARTICLE 8: LIMITATIONS

8.1 Limitation of Liability

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

8.2 Exclusive Remedy

The remedies provided for in this Agreement shall be the sole and exclusive remedies of the Parties as a result of the failure to perform by the other Party, for any cause whatsoever, including negligence.

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ARTICLE 9: SELLER SECURITY9.1 Seller Security9.2 Seller Security Replacement

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

9.2.2 If the applicable substitute Seller Security shall be replacing a Letter of Credit, then Buyer shall promptly mark such Letter of Credit as "cancelled" and return the original of same to Seller and shall take such other actions as reasonably may be requested by the issuer of such letter of credit to evidence the cancellation thereof. If the

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

9.3 Draw on Seller Security

Buyer may draw upon or make a claim on Seller Security (a) to satisfy any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) that are not satisfied within ten (10) Business Days following the date on which such amounts become due and owing pursuant to Section 7.3 and Buyer has notified Seller in writing of Buyer’s intention to draw on Seller Security, or (b) in the entire amount of such Seller Security if any Guaranty, Letter of Credit, Performance Bond or Escrow or other form of Seller Security instrument is due to expire by its terms within five (5) Days and has not been replaced, and Seller continues to be required to provide such Seller Security, in which instance Buyer may hold the proceeds of such draw as a cash balance to secure Seller’s obligations but shall return such to Seller upon Seller’s provision of substitute Seller Security in accordance with this Agreement. Upon termination of this Agreement in accordance with Section 6.5, Buyer shall have the right to draw upon or make a claim on Seller Security for any undisputed amounts owed to Buyer under this Agreement. In the event Seller becomes Bankrupt, if any payment has been made by Seller to Buyer within the period prior to Seller becoming Bankrupt in a manner that such Seller payment to Buyer could reasonably be challenged or recovered as a preference or fraudulent conveyance in bankruptcy, Buyer may, at any time prior to expiry of Seller Security, draw upon or make a claim on such Seller Security in an amount equal to the potentially recoverable prior payment and hold such amount in Escrow until the later of (i) the last date on which any trustee or party may assert Claims seeking to recover such payment, if no such Claim has been asserted, and (ii) final adjudication of any asserted Claim as to such payment, provided that, if no such Claim for recovery of such payment has been timely asserted or if such Claim is finally adjudicated and found not recoverable from Buyer, the amount in Escrow shall be promptly paid to Seller, and, if the payment is recovered from Buyer, such amount may be retained by Buyer.

9.4 Replenishment

In the event Buyer draws upon or makes a claim on Seller Security pursuant to Section 9.3, Seller shall replenish the amount of Seller Security required by Section 9.1 or Section 9.2 within fifteen (15) Business Days.

9.5 Expiration of Letter of Credit

If a Letter of Credit is serving as Seller Security, Seller shall replace such Letter of Credit with other Seller Security (which may be another Letter of Credit) no more than five (5) Business Days before the expiration of the Letter of Credit.

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ARTICLE 10: GOVERNMENTAL CHARGES**10.1 Cooperation**

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

10.2 Governmental Charges

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Project and the Products arising prior to the Delivery Point. Buyer shall pay or cause to be paid all costs of claiming Renewable Attributes or qualifying Delivered Energy for claiming Renewable Attributes and all Governmental Charges on or with respect to the Products at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of Energy and Contract Capacity or the conveyance of Renewable Attributes to Buyer and are, therefore, the responsibility of Seller). In the event Seller is required by Legal Requirements to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Legal Requirements to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 7 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Legal Requirements. Notwithstanding the foregoing, neither Party shall be required to pay any portion of such costs arising from the other Party’s failure to perform any obligation under this Agreement.

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ARTICLE 11: INSURANCE**11.1 Insurance Required**

Seller, at its sole cost and expense, shall acquire and maintain in full force and effect the types and amounts of insurance coverage described in Appendix 9. Not less frequently than annually, and upon reasonable request by Buyer, Seller shall submit to Buyer original insurance certificates or other documents providing evidence of such insurance and that such insurance policies name Buyer as an additional insured to the extent that such insurance policies are required to do so pursuant to Appendix 9. Failure by Seller to obtain the insurance coverage required by this Article 11 shall not relieve Seller of the insurance requirements set forth in this Agreement. Seller's compliance with insurance requirements does not relieve Seller's obligations and liabilities, specifically indemnity obligations.

11.2 Insurance Notice to Buyer

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

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ARTICLE 12: MISCELLANEOUS**12.1 Seller's Representations and Warranties**

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

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

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

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

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

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

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

12.1.7 no Seller Event of Default has occurred and is continuing, no Seller Event of Default would occur as a result of Seller entering into or performing its obligations under this Agreement and no event or circumstance exists which would, but for the passage of time, constitute a Seller Event of Default;

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

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

12.1.10 with respect to the purchase or sale of the Products, not later than Project COD, it will be a producer, processor, commercial user or merchant handling the

Products, and it is entering into this Agreement for purposes related to its business as such.

12.2 Buyer's Representations and Warranties

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

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

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

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

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

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

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

12.2.7 no Buyer Event of Default has occurred and is continuing, no Buyer Event of Default would occur as a result of Buyer entering into or performing its obligations under this Agreement and no event or circumstance exists which would, but for the passage of time, constitute a Buyer Event of Default;

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

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

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

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

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

12.3 Indemnity

12.3.1 Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, trustees, officers, employees and agents (collectively, the "Indemnified Party") from and against all Claims for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, trustees, officers, employees, subcontractors or agents. In Claims against any Indemnified Party by an employee of the Indemnifying Party, the indemnification obligation under this Section 12.3.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by the Indemnifying Party under any compensation acts, disability benefit acts or other employee benefits act.

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

12.4 Claims

Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 12 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the

Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer shall pay such costs. The Indemnified Party may not make any admission or offer or accept any settlement or compromise without prior written consent of the Indemnifying Party.

12.5 Governing Law; Jury Trial Waiver

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

12.6 Currency

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

12.7 Notices

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

If to Seller: Deepwater Wind South Fork, LLC
56 Exchange Terrace, Suite 300
Providence, RI 02903
Attn: Contract Administration
Tel.: (401) 868-4228

If to Buyer: Long Island Electric Utility Servco LLC as agent of and acting on behalf
of Long Island Lighting Company d/b/a LIPA
333 Earle Ovington Blvd. Suite 403
Uniondale, New York 11553
Attn: Manager of Power Contracts
Tel: (516) 719-3646

Fax: (516) 719-8602

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

12.8 General

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

12.9 Audit

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

12.10 Renewable Attribute Eligibility Audit

Buyer may require (at Buyer's sole cost and expense and provided that Buyer has given Seller reasonable prior notice) periodic inspections of the Project to verify that the Project

remains eligible under the eligibility rules and requirements of the Renewable Energy Standard in accordance with and subject to Section 3.7.1; provided, however, that (i) such inspection rights shall not be exercised more than once per year, (ii) any such inspection shall be undertaken during Seller's normal business hours at a time agreeable to Seller, (iii) in performing any such inspection Buyer shall comply with Seller's safety and security protocols, and (iv) Buyer shall not have any right to review any of Seller's information that is subject to the attorney-client privilege or work product doctrine or is proprietary or confidential in nature.

12.11 Forward Contract

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

12.12 Counterparts

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

12.13 Amendment

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

12.14 Compliance With Legal Requirements, Regulations and NYISO Rules

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

12.15 Compliance With Manufacturer's Requirements

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

12.16 Waiver

Except as otherwise provided for in Sections 6.4 or 7.4, the failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof shall in no way be construed to be a waiver of such provisions, or in any way to affect the validity of this Agreement or any part hereof or the right of such Party hereafter to enforce every such provision. No modification or waiver of all or any part of this Agreement shall be valid unless it is reduced to a writing, signed by both Parties, that expressly states that the Parties agree to a waiver of modification, as applicable. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

12.17 Agency

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

12.18 Severability

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

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

12.19 Negotiated Agreement

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

12.20 Local Workers

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

12.21 Regulatory Review of Agreement

Each Party agrees that, except with the prior written consent of the other Party, neither Party nor its Affiliates will institute or voluntarily cooperate in the institution or conduct of any action or proceeding of the FERC under Sections 205 or 206 of the Federal Power Act to change the rates, terms or conditions of this Agreement; provided Seller shall have the right to file this

Agreement with FERC and seek acceptance thereof in accordance with Section 205 of the Federal Power Act. Without limiting the foregoing, the Parties agree that the rates, terms and conditions of this Agreement shall remain in effect for the Term and shall not be subject to change through application to FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act, absent written agreement of the Parties. Absent the written agreement of the Parties to the contrary, the standard of review for changes to this Agreement shall be the “public interest” standard of review set forth in *United Gas Pipeline Co. vs. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission vs. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and as further clarified in *Morgan Stanley Capital Group, Inc. vs. Public Utility District No. 1 of Snohomish County*, 128 S.Ct. 2733 (2008), and *NRG Power Marketing, LLC vs. Maine Public Utilities Commission*, 130 S.Ct. 693 (2010).

