

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

**POWER PURCHASE AGREEMENT
BETWEEN
LONG ISLAND POWER AUTHORITY
AND
[NAME OF SELLER]**

Month/Day/Year

NOTE: THIS FORM OF POWER PURCHASE AGREEMENT IS APPLICABLE TO OFF-ISLAND GENERATION, WITH A CONTROLLABLE CABLE (“OFF-ISLAND PPA”). LIPA EXPRESSLY RESERVES THE RIGHT TO MODIFY OR OTHERWISE REVISE THIS DRAFT AS IT MAY DEEM NECESSARY OR ADVISABLE OR AS CIRCUMSTANCES MAY OTHERWISE WARRANT, INCLUDING IN RESPONSE TO QUESTIONS SUBMITTED BY PROPOSERS.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

TABLE OF CONTENTS

| | |
|--|-----------|
| ARTICLE 1 DEFINITIONS | 2 |
| 1.1 Definitions | 2 |
| 1.2 Construction | 19 |
| ARTICLE 2 TERM OF AGREEMENT | 21 |
| 2.1 Term | 21 |
| 2.2 Opinion of Counsel | 21 |
| 2.3 Early Termination by Buyer | 22 |
| ARTICLE 3 PROJECT DEVELOPMENT AND COMMERCIAL OPERATION | 23 |
| 3.1 Commercial Operation Notices | 23 |
| 3.2 Conditions for Project Commercial Operation Date | 23 |
| 3.3 Conditions for Off-Island Generator Commercial Operation Date | 23 |
| 3.4 Conditions for Controllable Cable Commercial Operation Date | 24 |
| 3.5 Liquidated Damages | 25 |
| 3.6 Testing | 28 |
| 3.7 Emission Allowances | 29 |
| 3.8 Notice of EPC Contracts Execution | 29 |
| 3.9 Obtaining Consents | 29 |
| 3.10 Design and Development | 29 |
| 3.11 Construction of the Projects | 30 |
| 3.12 Interconnection Arrangements | 30 |
| 3.13 Cooperation | 30 |
| 3.14 Cable Capacity of the Controllable Cable | 30 |
| 3.15 Capability Test and Line Rating | 31 |
| 3.16 Right to Schedule Energy, Capacity and Ancillary Services and Financial Rights Thereto | 31 |
| 3.17 Cable System Losses | 33 |
| 3.18 Off-Island ISO Refunds | 33 |
| 3.19 NYISO and Off-Island ISO Approvals | 33 |
| ARTICLE 4 ROLES OF THE PARTIES; REGULATORY APPROVALS | 35 |

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

| | | |
|--|---|-----------|
| 4.1 | Role of Seller..... | 35 |
| 4.2 | Role of Buyer..... | 37 |
| 4.3 | FERC Agreement; Regulatory Review..... | 37 |
| 4.4 | Costs and Charges Related to Products..... | 38 |
| ARTICLE 5 SALE OF DEDICATED CAPACITY, ENERGY AND ANCILLARY SERVICES | | 39 |
| 5.1 | Obligations..... | 39 |
| 5.2 | Agreement to Sell and Purchase..... | 39 |
| 5.3 | Off-Island Operations..... | 39 |
| 5.4 | Title..... | 39 |
| 5.5 | Meters..... | 39 |
| 5.6 | Right to Resell | 40 |
| 5.7 | Monthly Capacity Payments..... | 40 |
| 5.8 | Monthly Energy Payment | 40 |
| 5.9 | Excused Outages | 41 |
| 5.10 | Equivalent Availability and Chronic Underperformance..... | 41 |
| ARTICLE 6 BILLING AND COLLECTIONS | | 43 |
| 6.1 | Billing and Payment..... | 43 |
| 6.2 | Monthly Adjustment..... | 45 |
| 6.3 | Billing and Final Accounting. | 45 |
| 6.4 | Interest | 46 |
| 6.5 | Billing and Payment Records..... | 46 |
| 6.6 | Required Payment | 46 |
| ARTICLE 7 SELLER SECURITY | | 47 |
| 7.1 | Seller Security..... | 47 |
| 7.2 | Seller Security Replacement. | 47 |
| 7.3 | Draw on Seller Security..... | 48 |
| 7.4 | Replenishment..... | 48 |
| 7.5 | Draw on Letter of Credit if Seller Becomes Bankrupt..... | 48 |
| 7.6 | Expiration of Letter of Credit..... | 48 |

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

| | |
|--|-----------|
| ARTICLE 8 OPERATION AND MAINTENANCE | 49 |
| 8.1 Operation and Maintenance | 49 |
| 8.2 Development of Operating Instructions..... | 49 |
| 8.3 Coordination of Maintenance of the Controllable Cable and Off Island Generator..... | 49 |
| 8.4 Forced Outages..... | 50 |
| 8.5 Effect of System Emergency on Outage Scheduling..... | 50 |
| 8.6 Consistency with NYISO Rules and Off-Island ISO Rules..... | 50 |
| 8.7 Station Service Energy | 50 |
| 8.8 Dispatch | 50 |
| 8.9 Response to Forced Outages | 51 |
| 8.10 Scheduling of Contract Energy..... | 51 |
| 8.11 Scheduling at and from Delivery Point..... | 51 |
| 8.12 Generation–Schedule Imbalance..... | 51 |
| 8.13 Compensation for Cable Schedule Deviations | 52 |
| 8.14 Suspension | 52 |
| 8.15 Restoration of Service..... | 52 |
| 8.16 Consequences of Buyer’s Suspension..... | 52 |
| ARTICLE 9 INSURANCE | 53 |
| 9.1 Insurance Required | 53 |
| 9.2 Certificates of Insurance | 53 |
| 9.3 Insurance Notice to Buyer..... | 53 |
| 9.4 Notice to Contractors..... | 53 |
| ARTICLE 10 INFORMATION, ACCESS AND NONINTERFERENCE | 54 |
| 10.1 Information..... | 54 |
| 10.2 Access, Inspections, and Noninterference..... | 54 |
| ARTICLE 11 FORCE MAJEURE | 55 |
| 11.1 Definition | 55 |
| 11.2 Force Majeure Event | 55 |
| 11.3 Due Diligence..... | 55 |

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

| | | |
|---|---|-----------|
| 11.4 | Effect of Force Majeure on Buyer’s Payment Obligations | 56 |
| 11.5 | Suspension of Performance..... | 56 |
| 11.6 | Extended Force Majeure Events. | 56 |
| 11.7 | Insurance Proceeds | 56 |
| 11.8 | Right to Terminate..... | 56 |
| 11.9 | Liability Following Termination | 57 |
| ARTICLE 12 DEFAULT AND REMEDIES | | 58 |
| 12.1 | Default by Seller | 58 |
| 12.2 | Default by Buyer | 58 |
| 12.3 | Notice and Opportunity to Cure Event of Default..... | 59 |
| 12.4 | Dispute of Claim of Seller Event of Default or Buyer Event of Default | 59 |
| 12.5 | Remedies | 59 |
| 12.6 | No Consequential Damages..... | 61 |
| 12.7 | Suspension of Performance..... | 61 |
| 12.8 | Limitations of Liability; Remedies and Damages..... | 61 |
| 12.9 | Cure by Lenders..... | 61 |
| ARTICLE 13 MERCHANTABILITY AND FITNESS | | 63 |
| 13.1 | NO MERCHANTABILITY AND FITNESS WARRANTY..... | 63 |
| ARTICLE 14 COMPLIANCE WITH LEGAL REQUIREMENTS; CHANGE IN LAW | | 64 |
| 14.1 | Compliance..... | 64 |
| 14.2 | Change in Law..... | 64 |
| 14.3 | No Dedication | 65 |
| ARTICLE 15 ASSIGNMENT | | 66 |
| 15.1 | Assignment by Seller..... | 66 |
| 15.2 | Assignment by Buyer..... | 66 |
| 15.3 | Lenders..... | 67 |
| 15.4 | Rights of Lender..... | 68 |
| 15.5 | Sale of One or Both of the Projects | 68 |
| 15.6 | Change in Control..... | 69 |
| ARTICLE 16 DISPUTE RESOLUTION | | 70 |

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

| | | |
|---|--|-----------|
| 16.1 | Notice..... | 70 |
| 16.2 | Response..... | 70 |
| 16.3 | Resolution of Dispute..... | 70 |
| 16.4 | Tolling Statute of Limitations..... | 70 |
| ARTICLE 17 REPRESENTATIONS, WARRANTIES AND INDEMNITIES | | 71 |
| 17.1 | Seller’s Representation and Warranties..... | 71 |
| 17.2 | Buyer’s Representation and Warranties..... | 72 |
| ARTICLE 18 MISCELLANEOUS PROVISIONS | | 74 |
| 18.1 | Next Business Day..... | 74 |
| 18.2 | Amendments..... | 74 |
| 18.3 | Binding Effect..... | 74 |
| 18.4 | Counterparts..... | 74 |
| 18.5 | Notices..... | 74 |
| 18.6 | Entire Agreement..... | 75 |
| 18.7 | Governing Law and Jurisdiction..... | 75 |
| 18.8 | Service of Process..... | 75 |
| 18.9 | Waiver..... | 76 |
| 18.10 | Headings..... | 76 |
| 18.11 | Third Parties..... | 76 |
| 18.12 | Agency..... | 76 |
| 18.13 | Severability..... | 76 |
| 18.14 | Negotiated Agreement..... | 76 |
| 18.15 | Local Workers..... | 76 |
| 18.16 | Currency..... | 77 |
| 18.17 | Indemnification..... | 77 |
| ARTICLE 19 CONFIDENTIALITY | | 79 |
| 19.1 | Claim of Confidentiality..... | 79 |
| 19.2 | Compliance with the Freedom of Information Law..... | 79 |
| 19.3 | Executive Directive No..... | 80 |
| 19.4 | Treatment of Otherwise Publicly Available Information..... | 80 |

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

| | | |
|-------------|--------------------------------------|-----------|
| 19.5 | Term of Confidentiality | 80 |
| 19.6 | FERC..... | 80 |
| 19.7 | SEC..... | 80 |
| 19.8 | Confidential Treatment..... | 80 |

APPENDICES

| | |
|----|---|
| 1 | PROJECT DESCRIPTION AND PROJECT DEVELOPMENT MILESTONES |
| 2 | TESTS |
| 3 | MONTHLY CAPACITY RATE (\$/MW-MONTH) |
| 4 | ENERGY PAYMENT |
| 5 | AVAILABILITY ADJUSTMENT FOR MONTHLY CAPACITY PAYMENT |
| 6 | INSURANCE REQUIREMENTS |
| 7 | FORM OF SELLER GUARANTY |
| 8 | FORM OF SELLER LETTER OF CREDIT |
| 9 | FORM OF CONSENT AGREEMENT |
| 10 | OPERATING LIMITS |
| 11 | GUARANTEED HEAT RATE <u><i>[[IF APPLICABLE]]</i></u> |
| 12 | OFF-ISLAND GENERATOR INTERCONNECTION POINT, OFF-ISLAND WITHDRAWAL POINT AND CABLE DELIVERY POINT |
| 13 | CONNECTING TRANSMISSION OWNER’S INTERCONNECTION STANDARDS |
| 14 | FORM OF LONG ISLAND INTERCONNECTION AGREEMENT |
| 15 | CALCULATION OF GAINS AND LOSSES |
| 16 | MONTHLY EXCESS CABLE LOSSES ADJUSTMENT |

SUPPLEMENTS

SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA’S CONTRACTS
SUPPLEMENT 2: STANDARD PROCUREMENT FORMS

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, dated as of [Date], 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 [Name of Entity], a [(e.g., LLC, LP, corporation)] organized and existing under the laws of the State of [State], with its headquarters at [address], [City], [State] [zip] (“Seller”).

WITNESSETH:

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

WHEREAS, Seller intends to [construct] *IF APPLICABLE*, own, operate and maintain a generating facility with a nominal rating of [MW] to be located [Location] (the “Off-Island Generator”); *PROPOSER TO DESCRIBE PROJECT*

WHEREAS, Seller intends to construct, own, operate and maintain a controllable transmission cable with a nominal rating of [MW] to be connected between [Locations] (the “Controllable Cable”); *PROPOSER TO DESCRIBE PROJECT*

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, the Dedicated Capacity, Contract Energy, and [Ancillary Services] from the Off-Island Generator and Buyer Firm Transmission Capacity and Ancillary Services from the Controllable Cable (jointly the “Products”), all in accordance with the provisions of this Agreement; and *PROPOSER TO STATE IF IT WILL INCLUDE ANCILLARY SERVICES FROM THE OFF-ISLAND GENERATOR*

WHEREAS, Buyer intends to utilize such Dedicated Capacity, Contract Energy, and Ancillary Services and Buyer Firm Transmission Capacity 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.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 1 DEFINITIONS

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

AC – means alternating current.

Actual Input Energy – means the Energy in MW transmitted into the Controllable Cable during the Cable Loss Test as measured at the Off-Island Withdrawal Point.

Actual Output Energy – means the Energy in MW transferred over the Controllable Cable during the Cable Loss Test as measured at the Cable Delivery Point.

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. “Control” includes but is not limited to direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or equity interests any entity. A direct or indirect voting interest of ten percent (10%) or more of an entity’s voting stock or equity interests creates a rebuttable presumption of control.

Aggrieved Party – has the meaning set forth in Section 16.1.

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.

Ambient-Adjusted Generator Capacity – has the meaning set forth in Section 5.10(i).

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 or obligations under this Agreement.

Availability – means (for any Month) the arithmetic average of the Hourly Availability values for all hours in that Month.

Availability Adjusted Contract Rate – has the meaning set forth in Appendix 5.

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 is unable to pay its debts or fails 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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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(ii).

Btu – means British thermal unit.

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.

Buyer – has the meaning set forth in the Preamble.

Buyer Event of Default – means an event described in Section 12.2.

Buyer Firm Transmission Capacity – means the firm transmission capacity rights Buyer purchases and receives from Seller on the Controllable Cable which equals the Cable Capacity.

Cable Capacity – means the Capacity of the Controllable Cable as demonstrated by a Transmission Capacity Test as set forth in Appendix 2.

Cable Delivery Point – means the point at which the Controllable Cable interconnects with the Connecting Transmission Owner’s Electric System.

Cable Loss Percentage – has the meaning set forth in Section 3.17(i).

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Cable Loss Test – has the meaning set forth in Section 3.17(i).

Cable System Losses – means the transmission losses along the Controllable Cable between the Off-Island Withdrawal Point and the Cable Delivery Point, as determined or demonstrated as set forth in Appendix 2.

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

Capacity – means the capability to generate Energy measured in MW.

Change in Law – means (i) the adoption, promulgation, modification, or repeal, after the Execution Date, by any Governmental Authority of any Legal Requirements that materially affects the costs associated with a Party’s performance of its obligations hereunder, or (ii) the imposition after the Execution Date by a Governmental Authority of any term or condition in connection with the issuance, renewal, extension, replacement or modification of any Consent.

Change of Control – means (i) the acquisition of beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “1934 Act”)) of 25% or more of the outstanding shares of securities the holders of which are generally entitled to vote for the election of directors of Seller, Seller’s immediate parent or Guarantor, as the case may be (including securities convertible into, or exchangeable for, such securities or rights to acquire such securities or securities convertible into, or exchangeable for such securities, “Voting Stock”), on a fully diluted basis, by any Person or group of Persons (within the meaning of Section 13 or 14 of the 1934 Act); (ii) any sale, transfer or other disposition of beneficial ownership of 25% or more of the outstanding shares of Voting Stock, on a fully diluted basis, of Seller, Seller’s immediate parent or Guarantor, as the case may be; (iii) any merger, consolidation, combination or similar transaction of Seller, Seller’s immediate parent or Guarantor, as the case may be, with or into any other Person, whether or not Seller or Guarantor, as the case may be, is the surviving entity in any such transaction; (iv) a Person other than the current shareholders of Seller, Seller’s immediate parent or Guarantor, as the case may be, obtains, directly or indirectly, the power to direct or to cause the direction of the management or policies of Seller, Seller’s immediate parent or Guarantor, as the case may be, whether through the ownership of capital stock, by contract or otherwise; (v) during any period of twelve (12) consecutive calendar Months, when individuals who were directors of Seller, Seller’s immediate parent or Guarantor, as the case may be, on the first day of such period cease to constitute a majority of the board of directors of Seller, Seller’s immediate parent or Guarantor, as the case may be; or (vi) any liquidation, dissolution or winding up of Seller, Seller’s immediate parent or Guarantor, as the case may be.

Chronic Underperformance – has the meaning set forth in Section 5.10(i).

Claim – means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs,

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

whether incurred by settlement or otherwise, and whether such claim or action is threatened or filed prior to or after the termination of this Agreement.

Claiming Party – has the meaning set forth in Section 11.6.

COD Liquidated Damages – has the meaning set forth in Section 3.5(v).

Commercial Operation – means the achievement of the conditions set forth in Sections 3.3 and 3.4.

Confidential Information – has the meaning set forth in Section 19.1(ii).

Confidential Parties – has the meaning set forth in Section 19.1(ii).

Congestion Costs – has the meaning set forth in the Off-Island ISO Rules.

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

Connecting Transmission Owner’s Attachment Facilities – shall have the meaning assigned thereto in the Long Island Interconnection Agreement.

Connecting Transmission Owner’s Electric System – means all equipment and facilities (including the Connecting Transmission Owner’s 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.

Connecting Transmission Owner’s Interconnection Standards – means those standards for interconnecting with Connecting Transmission Owner’s Electric System that are attached hereto as Appendix 13.

Consent(s) – means any approval, consent, permit, license, decree, directive, certificate or other authorization that is required to own, construct, operate and maintain the Off-Island Generator and Controllable Cable from any Governmental Authority having jurisdiction, in accordance with applicable Legal Requirements, including, without limitation, all applicable environmental certificates, licenses, permits and approvals.

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

Contract Availability Period – means, for availability purposes only, either a Summer Period or a Non-Summer Period.

Contract Capability Period – means the Summer Capability Period or Winter Capability Period.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Contract Energy - means the Energy that is associated with Dedicated Capacity as further described in Article 5.

Contract Energy Dispatch Notice – has the meaning set forth in Section 8.10.

Contract Year – means each consecutive twelve (12) Month period beginning with the Month in which Project COD occurs.

Controllable Cable – has the meaning set forth in the third (3rd) Recital and is described further in Appendix 1.

Controllable Cable Commercial Operation Date – has the meaning set forth in Section 3.2.

Controllable Cable Commercial Operation Date Target Date – is [DATE].
[PROPOSER TO PROVIDE DATE]

Controllable Cable Forced Outage – means (i) an outage of the Controllable Cable or a reduction in its Cable Capacity, other than an Excused Outage, that is a result of a failure of one or more components of the Controllable Cable, or (ii) any failure or inability of the Controllable Cable to deliver Energy that does not occur during an Excused Outage.

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

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

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

Day-Ahead Market – has the meaning set forth in the NYISO Rules.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Dedicated Capacity – means the quantity of installed capacity of the Off-Island Generator sold to Buyer under this Agreement which is equal to the Design Cable Capacity plus the Design Cable Losses.

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

Delist or Delisted – means to cause all or part of the Dedicated Capacity for the applicable Month to be excluded as a source of Capacity in the Off-Island ISO pursuant to the Off-Island ISO Rules.

Dependable Maximum Net Capability or DMNC – means the Capacity demonstrated by the Off-Island Generator during a Generator Capacity Test for a Contract Capability Period.

Design Cable Capacity – means [] MW. ***[PROPOSER TO INSERT THE NUMBER OF MW EQUAL TO THE CAPACITY OF THE CONTROLLABLE CABLE AT THE CABLE DELIVERY POINT AS DESIGNED]***

Design Cable Losses – means [] MW. ***[PROPOSER TO INSERT THE NUMBER OF MW EQUAL TO THE TRANSMISSION LOSSES ALONG THE CONTROLLABLE CABLE BETWEEN THE OFF-ISLAND WITHDRAWAL POINT AND THE CABLE DELIVERY POINT, AS CALCULATED AT DESIGN CABLE CAPACITY]***

Design Generator Capacity – means [] MW. ***[PROPOSER TO INSERT THE NUMBER OF MW EQUAL TO THE NET CAPACITY OF THE OFF-ISLAND GENERATOR AS DESIGNED]***

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

Disclosing Party – has the meaning set forth in Section 19.1(ii).

Dispatch – means a request to Seller by Buyer, the Off-Island ISO or the NYISO to generate Energy and/or provide Contract Energy and/or Ancillary Services, in each case complying with the notification requirements of Article 8, and within the Operating Limits contained in Appendix 10.

Duration Estimate – has the meaning set forth in Section 11.3.

Early Termination Date– has the meaning set forth in Section 12.5(ii)(a).

Effective Date – has the meaning set forth in Section 2.1(i).

Electric Metering Equipment – has the meaning set forth in Section 5.5(ii).

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

EPC Contracts - means those contracts entered into between Seller and one or more contractors providing for the engineering, procurement and construction of the Projects.

EPC Contracts Execution Target Date - means the date that is [] Days prior to the Project COD Target Date (which is the date by which Seller expects to execute the EPC Contracts). **PROPOSER TO INSERT NUMBER OF DAYS!**

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

Equivalent Availability – has the meaning set forth in Section 5.10(i)(d).

Equivalent Availability-Cable – has the meaning set forth in Section 5.10(i)(c).

Equivalent Availability-Generator – has the meaning set forth in Section 5.10(i)(b).

Escrow Account – means the placing of an amount of U.S. currency with an escrow agent (and pursuant to an escrow agreement) reasonably acceptable to the Parties that provides for draws by Buyer in accordance with Section 3.5, the costs of which shall be borne by Seller.

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

Excused Outage – has the meaning set forth in Section 5.9.

Execution Date – means the date by which both Parties have executed this Agreement.

Extended Term – means the Base Term, plus any extension of the Term selected by Buyer pursuant to the applicable terms of this Agreement.

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

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

Financial Transmission Rights or FTRs – has the meaning set forth in Section 3.16(ii).

Firm Transmission Capacity – means non-interruptible transmission service in an amount equal to the Dedicated Capacity from the Off-Island Generator Interconnection Point to the Off-Island Withdrawal Point in an amount sufficient to deliver Contract Energy and Ancillary Services between such points with Seller being responsible for all Congestion Costs between such points.

Firm Transmission Injection Rights – has the meaning given in the Off-Island ISO Rules.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Firm Transmission Withdrawal Rights – has the meaning set forth in the Off-Island ISO Rules; or, if such rights are no longer recognized under such rules, the equivalent of such rights.

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

FOIL – has the meaning set forth in Section 19.2.

Force Majeure Event – means the events or circumstances described in Section 11.1.

Force Majeure Remedy Plan – has the meaning set forth in Section 11.6(i).

Forced Outages – means any Off-Island Generator Forced Outage or any Controllable Cable Forced Outage.

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

Gains – means, with respect to any Party, an amount equal to the net present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of transactions under this Agreement, determined in good faith and using commercially reasonable procedures. Gains shall be calculated in accordance with Appendix 15.

Generator Capacity – means the Capacity of the Off-Island Generator.

Generator Capacity Test – means the test set forth in Appendix 2 for establishing the Capacity of the Off-Island Generator. **[THE TEST WILL NEED TO INCLUDE REQUIREMENTS OF THE NYISO AS WELL AS THE OFF-ISLAND ISO]**

Governmental Authority – means (i) any federal, state, local, municipal, or other government, (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power (including, for the avoidance of doubt, the NYISO, FERC, the Off-Island ISOs, and NERC), and (iii) any court or governmental tribunal; provided that the Long Island Power Authority and its subsidiaries shall not be included in such definition when acting as Buyer 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 4.4(i).

Guaranteed Heat Rate – has the meaning set forth in Appendix 11. **[IF APPLICABLE]**

Guarantor – means a Person, if any, providing a Guaranty hereunder that at all times (i) satisfies the Credit Requirements, and (ii) has tangible net assets of not less than Five Hundred Million Dollars (US \$500 Million).

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Guaranty – means the instrument obligating the Guarantor to unconditionally guarantee the payment and performance obligations of Seller which shall be in the form substantially similar to the form in Appendix 7.

Heat Rate – means the amount of Energy in Btus consumed by the Off-Island Generator to produce a kWh of Energy.

Holding Company Act – means the Public Utility Holding Company Act of 2005, as such Act may be amended from time to time.

Hour Ahead Market – has the meaning set forth in the NYISO Rules.

Hourly Availability – means, for any hour, the availability of the Controllable Cable determined as the lesser of (a) 1.0 and (b) the ratio of (i) the Hourly Transmission Capacity for that hour divided by (ii) Buyer Firm Transmission Capacity applicable for that hour.

Hourly Transmission Capacity – means, for any hour, an amount of transmission capacity measured in MW and determined by the actual Energy that could have been delivered to the Cable Delivery Point (as determined in accordance with Prudent Utility Practices), excluding any (a) reductions or outages caused or directed by the NYISO, Off-Island ISO, and/or other applicable transmission system operator, (b) reduction due to Planned Outages approved in advance by Buyer, (c) reduction arising from Buyer’s isolation rights under the Long Island Interconnection Agreement, or (d) reductions due to a Force Majeure Event.

Indemnified Party – has the meaning set forth in Section 18.17(i).

Indemnifying Party – has the meaning set forth in Section 18.17(i).

Initial Tests – has the meaning set forth in Section 3.15(i).

Installed Capacity – has the meaning set forth in the NYISO Rules.

Installed Capacity Supplier – means a generating resource that satisfies the NYISO Rules for qualification to supply Installed Capacity.

Interconnection Agreements – means the Long Island Interconnection Agreement, the Off-Island Interconnection Agreement for Controllable Cable and the Off-Island Interconnection Agreement for Off-Island Generator.

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

Internal Bilateral Transaction – means (i) an internal bilateral energy transaction between Buyer and Seller to the Off-Island Withdrawal Point that conforms to a Contract Energy Dispatch Notice issued in accordance with this Agreement (including the requirements set forth in Article 8), the Operating Instructions and the Off-Island ISO Rules; or (ii) in the event (i) is

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

not permitted or is no longer recognized under the then current Off-Island ISO Rules, a schedule for Energy to the Off-Island Withdrawal Point entered into the Off-Island ISO Market System that conforms to a Dispatch notice for Contract Energy issued in accordance with this Agreement (including the requirements set forth in Article 8), the Operating Instructions and the Off-Island ISO Rules.

ISO - means any independent system operator, including but not limited to the NYISO and ISO-NE.

ISO Conditions – means fifty-nine degrees Fahrenheit (59⁰F) dry bulb temperature, sixty percent (60%) relative humidity, at sea level.

ISO-NE – means the Independent System Operator of New England.

kWh – means kilowatt–hours.

Lead Lender – means that lender to Seller who is not an Affiliate of Seller and any agent, trustee, collateral agent or depository for any such Persons and any successors or assigns of any of the foregoing Persons who is designated to accept notices as provided for in this Agreement on behalf of all of Seller’s Lenders.

Legal Requirements –means all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals or Consents, directives, and requirements of all Governmental Authorities, including Supplement 1 to this Agreement.

Lender – means any Person or agent or trustee of such Person who provides financing for any Project.

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 Billion), and (ii) not less than the following Credit Rating from two of the three specified rating agencies: “A-” from S&P, “A-” from Fitch, and “A3” from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued, which may be drawn at a location in the City of New York, New York. A Letter of Credit will be in an acceptable form if substantially similar to the form attached as Appendix 8 hereto.

Liabilities – has the meaning set forth in Section 18.17(i).

LIPA – means the Long Island Power Authority herein referred to as the Buyer.

Liquidated Damages – means liquidated damages associated with failing to (i) apply for the Minimum Required Consents by the Minimum Required Consents Application Target Date, (ii) achieve the Major Construction Milestone for Off-Island Generator by the Major Construction Milestone for Off-Island Generator Target Date, (iii) achieve the Major

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Construction Milestone for Controllable Cable by the Major Construction Milestone for Controllable Cable Target Date, or (iv) execute the EPC Contracts by the EPC Contracts Execution Target Date, or the COD Liquidated Damages or any other amounts that constitute liquidated damages in this Agreement.

Long Island Electric Interconnection Facilities – means the electrical interconnection facilities required to connect the Controllable Cable to the Connecting Transmission Owner’s Electric System, as set forth in the Long Island Interconnection Agreement.

Long Island Interconnection Agreement – means the agreement, among the Connecting Transmission Owner, the Seller and the NYISO, in substantially the form set forth in Appendix 14 that governs the interconnection between the Connecting Transmission Owner’s Electric System and the Controllable Cable; provided, however, that prior to the execution and delivery of the Long Island Interconnection Agreement, references in this Agreement shall refer to the form thereof set forth in Appendix 14.

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. Losses shall be calculated in accordance with Appendix 15.

Maintenance Outage - means a removal from service of a portion or all of the Capacity of the Off-Island Generator or Cable Capacity of the Controllable Cable that cannot be scheduled well in advance, as more fully described in Section 8.3.

Major Construction Milestone for Controllable Cable – means the [major construction milestone] for the Controllable Cable as more specifically set forth in Appendix 1. **[PROPOSER TO IDENTIFY ONE OR MORE CONSTRUCTION MILESTONES WHICH WILL BE LINKED TO LIQUIDATED DAMAGES (E.G., ARRIVAL OF CABLE AT SITE)]**

Major Construction Milestone for Controllable Cable Target Date – means the date that is [] Days prior to the Controllable Cable Commercial Operation Date Target Date (which is the date the Major Construction Milestone for Controllable Cable is scheduled to occur). **[PROPOSER TO INSERT NUMBER OF DAYS]**

Major Construction Milestone for Off-Island Generator – means the [major construction milestone] for the Off-Island Generator as more specifically set forth in Appendix 1. **[PROPOSER TO IDENTIFY ONE OR MORE CONSTRUCTION MILESTONES WHICH WILL BE LINKED TO LIQUIDATED DAMAGES ((E.G., ARRIVAL OF MAJOR EQUIPMENT AT SITE OR PLACED ON FOUNDATIONS).]**

Major Construction Milestone for Off-Island Generator Target Date – means the date that is [] Days prior to the Off-Island Generator Commercial Operation Date Target Date

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(which is the date the Major Construction Milestone for Off-Island Generator is scheduled to occur). **[PROPOSER TO INSERT NUMBER OF DAYS]**

Member – means any Person owning, directly or indirectly, an outstanding limited liability company interest of Seller.

Minimum Required Consents – has the meaning set forth in Section 2.3(i).

Minimum Required Consents Application Target Date – means the date that is [] Days prior to the Project COD Target Date (which is the date when the Seller is scheduled to have completed and filed all applications for the Minimum Required Consents). **[PROPOSER TO INSERT NUMBER OF DAYS]**

Minimum Required Consents Receipt Target Date – means the date that is [] Days prior to the Project COD Target Date (which is the date the Seller is scheduled to receive the Minimum Required Consents). **[PROPOSER TO INSERT NUMBER OF DAYS]**

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

Monthly Capacity Payment – means the amount to be paid by Buyer to Seller for Buyer’s purchase of Dedicated Capacity and Buyer Firm Transmission Capacity for a particular Month, as set forth in Section 5.7 and calculated pursuant to Appendix 5.

Monthly Capacity Rate – the rate used to determine the Monthly Capacity Payment for a Month determined as set forth in Appendix 3.

Monthly Energy Payment – means the amount to be paid by Buyer to Seller for Contract Energy and Ancillary Services for a particular Month as set forth in Section 5.8 and calculated pursuant to Appendix 4.

Monthly Equivalent Capacity – has the meaning set forth in Section 5.10(i)(e).

Monthly Excess Cable Losses Adjustment – has the meaning described in Appendix 16.

Monthly Invoice – means an invoice delivered after the end of a Month, in accordance with Section 6.1.

Monthly Surcharge – has the meaning defined in Section 14.2(iv).

MVAR – means Megavar(s), which is one million (1,000,000) volt amperes-reactive.

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

M/WBE – means Minority and Women-Owned Business Enterprises, as more fully described in Supplement 1 to this Agreement.

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

NERC – means the North American Electric Reliability Corporation.

Non-Claiming Party – has the meaning set forth in Section 11.6(i).

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

Non-Summer Period – means the period from October through May in any Contract Year.

Noticed Party – has the meaning set forth in Section 16.1.

Notice of Default – has the meaning set forth in Section 12.3.

NYISO – means the New York Independent System Operator, Inc.

NYISO Capability Period – means, as applicable, the Summer Capability Period or Winter Capability Period.

NYISO Capability Period Test Window – means the window of time within a NYISO Capability Period in which the NYISO requires generator output capability testing to establish the Installed Capacity of the generator for the NYISO Capability Period in question.

NYISO Installed Capacity Market – means the markets which are administered by the NYISO in which Installed Capacity is sold and purchased pursuant to the NYISO Rules.

NYISO Installed Capacity Supplier - has the meaning set forth in NYISO Rules.

NYISO Markets – means markets administered by the NYISO which include, but are not limited to, the Day Ahead Market, Hour Ahead Market and NYISO Installed Capacity Markets.

NYISO Market Participant Service Agreement – means that agreement by and between the Seller and NYISO (or between an Affiliate of the Seller and NYISO) that governs market participants, as may be modified from time to time, as provided in the NYISO Rules.

NYISO Rules – means the NYISO Tariff and all NYISO manuals, rules, procedures, agreements or other documents relating to sale of Capacity, Energy, and Ancillary Services as such govern the participation of market participants with respect thereto 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.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Off-Island Electric Interconnection Facilities – means the electrical interconnection facilities required to connect the (i) Controllable Cable to the Off-Island Electric System, as set forth in the Off-Island Interconnection Agreement for Controllable Cable, and (ii) Off-Island Generator to the Off-Island Electric System, as set forth in the Off-Island Interconnection Agreement for Off-Island Generator.

Off-Island Electric System – means the Off-Island ISO electric system to which the Off-Island Generator and Controllable Cable each interconnect.

Off-Island Generator – has the meaning set forth in the second (2nd) Recital and is described further in Appendix 1.

Off-Island Generator Commercial Operation Date – has the meaning set forth in Section 3.3.

Off-Island Generator COD Target Date – means [date.] **PROPOSER TO PROVIDE DATE**

Off-Island Generator Forced Outage – means (i) an outage of the Off-Island Generator or a reduction in Generator Capacity below the Dedicated Capacity, other than an Excused Outage, that is a result of a failure of one or more components of the Off-Island Generator, or (ii) any failure or inability of the Off-Island Generator to produce Energy that does not occur during an Excused Outage.

Off-Island Generator Interconnection Point – means the point described in Appendix 12 at which the Off-Island Generator delivers energy to the Off-Island Electric System.

Off-Island Incremental System Reinforcements – means those additions to transmission facilities required in accordance with the Off-Island ISO Rules for (i) interconnection of the Off-Island Generator to the Off-Island Electric System, (ii) interconnection of the Controllable Cable to the Off-Island Electric System, and (iii) firm transmission of the Dedicated Capacity from the Off-Island Generator Interconnection Point to the Off-Island Withdrawal Point.

Off-Island Interconnection Agreement for Controllable Cable – means the interconnection agreement providing for the interconnection of the Controllable Cable to the Off-Island Electric System in accordance with the Off-Island ISO Rules.

Off-Island Interconnection Agreement for Off-Island Generator – means the interconnection agreement providing for the interconnection of the Off-Island Generator to the Off-Island Electric System in accordance with the Off-Island ISO Rules.

Off-Island ISO – means the ISO or RTO in which the Off-Island Generator and the Off-Island Withdrawal Point are located. **PROPOSER TO INSERT NAME OF ISO OR RTO**

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Off-Island ISO Market Participant Service Agreement – means the agreement between Seller and Off-Island ISO (or between an Affiliate of the market participant and Off-Island ISO), or its equivalent, consistent with the terms of the Off-Island ISO Rules.

Off-Island ISO Market System – means the market system of the Off-Island ISO.

Off-Island ISO OATT – means the applicable Off-Island ISO open access transmission tariff or any successor tariff.

Off-Island ISO Rules – means the Off-Island ISO OATT and Off-Island ISO manuals, rules, procedures, agreements or other documents issued by Off-Island ISO that govern the participation of market participants in the Off-Island ISO Market System.

Off-Island ISO UCAP – means the unforced capacity (or its equivalent) of an applicable generating resource as calculated under the Off-Island ISO Rules.

Off-Island Withdrawal Point – means the point at which the Controllable Cable is interconnected with the Off-Island ISO.

Operating Instructions – means those procedures developed by the Parties pursuant to Section 8.2.

Operating Limits – means the limits and constraints described in Appendix 10 relating to the operation of the Projects beyond which Seller is not obligated to operate the Projects for any reason.

Other Consents – means Consents other than Minimum Required Consents.

Outage Schedule Manual – has the meaning set forth in the NYISO Rules.

Own – means maintaining more than 50% ownership interest in the entity owning or leasing the Projects, either as a majority member, partner or shareholder, or as the majority general partner and majority limited partner, as applicable.

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

Peak Hours – means those hours between hour ending 0800 EPT to and including hour ending 2300 EPT, Monday through Friday, except for holidays as defined by the NERC.

Periodic Tests – has the meaning set forth in Section 3.15(ii).

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

PJM - means PJM Interconnection L.L.C.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Planned Outage – means a planned removal from service of a portion or all of the Capacity of the Off-Island Generator or Cable Capacity that is scheduled well in advance for a predetermined duration, with the scheduling of such outage approved by Buyer and the NYISO as contemplated under Section 8.3.

Products – has the meaning set forth in the fourth (4th) Recital.

Projects – means the Off-Island Generator and Controllable Cable.

Project COD Notice - has the meaning set forth in Section 3.2.