12.22 Seller’s Responsibility with Minority, Women-Owned and Service-Disabled Veteran Owned Businesses

Seller shall comply with the requirements of Appendix 16 with respect to the M/WBE/VET subcontracting goals.

12.23 Business Continuity Plan

In order to address potential exposure to internal and third-party threats to Seller’s supply chain and operations which may adversely impact Seller’s performance under this Agreement after Project COD, Seller shall establish and maintain a current and effective Business Continuity Plan, approved by managers with highest responsibility for overall direction of Seller’s business, which, in Seller’s reasonable opinion, demonstrates business continuity management capability, and delineates the prevention of and recovery from events that disrupt or adversely impact Seller’s ability to provide Delivered Energy and Contract Capacity to Buyer. Seller’s Business Continuity Plan must include provisions for disaster recovery. Prevention efforts included in the Business Continuity Plan at Seller’s reasonable discretion will be appropriate for a wind turbine generating facility located in Federal waters and may include, but need not be limited to, making standby arrangements with disaster recovery contractors, establishing risk mitigation inventory processes and/or stock of raw materials or spares/sub-assemblies, or, flow down protective contract provisions in contracts with Seller’s subcontractors and third-party providers of goods and services. Seller shall review and update its Business Continuity Plan as Seller deems reasonable in its sole discretion to assure that the Business Continuity Plan is appropriate and adequate for Seller’s duties to Buyer under this Agreement and that it meets generally accepted industry standards (such as NFPA 1600 or those promulgated by FEMA, among others). Seller shall provide Buyer a copy of the Business Continuity Plan and updates to such plan, if any, promptly after approval by Seller of such plan or update. Seller shall promptly notify Buyer of any changes in circumstances that have the potential to materially adversely affect Seller’s performance under this Agreement and describe Seller’s strategies and methodology for mitigating the potential risk.

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ARTICLE 13: DISPUTE RESOLUTION

13.1 Notice

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

13.2 Response

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

13.3 Resolution of Dispute

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

13.4 Tolling Statute of Limitations

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

ARTICLE 14: FORCE MAJEURE EVENTS

14.1 Definition of Force Majeure Event

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

14.2 Force Majeure Event

Except as specifically provided elsewhere in this Agreement, if a Force Majeure Event causes either Party to be wholly or partially unable to perform its obligations under this Agreement, that Party shall be excused from performance (other than payment obligations); provided that, if such Force Majeure Event affects the Electrical Interconnection Facilities and/or Connecting Transmission Owner's Electrical System such that Buyer is unable to receive the Energy at the Delivery Point, Buyer shall be relieved of its obligation to receive and pay for Delivered Energy and Seller shall be relieved of its obligation to deliver Products. The suspension of performance (or payment) due to a Force Majeure Event shall be of no greater

scope (or amount) and of no longer duration than is required by such Force Majeure Event and the Claiming Party (as defined below) shall not be construed to be in default with respect to any obligation hereunder for so long as, but only to the extent that, failure to perform such obligation (or make such payment) is due to a Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond the Term.

14.3 Due Diligence

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

14.4 Extended Force Majeure Events

14.4.1 If the Claiming Party has reason to believe that a Force Majeure Event will prevent it from performing its obligations under this Agreement for one (1) Month or longer ("Extended Force Majeure Event"), it shall notify the Non-Claiming Party in writing as promptly as practicable after the beginning of said Force Majeure Event and shall submit a plan to remedy the impact of such Force Majeure Event(s) (a "Force Majeure Remedy Plan") to the Non-Claiming Party within thirty (30) Days of such notification.

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

14.5 Insurance Proceeds

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

14.6 Right to Terminate or Discontinue Obligations

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

14.7 Liability Following Termination

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


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ARTICLE 15: ASSIGNMENT; LENDERS; CONTROL OF SELLER**15.1 Assignment by Seller**

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

15.1.2 Subject to Section 15.7, any Assignment by Seller of its obligations hereunder including, without limitation, involving the ownership and/or operation of the Project, other than any Assignment to a Lender in connection with a financing, re-financing or other financial arrangements, shall be to a (i) Qualified Person; (ii) Person whose managing member or manager is a Qualified Person or (iii) Person that engages, prior to or concurrent with the Assignment, an operator that is a Qualified Person.

15.1.3 With respect to any permitted Assignment of this Agreement in compliance with this Article 15, including any assignment of this Agreement to any transferee that acquires Seller's interest in the Project in accordance with Section 15.7, other than an Assignment to a Lender in connection with a financing, re-financing or other financial arrangements or sale or transfer of the Project to a Substitute Owner in compliance with the terms of the Consent Agreement (as provided in 15.3), the assignee or transferee or successor entity shall assume all of the duties and obligations of Seller under this Agreement pursuant to an assignment and assumption agreement in which the assignee, transferee or successor entity unconditionally assumes and agrees to be bound by all of the terms and conditions of this Agreement as Seller, including providing Seller Security as provided for in Article 9, and whereby the assignee makes certain additional representations and warranties as appropriate for such assignee that are substantially similar to those contained in Section 12.1 and such assignee delivers such enforceability assurance as Buyer may reasonably request. Following any Assignment in compliance with this Article 15 (including Section 15.1), Seller shall be, without further action by Buyer, released and discharged from all obligations under this Agreement arising after the effective date of such Assignment. Seller agrees to compensate Buyer for Buyer's reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with the assignment of this Agreement in response to Seller's requests made pursuant to Section 15.1 (including this Section 15.1.3). Buyer shall provide an invoice to Seller for such charges, with appropriate documentation, and Seller shall pay such invoice within thirty (30) Days of receipt of such invoice.

15.1.4 Any Assignment by Seller pursuant to this Section 15.1 shall not be effective until it is approved by the State Comptroller. For the purposes of the Non-

Assignment Clause of Supplement 1, the Parties' compliance with the provisions of this Section 15.1 with respect to a proposed Assignment under this Section 15.1, shall be deemed to be written consent to such Assignment by Buyer.

15.2 Assignment by Buyer

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

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

15.3 Lender(s)

Notwithstanding Section 15.1 and the non-assignment provisions in Supplement 1, Seller may, without the consent of Buyer, assign, or grant as security, beneficially or otherwise, its rights under this Agreement to Lenders in connection with any financing of the Project, re-financing or other financing arrangement (through either a collateral or direct assignment and, in the case of a direct assignment, including a sub-assignment back to Seller for the term of the

financing); provided, however, that Seller's obligations under this Agreement shall continue in their entirety in full force and effect as the obligations of a principal and not as a surety, and Seller shall remain fully liable for all of its obligations under or relating to this Agreement. Each such assignment and any assignee, purchaser or transferee shall be subject to Buyer's rights and defenses hereunder and under Legal Requirements. Seller shall provide prior notice to Buyer of any such assignment. Buyer shall execute such consents, agreements or similar documents with respect to an assignment hereof to Lender(s) as Lender(s) may reasonably request in connection with the documentation of the financing of the Project(s), including a consent to collateral assignment ("Consent Agreement") in a form reasonably acceptable to Buyer, which shall be in the form of Appendix 11. Seller agrees to pay for Buyer's reasonable costs and expenses incurred in response to Seller's and Lender's requests, including attorney and consultant fees. Promptly after granting any such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned. Such notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

15.4 Rights of Lender

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

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

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

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

15.5 Cure Rights of Lender

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

15.6 Control of Seller

Prior to Project COD, unless Seller has obtained the prior written consent of Buyer, the managing member or manager of Seller shall be Deepwater Wind Holdings, LLC or a wholly-owned subsidiary of Deepwater Wind Holdings, LLC. At all times following Project COD, the managing member or manager of Seller shall be a Qualified Person. In no event shall this Section 15.6 apply to (a) a transfer, sale, conveyance, pledge, encumbrance or assignment of any interest in Seller to a Lender in connection with a financing, re-financing or other financial arrangement in compliance with Section 15.3, (b) a sale, transfer, conveyance or assignment of any interest in Seller by a Lender or other exercise by a Lender of its rights and remedies, in each case, in connection with any financing of the Project, re-financing or other financial arrangements in compliance with Section 15.3, including upon foreclosure of a Lender's security interest, (c) a sale, transfer, conveyance or assignment of an equity interest in Seller or any Affiliate of Seller in connection with the liquidation of Seller in bankruptcy or similar proceeding or (d) a sale, transfer, conveyance or assignment of an equity interest in Seller or any Affiliate of Seller by a shareholder or partner (general or limited) of Seller or any Affiliate of Seller, provided that the managing member or manager of Seller shall continue to be a Qualified Person after giving effect to such equity sale.

15.7 Sale of Project

Prior to Project COD, Seller may not, without the prior written consent of Buyer, sell, transfer or assign its interest in the Project to a third party (other than an Affiliate of Seller that assumes all obligations to perform this Agreement and complies with the requirements of Sections 15.1.2 and 15.1.3 or in connection with any financing, re-financing or other financial arrangements with a Lender pursuant to Section 15.3) or sell, transfer or assign its interest in the Project to any Person succeeding to all or substantially all of the assets of Seller, and any such consent by Buyer may be conditioned upon such transferee assuming all obligations of Seller to perform this Agreement and complying with the requirements of Sections 15.1.2 and 15.1.3. After Project COD and subject to the provisions of Section 15.8 and upon forty-five (45) Days' advance written notice by Seller to Buyer, Seller may sell, transfer or assign its interest in the Project to a Person who assumes all obligations of Seller to perform this Agreement and complies with the requirements of Sections 15.1.2 and 15.1.3. In no event shall this Section 15.7 apply to (a) a transfer, sale, conveyance, pledge, encumbrance or assignment of any interest in the Project to a Lender in connection with a financing, re-financing or other financial arrangement in compliance with Section 15.3, (b) a sale, transfer, conveyance or assignment of any interest in the Project by a Lender to a Substitute Owner in compliance with the terms of the Consent Agreement (as provided in Section 15.3) or other exercise by a Lender of its rights and remedies, in each case, in connection with any financing of the Project, re-financing or other

financial arrangements in compliance with Section 15.3, including upon foreclosure of a Lender's security interest, (c) a sale, transfer, conveyance or assignment of an interest in the Project in connection with the liquidation of Seller or any Affiliate of Seller in bankruptcy or similar proceeding or (d) a sale, transfer, conveyance or assignment of any interest in Seller permitted by Section 15.6.

15.8 Right of First Refusal

At any time after Project COD and subject to Buyer being authorized to own property outside of New York State, in the event that Seller receives one or more unsolicited offers from third parties to purchase the Project, prior to responding to such third parties, Seller shall promptly give notice to Buyer advising of the specific purchase offer(s) received (including proposed purchase prices and other pertinent terms) and Buyer shall have thirty (30) Days from the receipt of such notice to prepare an offer to purchase the Project. Seller shall not complete the sale of the Project to a third party pending receipt of Buyer's purchase offer. Seller shall negotiate in good faith exclusively with Buyer for a minimum of sixty (60) Days from Seller's receipt of Buyer's purchase offer to attempt to reach agreement on the terms of a purchase. If the Parties cannot reach agreement on the sale terms within sixty (60) Days of Seller's receipt of Buyer's purchase offer, then Seller shall have three hundred sixty-five (365) Days from the date on which it notified Buyer of unsolicited, third party purchase offer(s) to close on the sale of the Project to a third party for a price and for terms that are no less than the price and no more onerous than the terms, respectively, in Buyer's purchase offer. In no event shall this Section 15.8 apply to (a) a transfer, sale, conveyance, pledge, encumbrance or assignment of any interest in or asset of the Project to a Lender in connection with a financing, re-financing or other financial arrangement in compliance with Section 15.3, (b) a sale, transfer, conveyance or assignment of any interest in the Project by a Lender to a Substitute Owner in compliance with the terms of the Consent Agreement (as provided in Section 15.3) or other exercise by a Lender of its rights and remedies, in each case, in connection with any financing of the Project, re-financing or other financial arrangements in compliance with Section 15.3, including upon foreclosure of a Lender's security interest, (c) a sale, transfer, conveyance or assignment of an interest in the Project in connection with the liquidation of Seller or any Affiliate of Seller in bankruptcy or similar proceeding or (d) a sale, transfer, conveyance or assignment of an equity interest in Seller or any Affiliate of Seller by a shareholder or partner (general or limited) of Seller or any Affiliate of Seller.

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ARTICLE 16: CONFIDENTIALITY

16.1 Confidential Information

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

(a) Articles (Sections)

a. Article 1: Capacity Shortfall Damages, Excused Failure Day, Minimum Required Consents Application Target Date, Minimum Required Consents Receipt Target Date, Project COD Target Date, and Target Installation Start Date;

a. Article 2: Section 2.3 (Early Termination);

b. Article 3: Sections 3.1.3 (Failure to Achieve Expected Capacity on Project COD), 3.2 (Conditions for Project COD) and 3.18 (Change in Law);

c. Article 5: Sections 5.1 (Availability), 5.3 (Annual Energy Production) and 5.4 (Discounted Energy); and

d. Article 9: Section 9.1 (Seller Security).

(b) Appendices

a. Appendix 3 (Projected Energy Deliveries) including Schedule 1; and

b. Appendix 4 (Contract Price).

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

16.2 Compliance with the Freedom of Information Law

Seller expressly acknowledges that Buyer is subject to the requirements of New York's Freedom of Information Law ("FOIL") and must comply therewith. If Buyer is requested by a third party to disclose the marked Confidential Information that it has received from Seller, Buyer will, to the extent it is consistent with the requirements in Article 6 of the New York State Public Officers Law, (i) notify Seller of the request, (ii) provide Seller the opportunity to provide information regarding the need for confidential treatment, (iii) evaluate the third party's request for disclosure and Seller's request for confidential treatment, and (iv) determine if the marked Confidential Information is subject to disclosure under FOIL. If Buyer determines that the marked Confidential Information is subject to disclosure, it will provide prompt written notice of such determination to Seller so that Seller may seek a protective order or other appropriate remedy. If Seller does not obtain a protective order within thirty (30) Days after Buyer provides notice to Seller of its intent to make public the marked Confidential Information, Buyer may disclose such information with no liability or further obligation to Seller.

16.3 Contract Value Disclosure

Notwithstanding any other provision in this Agreement, Buyer may publicly disclose the estimated total contract value associated with this Agreement prior to Buyer's Board of Trustees authorization of the execution of this Agreement, which value shall be an aggregated amount. Furthermore, Buyer may be obligated to disclose certain Confidential Information in furtherance of Buyer's requirements to receive approval to execute this Agreement or to seek State Comptroller approval.

16.4 Treatment of Otherwise Publicly Available Information

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

16.5 Term of Confidentiality

The obligations set forth in this Article 16 shall survive expiration or termination of this Agreement for a period of three (3) Years thereafter. Upon termination of this Agreement, all Confidential Information furnished hereunder will be returned to the Disclosing Party promptly upon written request or destroyed with appropriate assurance that all copies have been destroyed, except to the extent that such Confidential Information is retained in order to comply with any law, professional standard or internal record retention policy, in which case the non-Disclosing Party shall take the appropriate measures to preserve its continuing confidentiality.

16.6 FERC

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

16.7 SEC

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

16.8 Confidential Treatment

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

[signatures on next page]

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

DEEPWATER WIND SOUTH FORK, LLC

LONG ISLAND POWER AUTHORITY

By: 
Name: Jeffrey Grybowski

Title: Chief Executive Officer

Date: 2/2/17

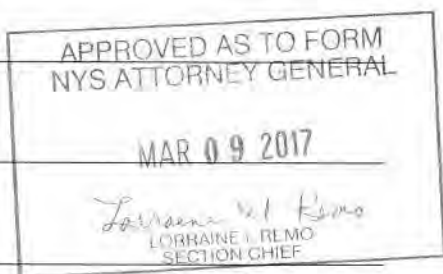
Approved as to Form:
Office of the Attorney General

By: _____

Name: _____

Title: _____

Date: _____



By: 

Name: ~~Thomas Falcione~~ Rick Starnes

Title: ~~Chief Executive Officer~~ Vice President of Operations Oversight

Date: 2/6/17

Approved:
Office of the State Comptroller

By: 

Name: _____

Title: _____

Date: _____

3/29/17

9R & 1,624,738,893.00
/52

STATE OF Rhode Island
COUNTY OF Providence)
ss.:

On the 2nd day of February, 2017 before me personally came Jeffrey Grybowski, who proved to me on the basis of satisfactory evidence to be the individual who executed the foregoing instrument in his authorized capacity on behalf of DEEPWATER WIND SOUTH FORK, LLC, the limited liability company described in and which executed the foregoing instrument, who being duly sworn did acknowledge that he executed same on behalf of, and that he was authorized to execute same on behalf of the aforementioned entity.