Project COD Target Date - means May 1 [year]. **PROPOSER TO IDENTIFY THE “YEAR” FOR THE COD TARGET DATE**

Project Commercial Operation Date or Project COD – has the meaning set forth in Section 3.2.

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

Real-Time Market – has the meaning set forth in the NYISO Rules.

Receiving Party – has the meaning set forth in Section 19.1.

Relist or Relisted – means to cause all or part of the Dedicated Capacity for the applicable Month to be included as a source of Capacity in the Off-Island ISO in accordance with Section 5.3(i) and to the extent permitted by the Off-Island ISO Rules.

RTO - means any regional transmission operator or organization which is approved by the FERC pursuant to applicable FERC orders, which controls the terms of access to the Controllable Cable, and which may administer associated wholesale capacity, energy, and ancillary services markets in New York or the Off-Island ISO region.

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

SEC – has the meaning set forth in Section 19.7.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Seller – has the meaning set forth in the Preamble.

Seller Event of Default – means an event described in Section 12.1.

Seller Security – has the meaning set forth in Section 7.1.

Seller’s Change in Law Capital Costs – has the meaning set forth in Section 14.2(i).

Seller’s CIL Cap – means _____ Dollars (\$ _____). **PROPOSER TO INSERT TWO HUNDRED AND FIFTY THOUSAND DOLLARS (US\$250,000) MULTIPLIED BY NUMBER OF MW OF THE DESIGN CABLE CAPACITY**

Seller’s Excess Costs – has the meaning set forth in Section 14.2(ii).

Settlement Amount – means, with respect to transactions arising under this Agreement, the Losses or Gains, and Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of the liquidation of transactions pursuant to Section 12.5(ii).

Settlement Statement – means, as applicable, a Monthly statement of account issued to a Party by the Off-Island ISO or NYISO pursuant to the Off-Island ISO Rules or NYISO Rules respectively.

Site – means the physical location of the Off-Island Generator set forth in the second (2nd) Recital and is described further in Appendix 1.

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

Station Service Energy – means Energy consumed by the Off-Island Generator and/or Controllable Cable.

Summer Capability Period – means May 1 through October 31 of each Calendar Year as currently defined by the NYISO, or such other periods as may be determined by the NYISO.

Summer Period – means the period from June through September in any Contract Year.

Suspension – has the meaning set forth in Section 8.14.

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

System Emergency – means a condition that, in Buyer’s reasonable judgment in accordance with Prudent Utility Practices and the NYISO Rules or the NYISO’s judgment, results in or is reasonably likely to result in a disruption of the operation of Connecting Transmission Owner’s Electric System or of service to Buyer’s customers or a condition that endangers or is reasonably likely to endanger life or property.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

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

Taxes – means any income, gross or net receipts, property, sales, use, consumption, capital gain, transfer, excise, license, production, franchise, employment, social security, occupation, payroll, registration, governmental pension or insurance, recordation, withholding, royalty, severance, stamp or documentary, value added, or other tax, charge, assessment, duty, levy, compulsory loan, business or occupation tax (including any interest, additions to tax, or civil or criminal penalties thereon) of the United States or any state or local taxing jurisdiction therein, or of any other nation or any jurisdiction therein.

Term – means the Base Term of this Agreement, or if applicable, the Extended Term, specified in Section 2.1(ii).

Termination Payment – has the meaning set forth in Section 12.5(ii)(b).

Testing – means any Generator Capacity Test, Transmission Capacity Test, Cable Loss Test or other tests as described in this Agreement.

Transmission Capacity Test – has the meaning as set forth in Appendix 2.

UDRs – means unforced capacity deliverability rights, as defined in the NYISO Rules; or, if such rights are no longer recognized under NYISO Rules, the equivalent of such rights.

Weekend – means the period of time that commences with the hour ending on Friday 11:00 PM and ends the following Monday at hour ending 9:00 AM.

Winter Capability Period – means November 1 of each Calendar Year through April 30 of the following Calendar Year as currently defined by the NYISO or such other periods as may be determined by the NYISO.

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, Sections, Schedules and Exhibits shall mean and refer to the respective Appendices, Sections, Schedules and Exhibits in or attached to this Agreement or any document in which such reference appears; (vii) the words

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

“include,” “includes” and “including” are not limiting and shall be deemed to be followed by the words “without limitation” whether or not in fact followed by such words or words of like import; and (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.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 2 TERM OF AGREEMENT

2.1 Term.

(i) This Agreement shall become effective on the date by which all of the following conditions shall have occurred (the “Effective Date”): (a) Seller shall have received authorization and approval by its Board of Directors, or equivalent executive body, of the execution, delivery and performance of this Agreement; (b) Buyer shall have received authorization and approval by its Board of Trustees of the execution, delivery, and performance of this Agreement; (c) this Agreement has been executed by both Seller and Buyer; and (d) the executed Agreement has been approved in writing by both (x) the New York State Attorney General (as to form), and (y) the State Comptroller and filed in the office of the State Comptroller (as provided for in Supplement 1). Buyer shall give Seller written notice within five (5) Business Days after the occurrence of the Effective Date.

(ii) The term of this Agreement shall begin on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Project Commercial Operation Date unless terminated earlier in accordance with the terms hereof (“Base Term”), with the option to extend as set forth in Section 2.1(iii) below; 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 with respect to purchase and sale of the Products. The Term shall be subject to the termination provisions of Sections 2.3, 3.6, 5.10, 11.8, 14.2, Article 12 and Supplement 1 of this Agreement.

(iii) Buyer shall have an option to extend this Agreement for [five (5) or ten (10) years] (the “Extended Term”) by providing Seller written notice of Buyer’s election by [[date] or [[x] Months prior to the end of the Base Term]]. ***[PROPOSER TO INSERT THE DATE OR NUMBER OF MONTHS PRIOR TO THE END OF THE BASE TERM FOR BUYER’S NOTICE]***

(iv) Buyer shall have the option to extend the Base Term or the Extended Term, if applicable, to the end of the then current NYISO Capability Period in the event the Base Term or the Extended Term, if applicable, ends during a NYISO Capability Period by providing Seller written notice of Buyer’s election twelve (12) Months prior to the end of the applicable Term.

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

2.3 **Early Termination by Buyer.** In addition to the right to terminate upon a Seller Event of Default as provided in Article 12, Buyer shall have the right to terminate this Agreement without payment of any kind to Seller if any of the following events occur:

(i) Seller fails to obtain all Consents which are necessary to commence construction of the Projects as set forth in Appendix 1 (the “Minimum Required Consents”) on or before two hundred seventy (270) Days after the Minimum Required Consents Receipt Target Date, unless such period is extended in writing by both Parties;

(ii) Seller fails to provide Buyer with Seller Security as required by Article 7;

(iii) Seller fails to complete and file its applications for the Minimum Required Consents on or before [] Days after the Minimum Required Consents Application Target Date; **PROPOSER TO INSERT THE NUMBER OF DAYS!**

(iv) Seller fails to execute the EPC Contracts on or before two hundred seventy (270) Days after the EPC Contracts Execution Target Date;

(v) The Major Construction Milestone for Off-Island Generator fails to occur on or before two hundred seventy (270) Days after the Major Construction Milestone for Off-Island Generator Target Date;

(vi) The Major Construction Milestone for Controllable Cable fails to occur on or before two hundred seventy (270) Days after the Major Construction Milestone for Controllable Cable Target Date; and

(vii) Seller fails to achieve Project COD on or before two hundred seventy (270) Days after the Project COD Target Date.

Each of the foregoing dates shall be extended by one (1) Day for each Day Seller has been prevented or delayed from accomplishing the required action or event as a result of a Force Majeure Event or by Buyer’s willful or grossly negligent actions or inaction, provided that the Force Majeure Event or such actions or inactions are a direct cause in preventing or delaying Seller and Seller could have accomplished such action or event by the required date but for such Force Majeure Event or Buyer’s actions or inactions. In the event Buyer elects to terminate this Agreement as a consequence of the conditions described in Sections 2.3(ii) through 2.3(vii), Seller shall pay to Buyer a Liquidated Damage payment of [] Dollars (\$) **PROPOSER TO INSERT \$150,000 MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY!** in lieu of a Termination Payment. No Liquidated Damages or Termination Payment shall be due from Seller in the event of Buyer’s termination is pursuant to Section 2.3(i) above.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 3 PROJECT DEVELOPMENT AND COMMERCIAL OPERATION

3.1 Commercial Operation Notices.

(i) **Notice of Off-Island Generator COD.** Upon the achievement of the conditions set forth in Section 3.3, Seller shall deliver to Buyer an officer’s certificate no less than three (3) Business Days prior to the Off-Island Generator Commercial Operation Date stating that such conditions set forth in Section 3.3 have been achieved, provided that Seller shall have given ten (10) Days’ prior written notice of the date of the Generator Capacity Test to Buyer.

(ii) **Notice of Controllable Cable Commercial Operation Date.** Upon the achievement of the conditions set forth in Section 3.4, Seller shall deliver to Buyer and officer’s certificate no less than three (3) Business Days prior to the Controllable Cable Commercial Operation Date stating that such conditions set forth in Section 3.4 have been achieved, provided that Seller shall have given ten (10) Days’ prior written notice of the date of the Transmission Capacity Test to Buyer.

(iii) The Parties’ respective obligations to sell and provide, and receive and pay for, the Products under this Agreement shall commence on the Project Commercial Operation Date.

3.2 **Conditions for Project Commercial Operation Date.** The term “Project COD” or “Project Commercial Operation Date” means the first (1st) Day of the first (1st) Month following the later of the date (a) the Off-Island Generator achieves Commercial Operation in accordance with Section 3.3 (“Off-Island Generator Commercial Operation Date”), and (b) the Controllable Cable achieves Commercial Operation in accordance with Section 3.4 (“Controllable Cable Commercial Operation Date”). The target date for Project COD is [Date] (“Target Project COD”). Seller shall provide written notice to Buyer of the expected Project COD no later than [Date]. **[PROPOSER TO INSERT DATES]** Seller shall provide Buyer with notice upon the occurrence to Commercial Operation of the Projects (“Project COD Notice”).

3.3 **Conditions for Off-Island Generator Commercial Operation Date.** The Off-Island Generator Commercial Operation Date shall occur upon the achievement of all of the following:

(i) Successful completion of all tests required for Seller to operate the Off-Island Generator in accordance with Prudent Utility Practices, the NYISO Rules, the Off-Island ISO Rules, and all equipment manufacturers’ instruction manuals and warranties, except for such testing that is required by Legal Requirements or order of a Governmental Authority to be conducted after the Off-Island Generator Commercial Operation Date;

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(ii) All Consents required to construct and operate the Off-Island Generator and to provide Products to Buyer have been obtained;

(iii) Delivery by Seller to Buyer of certificates of insurance coverage or proof of insurance policies, as required pursuant to Article 9 of this Agreement;

(iv) Seller has qualified the Off-Island Generator as an Installed Capacity Supplier and as a supplier of Energy and each Ancillary Service identified in Appendix 10 in accordance with NYISO Rules and Off-Island ISO Rules, and has provided written notice to Buyer of such qualifications no less than ten (10) Business Days prior to the Month in which Off-Island Generator Commercial Operation Date is to occur;

(v) Written notice by Seller to Buyer providing the results of a Generator Capacity Test demonstrating that the Off-Island Generator is capable of providing installed capacity at least equal to the Dedicated Capacity;

(vi) Full execution by all parties of the Off-Island Interconnection Agreement for Off-Island Generator with a term commencing on or before the Off-Island Generator Commercial Operation Date and ending no earlier than the end of the Term;

(vii) Execution by all parties of an Off-Island ISO Market Participant Service Agreement (or its equivalent) between Buyer (or its agent) and the Off-Island ISO such that Buyer (or its agent) is recognized as a market participant or an Affiliate of a market participant under Off-Island ISO Rules;

(viii) Execution by both parties of a NYISO Market Participant Service Agreement (or its equivalent) between Seller (or its agent) and NYISO such that Seller (or its agent) is recognized as the NYISO Installed Capacity Supplier and an Affiliate of a market participant under NYISO Rules;

(ix) Delivery by Seller to Buyer of any additional amounts of Seller Security that meets the requirements of Article 7;

(x) Successful completion of Off-Island Incremental System Reinforcements;
and

(xi) Delivery by Seller to Buyer of any additional amounts of Seller Security that meets the requirements of Article 7.

3.4 **Conditions for Controllable Cable Commercial Operation Date.** The Controllable Cable Commercial Operation Date shall occur upon the first (1st) Day after achievement of the following:

(i) Successful completion of all tests required for Seller to operate the Controllable Cable in accordance with Prudent Utility Practices, the NYISO Rules, the Off-Island ISO Rules, and all equipment manufacturers’ instruction manuals and

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

warranties, except for such testing that is required by Legal Requirements or order of a Governmental Authority to be conducted after the Controllable Cable Commercial Operation Date;

(ii) Successful completion of Off-Island Incremental System Reinforcements necessary to assign or award a minimum of Firm Transmission Withdrawal Rights to Seller equal to the Dedicated Capacity;

(iii) All Consents required to construct and operate the Controllable Cable and to deliver Products to Buyer have been obtained;

(iv) Execution of the Off-Island Interconnection Agreement for Controllable Cable by **[INSERT NAME OF ENTITY]** and Seller;

(v) (a) The Controllable Cable has been interconnected with Connecting Transmission Owner’s Electric System, and (b) Seller has executed the Long Island Interconnection Agreement for the Controllable Cable in substantially the form in Appendix 14 hereto, providing for a term commencing on or before the Controllable Cable Commercial Operation Date and ending no earlier than the last day of the Term and has used commercially reasonable efforts to obtain NYISO execution of the Long Island Interconnection Agreement;

(vi) Acknowledgement by the NYISO and the Off-Island ISO of the ability to interconnect and operate the Controllable Cable;

(vii) Approval by Buyer (which shall not be unreasonably withheld) that the Controllable Cable complies in all material respects with all design criteria, system performance requirements and operating standards contained in Appendix 13;

(viii) Approval by the NYISO and Off-Island ISO of interconnection of the Controllable Cable to the Connecting Transmission Owner’s Electric System and the Off-Island Electric System;

(ix) Delivery to Buyer by Seller of certificates of insurance coverage or proof of insurance policies, as required pursuant to Article 9 of this Agreement; and

(x) Receipt of UDRs equal to the Design Cable Capacity.

3.5 Liquidated Damages.

(i) **Minimum Required Consents Liquidated Damages.** Seller shall deliver to Buyer written notice that Seller has applied for the Minimum Required Consents within seventy-two (72) hours of such occurrence. If Seller has not completed and filed the applications for the Minimum Required Consents by the Minimum Required Consents Application Target Date, then Seller shall pay to Buyer as Liquidated Damages an amount equal to [_____] Dollars (\$) **[PROPOSER TO INSERT NUMBER]**

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

EQUAL TO THREE HUNDRED DOLLARS (\$300) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY OF THE PROJECT] per Day for each Day of delay following the Minimum Required Consents Application Target Date until Seller has completed and filed the applications for the Minimum Required Consents up to a maximum amount equivalent to two hundred and seventy (270) Days, to be paid to Buyer as set forth in Section 3.5(vi). Buyer shall deposit the Liquidated Damages paid pursuant to this Section 3.5(i) into an Escrow Account. Buyer shall maintain the deposited amount in the Escrow Account as a down payment for satisfying the COD Liquidated Damages, if any, payable pursuant to Section 3.5(v); provided, however, that if Seller achieves the Project COD on or before the Project COD Target Date, Buyer shall return to Seller any Liquidated Damages paid by Seller pursuant to this Section 3.5(i), without interest, within thirty (30) Business Days of the Project COD.

(ii) **Execution of EPC Contracts.** Seller shall deliver to Buyer written notice that Seller has executed the EPC Contracts within seventy-two (72) hours of such occurrence. If Seller has not executed the EPC Contracts by the EPC Contracts Execution Target Date, then Seller shall pay to Buyer as Liquidated Damages an amount equal to [_____] Dollars (US\$____) [**PROPOSER TO INSERT NUMBER EQUAL TO THREE HUNDRED DOLLARS (\$300) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY]**] per Day for each Day of delay following the EPC Contracts Execution Target Date until Seller has executed the EPC Contracts up to a maximum amount equivalent to two hundred and seventy (270) Days, to be paid to Buyer as set forth in Section 3.5(vi). Buyer shall deposit the Liquidated Damages paid pursuant to this Section 3.5(ii) into an Escrow Account. Buyer shall maintain the deposited amount in the Escrow Account as a down payment for satisfying the COD Liquidated Damages, if any, payable pursuant to Section 3.5(v); provided, however, that if Seller achieves the Project Commercial Operation Date on or before the Project COD Target Date, Buyer shall return to Seller any Liquidated Damages paid by Seller pursuant to this Section 3.5(ii), without interest, within thirty (30) Business Days of the Project Commercial Operation Date.

(iii) **Major Construction Milestone for Off-Island Generator Liquidated Damages.** Seller shall deliver to Buyer its written notice that the Major Construction Milestone for Off-Island Generator has occurred within seventy-two (72) hours of such occurrence. If the Major Construction Milestone for Off-Island Generator has not occurred by the Major Construction Milestone for Off-Island Generator Target Date, then Seller shall pay to Buyer as Liquidated Damages an amount equal to [_____] Dollars (US\$____) [**PROPOSER TO INSERT NUMBER EQUAL TO THREE HUNDRED DOLLARS (\$300) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY]**] per Day for each Day of delay following the Major Construction Milestone for Off-Island Generator Target Date until Major Construction Milestone for Off-Island Generator has occurred, up to a maximum amount equivalent to two hundred and seventy (270) Days, to be paid to Buyer as set forth in Section 3.5(vi). Buyer shall deposit the Liquidated Damages paid pursuant to this Section 3.5 into an Escrow Account. Buyer shall maintain the deposited amount in the Escrow Account as a down

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

payment for satisfying the COD Liquidated Damages, if any, payable pursuant to Section 3.5(iv); provided, however, that if Seller achieves the Project COD on or before the Project COD Target Date, Buyer shall return to Seller any Liquidated Damages paid by Seller pursuant to this Section 3.5(iii), without interest, within thirty (30) Business Days of the Project COD.

(iv) **Major Construction Milestone for Controllable Cable Liquidated Damages.** Seller shall deliver to Buyer its written notice that the Major Construction Milestone for Controllable Cable has occurred within seventy-two (72) hours of such occurrence. If the Major Construction Milestone for Controllable Cable has not occurred by the Major Construction Milestone for Controllable Cable Target Date, then Seller shall pay to Buyer as Liquidated Damages an amount equal to [_____] Dollars (US\$____) [**PROPOSER TO INSERT NUMBER EQUAL TO THREE HUNDRED DOLLARS (\$300) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY**] per Day for each Day of delay following the Major Construction Milestone for Controllable Cable Target Date until Major Construction for Controllable Cable Generator Milestone has occurred, up to a maximum amount equivalent to two hundred and seventy (270) Days, to be paid to Buyer as set forth in Section 3.5(vi). Buyer shall deposit the Liquidated Damages paid pursuant to this Section 3.5(iv) into an Escrow Account. Buyer shall maintain the deposited amount in the Escrow Account as a down payment for satisfying the COD Liquidated Damages, if any, payable pursuant to Section 3.5(v); provided, however, that if Seller achieves the Project Commercial Operation Date on or before the Project COD Target Date, Buyer shall return to Seller any Liquidated Damages paid by Seller pursuant to this Section 3.5(iv), without interest within thirty (30) Business Days of the Project Commercial Operation Date.

(v) **COD Liquidated Damages.** If Seller has not achieved Project COD as of the Project COD Target Date, then Seller shall pay to Buyer as Liquidated Damages an amount equal to [_____] Dollars (US\$____) [**PROPOSER TO INSERT NUMBER EQUAL TO THREE HUNDRED DOLLARS (\$300) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY**] per Day for each day of delay (“COD Liquidated Damages”) following the Project COD Target Date up to a maximum amount equivalent to two hundred seventy (270) Days of delay.

(vi) Payment of Liquidated Damages.

(a) Liquidated Damages owed pursuant to Sections 3.5(i), 3.5(ii), 3.5(iii), 3.5(iv), and 3.5(v) shall be due and payable in accordance with Section 6.1 of this Agreement; provided, however, that the maximum daily down payment is [_____] Dollars (US\$____) [**PROPOSER TO INSERT NUMBER EQUAL TO THREE HUNDRED DOLLARS (\$300) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY**] and the maximum total down payment is [_____] Dollars (US\$____) [**PROPOSER TO INSERT NUMBER EQUAL TO EIGHTY-ONE THOUSAND DOLLARS (\$81,000) MULTIPLIED BY THE NUMBER OF MW OF**]

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

DESIGN CABLE CAPACITY. If said Liquidated Damages are not paid by Seller in accordance with Section 6.1, in addition to the rights under Article 12, Buyer shall have the right to collect such Liquidated Damages from Seller Security.

(b) If Buyer terminates this Agreement pursuant to Section 2.3. Buyer may retain all such Liquidated Damages collected pursuant to this Section 3.5 and such Liquidated Damages shall be credited against Liquidated Damages that Seller owes Buyer pursuant to Section 2.3.

(c) If either Party disputes whether Liquidated Damages are owed or the amount of Liquidated Damages owed, such Party may seek resolution of such dispute pursuant to the terms of Article 16.

(d) To the extent any damages required to be paid under this Agreement are liquidated, the Parties agree that such damages are difficult or impossible to determine, otherwise obtaining an adequate remedy is inconvenient and the Liquidated Damages set forth in this Agreement constitute a reasonable approximation of the harm or loss and not a penalty. For breach of any provision for which Liquidated Damages are provided, such damages are the sole and exclusive remedy unless otherwise expressly stated and Seller’s liability will be limited as set forth herein.

3.6 Testing.

(i) **COD Generator Capacity Test.** Prior to the Off-Island Generator Commercial Operation Date, Seller shall conduct a Generator Capacity Test in accordance with NYISO Rules, Off-Island ISO Rules, and Appendix 2 to establish that the Generator Capacity is not less than the Dedicated Capacity commencing on the Off-Island Generator Commercial Operation Date, even if the date of such test does not fall within a NYISO Capability Period Test Window. In such event, the Generator Capacity shall be revised based on the results of such test conducted by Seller as required by NYISO Rules and any deficiency charges shall be Seller’s sole responsibility.

(ii) **Transmission Capacity Test.** Prior to the Controllable Cable Commercial Operation Date, Seller shall conduct a Transmission Capacity Test as set forth in Section 3.15(i).

(iii) **Post-COD Capacity Tests.** In each Contract Capability Period, Seller shall conduct or cause to be conducted a Generator Capacity Test in accordance with NYISO Rules, and Off-Island ISO Rules, as more fully described in Appendix 2, to demonstrate that the Generator Capacity is not less than the Dedicated Capacity. Seller shall also conduct Periodic Tests for the Controllable Cable as set forth in Section 3.15(ii).

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(iv) **Notice of Tests.** A Party requesting or performing any Testing shall provide written notice thereof to the other Party, which shall be the lesser of seven (7) Days or the requisite notice period set forth under then applicable NYISO Rules or Off-Island ISO Rules. Buyer shall have the right to attend, observe and receive the results of all tests. Seller shall provide to Buyer the results of each test no later than five (5) Business Days after the performance of such test.

(v) **Reporting.** Seller shall regularly report all such operating and test data as the NYISO shall require of Installed Capacity Suppliers and other sellers of Products.

3.7 **Emission Allowances.** Seller shall be responsible to pay for and provide any and all emissions allowances or offsets required to operate the Off-Island Generator under existing Legal Requirements, including emissions allowances, credits, rights or offsets for NO_x, SO_x, CO₂ or other criteria pollutants required under applicable Consents, provided, any new or increased Legal Requirements adopted or enacted after the Effective Date shall be addressed as a “Change of Law” in accordance with Section 14.2.

3.8 **Notice of EPC Contracts Execution.** Seller shall provide Buyer with prompt written notice of the execution of the EPC Contracts.

3.9 **Obtaining Consents.** Seller shall perform the necessary analyses, studies and other activities and make all necessary applications and proceed in an expeditious manner to obtain all Consents that will allow for development and commercial operation of the Off-Island Generator and Controllable Cable by the Project COD Target Date. Seller shall immediately notify Buyer of any events that may reasonably be expected to change in any material manner the Projects or that adversely affect Seller’s ability to achieve Commercial Operation on or before the Project COD Target Date. Within ten (10) Days after the end of each Month prior to the time when all Minimum Required Consents are received, Seller shall deliver a written report to Buyer describing the progress of activities to obtain Minimum Required Consents, including any events of material significance to Seller’s ability to develop the Projects or achieve Commercial Operation by the Project COD Target Date.

3.10 **Design and Development.** Seller shall design and develop, or cause to be designed and developed, the Projects in a manner so as to conform in all material respects with:

- (i) The description of the Projects set forth in Appendix 1;
- (ii) All applicable Legal Requirements;
- (iii) Prudent Utility Practices; and
- (iv) Consents.

The Off-Island Generator shall be designed and developed in such a manner that it will provide and maintain at least the Dedicated Capacity and that the useful life of the Off-Island Generator shall be at least equal to the Extended Term. The Controllable Cable shall be

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

designed and developed in such a manner that it will provide and maintain the Design Cable Capacity and that the useful life of the Controllable Cable shall be at least equal to the Extended Term. Except as otherwise provided under Sections 3.9 and 3.11, Seller shall not make any material changes to the Projects (unless required by Legal Requirements) that may be expected to adversely affect the performance of Seller’s obligations under this Agreement.

3.11 **Construction of the Projects.** Seller shall proceed with engineering, construction and implementation of the Projects using Prudent Utility Practices and in a manner that will allow for achievement of the Project COD by the Project COD Target Date. Seller shall notify Buyer immediately of any events which may reasonably be expected to adversely affect Seller’s ability to achieve Commercial Operation by the Project COD Target Date. Within ten (10) Days after the end of each Month during the construction phase of the Projects, Seller shall deliver a written report to Buyer describing the progress of construction of the Projects, including any events of material significance to Seller’s ability to meet the Project COD Target Date.

3.12 **Interconnection Arrangements.** The Parties shall cooperate to make all arrangements, execute all agreements, and take other action necessary to cause the Long Island Electric Interconnection Facilities and Off-Island Electric Interconnection Facilities to be completed within [] Days prior to the Project COD Target Date. Under the terms of the Interconnection Agreements, Seller is responsible for (a) the cost and expense associated with the construction, operation and maintenance of the Developer Attachment Facilities, (b) the cost and expense associated with the construction of the Connecting Transmission Owner’s Attachment Facilities, the System Upgrade Facilities and the System Deliverability Upgrades, and (c) all costs for interconnecting the Off-Island Generator and Controllable Cable. The Connecting Transmission Owner is responsible for the construction, operation and maintenance of the Connecting Transmission Owner’s Attachment Facilities, the System Upgrade Facilities and the System Deliverability Upgrades. Buyer shall reimburse Seller for the costs paid or incurred by Seller for the capital costs of the Connecting Transmission Owner’s Attachment Facilities, the System Upgrade Facilities and the System Deliverability Upgrades on Connecting Transmission Owner’s Electric System pursuant to invoices submitted by Seller under and otherwise in accordance with Article 6. For the avoidance of doubt, Seller is responsible for the cost and expense associated with operations and maintenance of the Connecting Transmission Owner’s Attachment Facilities, the System Upgrade Facilities and the System Deliverability Upgrades without reimbursement by Buyer. ***PROPOSER TO INSERT THE NUMBER OF DAYS!***

3.13 **Cooperation.** Buyer and Seller shall cooperate and act in good faith in the implementation of the Projects. Such cooperation shall include timely responses to reasonable requests for information, attendance at meetings, and the reasonable coordination of the activities of both Parties and their respective third parties regarding the design and construction of the Projects and the electrical interconnection facilities.

3.14 **Cable Capacity of the Controllable Cable.** Seller shall construct, own or lease, operate and maintain the Controllable Cable to ensure that it has a continuous power transfer

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

capability (calculated pursuant to then-current NYISO and Off-Island ISO standards) for the Term of this Agreement of not less than Design Cable Capacity and in accordance with the conditions specified in Section 3.4 with all System Upgrade Facilities, System Deliverability Upgrades and Off-Island Incremental System Reinforcements in place. In the event of a rating of the Cable Capacity for the current Month that is less than the Design Cable Capacity, the Monthly Capacity Payment will be adjusted to reflect such a rating of the Controllable Cable pursuant to the provisions of Section 5.7.

3.15 Capability Test and Line Rating.

(i) Prior to the Controllable Cable Commercial Operation Date, Seller shall conduct initial Transmission Capacity Tests (“Initial Tests”) in accordance with the then-current procedures of the NYISO and Off-Island ISO to demonstrate that the Cable Capacity, as measured in accordance with the provisions set forth in Appendix 2, is not less than the Design Cable Capacity. Buyer shall be responsible for arranging for and the cost of purchasing all Energy transmitted on the Controllable Cable in connection with such tests. Seller shall provide Buyer at least sixty (60) days prior written notice of the expected date of commencement of the Initial Tests.

(ii) Periodic tests shall be conducted throughout the Term in accordance with the then-current procedures of the NYISO and Off-Island ISO (“Periodic Tests”) to demonstrate that the Cable Capacity, as measured in accordance with the provisions set forth in Appendix 2, is not less than the Design Cable Capacity. Buyer shall be responsible for arranging for and the cost of purchasing all Energy transmitted on the Controllable Cable in connection with such tests. Seller shall provide Buyer at least sixty (60) days prior written notice of the expected date of commencement of each Periodic Test.

3.16 Right to Schedule Energy, Capacity and Ancillary Services and Financial Rights Thereeto.

(i) Through its purchase of Products from Seller, and subject to and in accordance with the Off-Island ISO Rules, Buyer is entitled to schedule, for any hour, transmission of the Energy and Ancillary Services over the Controllable Cable up to Buyer Firm Transmission Capacity applicable for that hour. Buyer shall have the right to resell Products under this Agreement pursuant to the terms of the NYISO Rules and Off-Island ISO Rules, and to retain any proceeds of such a sale. Seller shall have the right to sell, in accordance with the Off-Island ISO Rules (including Buyer’s right of recallability), any Buyer Firm Transmission Capacity that Buyer has purchased but neither schedules for its own use nor posts for resale (subject to FERC approval) or resells in any particular hour and shall be entitled to any proceeds collected by Seller for the use by third parties of any such Buyer Firm Transmission Capacity in that particular hour from Seller transactions. The Parties agree to jointly file a request with FERC to clarify that unused capacity posted for resale by Buyer in the Secondary Market is not subject to the forfeiture provisions of the “use it or lose it” provision under Seller’s FERC

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Authority. No reassignment or resale of Buyer Firm Transmission Capacity by either Party shall relieve Buyer of its liabilities or obligations under this Agreement, including the obligation to make payments to Seller for Products when due, except with the prior written consent of Seller.

(ii) Seller shall make commercially reasonable efforts to obtain and maintain all available Firm Transmission Injection Rights and/or Firm Transmission Withdrawal Rights from the Off-Island ISO necessary to operate the Projects in the manner set forth in this Agreement and the Operating Instructions. If the Off-Island ISO awards either Firm Transmission Injection Rights or Firm Transmission Withdrawal Rights, then Buyer shall be entitled to the full use and benefit of all such rights during the Term, and Buyer shall have the first option to purchase any transferable interest therein from Buyer at fair market value at the end of the Term. Seller shall also make commercially reasonable efforts to obtain from or through the Off-Island ISO financial transmission rights or other similar rights or interests, however denominated, giving the holder the right to participate in any future revenues with respect to system upgrades or other projects or expenditures required under the Off-Island Interconnection Agreement for Controllable Cable or otherwise in connection with the issuance of Firm Transmission Injection Rights or Firm Transmission Withdrawal Rights (“Financial Transmission Rights”). If the Off-Island ISO awards any Financial Transmission Rights, Seller shall convey or assign such rights to Buyer, or if such rights are not assignable, shall apply any revenues received as an offset against amounts owed to Seller by Buyer in accordance with Appendix 3.

(iii) During the Term, Buyer shall be entitled to all UDRs or other rights granted under the NYISO Rules associated with the use of the Controllable Cable in accordance with this Agreement, and upon receipt thereof, Seller shall promptly transfer and convey such UDRs or other rights to Buyer. Seller shall be entitled to all rights granted under the Off-Island ISO Rules associated with the Controllable Cable (excluding Firm Transmission Withdrawal Rights allocated between Buyer and Seller pursuant to Section 3.16(iv) below and Firm Transmission Injection Rights provided to Buyer pursuant to Section 3.16(ii) above).

(iv) During the Term, Buyer shall be entitled to an amount not to exceed Buyer Firm Transmission Capacity (in effect from time to time) of Firm Transmission Withdrawal Rights assigned or awarded by the Off-Island ISO to Seller. Upon receipt thereof, and subject to the provisions of this Agreement and the Off-Island ISO Rules, Seller shall transfer and convey such Firm Transmission Withdrawal Rights to Buyer.

(v) For so long and to the extent that (i) Seller has not requested that Off-Island ISO provide Seller with Firm Transmission Injection Rights, or (ii) has not contracted for capacity service resulting from such Firm Transmission Injection Rights pursuant to the FERC open season rules, Buyer shall have the right to request that Seller initiate a supplemental request (feasibility study level) for Firm Transmission Injection Rights at Buyer’s sole expense for such request and subsequently to initiate an open season for the purpose of awarding capacity rights associated with Firm Transmission

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Injection Rights that may be granted to Seller by the Off-Island ISO. In requesting Seller’s initiation of such an open season, Buyer is not granted any rights or priorities with respect to the open season for such capacity rights. The notice of open season for the use of such service shall make such service available to all qualified bidders and shall provide, inter alia, that a successful bidder in such open season shall be required to pay for all subsequent studies and any associated system upgrades related to the award of such Firm Transmission Injection Rights, and agree to business terms and conditions, for the use of such service as may be set forth in such notice.

3.17 Cable System Losses.

(i) Concurrent with each Transmission Capacity Test and at such other times as may be required by Off-Island ISO Rules, NYISO Rules and Prudent Utility Practices, Seller shall at its own expense conduct a test of the Cable System Losses (“Cable Loss Test”) in accordance with the then-current procedures of the NYISO and Off-Island ISO, or a mutually agreed upon procedure at a load level of [] MW and adjusted to ISO Conditions and as adjusted for nominal voltage and frequency. The Cable Loss Test shall measure the positive difference, if any, between (i) the Actual Input Energy supplied by Seller during such test, and (ii) the Actual Output Energy during such test expressed as a percentage of Actual Input Energy (“Cable Loss Percentage”). The Cable Loss Test shall also measure the Cable System Losses under “no-load” conditions. Any Cable System Losses that occur under “no load” conditions shall be the responsibility of Seller. The Cable Loss Percentage established by each Cable Loss Test shall establish the level of Cable System Losses over the Controllable Cable until the following Cable Loss Test. Buyer shall be responsible for arranging for and the cost of purchasing all Energy transmitted on the Controllable Cable in connection with Cable Loss Tests. Following each Cable Loss Test the Cable Loss Percentage shall be adjusted to the tested level. ***[PROPOSER TO INSERT THE MW LOADING LEVEL FOR THE CABLE LOSS TEST]***

(ii) If the Cable System Losses exceed the Design Cable Loss, then Buyer shall receive from Seller a Monthly Excess Cable Losses Adjustment for each Month in which the Cable System Losses exceed the Design Cable Loss calculated pursuant to the formula set forth in Appendix 16.

3.18 Off-Island ISO Refunds. In the event of any Off-Island ISO refunds, such refunds shall be allocated between Buyer and Seller based on the Parties’ use of the Off-Island ISO services as applicable to the particular refund (e.g., marginal loss over-collection refund).

3.19 NYISO and Off-Island ISO Approvals.

(i) The Parties shall use commercially reasonable efforts to obtain the expeditious approval of the NYISO to interconnect the Controllable Cable to Connecting Transmission Owner’s Electric System and of the Off-Island ISO to interconnect the Controllable Cable and the Off-Island Generator to the Off-Island Electric System. The

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

goal of such cooperation shall be to obtain the approval of the NYISO to interconnect the Controllable Cable by [Date]. **[PROPOSER TO INSERT DATE]** To the extent permitted by Seller’s FERC authority and the Off-Island ISO Rules, the Parties shall work together in good faith with the NYISO and Off-Island ISO to allow Buyer to realize the full reliability and economic value and benefits intended under this Agreement.