I certify under PENALTY OF PERJURY under the laws of the State of Rhode Island that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

[Signature]
Notary Public

APPENDIX 1

DESCRIPTION AND LOCATION OF THE PROJECT

Pursuant to the terms of the Agreement, Seller is planning to construct/install the renewable energy facility as more particularly described below.

Project Description

The Project will be an offshore wind generating facility and will include the following equipment:

- Wind Turbines having a cumulative nameplate Capacity of no more than 98 MW;
- Submarine and buried terrestrial electrical cable and supporting electrical equipment to interconnect with and deliver the Products to the Delivery Point which shall include:
 - A collection system of medium-voltage submarine electrical cables connecting the Wind Turbines to the offshore substation;
 - An offshore substation;
 - An export system, consisting of submarine and buried terrestrial high-voltage electrical cable(s) connecting the offshore station to the onshore substation;
 - An onshore substation; and
 - Interconnection facilities connecting the onshore substation to the Delivery Point; and
- Energy management and power quality control equipment which may include reactors, STATCOM and/or battery energy storage systems.

Site Description

The Wind Turbines, collection system and offshore substation will be located on the submerged lands of the Federal outer continental shelf in BOEM lease area OCS-A-0486.

The submarine portion of the export system will be located in right-of-way grants and/or easements provided by BOEM in connection with the Project's lease and by New York State Office of General Services. The terrestrial portion of the export system will be located in right-of-way grants and/or easements obtained from public and private land owners within the Towns of East Hampton, New York and Southampton, New York.

The onshore substation and interconnection facilities will be located in leased areas or easements on public and private land owners in the Town of East Hampton, New York.

Delivery Point Description

The Project will interconnect with and deliver the Products at the LIPA-owned 69 kV substation designated as “LIPA 9L-East Hampton Substation” with the details to be set forth in a one-line diagram in the Interconnection Agreement.

APPENDIX 2**PROJECT DEVELOPMENT MILESTONES**1. Minimum Required Consents

- A. National Environmental Policy Act Record of Decision
- B. Article VII of the New York Public Service Law Certificate of Environmental Compatibility and Public Need

2. Minimum Required Consents Application Target Date

September 30, 2018

3. Minimum Required Consents Receipt Target Date

March 31, 2021

4. Milestone Associated with the Installation Start Date

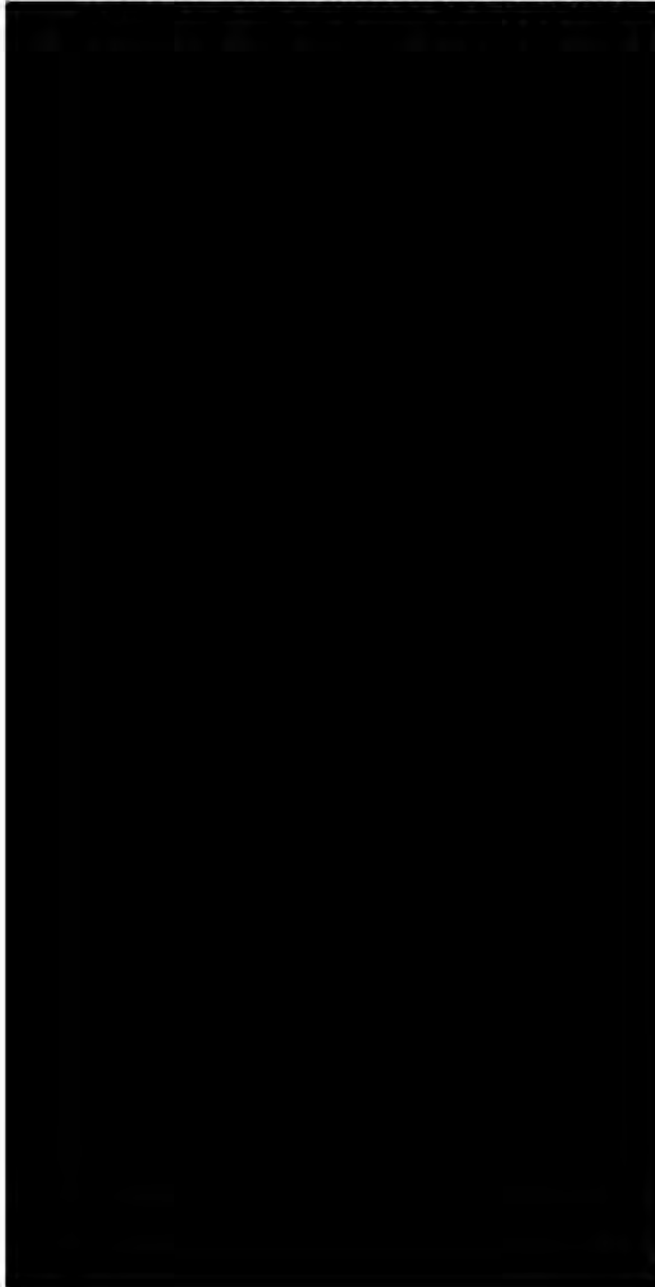
Target Installation Start Date, defined as a date which is three (3) Months following the Minimum Required Consents Receipt Target Date, or such later date to which the Target Installation Start Date shall be extended in accordance with Section 3.2.3.

5. Milestone Associated with the Project COD

Project COD Target Date, defined as December 1, 2022, or such later date to which the Project COD Target Date shall be extended in accordance with Section 3.2.3.

APPENDIX 3

PROJECTED ENERGY DELIVERIES



¹ Applies if only the Base Term is selected.

² Applies if the Base Term and the Extended Term are selected.

SCHEDULE 1 TO APPENDIX 3

ENERGY DELIVERY ASSUMPTIONS



FOIL Request Submitted to OSC on Nov 26, 2018

OSC Provided Contract Price Table 4-1 on Nov 12, 2019

Time to obtain contract price: 1 Year

APPENDIX 4

CONTRACT PRICE

- I. 20 Year Term. If the Effective Date occurs:
- (x) on or prior to March 31, 2017, then the Contract Price during the Base Term shall be as set forth in Column I of Table 4-1 below; or
 - (y) after March 31, 2017, then the Contract Price during the Base Term shall be as set forth in Column II of Table 4-1 below.
- II. Extension. If the Base Term is extended pursuant to Section 2.1.2 and if the Effective Date occurred:
- (x) on or prior to March 31, 2017, then the Contract Price during the Extended Term shall be as set forth in Column I of Table 4-2 below; or
 - (y) after March 31, 2017, then the Contract Price during the Extended Term shall be as set forth in Column II of Table 4-2 below.

[remainder of page intentionally blank]

Power Purchase Agreement (PPA)

between

LIPA & Deepwater Wind South Fork, LLC

(Executed Version dated February 6, 2017)

ARTICLE 1: GENERAL DEFINITIONS

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

Effective Date - means the first date on which all of the following shall have occurred:

(1) this Agreement has been executed by both Seller and Buyer; and (2) the executed Agreement has been (a) approved in writing by both (i) the New York State Attorney General (as to form), and (ii) the State Comptroller and (b) filed in the office of the State Comptroller (as provided for in Supplement 1).

(1) Seller: Executed by Deepwater Wind South Fork, LLC on February 2, 2017

Buyer: Executed by LIPA on February 6, 2017

(2)(a) (i) NYS OAG: Executed on March 9, 2017

(ii) NYS OSC: Executed on March 29, 2017

(b) PPA would have had to be filed with OSC prior to OSC approval (2)(a)(ii).