(ii) No later than [DATE/EVENT], Seller shall enter into the Off-Island Interconnection Agreement for Controllable Cable pursuant to which Off-Island Incremental System Reinforcements necessary for the provision of Firm Transmission Withdrawal Rights equal to the Dedicated Capacity to Seller at the Off-Island Withdrawal Point will be constructed. Seller shall comply with the terms and provisions of the Off-Island Interconnection Agreement for Controllable Cable and Off-Island Interconnection Agreement for Off-Island Generator in all material respects (provided, in any event, that remedies for Seller’s failure to provide Firm Transmission Withdrawal Rights equal to the Dedicated Capacity shall be as set forth in Article 12 below). **[PROPOSER TO INSERT DATE/EVENT]**

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 4 ROLES OF THE PARTIES; REGULATORY APPROVALS

4.1 **Role of Seller**. Subject to the terms of this Agreement, during the Term, Seller shall, at its sole cost and expense:

(i) Design, permit, Own, finance, engineer, construct, maintain and operate the Off-Island Generator and Controllable Cable;

(ii) Provide fuel management services, natural gas transportation (including infrastructure improvements), liquid fuel transportation, balancing, and natural gas and liquid fuel commodity as required to provide Products to Buyer;

(iii) Apply for, expeditiously prosecute, obtain and maintain all Consents necessary for Seller to design, construct, operate and maintain the Off-Island Generator and Controllable Cable in accordance with this Agreement using commercially reasonable efforts;

(iv) Upon Seller’s learning of any material violation of a Consent, Seller shall provide Buyer with written notice of such violation and as soon as reasonably practicable thereafter, a written statement setting forth the Seller’s plan for curing the violation;

(v) Operate and maintain the Off-Island Generator and Controllable Cable consistent with all equipment manufacturers’ instruction manuals and warranties;

(vi) In accordance with Prudent Utility Practices, NYISO Rules, and Off-Island ISO Rules, employ and/or make available sufficient operating personnel who are adequately trained to operate and maintain the Off-Island Generator and Controllable Cable to provide Buyer with Products required under this Agreement;

(vii) Meet all the conditions for the Off-Island Generator Commercial Operation Date and Controllable Cable Commercial Operation Date set forth in Sections 3.3 and 3.4 respectively by the Off-Island Generator COD Target Date and Controllable Cable Commercial Operation Date and maintain compliance in all material respects with the performance requirements and operating standards as set forth in Appendix 10;

(viii) Comply with all Legal Requirements, Consents, NYISO Rules and Off-Island ISO Rules and upon Seller’s learning of any material violation of such, Seller shall provide Buyer with written notice of such violation and as soon as reasonably practicable thereafter, a written statement setting forth the Seller’s plan for curing the violation;

(ix) Subject to the Operating Limits, use commercially reasonable efforts to make available Products to Buyer;

(x) Sell, deliver and provide Products to Buyer;

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

- (xi) Arrange to delist the Off-Island Generator from the Off-Island ISO, if applicable;
- (xii) Register the Projects with the NYISO;
- (xiii) Qualify the Off-Island Generator as an Installed Capacity Supplier;
- (xiv) Report Monthly operating data to Buyer that an Installed Capacity Supplier is required to report under the NYISO Rules and Off-Island ISO Rules;
- (xv) Report MW and MVAR data to Buyer in accordance with NYISO and Off-Island ISO operating guidelines in effect on the date hereof;
- (xvi) Conduct any Testing as set forth in this Agreement or as required by the NYISO or Off-Island ISO;
- (xvii) Manage local community relations as such are related to the development of the Off-Island Generator and Controllable Cable; including local workforce as set forth in Section 18.15 and M/WBE subcontracting goals as set forth in Supplement 1;
- (xviii) Report hourly fuel consumption data to Buyer each Month;
- (xix) Provide all documents, certificates and other requirements certifying the occurrence of the Off-Island Generator Commercial Operation Date and Controllable Cable Commercial Operation Date;
- (xx) Enter into and comply with the terms of the Interconnection Agreements;
- (xxi) (a) Construct and be responsible for the cost and expense of the Developer Attachment Facilities (b) be responsible for the capital costs of the Connecting Transmission Owner’s Attachment Facilities, the System Upgrade Facilities and the System Deliverability Upgrades as set forth in Section 3.12 (with reimbursement by Buyer pursuant to the terms of this Agreement), and (c) be responsible for the cost and expense associated with operations and maintenance of the Connecting Transmission Owner’s Attachment Facilities, the System Upgrade Facilities and the System Deliverability Upgrades (without reimbursement by Buyer) in accordance with the Interconnection Agreements and Section 3.12 of this Agreement required for the Off-Island Generator and Controllable Cable;
- (xxii) Deliver its legal counsel’s opinion to Buyer, in form and substance satisfactory to Buyer, 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, except for the customary exceptions;
- (xxiii) Comply with the FERC authority and the Off-Island ISO Rules;

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(xxiv) Make available sufficient Buyer Firm Transmission Capacity, so that Buyer may receive the Products for the Term pursuant to the terms of this Agreement;

(xxv) Meet the conditions for the Controllable Cable Commercial Operation Date set forth in Section 3.4 and maintain compliance in all material respects with all performance requirements and operating standards set forth in Appendix 10; and

(xxvi) Pay for the System Upgrade Facilities and System Deliverability Upgrades in accordance with Section 6.1(i)(b) of this Agreement. **[PROPOSER TO PROVIDE LANGUAGE APPLICABLE TO THE OFF-ISLAND ISO]**

4.2 **Role of Buyer.** Subject to the terms of this Agreement, and during the Term, Buyer shall, at its sole cost and expense:

(i) Receive and pay for Products on the terms and conditions set forth herein and pay all other charges required of Buyer pursuant to this Agreement;

(ii) Schedule deliveries of Energy on the Controllable Cable;

(iii) Bid Products into NYISO Markets, as appropriate, in accordance with Buyer’s needs and NYISO Rules;

(iv) Deliver to Seller its legal counsel’s opinion, in form and substance satisfactory to Seller, that this Agreement has been duly and validly executed and delivered by Buyer, and that this Agreement constitutes a legal, valid, and binding obligation of Buyer enforceable against it in accordance with its terms, except for the customary exceptions;

(v) Maintain a valid Off-Island Market Participant Services Agreement as required for the purchase of Products for the Term;

(vi) Maintain a valid NYISO Market Participant Services Agreement;

(vii) Cause the Connecting Transmission Owner to (a) enter into the Long Island Interconnection Agreement, and (b) construct the Connecting Transmission Owner’s Attachment Facilities, System Upgrade Facilities and System Deliverability Upgrades; and

(viii) Reimburse Seller for its payment of the costs and expense of the capital costs associated with the Connecting Transmission Owner’s Attachment Facilities, System Upgrade Facilities and System Deliverability Upgrades on Connecting Transmission Owner’s Electric System as set forth in Section 3.12.

4.3 **FERC Agreement; Regulatory Review.** Each Party agrees that, except with the prior written consent of the other Party, the Party or its Affiliates will not institute or voluntarily cooperate in the institution or conduct of any action or proceeding of the FERC under Section

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

205, Section 206 or any other portion of the Federal Power Act, which action or proceeding is intended for the purpose of, or could reasonably be expected to have the effect of, changing the terms of this Agreement then in effect; 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 and terms and conditions for service specified herein shall remain in effect for the Term and shall not be subject to change through application to FERC pursuant to provisions of Section 205 or 206 of the Federal Power Act, absent written agreement of the Parties.

4.4 Costs and Charges Related to Products.

(i) Seller shall be responsible for (a) any costs or charges on or with respect to the Products from the Off-Island Generator arising prior to the Off-Island Withdrawal Point, and (b) paying or causing to be paid all Taxes imposed by any Governmental Authority (“Governmental Charges”), on or with respect to the Products from the Off-Island Generator arising prior to the Off Island Withdrawal Point. Buyer shall be responsible for (x) any costs or charges on or with respect to the Products from the Off-Island Generator at and from the Off-Island Withdrawal Point, and (y) paying or causing to be paid all Governmental Charges, on or with respect to the Products from the Off-Island Generator at and from the Off-Island Withdrawal Point (other than *ad valorem*, franchise or income taxes which are related to the sale of the Products to Buyer and are, therefore, the responsibility of Seller).

(ii) Seller shall be responsible for (a) any costs or charges on or with respect to the Products with respect to the Controllable Cable arising prior to the Cable Delivery Point, and (b) paying or causing to be paid all Governmental Charges on or with respect to the Products with respect to the Controllable Cable arising prior to the Cable Delivery Point. Buyer shall be responsible for (x) any costs or charges on or with respect to the Products with respect to the Controllable Cable at and from the Cable Delivery Point, and (y) paying or causing to be paid all Governmental Charges, on or with respect to the Products with respect to the Controllable Cable from the Cable Delivery Point (other than *ad valorem*, franchise or income taxes which are related to the sale of Products to Buyer and are, therefore, the responsibility of Seller).

(iii) In the event either Party is required by Legal Requirements to remit or pay Governmental Charges which are the other Party’s responsibility hereunder, the Party required to pay shall promptly reimburse the other Party for such Governmental Charges.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 5
SALE OF DEDICATED CAPACITY, ENERGY AND ANCILLARY SERVICES

5.1 **Obligations.** Commencing on the Project COD and continuing through the Base Term and the Extended Term, if applicable, Seller shall sell and make available to Buyer the Dedicated Capacity, the Contract Energy, Ancillary Services and Buyer Firm Transmission Capacity. Buyer shall purchase and receive all such Products in the manner set forth under this Agreement upon achievement of the conditions set forth in Sections 3.3 and 3.4. Seller’s failure to make available to Buyer such Products in the manner and time for which this Agreement provides shall give Buyer the right to terminate this Agreement as a Seller Event of Default as set forth in Article 12.

5.2 **Agreement to Sell and Purchase.** Following the Project Commercial Operation Date, except during the occurrence of an Excused Outage, Seller shall make available Products to Buyer in accordance with the terms of this Agreement (including as specifically set forth in Article 8), and Buyer agrees to compensate Seller therefore in accordance with the terms of this Agreement; provided that, Buyer shall not be obligated to pay Seller for Dedicated Capacity until such time as Buyer receives credit for such Dedicated Capacity pursuant to NYISO Rules.

5.3 **Off-Island Operations.**

(i) Buyer shall have the right to direct Seller to Relist all or part of the Dedicated Capacity. **/PARTIES TO INSERT APPLICABLE PROVISIONS TO IMPLEMENT THIS RIGHT/** Seller shall comply with all Off-Island ISO Rules (including bidding, scheduling and operating the Off-Island Generator to produce Energy) with respect to any Generator Capacity that is Relisted.

(ii) Scheduling of Contract Energy. **/PROPOSER TO INSERT APPROPRIATE PROVISIONS/**

(iii) Seller shall be responsible for securing and paying for the transmission of Contract Energy to the Off-Island Withdrawal Point using Firm Transmission Capacity. In addition, Seller shall be responsible for any congestion charges, locational marginal pricing differentials and losses to the Off-Island Withdrawal Point with respect to any Contract Energy.

5.4 **Title.** Title to and risk of loss for Contract Energy provided under the terms of this Agreement shall pass from Seller to Buyer at the Off-Island Withdrawal Point. Title to risk of loss for Dedicated Capacity shall pass from Seller to Buyer at the Cable Delivery Point.

5.5 **Meters.**

(i) Buyer shall be responsible for the ownership, operation and maintenance of the Electric Metering Equipment.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(ii) For purposes of metering Capacity and Energy, the meters, together with the associated current and potential transformers (the “Electric Metering Equipment”), shall measure and record the amount of Capacity and Energy received by Buyer at the Off-Island Withdrawal Point and Cable Delivery Point.

(iii) If the Electric Metering Equipment fails to register Capacity and Energy, or if the measurement made by the Electric Metering Equipment is found upon testing to vary by more than one percent (1%) from the measurement made by the standard meter used in the test, then the readings of such Electric Metering Equipment, taken during the measurement periods up to the lesser of (a) six (6) Months before the test, or (b) the last test of such equipment was made, will be adjusted, either upward, if the tests indicate under-reading by the Electric Metering Equipment or downward, if the tests indicate over-reading by the Electric Metering Equipment, to correct for such error, unless there is verifiable information available upon which a more accurate adjustment can be made, including readings from Seller-installed metering devices. If the Parties are unable to agree on the amount of the adjustment to be applied, the amount of the adjustment shall be determined (x) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or (y) if not so ascertainable, by estimating on the basis of deliveries under similar conditions during the period since the last test. Any accumulated difference in payments due under the terms of this Agreement which are owing or to be refunded as a result of such metering errors will be reflected in adjustments to bills for a future period of reasonable length, to be agreed upon by the Parties, but in no event over a period greater than the three (3) succeeding billing periods after the inaccuracy is verified. Subject to Section 6.3, such correction when made shall, in the absence of bad faith, fraud, or intentional wrongdoing, constitute a complete and final settlement of any claim arising between the Parties out of such inaccuracy of the Electric Metering Equipment.

5.6 **Right to Resell.** Seller shall convey all Products to Buyer with good title, free and clear of liens and encumbrances of any nature whatsoever at any time during the Term, Buyer shall have the right to resell Products to third parties either within or outside the NYISO, for any time duration, and to retain any and all proceeds of such sales, and such Seller shall reasonably cooperate with Buyer in undertaking such efforts.

5.7 **Monthly Capacity Payments.** Subject to the provisions in Section 6.2, beginning with the Month in which the Project COD occurs, Buyer shall pay to Seller a Monthly Capacity Payment equal to the Monthly Capacity Rate calculated in accordance with Appendix 3 multiplied by the Buyer Firm Transmission Capacity for each Month (up to the Design Cable Capacity), and adjusted, as applicable, in accordance with Appendix 5.

5.8 **Monthly Energy Payment.** Buyer shall pay Seller for scheduled Contract Energy calculated in accordance with Appendix 4 and pursuant to the terms of Article 6. Buyer shall receive and purchase all Ancillary Services listed in Appendix 1 for no additional charge.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

5.9 **Excused Outages.** Seller’s obligation to provide Products pursuant to this Agreement will be excused, and Buyer’s right to Dispatch pursuant to this Agreement will be curtailed, if and to the extent that any of the following (each an “Excused Outage”) occurs and continues:

- (i) Any partial or complete reduction in the Generator Capacity below the Dedicated Capacity which is the result of a Planned Outage or Maintenance Outage;
- (ii) Any partial or complete reduction in the Cable Capacity of the Controllable Cable below the Buyer Firm Transmission Capacity which is the result of a Planned Outage or Maintenance Outage;
- (iii) Dispatch not in accordance with Section 8.8, the Operating Limits, or the Operating Instructions,
- (iv) Buyer’s inability or unwillingness to accept Contract Energy or Ancillary Services at the Off-Island Withdrawal Point;
- (v) A Suspension pursuant to Section 8.14; or
- (vi) A Force Majeure Event to the extent provided in Article 11.

Seller shall provide Buyer prompt written notice of the occurrence of and the resolution of an Excused Outage and shall use commercially reasonable efforts to limit the duration and extent of such Excused Outage. Upon notice from Seller to Buyer that an Excused Outage has ended, Buyer may Dispatch the Projects.

5.10 **Equivalent Availability and Chronic Underperformance.**

(i) For purposes of this Agreement: (a) “Ambient-Adjusted Generator Capacity” means the maximum amount of Energy in MWh the Off-Island ISO will permit to be Dispatched for the Off-Island Generator in any hour, based on temperature, humidity and any other applicable ambient conditions; (b) “Equivalent Availability-Generator” means the weighted percentage of time in a specific time period during which the Off-Island Generator is available for Dispatch, whether or not the Off-Island Generator is actually Dispatched, which shall be expressed as a percentage equal to one hundred percent (100%) multiplied by a fraction where: (x) the numerator is the sum of the Ambient-Adjusted Generator Capacity in every hour of a specific time period that is actually available for Dispatch; provided, for purposes of this calculation that Off-Island Generator Capacity unavailable due to a Force Majeure Event or an Excused Outage will be included in the Ambient-Adjusted Generator Capacity, and (y) the denominator is the sum of the Ambient-Adjusted Generator Capacity in every hour of such time period; (c) “Equivalent Availability-Cable” means the weighted percentage of time in a specific time period during which the Controllable Cable is available for scheduling, whether or not the Controllable Cable is actually scheduled, which shall be expressed as a percentage equal to one hundred percent (100%) multiplied by a fraction where: (x) the numerator is the

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

sum of the Cable Capacity in every hour of a specific time period that is actually available for scheduling; provided, for purposes of this calculation that Cable Capacity unavailable due to a Force Majeure Event or an Excused Outage will be included in the numerator, and (y) the denominator is the sum of the Cable Capacity in every hour of such time period; (d) “Equivalent Availability” means Equivalent Availability-Generator multiplied by Equivalent Availability-Cable; (e) “Monthly Equivalent Capacity” means Dedicated Capacity for such Month multiplied by the Equivalent Availability for such Month; and (f) “Chronic Underperformance” means the failure of the Projects to achieve an average Monthly Equivalent Capacity in any consecutive twenty-four (24) Month period that is equal to at least seventy-five percent (75%) of the Dedicated Capacity.

(ii) Commencing on the third (3rd) anniversary of the Project Commercial Operation Date, Buyer shall have the option to terminate this Agreement as provided herein in the event of Chronic Underperformance. If Chronic Underperformance has occurred, Buyer may give Seller written notice of such Chronic Underperformance within thirty (30) Days of the end of the consecutive twenty-four (24) Month period in which such Chronic Underperformance occurred. Upon receipt of any notice of Chronic Underperformance, Seller shall have an additional six (6) Months to achieve Monthly Equivalent Capacity in excess of the minimum level required to avoid a finding of Chronic Underperformance. In the event that Seller fails to achieve the required Monthly Equivalent Capacity level within such six (6) Month period, Buyer shall have the right to terminate this Agreement immediately pursuant to Section 12.5.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 6 BILLING AND COLLECTIONS

6.1 **Billing and Payment**. Unless otherwise specifically agreed upon by the Parties, the calendar Month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each Month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month, except that Monthly Capacity Payments will be submitted in accordance with the terms and conditions set forth in Section 6.1(i)(c)(w) below.

(i) **Billing By Seller.**

(a) **Reading Electric Metering Equipment.** Seller shall read the Electric Metering Equipment at the end of each Month of the Term.

(b) **Interconnection Costs.** After the Project Commercial Operation Date, Seller shall prepare and submit to Buyer an invoice for the accumulated capital costs it has incurred associated with paying for Connecting Transmission Owner’s Attachment Facilities, System Upgrade Facilities, and System Deliverability Upgrades pursuant to the Long Island Interconnection Agreement. Such invoice shall show the nature, amount and payee, if any, of the capital costs paid and incurred by Seller.

(c) **Monthly Invoice.** Subject to the provisions of Section 6.3, on or about the tenth (10th) Day of each Month following the Month in which the Project Commercial Operation Date occurs, Seller shall send Buyer a Monthly invoice for:

(w) **Monthly Capacity Payment.** The Monthly Capacity Payment for the upcoming Month (and any previous Months in the case of the first (1st) invoice);

(x) **Monthly Energy Payment.** The Monthly Energy Payment for the preceding Month;

(y) **Seller’s Excess Costs.** Lump sum payment or Monthly Surcharge pursuant to Section 14.2(iii) and (iv), as applicable; and

(z) Any Off-Island ISO or NYISO charges incurred by Seller that are the responsibility of Buyer pursuant to the terms of this Agreement. Invoices for scheduled Contract Energy shall be based on data in the most recent Settlement Statement from the Off-Island ISO to Seller and shall be adjusted to reflect any revised Settlement Statement from the Off-Island ISO. In the event that Seller incurs any charges from the Off-Island ISO on a Settlement Statement that in accordance with this Agreement are the responsibility of Buyer, Seller shall provide a copy of the relevant invoice to Buyer, and the applicable charges shall be added to

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

the Monthly invoice. In the event that Buyer incurs any charges from the Off-Island ISO on its Settlement Statements, that in accordance with this Agreement are the responsibility of Seller, Buyer shall provide a copy of the relevant invoice to Seller, and the applicable charges shall be deducted from the Monthly invoice.