FOIL Request Submitted to OSC on Nov 26, 2018

OSC Provided Contract Price Table 4-1 on Nov 12, 2019

Time to obtain contract price: 1 Year

Table 4-1: Contract Price

<i>Contract Year</i>	<i>I. Contract Price (\$/MWh)</i>	<i>II. Contract Price (\$/MWh)</i>
0	\$160.33	\$177.23
1	\$168.35	\$186.09
2	\$176.76	\$195.40
3	\$185.60	\$205.17
4	\$194.88	\$215.42
5	\$200.73	\$221.89
6	\$206.75	\$228.54
7	\$212.95	\$235.40
8	\$219.34	\$242.46
9	\$225.92	\$249.74
10	\$228.18	\$252.23
11	\$230.46	\$254.76
12	\$232.77	\$257.30
13	\$235.10	\$259.88
14	\$237.45	\$262.47
15	\$237.45	\$262.47
16	\$237.45	\$262.47
17	\$237.45	\$262.47
18	\$237.45	\$262.47
19	\$237.45	\$262.47
20	\$237.45	\$262.47

Table 4-2: Contract Price

<i>Contract Year</i>	<i>I. Contract Price (\$/MWh)</i>	<i>II. Contract Price (\$/MWh)</i>
21	\$94.80	\$94.80
22	\$96.80	\$96.80
23	\$99.00	\$99.00
24	\$101.20	\$101.20
25	\$103.40	\$103.40

APPENDIX 5**SAMPLE MONTHLY INVOICE**

Deepwater Wind South Fork, LLC
 56 Exchange Terrace, Suite 300
 Providence, RI 02903
 Attn: Contract Administration

Buyer: Long Island Power Authority Billing Address: Long Island Electric Utility Service 333 Earle Ovington Blvd. Suite 403 Uniondale, New York 11553 Attn: Director of Power Markets Contracts Fax: (516) 719-8602	Invoice: Date: No.: Due: 30 Days from receipt Payment Instructions: By Wire Transfer to: [Bank Name] ABA: _____ Account No. _____ [Attention: _____]
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Comments or Special Instructions:

Item	Description	Amount Due
	Applicable Adjustments	
	Interest	
	(Credit)	
	Total	

If you have any questions concerning this invoice, then please contact [Name], [Telephone], [Email].

APPENDIX 6**CERTIFICATION AND ASSIGNMENT OF RIGHTS FORM**

Buyer Agreement No. _____ Buyer Agreement Date: January 25, 2017

Name of Seller: _____

Name of Project: _____

Invoice Number: _____

Serial Number(s): _____

Total Number of Renewable Attributes: _____

Total Number of RECs: _____

Total Number of MWh (Delivered Energy): _____

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

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

Date: _____

By: _____

Signature of Seller's Authorized Officer

Name: _____

APPENDIX 7

[NOT USED]

APPENDIX 8

[NOT USED]

APPENDIX 9

INSURANCE REQUIREMENTS

Commencing with the Effective Date and at all times throughout the Term of this Agreement except as expressly provided below, Seller shall, at its own cost, maintain and cause to be maintained the types and amounts of insurance set forth below. Such insurance shall be placed with responsible and reputable insurance companies (i) which have an A.M. Best rating of at least "A" or (ii) which are reasonably acceptable to Buyer, including Seller's related captive insurance company, as long as such captive insurance company meets the required A.M. Best Rating. Seller shall give Buyer prompt notice of any material alteration to any of such insurance coverages, but in no event later than sixty (60) Business Days after it learns of such material alteration.

1. Insurance Policies and Limits:

1.1 Workers' Compensation/Employer's Liability:

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

1.2 Automobile Liability:

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

1.3 Third Party Liability:

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

1.4 Umbrella or Excess Liability:

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

1.5 Property Insurance:

From and after the date that Seller or its contractors commence construction at the Site and subject to availability on commercially reasonable terms Property Insurance providing coverage for all risks of direct physical loss or damage to,

and for the probable maximum loss, as determined by a third party independent engineer, to (subject to standard loss sublimits), all property and equipment of Seller used for or in connection with the Products provided under this Agreement. Such coverage shall provide the costs of continuing expenses and additional expenses necessary to continue operations, insofar as reasonably possible, following loss of or damage to the property and equipment of Seller.

2. General Provisions.

2.1 Evidence of Coverage:

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

2.2 Additional Insureds:

With the exception of Workers' Compensation/Employer's Liability and Property Insurance, Buyer, its service provider and their respective trustees, directors, officers, employees, agents, and affiliates and any other party reasonably requested by Buyer and to whom Seller is contractually obligated shall be included as an additional insured on the policies required by this Appendix.

2.3 Waiver of Subrogation:

Under each policy under which Buyer is required by this Appendix to be named as an additional insured, and including the Workers Compensation and Employer's Liability insurance, Buyer, its service provider and their respective trustees, directors, officers, employees, agents, and affiliates and any other party reasonably requested by Buyer shall be and hereby is granted waivers of subrogation by the insurers providing the coverage.

2.4 Severability of Insureds:

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

2.5 Primary Insurance:

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

2.6 Notice of Cancellation:

Seller shall provide Buyer with copies of any notices of cancellation or material alteration of any insurance policy required by this Appendix, within sixty (60) Business Days of receipt of such notice by Seller.

2.7 Deductibles:

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

APPENDIX 10
FORM OF SELLER LETTER OF CREDIT

[ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT NO. _____

DATE:

BENEFICIARY:

Long Island Power Authority

333 Earle Ovington Boulevard, Suite 403

Uniondale, New York 11553

Attn: TBD

APPLICANTS:

[_____]

INITIAL AMOUNT: USD \$ ***[RESPONDENT TO INSERT AMOUNT THAT IS REQUIRED UNDER THE AGREEMENT]***

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

PLACE OF EXPIRY: At our Counters

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

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

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

- (1) the original of this Letter of Credit and all amendments; and
- (2) your sight draft drawn on us; and
- (3) either:
 - (i) Beneficiary's Certificate issued in the form of Annex I attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary; or
 - (ii) Beneficiary's Certificate issued in the form of Annex II attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the original signature of an officer of the Beneficiary.

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

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

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

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

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

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

[ISSUING BANK NAME]

By:

Authorized Signature

Address: []
[]
[]

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

[Issuing Bank Name]

Date: _____, _____

[
 [
 [

Ladies and Gentlemen:

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

1. The Beneficiary is a party to that certain Power Purchase Agreement dated as of January 25, 2017 (as amended from time to time, the "Agreement"), between the Beneficiary and Seller.
2. The Beneficiary has not heretofore disposed of its right, title or interest in or to the Agreement.
3. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$_____, pursuant to the provisions of Section 9.3 or 9.5 of the Agreement because [indicate applicable reason]:
 - [] The amount drawn hereunder constitutes undisputed amounts that are owed to Beneficiary by Seller under the Agreement and that remain unsatisfied for at least ten (10) Business Days (as defined in the Agreement) of becoming due and payable and Buyer has notified Seller in writing of Buyer's intention to draw on this Letter of Credit.
 - [] The amount drawn hereunder constitutes undisputed amounts that are owed to Beneficiary by Seller under the Agreement as a result of a declaration of an early termination date by Beneficiary in accordance with Section 6.5 of the Agreement.
 - [] The Seller is Bankrupt (as defined in the Agreement) and the amount drawn hereunder constitutes not less than the amounts paid by Seller to Beneficiary that could [reasonably] be challenged or recovered as a preference or fraudulent conveyance in bankruptcy.
 - [] The Letter of Credit is to expire in five (5) Business Days (as defined in the Agreement) or less and Beneficiary has not been provided substitute Seller

Security (as defined in the Agreement), permitting Beneficiary to draw the entire amount of the Letter of Credit.

4. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS AND ____/100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in Paragraph 3, above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
5. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 4 above. The date of the sight draft is the date hereof, which is not later than the Expiration Date or any New Expiration Date.
6. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

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

Beneficiary:

LONG ISLAND POWER AUTHORITY

By: _____
 Name: _____
 Title: _____

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

[Issuing Bank Name]

Date: _____, _____

[
 [
 [

Ladies and Gentlemen:

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

1. The Beneficiary is a party to that certain Power Purchase Agreement dated as of January 25, 2017 (as amended from time to time, the "Agreement"), between the Beneficiary and Seller.
2. The Beneficiary has not heretofore pledged, assigned, transferred or disposed of any of its right, title or interest in or to the Agreement.
3. The Beneficiary has not heretofore disposed of its right, title or interest in or to the Agreement.
4. The Beneficiary has provided at least forty (40) days' prior written notice to the Applicants of the Bank's intent not to renew the Letter of Credit following the present Expiration Date or any New Expiration Date.
5. The Applicants have failed to provide the Beneficiary with a substitute letter of credit substantially in the same form as the Letter of Credit within the forty (40) day period referred to in Paragraph 4 above.
6. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS & /100ths (U.S. \$ _____).
7. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 6 above, which amount does not exceed the Available Amount as of the date hereof. The date of the sight draft is the date of this Certificate, which is not later than the Expiration Date or any New Expiration Date.
8. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

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

Beneficiary:

LONG ISLAND POWER AUTHORITY

By: _____
Name:
Title:

APPENDIX 11**FORM OF CONSENT AND AGREEMENT**

This CONSENT AND AGREEMENT (this "Consent"), dated as of [_____] among LONG ISLAND POWER AUTHORITY, a corporate municipal instrumentality of the State of New York (the "Consenting Party"), [SELLER], a [STATE] [ENTITY] (the "Company"), and [_____] as collateral agent (together with its successors in such capacity, the "Collateral Agent") under the Security Documents (as defined below) for the benefit of the Financing Parties (as defined below). Capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Assigned Agreement (as defined below).

RECITALS

WHEREAS the Company intends to develop, site, construct, install, operate, maintain and finance generating facility and all related and ancillary facilities to be used in connection with the generation, metering and transmission of the energy produced by generating facility located in [CITY, STATE];

WHEREAS the Company intends to finance the development, siting, construction, purchase, installation and operation of the Project through senior or subordinated construction, interim or long-term debt or equity financing or refinancing, which may take the form of private debt, public debt or any other form (including debt financing or refinancing provided to a member or other direct or indirect owner of the Company), including any equity and tax investor directly or indirectly providing financing or refinancing for the Project, any Person providing any interest rate protection agreements to hedge any of the foregoing obligations, and any trustee or agent acting on behalf of one or more of the foregoing Persons (the "Financing");

WHEREAS all of the obligations of the Company with respect to the Financing and any other agreements related thereto (collectively, the "Financing Documents") to the Collateral Agent and each other Person that becomes a party to whom Finance Obligations (as defined below) are owed under any Financing Documents (with the Collateral Agent, collectively, the "Financing Parties") will be secured by one or more security agreements, pledge agreements, or other document providing for any lien on, pledge of, encumbrance on, mortgage of or security interest in the Company's property or assets and any related documentation including third-party consents (collectively, the "Security Documents");

WHEREAS the Collateral Agent is the representative of the Financing Parties;

WHEREAS the Company and the Consenting Party have entered into that certain Power Purchase Agreement, dated as of January 25, 2017 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Assigned Agreement");

WHEREAS the Company has notified the Consenting Party that all of the Company's right, title and interest in, to and under the Assigned Agreement is to be assigned to the Collateral Agent as security pursuant to one or more of the Security Documents; and

WHEREAS it is a condition precedent to the Financing Parties' obligation to make the Financing available to the Company under the Financing Documents that the Consenting Party execute and deliver this Consent for the benefit of the Financing Parties;

NOW, THEREFORE, as an inducement to the Collateral Agent and the Financing Parties to enter into the Financing Documents and the Security Documents and to make the Financing available to the Company, and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Consenting Party hereby agrees as follows:

ARTICLE I

CONSENT TO ASSIGNMENT, ETC.

Section 1.01 Consent to Assignment. Each of the Company and the Consenting Party (a) acknowledges that the Collateral Agent and the Financing Parties are entering into the Financing Documents and the Security Documents and making the Financing available to the Company in reliance upon the execution and delivery by the Consenting Party of the Assigned Agreement and this Consent, (b) consents in all respects to the pledge and collateral assignment to the Collateral Agent of all of the Company's right, title and interest in, to and under the Assigned Agreement pursuant to one or more of the Security Documents and (c) acknowledges the right, but not the obligation, of the Collateral Agent or the Collateral Agent's designee, in the exercise of the Collateral Agent's rights and remedies under the Security Documents, to make all demands, give all notices, cure all defaults, take all actions and exercise all rights of the Company in accordance with the Assigned Agreement, and upon the Collateral Agent providing written notice to the Consenting Party, the Consenting Party shall recognize all such demands, notices, actions and exercises of rights as actions of the Company under the Assigned Agreement, may consider such actions as superseding any contrary actions taken by the Company and shall accept and respond to such actions as if such actions had been taken by the Company. In any such event, the Consenting Party agrees that it shall continue to perform its obligations under the Assigned Agreement.

Section 1.02 Substitute Owner. The Consenting Party and Company each agree that, if the Collateral Agent shall notify the Consenting Party that an event of default under any of the Financing Documents has occurred and is continuing and that the Collateral Agent has exercised its rights (a) to have itself or its designee substituted for the Company under the Assigned Agreement or (b) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to any Person, including, without limitation, any purchaser or grantee at a judicial or non-judicial foreclosure sale or by a conveyance by the Company in lieu of foreclosure, then the Collateral Agent, the Collateral Agent's designee or such Person (each, a "Substitute Owner") shall be substituted for the Company under the Assigned Agreement and that, in such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor

of the Substitute Owner, provided that any Substitute Owner under this Section 1.02 will cause the Project to be operated by an experienced, qualified operator of generating facilities.

Section 1.03 Right to Cure. The Consenting Party agrees that in the event of a default by the Company in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Consenting Party to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable legal requirements (hereinafter a "default"), the Consenting Party will continue to perform its obligations under the Assigned Agreement and will not exercise any such right or remedy until it first gives prompt written notice of such default to the Collateral Agent and affords the Collateral Agent, the Collateral Agent's designee and the Financing Parties a period of at least ten (10) Days (or if such default is a non-monetary default, such longer period not to exceed thirty (30) Days as is required so long as any such party has commenced and is diligently pursuing appropriate action to cure such default) from receipt of such notice to cure such default; provided, however, that (i) Collateral Agent shall have the right, but not the obligation, to cure such default, (ii) cure of any default by the Collateral Agent, if timely performed by Collateral Agent, shall be effective to prevent or cure a default as if done by the Company, and (iii) if any such party is prohibited from curing any such default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Company, then the time periods specified in this Section 1.03 for curing a default shall not include the period of such prohibition. Neither Collateral Agent nor any lender or third party to any Financing Documents or Security Documents shall be obligated to perform any obligation of the Company under the Assigned Agreement or have any obligation or liability to the Consenting Party except and to the extent the Collateral Agent or such party has expressly assumed such obligation, provided that the Consenting Party shall be entitled to exercise all its rights under the Assigned Agreement in the event that Collateral Agent or such other party fails to perform Company's obligations.

Section 1.04 No Termination, Assignment or Material Amendment.

(a) The Consenting Party will not, without the prior written consent of the Collateral Agent enter into any consensual cancellation or termination of the Assigned Agreement (which consent shall not be unreasonably withheld, delayed or conditioned), or assign or otherwise transfer, any of its right, title and interest thereunder except to the extent permitted by the Assigned Agreement, or consent to any such assignment or transfer by the Company other than this Consent.

(b) The Consenting Party will not enter into any material amendment, restatement, supplement or other modification of the Assigned Agreement (an "Amendment") until after the Collateral Agent has been given twenty (20) Days prior written notice of the proposed Amendment by the Company (a copy of which notice will be provided to the Consenting Party by the Company), and will not then enter into such Amendment if the Consenting Party has, within such twenty (20) Day period, received a copy of (a) the Collateral Agent's objection to such Amendment (not to be unreasonable) or (b) the Collateral Agent's request to the Company for additional information with respect to such Amendment.

Section 1.05 Replacement Agreement. In the event that the Assigned Agreement is terminated as a result of any bankruptcy or insolvency proceeding affecting the Company, the Consenting Party will, at the option of the Collateral Agent, within ninety (90) Days after such termination, enter into a new agreement with the Substitute Owner on the same terms as the terms of the Assigned Agreement (including prices) except for any conforming changes to designate the Substitute Owner and to establish the term of the replacement agreement which shall be for the remainder of the term of the Assigned Agreement on the date of execution of the replacement agreement provided that any Substitute Owner will cause the Project to be operated by an experienced, qualified operator of generating facilities such as the Project.

Section 1.06 No Liability. The Consenting Party acknowledges and agrees that none of the Collateral Agent, the Collateral Agent's designee or the Financing Parties shall have any liability or obligation under the Assigned Agreement solely as a result of this Consent or the Security Documents, nor shall the Collateral Agent, the Collateral Agent's designee or the Financing Parties be obligated or required to (a) perform any of the Company's obligations under the Assigned Agreement, except, in the case of the Collateral Agent or the Collateral Agent's designee, during any period in which the Collateral Agent or the Collateral Agent's designee is a Substitute Owner pursuant to Section 1.02, in which case (i) the obligations of such Substitute Owner shall be no more and no less than those of the Company under the Assigned Agreement and (ii) such Substitute Owner shall cure any continuing defaults under the Assigned Agreement (including any defaults for failure to pay amounts owed), or (b) take any action to collect or enforce any claim for payment assigned under the Security Documents.

Section 1.07 Performance under Assigned Agreement. The Consenting Party shall perform and comply with all material terms and provisions of the Assigned Agreement to be performed or complied with by it to the extent provided therein and shall maintain the Assigned Agreement in full force and effect in accordance with its terms.