(ii) Buyer shall be obligated to pay to Seller, within thirty (30) Days of the receipt of each Monthly invoice, any undisputed amounts owed to Seller.

(iii) Seller shall deliver each invoice to Buyer’s billing address as set forth in Section 18.5 herein. Such invoice shall include the basis of the calculation of the payment amounts, the applicable rates and any interest charges or other adjustments to the amounts owed.

(iv) Billing by Buyer.

(a) **Liquidated Damages.** Commencing with the first Month after any Liquidated Damages are owed by Seller, Buyer shall send Seller an invoice for any applicable Liquidated Damages for the preceding Month.

(v) **Minimum Required Consents Liquidated Damages Amounts.** Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages amounts due and payable to Buyer from Seller pursuant to Section 3.5(i) providing sufficient detail to show the amounts due.

(w) **Execution of EPC Contracts.** Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages amounts due and payable to Buyer from Seller pursuant to Section 3.5(ii) providing sufficient detail to show the amounts due.

(x) **Major Construction Milestone for Off-Island Generator Liquidated Damages Amount.** Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages amounts due and payable to Buyer from Seller pursuant to 3.5(iii) providing sufficient detail to show the amounts due.

(y) **Major Construction Milestone for Controllable Cable Liquidated Damages Amount.** Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages amounts due and payable to Buyer from Seller pursuant to 3.5(iv) providing sufficient detail to show the amounts due.

(z) **COD Liquidated Damages and Other Amounts.** Buyer shall prepare and submit an invoice to Seller for any Liquidated Damages

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

amounts due and payable to Buyer from Seller providing sufficient detail to show the amounts due for COD Liquidated Damages and/or a Termination Payment pursuant to Section 12.5(ii), if applicable.

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

(c) Buyer shall deliver each invoice to Seller’s billing address as set forth in Section 18.5 herein. Such invoice shall include the basis of the calculation of the payment amounts, the applicable rates and any interest charges or other adjustments to the amounts owed.

6.2 **Monthly Adjustment.** In each Month of the Contract Year, Seller will adjust the Monthly Capacity Payment, as applicable, as specified in Appendix 5.

6.3 **Billing and Final Accounting.**

(i) If Buyer questions or contests the amount or propriety of any payment claimed by Seller to be due pursuant to this Agreement, Buyer shall make payment to Seller only of amounts not in dispute.

(ii) In the event Buyer questions or contests the correctness of any calculations made by Seller in developing a Monthly Invoice, Buyer shall provide Seller with written notice of such dispute and the basis for Buyer’s question or contest. Seller shall promptly review the questioned Monthly Invoice and shall notify Buyer of any error in Seller’s determination of the Monthly Invoice amounts and issue an amended Monthly Invoice in conjunction with any payment to, or request for payment from, Buyer, as the case may be, in light of the redetermination. If Buyer disputes in good faith Seller’s amended Monthly Invoice amount, then Buyer may submit the matter for dispute resolution pursuant to the procedure set forth in Article 16. To the extent Seller disagrees with Buyer’s basis for questioning the original Monthly Invoice, Seller shall provide a written explanation of its position.

(iii) Seller shall have until the end of one (1) year after the delivery of a Monthly Invoice to correct the calculations made by Seller in developing the Monthly Invoice and deliver a revised Monthly Invoice to Buyer. At any time and from time to time and during and until the expiration of six (6) years following the end of the Base Term, or Extended Term if applicable, Buyer may, upon reasonable notice, audit (or cause to be audited) Seller’s books and records in connection with any Monthly Invoice to question or contest the correctness of any Monthly Invoice and the calculation of such payments and reimbursements. Each payment made by Buyer hereunder shall be subject to subsequent adjustment for amounts determined by Buyer or its auditor. Notwithstanding the foregoing, either Party may correct calculations at any time NYISO or Off-Island ISO adjusts prior data calculations upon which any settlement has been based. If payment already has been made by either Seller or Buyer pursuant to the

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Monthly Invoice and a Party thereafter questions or contests the correctness of such previously reconciled Monthly Invoice, neither Party shall be required to refund any payment received pursuant to the contested Monthly Invoice nor make any additional payment thereto until such time as it is finally determined that the contested Monthly Invoice was in error.

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

6.5 **Billing and Payment Records.** In accordance with Supplement 1, after the receipt of any Monthly Invoice, Buyer shall have the right to audit such books and records of Seller as are necessary for Buyer to verify the calculation of the Monthly Capacity Payments and the Monthly Energy Payments as well as all other information provided to Buyer pursuant to Section 6.1.

6.6 **Required Payment.** Any amounts due pursuant to this Article 6, shall be paid by the owing Party in the amounts and when required by this Agreement, notwithstanding any event, act, omission, failure, condition, change, excuse, suspension of a Party’s performance under Section 12.1 or Section 12.2 (as the case may be) or contrary provision in this Agreement.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 7 SELLER SECURITY

7.1 **Seller Security.** As security for Seller’s payment obligations under this Agreement, Seller shall deliver to Buyer, at Seller’s sole cost and expense, Letter(s) of Credit, or a Guaranty by the dates and in the amounts set forth in Sections 7.1 (i) and (ii), on the terms and conditions set forth herein (“Seller Security”).

(i) Within five (5) Business Days of receipt of notice from Buyer that the Effective Date has occurred in accordance with Section 2.1(i), Seller shall deliver to Buyer and shall maintain until the date that is ninety-eight (98) Days after the later to occur of (a) the expiration or earlier termination of this Agreement, or (b) payment of all obligations due from Seller to Buyer, Seller Security in an amount equivalent to _____ Dollars (\$ ____). **PROPOSER TO INSERT NUMBER EQUAL TO FIFTEEN THOUSAND DOLLARS (\$15,000) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY OF THE PROJECT**

(ii) No later than the Minimum Required Consents Application Target Date, Seller shall delivery to Buyer and shall maintain until the date that is ninety-eight (98) Days after the later to occur of (a) the expiration or earlier termination of this Agreement, or (b) payment of all obligations due from Seller to Buyer, Seller Security in an amount equivalent to _____ Dollars (\$ ____). **PROPOSER TO INSERT NUMBER EQUAL TO ONE HUNDRED THIRTY FIVE THOUSAND DOLLARS (\$135,000) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY OF THE PROJECT**. Seller may meet its obligations under Sections 7.1(i) and (ii) by providing one form of Seller Security in the combined amount equivalent to _____ Dollars (\$ ____). **PROPOSER TO INSERT NUMBER EQUAL TO ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) MULTIPLIED BY THE NUMBER OF MW OF DESIGN CABLE CAPACITY OF THE PROJECT**.

7.2 **Seller Security Replacement.**

(i) Each Letter of Credit or Guaranty provided as Seller Security shall be issued by an issuer meeting the requirements contained in the definition “Letter of Credit” or a Guarantor meeting the Credit Requirements, and if at any time such issuer of a Letter of Credit or provider of a Guaranty fails to meet such Credit Rating or net worth requirements or becomes Bankrupt, Seller shall promptly replace such Letter of Credit or Guaranty within five (5) Days of such event. Notwithstanding the foregoing, 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 or Guaranty with a substitute form of security; provided, that any such replacement meets the terms and conditions of Seller Security under this Agreement; and provided further that there is no lapse in Seller Security.

(ii) If the applicable substitute Seller Security is replacing a Letter of Credit, then Buyer shall promptly mark such Letter of Credit as “cancelled” and return the

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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.

(iii) If the applicable substitute Seller Security shall be replacing a Guaranty, then Buyer shall execute such release documentation as may be reasonably requested by Seller.

7.3 **Draw on Seller Security.** Any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing may be satisfied by Buyer on a draw on Seller Security. Buyer may also draw on Seller Security as provided in Section 7.5 or Section 7.6. Prior to termination, Buyer shall have the right to draw upon Seller Security for any undisputed amounts owed to Buyer under this Agreement.

7.4 **Replenishment.** In the event Buyer draws upon the Seller Security, Seller shall replenish the amount of security required by Section 7.1 within ten (10) Days.

7.5 **Draw on Letter of Credit if Seller Becomes Bankrupt.** If Seller becomes Bankrupt, Buyer is entitled to make a draw or draws upon any Letter of Credit constituting Seller Security up to the full amount of such Letter of Credit. With respect to those amounts drawn that are not used to satisfy any amount owed by Seller to Buyer hereunder, Buyer shall hold such amounts separate and apart from all other funds of Buyer in an interest-bearing account until a final determination has been made, by a court of competent jurisdiction, that the amounts paid with respect to Seller’s obligations to Buyer prior to Seller becoming Bankrupt are not subject to being recovered from Buyer pursuant to Sections 544, 547, 549 or 550 of the U.S. Bankruptcy Code (or pursuant to any successor or similar provisions of law) in any proceeding instituted under the U.S. Bankruptcy Code, or any comparable provision of any applicable state or federal bankruptcy or creditors’ rights law, by or against Seller. If such a final determination is made, Buyer shall pay Seller the funds drawn under the Letter of Credit pursuant to the first sentence of this Section 7.5, net of any amounts that have been applied in regard to amounts owed by Seller to Buyer, and actual interest earnings thereon. If such final determination is not made and the bankruptcy trustee or debtor-in-possession recovers moneys from Buyer, Buyer shall retain the funds drawn under the Letter of Credit and any interest earnings thereon equal to the amount of such recovery, and any excess shall be paid to Seller.

7.6 **Expiration of Letter of Credit.** If a Letter of Credit is serving as Seller Security, Seller shall replace such Letter of Credit with other Seller Security (which may be another Letter of Credit) more than five (5) Business Days before the expiration of the Letter of Credit. If Seller fails to provide such substitute Seller Security more than five (5) Business Days before the expiration of the Letter of Credit, Buyer may draw the full amount of the Letter of Credit and hold the proceeds until Seller Security satisfying the requirements of this Agreement is provided to Buyer (and Buyer may at any time apply such proceeds to any amount due and owing from Seller to Buyer).

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 8 OPERATION AND MAINTENANCE

8.1 **Operation and Maintenance.** Seller shall manage, control, operate and maintain the Projects in a manner:

- (i) Consistent with Prudent Utility Practices;
- (ii) In accordance with the Operating Instructions and manufacturers’ warranties;
- (iii) To provide all Products in the amounts as specified in this Agreement;
- (iv) To meet all obligations of this Agreement; and
- (v) In accordance with all Consents and other Legal Requirements.

8.2 **Development of Operating Instructions.** The Parties shall jointly develop written Operating Instructions no later than sixty (60) Days prior to the Project Commercial Operation Date. The Operating Instructions will be based on the design of the Off-Island Generator and Controllable Cable and will conform to Connecting Transmission Owner’s Electric System operating standards, Off-Island ISO Rules, and NYISO Rules. Such instructions shall be in a level of detail reasonably required by Buyer. The Operating Instructions shall be revised to the extent mutually agreed in writing by the Parties to continue coordination of the operation and dispatch of the Projects in accordance with NYISO Rules and Off-Island ISO Rules.

8.3 **Coordination of Maintenance of the Controllable Cable and Off Island Generator.** Seller shall coordinate with Buyer on maintenance procedures and schedules, and the scheduling of Planned Outages and Maintenance Outages of the Controllable Cable and Off Island Generator. A Maintenance Outage, once scheduled, may be deferred beyond the end of the next Weekend, but must occur before the next Planned Outage.

- (i) The number of Days allowed for Planned Outages of the Controllable Cable and Off-Island Generator is set forth in Appendix 10. Any Planned Outage that exceeds the number of Days set forth in Appendix 10 or as amended pursuant to this Section 8.3(i) shall be deemed to be a Maintenance Outage. Seller shall submit a plan detailing the Planned Outages of the Controllable Cable and Off-Island Generator for the two coming Calendar Years to Buyer sixty (60) Days prior to the date when such information is due to be submitted to the NYISO and/or Off-Island ISO, as applicable, prior to each Calendar Year for Buyer’s review and approval, and such approval shall be deemed given unless Seller receives written notice to the contrary within thirty (30) Days of its submission to Buyer. In its approval of the plan, Buyer may consider reliability and economic considerations. In no event shall Seller schedule a Planned Outage during the period from May 15 through September 30 in any Contract Year. Seller shall give Buyer prior written notice of any proposed change in the annual Planned Outage schedule consistent with the NYISO Rules and Off-Island ISO Rules (including those set forth in

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

the Outage Schedule Manual) and any such change shall be subject to Buyer’s approval (in consultation with the Connecting Transmission Owner). Except as provided for in Section 8.8, Buyer shall not be permitted to make Dispatch requests for the Controllable Cable or otherwise receive Delivered Energy from the Controllable Cable during a Planned Outage or Maintenance Outage.

(ii) Maintenance Outages of the Controllable Cable and Off-Island Generator shall be limited to no more than ____ () hours per Calendar Year. **[PROPOSER TO INSERT NUMBER OF HOURS]** Any Maintenance Outage that exceeds the foregoing limitation shall be deemed to be a Forced Outage.

8.4 **Forced Outages.** Seller shall take commercially reasonable efforts consistent with Prudent Utility Practice to minimize the occurrence and duration of Forced Outages. **[PROPOSER TO INSERT PERFORMANCE STANDARD FOR CONTROLLABLE CABLE AND RELATED PAYMENT ADJUSTMENT FORMULA]** Upon the occurrence of a Forced Outage, Seller shall notify Buyer as soon as possible of such occurrence and the Projects’ capability, if any, to produce Products during such Forced Outage. Seller shall notify Buyer promptly upon the conclusion of the Forced Outage. Seller shall provide such notice pursuant to the terms of the Operating Instructions.

8.5 **Effect of System Emergency on Outage Scheduling.** If Seller has scheduled a Planned Outage or a Maintenance Outage, and such outage occurs or would occur coincident with the System Emergency, Buyer shall notify Seller of the System Emergency. Buyer may request Seller to reschedule the outage or, if the outage has begun, to expedite the completion thereof, and Seller shall use commercially reasonable efforts to comply with such request and applicable NYISO Rules and Off-Island ISO Rules. Buyer has no obligation to pay Seller for any incremental cost or expense Seller may incur as a result of such rescheduling or expediting resulting from a System Emergency declared by NYISO or the Off-Island ISO.

8.6 **Consistency with NYISO Rules and Off-Island ISO Rules.** The Parties shall comply with NYISO Rules and Off-Island ISO Rules and to the extent any such rules or Parties’ actions in compliance with such rules are inconsistent with the provisions of this Agreement, such actions or compliance by a Party shall not be deemed to be a breach of this Agreement an Event of Default.

8.7 **Station Service Energy.** To the extent that Seller requires Station Service Energy, it shall be at Seller’s sole cost and expense. Seller shall have responsibility to obtain such Station Service Energy.

8.8 **Dispatch.** Seller shall be responsible to make the Off-Island Generator available for Dispatch and to provide Buyer with Contract Energy. **[PROPOSER TO INCLUDE ADDITIONAL DISPATCH PROVISIONS BASED ON THE TERMS OF THE PROPOSAL]**

(i) Buyer has the right, but not the obligation, to schedule Contract Energy in accordance with the Operating Limits specified in Appendix 10.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(ii) Seller shall operate the Off-Island Generator in accordance with the most recent Dispatch schedule received from the Off-Island ISO.

(iii) As soon as reasonably practicable, but no later than thirty (30) Days prior to the Off-Island Generator Commercial Operation Date, Seller and Buyer shall agree to performance curves detailing the MW and MVAR capability of the Off-Island Generator over a range of ambient conditions. Such performance curves shall be part of the Operating Limits. Within ten (10) Days of establishing a new Dedicated Capacity, Buyer and Seller shall agree to new performance curves reflecting the new Dedicated Capacity. In the absence of new performance curves, the old performance curves shall be used by Buyer as Operating Limits.

8.9 **Response to Forced Outages.** Seller shall give Buyer notice as soon as possible if Energy or Ancillary Services from the Off-Island Generator unexpectedly becomes unavailable to satisfy a Dispatch as a result of a Forced Outage of the Off-Island Generator. Buyer and Seller, through a previously designated individual (with authority and ability to respond to such event and whose name and contact information shall be incorporated into the Operating Instructions), shall be immediately available to each other for communications during a Forced Outage and shall respond with all necessary promptness in accordance with NYISO and Off-Island ISO procedures.

8.10 **Scheduling of Contract Energy.** Beginning on the Effective Date and throughout the Base Term, and Extended Term, if applicable, Buyer shall have the right, but not the obligation, to provide a notice to Seller, consistent with the Operating Limits, scheduling Energy for delivery by Seller to the Off-Island Withdrawal Point in a quantity up to the Dedicated Capacity (such notice a “Contract Energy Dispatch Notice”). Subject to the terms and conditions of this Agreement, the Operating Instructions shall set forth the content and procedures for issuing such Contract Energy Dispatch Notices. Buyer (or if the Parties agree otherwise in the Operating Instructions, Seller) shall enter in the Off-Island ISO Market System an Internal Bilateral Transaction consistent with information contained in the Contract Energy Dispatch Notice. Seller (or if the Parties agree otherwise in the Operating Instructions, Buyer) shall respond to Contract Energy Dispatch Notices by reviewing the Internal Bilateral Transaction entered by the Buyer in the Off-Island ISO for conformance with this Agreement and shall either (i) complete scheduling of the Internal Bilateral Transaction by confirming Buyer’s Internal Bilateral Transaction in the Off-Island ISO Market System or (ii) advise Buyer of any nonconformance with this Article 8, the Contract Energy Dispatch Notice issued in accordance with this Article 8 and the Off-Island ISO Rules.

8.11 **Scheduling at and from Delivery Point.** Buyer is responsible for scheduling Contract Energy at and from the Off-Island Withdrawal Point.

8.12 **Generation–Schedule Imbalance.** Seller will exercise commercially reasonable efforts to cause the Off-Island Generator to be operated within any applicable tolerance levels prescribed by the Off-Island ISO in order to avoid imposition of under-generation penalties by

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

the Off-Island ISO. Seller shall be responsible for any imbalance charges between the Off-Island Generator and the schedule requirements.

8.13 **Compensation for Cable Schedule Deviations.** If during any Month Buyer schedules any delivery of Energy into the Day-Ahead Market and the Controllable Cable is unavailable or otherwise fails to deliver all or any portion of such Contract Energy delivery, unless and to the extent such unavailability or failure arises from an Excused Outage as set forth in Section 5.9, if Buyer is required to fulfill its delivery contract with the NYISO by purchasing Energy from the Real-Time Market or is otherwise penalized by NYISO, Seller will pay to Buyer the net amount of any higher Real-Time Market prices for such Energy for all such instances during such Month plus any penalties Buyer is required to pay with respect to such Month.

8.14 **Suspension.** Buyer shall have the right, at its sole reasonable discretion, to suspend acceptance of Products from the Controllable Cable during any one of the following circumstances: (i) to prevent damage to Connecting Transmission Owner’s Electric System; (ii) to maintain electrical service to Buyer’s customers; (iii) a System Emergency, or (iv) if suspension is required for relocation, repair or maintenance of facilities or to facilitate restoration of line outages (each, a “Suspension”). A Suspension in the foregoing cases shall not be regarded as an Excused Outage. Buyer shall give advance notice regarding any such circumstances. Upon receipt of notice of a Suspension, Seller shall carry out the required action without undue delay. Where circumstances do not permit such advance notice, including circumstances in which Seller’s Controllable Cable is not staffed, or where Seller fails to carry out the required action, Buyer may invoke Suspension without notice. Except to the extent that a Suspension is the result of negligence or willful misconduct in Seller’s operation of the Controllable Cable, Seller shall not be responsible for payment of any cost incurred by Buyer during, or as a result of, such Suspension.

8.15 **Restoration of Service.** Buyer and Seller shall endeavor to restore acceptance of deliveries of Energy and Ancillary Services as promptly as is reasonably possible in cases of outages or Suspensions.

8.16 **Consequences of Buyer’s Suspension.** In the event of a Suspension, Buyer shall continue to make Monthly Capacity Payments during the Suspension and the Suspension will be deemed an Excused Outage, unless such Suspension results from Seller’s negligence or willful misconduct in the operation of one or both of the Projects.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 9 INSURANCE

9.1 **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 6.

9.2 **Certificates of Insurance.** On or prior to commencement of construction of the Projects, Seller will provide Buyer with certificates of insurance evidencing the required coverage set forth above and in Appendix 6. Such certificates shall provide for a minimum of thirty (30) Days’ advance notice to Buyer of cancellation or material change in coverage. Failure by Seller to obtain the insurance coverage or certificates of insurance required by this Section 9.2 or Appendix 6 shall not relieve Seller of the insurance requirements set forth herein or therein or in any way relieve or limit Seller’s obligations and liabilities under any other provision of this Agreement.

9.3 **Insurance Notice to Buyer.** Seller shall arrange to have its insurance carriers send Buyer a written notice of cancellation or termination of Seller’s insurance coverage required under this Article.

9.4 **Notice to Contractors.** Seller shall give written notice of this Agreement to (a) each counterparty with which Seller enters any crossing agreement with respect to the submerged portions of the Controllable Cable and (b) each contractor performing any maintenance, repair or other services on or on the vicinity of the submerged portions of the Controllable Cable with which Seller enters any agreement or consent, and shall further require each such contractor to include in its principal subcontracts such notice, as follows:

[Seller] is a party to a Power Purchase Agreement dated _____ with the Long Island Power Authority (“LIPA”) for the exclusive use by LIPA of the transmission capability of the undersea cable described therein, and for the term of such Power Purchase Agreement LIPA is a beneficial owner and has an economic interest in such cable. Contractor acknowledges such rights and interests of LIPA for purposes of Robins Dry Dock & Repair Co. v. Flint, 275 U.S. 303 (1927).

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 10 INFORMATION, ACCESS AND NONINTERFERENCE

10.1 **Information.** Buyer shall have the right to request information related to all phases of permitting, development, construction, operation and maintenance of the Projects at any time during the Term. Seller shall cooperate by providing the information requested within five (5) Business Days.

10.2 **Access, Inspections, and Noninterference.** To the extent necessary to enable Buyer to verify Seller’s compliance with this Agreement, Buyer may have its duly authorized agents and representatives on the Controllable Cable site and Off-Island Generator site both before and after the Project Commercial Operation Date to inspect the construction, start-up, operation and maintenance of the Projects and to witness all Testing. Seller grants to Buyer (including Buyer’s duly authorized agents and representatives) for the Base Term and Extended Term, if applicable, a right to access the Projects at all reasonable hours, and, in an emergency, immediately upon request. In no event shall such access unreasonably interfere with Seller’s ownership, development, construction, operation or maintenance of the Projects. In connection with Buyer’s exercise of rights under this Section 10.2, while on Seller’s premises, Buyer’s personnel and duly authorized agents and representatives shall comply with all applicable health and safety rules or regulations of Seller, including, if required, acceptance of an escort. Prior to the Commercial Operation of the Projects, Seller agrees to provide Buyer (i) space at the Controllable Cable site and Off-Island Generator site for one (1) single wide construction trailer (or at Seller’s option in lieu of such trailer space, an office in Seller’s offices at the Controllable Cable site and Off-Island Generator site for Buyer’s representative), and (ii) utilities for such construction trailer, or such office space.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 11 FORCE MAJEURE

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

11.2 **Force Majeure Event.** Except as specifically provided elsewhere in this Agreement, if a Force Majeure Event causes either Party to be rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from performance (other than credit support or payment obligations) solely to the extent and during such period performance is prevented and shall not be construed to be in default in respect of any obligation hereunder for so long as, but only to the extent that, failure to perform such obligation is due to a Force Majeure Event.

11.3 **Due Diligence.** A Party claiming a Force Majeure event shall: (i) provide immediate oral notice followed by written notice to the other Party within three (3) Business Days after such Party becomes aware of such Force Majeure Event, giving a detailed written explanation of the event and an estimate of its expected duration and probable effect on the performance of that Party’s obligations hereunder (“Duration Estimate”), (ii) use commercially reasonable efforts in accordance with Prudent Utility Practices to continue to perform its obligations under this Agreement, to remedy the condition that prevents performance and to mitigate the effects of the same, and (iii) keep the other Party informed in writing of all efforts to mitigate and remedy the Force Majeure Event including periodic updates to the Duration Estimate and, if applicable notice of the Force Majeure Event’s cure.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

11.4 **Effect of Force Majeure on Buyer’s Payment Obligations.** If Seller is the Party claiming a Force Majeure Event, the Monthly Capacity Payments shall be adjusted as set forth in Appendix 3.

11.5 **Suspension of Performance.** The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event shall extend this Agreement beyond its stated Term.

11.6 **Extended Force Majeure Events.**

(i) If a Party (“Non-Claiming Party”) has reason to believe that a Force Majeure Event which is preventing the other Party (“Claiming Party”) from performing its obligations hereunder will result in a suspension of the Claiming Party’s performance for more than thirty (30) Days, the Non-Claiming Party may request that the Claiming Party submit a “Force Majeure Remedy Plan.” Such Force Majeure Remedy Plan shall set forth a course of repairs, improvements, changes to operations or other actions which should permit the Claiming Party to perform its obligations under this Agreement as soon as reasonably practicable. The Claiming Party shall submit such Force Majeure Remedy Plan to the Non-Claiming Party within ten (10) Days of the request.

(ii) If the Claiming Party has reason to believe that a Force Majeure Event will prevent it from performing its obligations required by the Agreement for thirty (30) Days or longer, it shall notify the Non-Claiming Party in writing within fifteen (15) Days from the beginning of said Force Majeure Event and shall submit a Force Majeure Remedy Plan to the Non-Claiming Party within ten (10) Days of such notification.

(iii) While the Force Majeure Remedy Plan is in effect, the Claiming Party shall provide weekly status reports notifying the other Party of the steps which have been taken to remedy the Force Majeure Event and the expected remaining duration of the Claiming Party’s inability to perform its obligations.

11.7 **Insurance Proceeds.** In the event Seller obtains or receives insurance proceeds to repair or rebuild one or both of the Projects or its related facilities and equipment that have been damaged as a result of a Force Majeure Event, Seller shall apply such proceeds to repair or rebuild the Projects or its facilities and equipment as part of Seller’s Force Majeure Remedy Plan.

11.8 **Right to Terminate.**

(i) The Non-Claiming Party may terminate this Agreement upon thirty (30) Days prior written notice if the Claiming Party remains unable to perform its obligations hereunder for one hundred eighty (180) consecutive Days following the submission of the Force Majeure Remedy Plan; provided, however, that the Buyer may terminate if Seller is unable, within such one hundred eighty (180) Day period, to restore (a) the Off-Island

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Generator to the Design Generator Capacity, or (b) the Controllable Cable to the Design Cable Capacity using commercially reasonable efforts.

(ii) The Non-Claiming Party may terminate this Agreement upon thirty (30) Days prior written notice if the Claiming Party (a) fails to provide a Force Majeure Remedy Plan as provided for in this Article 11; or (b) fails to perform its obligations set forth in its Force Majeure Remedy Plan. In the event of (a) or (b) such failures shall be considered a material breach of the provisions of this Agreement constituting a Seller Event of Default or a Buyer Event of Default, as applicable, and the Non-Claiming Party shall have the right to terminate this Agreement and seek a Termination Payment pursuant to Article 12.

11.9 **Liability Following Termination.** Upon termination of this Agreement as provided in Section 11.8, the Parties shall have no further liability or obligation to each other except for any obligation arising prior to the date of such termination.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 12 DEFAULT AND REMEDIES

12.1 **Default by Seller.** The occurrence of one or more of the following events shall constitute a “Seller Event of Default” (unless it results from an Excused Outage or a Force Majeure Event, breach of this Agreement by Buyer or is otherwise excused pursuant to terms set forth in this Agreement):

(i) Seller fails to pay Buyer any amount payable by Seller to Buyer (other than amounts in dispute that are not expressly required by this Agreement to be paid) pursuant to this Agreement after the same shall have become due and payable;

(ii) Seller fails to perform or observe any material obligation of Seller under this Agreement, other than those obligations specifically addressed in this Section;

(iii) Any representation or warranty made by Seller herein or in any certificate delivered to Buyer pursuant hereto shall prove to be incorrect in any material respect, and such error has a material and adverse effect on the ability of Seller or of Buyer to perform their respective material obligations under this Agreement or the ability to deliver Products to Buyer;

(iv) Seller becomes Bankrupt;

(v) Guarantor becomes Bankrupt;

(vi) Seller fails to provide, maintain, replace, replenish or reinstate Seller Security pursuant to Article 7;

(vii) Seller fails to achieve the minimum Monthly Equivalent Capacity level as set forth in Section 5.10(ii);

(viii) Seller fails to provide Firm Transmission Withdrawal Rights equal to the Dedicated Capacity; and

(ix) Seller fails to use commercially reasonable efforts to obtain the Minimum Required Consents.

12.2 **Default by Buyer.** The occurrence of one or more of the following events shall constitute a “Buyer Event of Default” (unless it results from a Force Majeure Event, a breach of this Agreement by Seller or is otherwise excused pursuant to terms set forth in this Agreement):

(i) Buyer fails to pay any amount payable by Buyer to Seller (other than amounts in dispute that are not expressly required by this Agreement to be paid) pursuant to this Agreement after the same shall have become due and payable;

(ii) Buyer fails to perform or observe any material obligation of Buyer under this Agreement, other than those obligations specifically addressed in this Section;

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(iii) Any representation or warranty made by Buyer herein or in any certificate delivered to Seller pursuant hereto shall prove to be incorrect in any material respect, unless Buyer shall promptly commence and diligently pursue action to cause the facts or circumstances which are the subject of such representation or warranty to become true in all material respects; and

(iv) Buyer becomes Bankrupt.

12.3 **Notice and Opportunity to Cure Event of Default.** Upon actual discovery of an Event of Default, the Non-Defaulting Party claiming the occurrence of such Event of Default shall promptly provide the Defaulting Party with written notice of the Event of Default and any remedy sought (“Notice of Default”). If such notice is to Seller with respect to a Seller Event of Default, then Buyer shall provide concurrent written notice to Lead Lender. The Defaulting Party shall have thirty (30) Days to (a) cure such default, or (b) undertake dispute resolution pursuant to Article 16; provided, however, that notwithstanding the foregoing, as to a Seller Event of Default described in Section 12.1(vii) the cure period shall be as specified in Section 5.10(ii), and the cure period for failure to make any timely payment shall be five (5) Business Days. If the Defaulting Party chooses to cure such default and the default cannot be reasonably cured within such thirty (30) Day period, then the cure period shall be extended by an additional thirty (30) Days, so long as the alleged Defaulting Party diligently pursues efforts to cure such default; provided that no additional extension of the cure period will apply for Events of Default described in Sections 12.1(i), 12.1(vi) and 12.2(i).

12.4 **Dispute of Claim of Seller Event of Default or Buyer Event of Default.** If, within thirty (30) Days of the service of a Notice of Default pursuant to Section 12.3, the alleged Defaulting Party disputes in writing that an Event of Default has occurred, either Party may seek resolution of such dispute pursuant to the terms of Article 16, and this Agreement shall not be terminated by the Non-Defaulting Party prior to such resolution.

12.5 **Remedies.** If an Event of Default has occurred, which is not cured as provided herein, then the Non-Defaulting Party may, at its discretion, take any or all of the following actions:

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

(ii) Early Termination Date and Calculation of Settlement Amounts as set forth in (a) through (d) below.

(a) **Declaration of an Early Termination Date and Calculation of Settlement Amounts.** If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party shall have the right (x) to designate a day, no earlier than the day such notice is effective and no later than ninety (90) days

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement and liquidate all amounts due and owing between the Parties, (y) withhold any payments due to the Defaulting Party under this Agreement, and (z) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for this Agreement as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of matters under the Agreement are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

(b) **Net Out of Settlement Amounts.** The Non-Defaulting Party shall calculate an amount (the “Termination Payment”) by subtracting any and all amounts due from the Non-Defaulting Party to the Defaulting Party under this Agreement with respect to deliveries of Products or other matters completed prior to the Early Termination Date from the sum of (x) the Settlement Amount due from the Defaulting Party to the Non-Defaulting Party and (y) any or all other amounts due and owing from the Defaulting Party to the Non-Defaulting Party under this Agreement with respect to deliveries of Products or other matters completed prior to the Early Termination Date, less (z) if Buyer is the Non-Defaulting Party, any cash held by Buyer from prior draws upon Seller Security that has not been applied to other amounts owed by Seller plus, at Buyer's option, any amounts that may prospectively be drawn upon the Seller Security. The Termination Payment, if any, shall be immediately due from the Defaulting Party to the Non-Defaulting Party. For the avoidance of doubt, notwithstanding any provision of this Agreement that may be interpreted to the contrary, the Defaulting Party shall not be entitled to receive or recover a Termination Payment.

(c) **Notice of Payment of Termination Payment.** If the Non-Defaulting Party exercises its termination right set forth in Section 12.5(ii)(a), the Non-Defaulting Party shall provide prompt written notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within five (5) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(d) **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer additional amounts for the Seller Security to the Non-Defaulting Party in an amount equal to the amount calculated by the Non-Defaulting Party to be the Termination Payment.

(iii) Buyer shall also be entitled to draw upon any Seller Security established pursuant to Section 7.1 to satisfy in whole or in part any Seller’s obligations under this Agreement.

12.6 **No Consequential Damages.** Notwithstanding any other provision of this Agreement (except to the extent indemnification payments are made pursuant to Section 18.17 as a result of a third party being awarded special, indirect, incidental, punitive or consequential damages), neither Buyer nor Seller (nor any of their Affiliates, trustees, agents, employees, officers, directors, successors and assigns) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or non-performance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise. For purposes of this Agreement, consequential damages shall include loss of revenue, cost of capital, loss of business reputation or opportunity, and loss due to outages of equipment and facilities.

12.7 **Suspension of Performance.** In addition to the remedies set forth above and, notwithstanding other provisions herein, whenever any Event of Default shall have occurred and is continuing, and notwithstanding any dispute resolution process commenced under Article 16, the Non-Defaulting Party, to the extent permitted by Legal Requirements and to the extent of such default, shall be entitled to suspend immediately its performance under this Agreement until such Event of Default is cured.

12.8 **Limitations of Liability; Remedies and Damages.** Each Party acknowledges and agrees that in no event shall any of the Party’s Affiliates, partners, trustees, members, shareholders, owners, officers, managers, directors, employees, or any Affiliates thereof be liable to the other Party for any payments, obligations or performance due under this Agreement or any breach or failure of performance of either Party; and the sole recourse for payment or performance of the obligations under this Agreement shall be against Seller, Seller’s Guarantor or issuer or of any Letter of Credit for the account of Seller, or Buyer and each of their respective assets and not against any other Person.

12.9 **Cure by Lenders.** All rights of Buyer to terminate this Agreement as a result of the occurrence of any Seller Event of Default shall be subject to and conditioned upon Buyer

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

having first given Lead Lender written notice of such Seller Event of Default pursuant to Section 12.3 and said Lead Lender having failed to remedy such default within the later of (i) thirty (30) Days after receipt of notice from Buyer, or (ii) thirty (30) Days after the last Day Seller could have cured such Seller Event of Default pursuant to the terms of this Agreement; provided, however, that the Lead Lender’s cure period for failure to make any payment when due shall be ten (10) Business Days.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 13 MERCHANTABILITY AND FITNESS

13.1 **NO MERCHANTABILITY AND FITNESS WARRANTY.** SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, CONCERNING THE ANY PRODUCT SOLD HEREUNDER, INCLUDING AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 14 COMPLIANCE WITH LEGAL REQUIREMENTS; CHANGE IN LAW

14.1 **Compliance.** Seller covenants that as of the Execution Date and throughout the Term, Seller shall be in compliance with all Legal Requirements applicable to Seller (including the terms and conditions set forth in Supplement 1) with respect to the ownership, construction, operation and maintenance of the Projects, including (without limitation) all requirements to seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, any and all Consents.

14.2 **Change in Law.** Seller shall be responsible for and pay for all additional costs resulting from a Change in Law affecting or arising on Seller’s side of the Cable Delivery Point. Buyer shall be responsible for and pay for all additional costs resulting from a Change in Law affecting or arising on Buyer’s side of the Cable Delivery Point (other than *ad valorem*, franchise or income taxes which are related to the sale of Products to Buyer and are, therefore, the responsibility of Seller). The affected Party shall deliver written notice to the other Party as soon as practicable after it becomes aware of the occurrence of a Change in Law, which notice shall describe in reasonable detail the Change in Law, its effects on the affected Party or the Projects, the additional costs associated with remedial measures or other expenses to be undertaken with respect to the affected Party or the Projects due to such Change in Law, except that:

(i) If a Change in Law occurs that results in an increase in costs classified as “capital costs” with respect to one or both of the Projects pursuant to GAAP, including costs associated with a material modification (including any capital improvement or addition) to one or both of the Projects, Seller shall be responsible for all such costs during the Base Term and Extended Term, if applicable (“Seller’s Change in Law Capital Costs”); provided, that the aggregate Seller’s Change in Law Capital Costs shall not exceed Seller’s CIL Cap.

(ii) In the event that Seller’s Change in Law Capital Costs exceed the Seller’s CIL Cap, the Parties shall meet and confer to determine whether and to the extent to which they will share such costs in excess of the Seller CIL Cap (“Seller’s Excess Costs”); provided, that if the Parties do not agree to sharing of costs within sixty (60) Days of the Change in Law event, (or if later, the date said Change in Law event was discovered), Seller or Buyer may elect to absorb all such Seller’s Excess Costs or alternatively either Party may terminate this Agreement by providing written notice to the other Party within ninety (90) Days of the Change in Law event (or if later, the date said Change in Law event was discovered). Upon termination of this Agreement pursuant to this Section 14.2, (a) neither Party shall have any obligation or financial liability to the other Party as a result of such termination, including the payment of any Termination Payment and (b) Seller shall be permitted to sell, free and clear of any claim by Buyer, any Products contemplated under this Agreement to any third Person.