Section 1.08 Delivery of Notices. The Consenting Party shall deliver to the Collateral Agent, concurrently with the delivery thereof to the Company, a copy of each notice of default given by the Consenting Party pursuant to the Assigned Agreement.

ARTICLE II

PAYMENTS UNDER THE ASSIGNED AGREEMENT.

Section 2.01 Payments. The Consenting Party will pay all amounts payable by it under the Assigned Agreement, if any, in the manner required by the Assigned Agreement directly into the account specified on Exhibit A hereto, or to such other Person or account as shall be specified from time to time by the Collateral Agent to the Consenting Party in writing upon forty-five (45) Days' prior notice.

Section 2.02 No Offset, etc. All payments required to be made by the Consenting Party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, except as specifically permitted under the Assigned Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE CONSENTING PARTY

In order to induce the Collateral Agent and the Financing Parties to enter into the Financing Documents and the Security Documents and to make the Financing available to the Company, the Consenting Party makes the following representations and warranties, which shall survive the execution and delivery of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby.

Section 3.01 Organization; Power and Authority. The Consenting Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, [and has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.] [Subject to confirmation at time of execution.]

Section 3.02 Authorization. The execution, delivery and performance by the Consenting Party of this Consent and the Assigned Agreement have been duly authorized by all necessary action on the part of the Consenting Party and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (a) the Consenting Party or (b) any other Person, in each case except for [Deferred Approvals and] approvals or consents which have previously been obtained. The Consenting Party has all regulatory authorizations necessary for it to legally perform its obligations under this Consent and the Assigned Agreement [other than the Deferred Approvals].

Section 3.03 Execution and Delivery; Binding Agreements. [Subject to the Deferred Approvals,] each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Consenting Party by the appropriate officers of the Consenting Party, and constitutes the legal, valid and binding obligation of the Consenting Party, enforceable against the Consenting Party in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

Section 3.04 Litigation. There is no litigation, action, suit, proceeding or investigation pending or (to the Consenting Party's knowledge) threatened against or involving the Consenting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (a) is reasonably expected to materially adversely affect the performance by the Consenting Party of its obligations hereunder or under the Assigned Agreement, or which could modify or otherwise materially adversely affect the Approvals (as defined in Section 3.06), (b) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby or (c) is reasonably likely to have a material adverse effect upon (i) the operations, properties, assets, or

condition (financial or otherwise) of the Consenting Party, (ii) the ability of the Consenting Party to perform under the Assigned Agreement or this Consent, (iii) the operations, properties, assets or condition (financial or otherwise) of the Project, (iv) the value, validity, perfection and enforceability of the liens granted to the Collateral Agent under the Security Documents or (v) the ability of the Collateral Agent or the Financing Parties to enforce any of their material rights and remedies under the Assigned Agreement or this Consent (collectively, a “Material Adverse Effect”).

Section 3.05 Compliance with Other Instruments, etc. The Consenting Party is not in violation of its charter or by-laws, and [upon receipt of the Deferred Approvals] the execution, delivery and performance by the Consenting Party of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, breach of or default under any term of its charter or by-laws, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to it, except for any such violations which, individually or in the aggregate, would not have a Material Adverse Effect.

Section 3.06 Government Consent. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any Person, board or body, public or private (collectively, the “Approvals”), is required to be obtained by the Consenting Party in connection with the execution, delivery or performance of the Assigned Agreement or the consummation of the transactions contemplated thereunder, except as listed on Exhibit B hereto. All such Approvals listed on Exhibit B, except for those set forth in Part II thereof (the “Deferred Approvals”), are Final (as defined below). An Approval shall be “Final” if it has been validly issued, is in full force and effect, is not subject to any condition (other than compliance with the terms thereof), does not impose restrictions or requirements inconsistent with the terms of the Assigned Agreement, and is final and not subject to any appeal. The Consenting Party reasonably believes that each Deferred Approval will be obtained in the ordinary course of business.

Section 3.07 No Default or Amendment. Neither the Consenting Party nor, to the Consenting Party’s knowledge, any other party to the Assigned Agreement is in default of any of its obligations thereunder. To its knowledge, the Consenting Party has no existing counterclaims, offsets or defenses against the Company. [The Assigned Agreement is in full force and effect] [subject to confirmation at time of execution] and, to the Consenting Party’s knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Consenting Party or the Company to terminate or suspend its obligations under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented. [Subject to confirmation at time of execution.]

Section 3.08 No Previous Assignments. The Consenting Party has no notice of, and has not consented to, any previous assignment of all or any part of its rights under the Assigned Agreement.

Section 3.09 Representations and Warranties. All representations, warranties and other statements made by the Consenting Party in the Assigned Agreement were true and correct as of the date when made [and, unless made as of a specified date, are true and correct as of the date of this Consent.] [Subject to confirmation at time of execution.]

ARTICLE IV

OPINION OF COUNSEL

The Consenting Party shall deliver to the Collateral Agent an opinion of counsel relating to the Assigned Agreement and this Consent, which opinion shall be in form and substance reasonably satisfactory to the Collateral Agent. The Company agrees to pay for the Consenting Party's reasonable attorney's fees and expenses incurred in providing such opinion of counsel.

ARTICLE V

MISCELLANEOUS

Section 5.01 Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the Assigned Agreement (although failure to so refer shall not render any such notice of communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed as follows:

If to the Consenting Party: Long Island Electric Utility Servco LLC as agent of and acting on behalf of Long Island Lighting Company d/b/a LIPA
333 Earle Ovington Blvd., Suite 403
Uniondale, New York 11553
Attention: Manager of Power Contracts
Telephone: (516) 222-3646

With a copy to:

Long Island Power Authority
333 Earle Ovington Blvd., Suite 403
Uniondale, New York 11553
Attention: General Counsel
Telephone: (516) 222-7700

If to the Company: [_____] [ADDRESS]
Attention:
Telephone:
Fax:

If to the Collateral Agent: []
[ADDRESS]
Attention:
Telephone:
Fax:

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

Section 5.02 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

(b) Any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the Supreme Court of the State of New York located in Nassau County or Suffolk County or in the Federal court of the United States of America for the Eastern District of New York, and, by execution and delivery of this Consent, each of the Consenting Party, the Company and the Collateral Agent hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each of the Consenting Party, the Company and the Collateral Agent irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Consenting Party at its notice address provided pursuant to Section 5.01 hereof. Each of the Consenting Party, the Company and the Collateral Agent hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of the Collateral Agent or its designees to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Consenting Party in any other jurisdiction.

Section 5.03 Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Section 5.04 Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

Section 5.05 Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 5.06 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Consenting Party, the Company and the Collateral Agent. Notwithstanding the foregoing, the Company shall not have any right to consent to or approve any amendment, modification, termination or waiver of any provision of this Consent except to the extent its rights are directly affected.

Section 5.07 Termination.

(a) The Consenting Party's obligations hereunder are absolute and unconditional, and the Consenting Party has no right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until all obligations under the Financing Documents (the "Finance Obligations") have been satisfied in full, notice of which shall be provided by or on behalf of the Collateral Agent when all such obligations have been so satisfied (the "Termination Notice").

(b) In the event that the Termination Notice is delivered to the Consenting Party pursuant to this Section 5.07, this Consent shall terminate for all purposes as to the Collateral Agent, the Financing Documents and the Security Documents, and the Collateral Agent and the Financing Parties (and if the proviso at the end of this sentence is not applicable, the Consenting Party) shall have no further rights or obligations under this Consent; provided, however, that the Consenting Party agrees that this Consent shall continue to apply for the benefit of the Company and the providers of new credit facilities under the documentation for the new credit facilities (the "New Lender"), if concurrently with the delivery by or on behalf of the Collateral Agent to the Consenting Party of the Termination Notice pursuant to this Section 5.07, (i) the New Lender or an agent, trustee or other representative of the New Lender shall have agreed in a writing sent to the Consenting Party that it assumes the rights and the prospective obligations of the "Collateral Agent" under this Consent, and shall have supplied substitute notice address information for Section 5.01 and new payment instructions (countersigned by the Company) for Exhibit A and (ii) the amount of the new credit facilities does not exceed the original amount of commitments by the Financing Parties to make loans and extend other credit facilities under the original Financing Documents. In such event, thereafter, (A) the term "Finance Obligations" under this Consent shall be deemed to refer to the new credit facilities, (B) the terms "Collateral Agent" or "Financing Parties" shall be deemed to refer to the New Lender or any agent or trustee for the New Lender (as appropriate), (C) the term "Financing Documents" shall be deemed to refer to the credit

agreement, indenture or other instrument providing for the new credit facilities, and (D) the term "Security Documents" shall be deemed to refer to the security agreements and related documents under which the Assigned Agreement is assigned as collateral to secure performance of the obligations of the Company under the new credit facilities.

Section 5.08 Successors and Assigns. This Consent shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns. Any corporation or association into which the Collateral Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Collateral Agent shall be a party, or any corporation or association to which all or substantially all of the corporate business of the Collateral Agent may be sold or otherwise transferred, shall be the successor collateral agent hereunder following notice given by such entity to the Consenting Party.

Section 5.09 Further Assurances. Each party hereto agrees to execute and deliver all such acknowledgments or such other instruments and take such other actions as another party hereto shall reasonably request in connection with the transactions provided for in this Consent.

Section 5.10 Waiver of Trial by Jury. TO THE EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, THE CONSENTING PARTY, THE COMPANY AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT.

Section 5.11 Survival. All agreements, statements, representations and warranties made by any party herein shall be considered to have been relied upon by the other parties and shall survive the execution and delivery of this Consent.

Section 5.12 No Waiver; Remedies Cumulative. No failure or delay on the part of the Collateral Agent in exercising any right, power or privilege hereunder and no course of dealing between the Consenting Party and the Collateral Agent shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Collateral Agent would otherwise have.

Section 5.13 Entire Agreement. This Consent embodies the complete agreement between the parties hereto with respect to the matters covered herein and supersedes all other oral or written understandings or agreements with respect to such matters.

IN WITNESS WHEREOF, the Consenting Party, the Company and the Collateral Agent have caused this Consent to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

LONG ISLAND POWER AUTHORITY

By: _____
Name:
Title:

[SELLER]

By: _____
Name:
Title:

[_____] ,
as Collateral Agent

By: _____
Name:
Title:

Exhibit A to
Consent and Agreement

Payment Instructions

[_____]

[_____]

[_____]

[_____]

[_____]

[_____]

[_____]

Exhibit B to
Consent and Agreement

Approvals

Part I – Final Approvals:

Part II – Deferred Approvals:

APPENDIX 12

[NOT USED]

APPENDIX 13

[NOT USED]

APPENDIX 14

[NOT USED]

APPENDIX 15

[NOT USED]

APPENDIX 16-1

**STANDARD CLAUSES FOR MINORITY-AND WOMEN-OWNED
BUSINESS ENTERPRISES**PARTICIPATION BY MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES:
REQUIREMENTS AND PROCEDURESI. General Provisions

- A. The Authority 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 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 agrees, in addition to any other nondiscrimination provision of this Agreement and at no additional cost to the Authority, to fully comply and cooperate with the Authority 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 subsection VII of this Appendix or enforcement proceedings as allowed by this Agreement.

II. Contract Goals

- A. For purposes of this procurement, the Authority hereby establishes an overall goal of 0 % 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 this Agreement and achieving the Contract Goals established in subsection II-A above, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://ny.newnycontracts.com/>

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 this Agreement.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.
- D. The Contractor must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
 - 1. Evidence of outreach to MWBEs;
 - 2. Any responses by MWBEs to the Contractor's outreach;
 - 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by Authority with MWBEs; and,
 - 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
 - 1. Ensure that each contractor and subcontractor performing work on the Contract 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.
 - 1. The Contractor shall submit an EEO policy statement to the Authority within seventy two (72) hours after the date of the notice by Authority to award this Agreement to the Contractor.

2. If Contractor or Subcontractor does not have an existing EEO policy statement, the Authority may provide the Contractor or Subcontractor a model statement (see attached - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
3. 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 subsection III, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of this Agreement 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 thereafter, but no later than the time of award of the contract.

D. Form 102 - Workforce Employment Utilization Report ("Workforce Report")

1. The Contractor shall submit a Workforce Utilization Report (excel form format), and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as required by Authority on a QUARTERLY basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

- 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 the Contractor has submitted an MWBE Utilization Plan (Form 103), or shall submit an MWBE Utilization Plan required by Authority through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Authority, either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Authority shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

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, the Authority shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Authority, 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, the Authority 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 the Authority by the 10th day following each end of quarter over the term of this Agreement documenting the progress made towards achievement of the MWBE goals of this Agreement.

VII. Liquidated Damages - MWBE Participation

- A. Where the Authority determines that Contractor is not in compliance with the requirements of this Agreement 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 set forth herein, Contractor shall be obligated to pay to the Authority 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 this Agreement.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Authority, Contractor shall pay such liquidated damages to the Authority within sixty (60) days after they are assessed by the Authority 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 the Authority.

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.

EEO

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.

(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

0% Minority and Women's Business Enterprise Participation

0% Minority Business Enterprise Participation

0% Women's Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

_____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____

APPENDIX 16-2**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED
SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. LIPA recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of LIPA contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractor is strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, LIPA conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp> Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

APPENDIX 17

OUTAGES³**NERC Event Type U1:****U1 – Unplanned (Forced) Outage — immediate**

This is an outage that requires immediate removal of a unit from service, another outage state, or a reserve shutdown state. This type of outage usually results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to unit alarms.

NERC Event Type U2:**U2 – Unplanned (Forced) Outage — Delayed**

This is an outage that does not require immediate removal of a unit from the in-service state, instead requiring removal within six hours. This type of outage can only occur while the unit is in service.

NERC Event Type U3:**U3 – Unplanned (Forced) Outage — Postponed**

This is an outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend (Sunday at 2400 or before Sunday turns into Monday). This type of outage can only occur while the unit is in service.

NERC Event Type MO:**MO – Maintenance Outage**

An outage that can be deferred beyond the end of the next weekend (defined as Sunday at 2400 hours or as Sunday turns into Monday), but requires that the unit be removed from service, another outage state, or Reserve Shutdown state before the next Planned Outage (PO). Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration, and is usually much shorter than a PO. Discovery work and re-work which render the unit out of service beyond the estimated MO end date are not considered part of the original scope of work. A maintenance extension may be used only in

³ The terms set forth in this Appendix 17 are defined at the following website:
<http://www.nerc.com/pa/RAPA/gads/Pages/Data%20Reporting%20Instructions.aspx> (Section 3, dated January 2015). Capitalized terms used in this Appendix and not defined herein shall have the meanings ascribed to such terms referenced on such website.

instances where the original scope of work requires more time to complete than the estimated time. For example, if an inspection that is in the original scope of work for the outage takes longer than scheduled, the extra time should be coded as an extension (ME). If the damage found during the inspection is of a nature that the unit could be put back on-line and be operational past the end of the upcoming weekend, the work could be considered MO or ME. If the inspection reveals damage that prevents the unit from operating past the upcoming weekend, the extended work time should be Forced Outage (See definitions of Event Types U1, U2, or U3 above).

NERC Event Type ME:

ME – Maintenance Outage Extension

GADS defines a maintenance outage extension as an extension of a maintenance outage (MO) beyond its estimated completion date. This means that at the start of an MO, the outage had an estimated duration (time period) for the work and a date set for the unit to return to service. All work during the MO is scheduled (part of the original scope of work) and all repair times are determined before the outage started.

NERC Event Type PO:

PO – Planned Outage

An outage that is scheduled well in advance and is of a predetermined duration, can last for several weeks, and occurs only once or twice a year. Turbine and boiler overhauls or inspections, testing, and nuclear refueling are typical planned outages. For a planned outage, all of the specific individual maintenance and operational tasks to be performed are determined in advance and are referred to as the “original scope of work.” The general task of repairing turbines, boilers, pumps, etc. is not considered a work scope because it does not define the individual tasks to be performed.

Discovery work and re-work which render the unit out of service beyond the estimated PO end date are not considered part of the original scope of work. A planned extension may be used only in instances where the original scope of work requires more time to complete than the estimated time.

NERC Event Type PE:

PE – Planned Outage Extension

GADS defines a planned outage extension as an extension of a Planned Outage (PO) beyond its estimated completion date. This means that at the start of the PO, the outage had an estimated duration (time period) for the work and a date set for the unit to return to service. All work during the PO is scheduled (part of the original scope of work) and all repair times are determined before the outage started.

SUPPLEMENT 1 - STANDARD CLAUSES FOR LIPA CONTRACTS

For the purposes of this Supplement 1, 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.

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 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 Supplement 1 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.

Minority-Owned Business Enterprise (MBE) Subcontracting Goal 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 Supplement 1, the terms of this Supplement 1 shall control.

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

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

PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically

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

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

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

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

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

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

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

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

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

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

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

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

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.

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.