(iii) If Buyer elects to absorb some or all of Seller’s Excess Costs associated with a Change in Law, Buyer may elect to either (a) pay or reimburse such Seller’s Excess Costs in a lump sum payment, or (b) reimburse Seller for Seller’s Excess Costs

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

through Monthly payments in accordance with Section 14.2(iv) and invoiced by Seller to Buyer as set forth in Article 6.

(iv) If Buyer elects to reimburse Seller for Seller’s Excess Costs through Monthly payments as set forth in Section 14.2(iii) above, Seller shall calculate a “Monthly Surcharge” by amortizing such amounts over the remaining Term at an annual interest rate of __ percent (__%).

14.3 **No Dedication.** No undertaking by Seller under this Agreement is intended to constitute the dedication of the Projects or any part thereof, to the public or affect the status of Seller as an independent entity and not a public utility or public service company.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 15 ASSIGNMENT

15.1 Assignment by Seller.

(i) Seller may, subject to the requirements and limitations of this Article 15, (including Section 15.3) without the consent of Buyer transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to a Lender in connection with any financing of the one or both of the Projects.

(ii) Except as provided in Section 15.1(i), Seller may not, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed (a) assign, transfer, pledge, encumber or otherwise dispose of this Agreement or its rights hereunder or (b) sell, assign, transfer or otherwise dispose of all or substantially all of Seller’s assets or (c) merge or consolidate with any other entity (whether or not Seller is the survivor); provided, however, that Buyer’s consent shall not be required for any such assignment, transfer, pledge, or other disposition to, or merger or consolidation with, an Affiliate of the Seller.

(iii) With respect to any permitted Assignment of this Agreement in compliance with this Section 15.1, including any assignment of this Agreement to any transferee that acquires Seller’s interest in one or both of the Projects in accordance with Section 15.5, other than an Assignment to a Lender in connection with a financing or sale or transfer of one or both of the Projects to a Substitute Owner (as defined in the Consent Agreement) in compliance with the terms of the Consent Agreement (as provided in Section 15.3), the assignee or transferee or successor entity shall execute this Agreement and 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 7, and whereby the assignee makes certain additional representations and warranties as appropriate for such assignee that are substantially similar to those contained in Section 17.1 and such assignee delivers such corporate powers, due authorization and enforceability assurance as Buyer may reasonably request. Following any Assignment in compliance with this Article 15 (including Section 15.1) other than an assignment in connection with a financing or merger where Seller is the surviving entity, Seller shall be, without further action by Buyer, released and discharged from all obligations under this Agreement arising after the effective date of such Assignment. Seller agrees to compensate Buyer for Buyer’s reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Seller’s requests made pursuant to Article 15. Buyer shall provide an invoice to Seller for such charges, with appropriate documentation.

15.2 Assignment by Buyer.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

(i) 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 (a) transfer, sell, pledge, encumber or assign this Agreement or the account, revenues, or proceeds hereof in connection with any financing or other financial arrangements, (b) transfer or assign this Agreement to an Affiliate of Buyer, or (c) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of Buyer and its Affiliates with such Person meeting the Credit Requirements; 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.

(ii) With respect to any permitted assignment or transfer of this Agreement in compliance with this Section 15.2, 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 17.2. Upon any permitted assignment or transfer by Buyer pursuant to clause 15.2(i), Buyer shall be, without further action by Seller, released and discharged from all obligations under this Agreement arising after the effective date of such assignment or transfer. Buyer agrees to compensate Seller for Seller’s reasonable costs and expenses incurred by its use of outside attorneys, consultants, accountants and advisors in connection with this Agreement in response to Buyer’s requests made pursuant to Section 15.2 (including this Section 15.2(ii)). Seller shall provide an invoice to Buyer for such charges, with appropriate documentation.

15.3 **Lenders**. Notwithstanding Section 15.1 and the non-assignment provisions in Supplement 1, Seller may, without the consent of Buyer, collaterally assign, or grant as security, beneficially or otherwise, its rights under this Agreement to Lenders for collateral security purposes in connection with any financing of one or both of the Projects or other financing arrangement; provided, however, that Seller’s obligations under this Agreement shall continue in their entirety in full force and effect as the obligations of a principal and not as a surety, and Seller shall remain fully liable for all of its obligations under or relating to this Agreement. Each such collateral assignment and any assignee, purchaser or transferee shall be subject to Buyer’s rights and defenses hereunder and under Legal Requirements. Seller shall provide prior notice to Buyer of any such collateral assignment. Buyer shall execute such consents, agreements or similar documents with respect to a collateral assignment hereof to Lender(s) as Lender(s) may reasonably request in connection with the documentation of the financing of one or both of the Projects, including a consent to collateral assignment (“Consent Agreement”) substantially in the form set forth in Appendix 9; provided that, in the case of an equity financing or refinancing by any equity or tax investor, Buyer shall execute a consent and agreement substantially similar to the Consent Agreement, modified, mutatis mutandis, to include language customary to such

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

equity financing or refinancing. Seller agrees to pay for Buyer’s costs and expenses incurred in response to Seller’s and Lender’s requests, including attorney, consultant and expert fees. 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. 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:

(i) 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 Article 12, and such act is timely performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

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

(iii) 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 **Sale of One or Both of the Projects.** Except as otherwise provided in this Section 15.5, Seller shall not sell one or both of the Projects, or any interest therein, to any Person unless Buyer has provided its advance written approval of such sale. If Seller does not obtain Buyer’s prior written consent, such sale of any Project by Seller shall constitute a Seller Event of Default as set forth in Section 12.1(ii). Seller shall make any sale of one or both of the Projects conditioned upon the purchaser’s (i) unconditional assumption of Seller’s obligations hereunder, including providing necessary Seller Security pursuant to the requirements in Article 7, and (ii) possessing the creditworthiness and experience as set forth herein. With respect to a proposed purchaser of the Off-Island Generator, it must meet or exceed the Credit Requirements

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

and provide such documentation satisfactory to Buyer demonstrating that such purchaser has (a) owned and/or operated a minimum of three (3) power plants having generation capacity equal to or greater than the Off-Island Generator during a period of no less than five (5) years or (b) retained a facility operator that satisfies the criteria set forth herein to operate the Off-Island Generator for the remainder of the Base Term or Extended Term, if applicable, shall not have consent to sale denied on the grounds of a lack of creditworthiness or lack of sufficient experience. With respect to a proposed purchaser of the Controllable Cable, it must meet or exceed the Credit Requirements and provide such documentation satisfactory to Buyer demonstrating that such purchaser is experienced in owning and operating electric utility transmission or distribution facilities, as applicable, or has contracted with a reputable and experienced operator for a term at least equal to the then remaining Base Term or Extended Term, if applicable. Seller and Buyer shall execute such documents as may be reasonably required to enable Buyer to record notice that this Agreement must be assigned to, and assumed by, any purchaser of one or both of the Projects as a condition of transfer of legal title to one or both of the Projects.

15.6 **Change in Control.** Any Change of Control of Seller shall be subject to Buyer’s prior written consent such consent not to be unreasonably withheld, conditioned or delayed. If Seller does not obtain Buyer’s prior written consent, such Change of Control of Seller shall constitute a Seller Event of Default as set forth in Section 12.1(ii). In addition, such successor entity must meet or exceed the Credit Requirements and provide such documentation satisfactory to Buyer demonstrating that such successor entity has (x) owned and/or operated a minimum of three (3) power plants having generation capacity equal to or greater than the Off-Island Generator during a period of no less than five (5) years, or (y) retained a facility operator that satisfies the criteria set forth herein to operate the Off-Island Generator for the remainder of the Base Term or Extended Term, if applicable.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 16 DISPUTE RESOLUTION

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

16.2 **Response.** If the Noticed Party agrees with the Aggrieved Party’s concern, the Noticed Party shall promptly take appropriate action to correct the failure. In such circumstance, the Noticed Party shall respond to the Aggrieved Party’s written notice within ten (10) Days of receipt thereof describing the action taken in response to the notice and shall bear all costs incurred by both Parties associated with the corrective action.

16.3 **Resolution of Dispute.** If the Noticed Party disagrees with the Aggrieved Party’s concern, each Party shall designate a member or members of senior management to discuss the matter and attempt to resolve the dispute. The representatives of the Parties shall meet in a location mutually agreed upon by the Parties within ten (10) Days of the Aggrieved Party’s notice to the Noticed Party of the Aggrieved Party’s concern. The Parties agree to use their best 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 16.3 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 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.

16.4 **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 16 are pending. The parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article 16, 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 16.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 17 REPRESENTATIONS, WARRANTIES AND INDEMNITIES

17.1 Seller’s Representation and Warranties.

(i) As of the Effective Date of this Agreement, Seller represents and warrants to Buyer that:

(a) Seller is a [insert as to type of entity and State of formation], is duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

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

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

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

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

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

agency or instrumentality which is reasonably likely to have such a materially adverse effect or to result in such impairment; and

(g) Seller is and will be, for the Base Term and Extended Term, if applicable, in compliance in all material respects with all Legal Requirements, judicial and administrative orders, rules and regulations, and Consents as of the Effective Date to the extent compliance is required as of such date (a) which govern Seller’s ability to perform its obligations under this Agreement, or (b) the noncompliance with which would have a material adverse effect on Seller’s ability to perform its obligations under this Agreement.

(ii) Seller covenants that it will have, from the COD through the termination or expiration of the Agreement, good and merchantable title to the Projects, or any component part thereof, except as otherwise contemplated or permitted by this Agreement or as required for financing purposes (it being acknowledged by Buyer that depending on the financing structure utilized, the Projects may be owned by a special purpose entity or an Affiliate of Seller).

17.2 Buyer’s Representation and Warranties.

(i) As of the Effective Date of this Agreement, Buyer represents and warrants to Seller that:

(a) Buyer is a corporate municipal instrumentality of the State of New York, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Buyer is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

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

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

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

(e) This Agreement has been duly and validly executed and delivered by Buyer and constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and

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

(ii) Buyer covenants that it is and will be, for the Base Term and Extended Term, if applicable, in compliance in all material respects with all Legal Requirements and Consents as of the Effective Date to the extent compliance is required as of such date (a) which govern Buyer’s ability to perform its obligations under this Agreement, or (b) the non-compliance with which would have a material adverse effect on Buyer’s ability to perform its obligations under this Agreement.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 18 MISCELLANEOUS PROVISIONS

18.1 **Next Business Day.** Unless specifically required otherwise by the terms of this Agreement (e.g., scheduling and delivery), if any date on which action is to be taken under this Agreement, or date on which a period of time provided herein expires, is not a Business Day, the effective date for taking such action, or expiration of such time period, shall be the next Business Day.

18.2 **Amendments.** This Agreement may be amended only by a written instrument duly executed by authorized representatives of Buyer and Seller.

18.3 **Binding Effect.** This Agreement and any extension shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns.

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

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

To Seller: [Name]

 [Title]

 [Address]

 [Fax]

with a copy to: [Name]

 [Title]

 [Address]

 [Fax]

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

To Lead Lender: [Name]

[Title]

[Address]

[Fax]

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

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

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

18.6 **Entire Agreement.** This Agreement (including the attached Appendices and Supplements) constitutes the entire understanding between the Parties and supersedes any previous agreements between the Parties.

18.7 **Governing Law and Jurisdiction.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without regard to principles of conflicts of law. The Parties hereto agree that venue in any and all actions and proceedings related to the subject matter of this Agreement shall be in the Supreme Courts of New York located in Nassau County 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.

18.8 **Service of Process.** In addition to the methods of service allowed by the New York Civil Practice Law & Rules, each Party hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Party’s actual receipt of process or upon the serving Party’s receipt of the return thereof by the

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

United States Postal Service as refused. Each Party must promptly notify the other Party, in writing, of each and every change of address to which service of process can be made. Service to the last known address provided pursuant to Section 18.5 shall be sufficient.

18.9 **Waiver**. The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions hereof; shall in no way be construed to be a waiver of such provisions, or in any way to affect the validity of this Agreement or any part hereof or the right of such Party hereafter to enforce every such provision. No modification or waiver of all or any part of this Agreement shall be valid unless it is reduced to a writing, signed by both Parties, that expressly states that the Parties agree to a waiver of modification, as applicable.

18.10 **Headings**. The headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

18.11 **Third Parties**. This Agreement is intended solely for the benefit of the Parties herein. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party to this Agreement.

18.12 **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.

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

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

18.15 **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 during construction of that portion of the Controllable Cable in New York State and as permanent employees for the operation of the Controllable Cable and performance of Seller’s obligations in New York State under the terms of this Agreement. Notwithstanding the foregoing, Seller shall be responsible to manage relations

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

among Seller, its Affiliates, its contractors and subcontractors and local unionized workforce and other local workers.

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

18.17 **Indemnification.**

(i) In addition to all other sums due hereunder or provided for in this Agreement, each Party (an “Indemnifying Party”) agrees to indemnify and hold harmless the other Party and its affiliates and each of its officers, directors, agents, employees, subsidiaries, partners, members, attorneys, accountants and controlling persons (each, an “Indemnified Party”) to the fullest extent permitted by Legal Requirements from and against any and all losses, claims, damages, expenses (including, without limitation, reasonable fees, disbursements and other charges of outside counsel and costs of investigation incurred by an Indemnified Party) or other liabilities, losses, or diminution in value (collectively, “Liabilities”) resulting from or arising out of any breach of any representation or warranty, covenant or agreement of the Indemnifying Party in this Agreement, or the other documents; provided, however, that no Indemnifying Party shall be liable under this Section 18.17 to an Indemnified Party to the extent that such Liabilities resulted principally from the willful misconduct or negligence of such Indemnified Party; provided, further, that if and to the extent that such indemnification is unenforceable for any reason, the Indemnifying Party shall make the maximum contribution to the payment and satisfaction of such Liabilities that shall be permissible under applicable Legal Requirements. In connection with the obligation of Indemnifying Party to indemnify for expenses as set forth above, Indemnifying Party further agrees, upon presentation of appropriate invoices containing reasonable detail, to reimburse, without duplication, each Indemnified Party for all such expenses (including, without limitation, reasonable fees, disbursements and other charges of counsel and costs of investigation incurred by an Indemnified Party in any action or proceeding between an Indemnified Party (or Indemnified Parties) and any third party or otherwise) as they are incurred by such Indemnified Party; provided, however, that if an Indemnified Party is reimbursed hereunder for any expenses, such reimbursement of expenses shall be refunded to the extent it is finally judicially determined that the Liabilities in question resulted solely from the willful misconduct or negligence of such Indemnified Party

(ii) Each Indemnified Party under this Section 18.17 will, promptly after the receipt of written notice of the commencement of any action, investigation, claim or other proceeding against such Indemnified Party in respect of which indemnity may be sought from the Indemnifying Party under this Section 18.17, notify Indemnifying Party in writing of the commencement thereof. The failure of any Indemnified Party to so notify Indemnifying Party of any such action shall not relieve Indemnifying Party from any liability which it may have to such Indemnified Party unless, and then only to the extent that, such omission results in Indemnifying Party being materially prejudiced thereby. In case any such action, claim or other proceeding shall be brought against any Indemnified

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Party and it shall notify Indemnifying Party of the commencement thereof, Indemnifying Party shall be entitled to assume the defense thereof at its own expense, with counsel satisfactory to such Indemnified Party in its reasonable judgment; provided, however, that any Indemnified Party may, at its own expense, retain separate counsel to participate in such defense. Notwithstanding the foregoing, in any action, claim or proceeding in which Indemnifying Party or any of its affiliates, on the one hand, and an Indemnified Party, on the other hand, is, or is reasonably likely to become, a party, such Indemnified Party shall have the right to employ separate counsel at Indemnifying Party expense and to control its own defense of such action, claim or proceeding if, in the reasonable opinion of counsel to such Indemnified Party, a conflict or potential conflict exists between Indemnifying Party, on the one hand, and such Indemnified Party, on the other hand, that would make such separate representation advisable; provided however, that in no event shall Indemnifying Party be required to pay fees and expenses under this Section 19.17 for more than one firm of attorneys in any jurisdiction in any one legal action or group of related legal actions. Each Indemnifying Party agrees that it will not, without the prior written consent of the Indemnified Party, which consent will not be unreasonably withheld or delayed, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated hereby (if any Indemnified Party is a party thereto or has been actually threatened to be made a party thereto) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liability arising or that may arise out of such claim, action or proceeding. Indemnifying Party shall not be liable for any settlement of any claim, action or proceeding effected against an Indemnified Party without its written consent, which consent shall not be unreasonably withheld, delayed or conditioned. The rights accorded to the Indemnified Parties hereunder shall be in addition to any rights that any Indemnified Party may have at common law, by separate agreement or otherwise.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

ARTICLE 19 CONFIDENTIALITY

19.1 Claim of Confidentiality.

(i) 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:

(ii) (a) Articles (Sections) [IDENTIFY SECTION NO(S).]

(iii) (b) Appendices [IDENTIFY APPENDIX NO(S).]

(iv) (c) Supplement [IDENTIFY SUPPLEMENT NO(S).]

(v) 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 Confidential Information from disclosure to third parties consistent with the provisions of this Article 19 and subject to Legal Requirements; provided, however, that a Party may disclose Confidential Information to (i) its Affiliates, potential Lenders, potential and actual equity investors in, or purchasers of, the Off-Island Generator or Controllable Cable, (ii) trustees, directors, employees, agents, consultants, contractors, partners, members, managers, or representatives of such Party, and (iii) the federal government of the United States of America, the New York state government, or local governments within the State of New York to the extent necessary for such Party to apply for and obtain Benefits associated with this Agreement (“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

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

19.3 **Executive Directive No. 3.** Notwithstanding any other provision in this Agreement and consistent with its Executive Directive No. 3 issued by Buyer on January 12, 2009, Buyer may have disclosed to the public the estimated total contract value of this Agreement prior to the authorization of the execution of this Agreement by Buyer’s Board of Trustees. Furthermore, Buyer may disclose certain Confidential Information in furtherance of Buyer’s requirements to receive approval to execute this Agreement or to seek approval by the Office of the New York State Comptroller.

19.4 **Treatment of Otherwise Publicly Available Information.** Notwithstanding anything to the contrary in this Article 19, 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.

19.5 **Term of Confidentiality.** The obligations set forth in this Article 19 shall survive expiration or termination of this Agreement for a period of two (2) years thereafter.

19.6 **FERC.** The Parties agree to seek confidential treatment of the Confidential Information in this Agreement from FERC, but acknowledges that certain Confidential Information may need to be disclosed in Seller’s rate filing or reporting with FERC and in any application to FERC for determination of Seller’s status as an exempt wholesale generator under the Holding Company Act that will be publicly available.

19.7 **SEC.** Seller may file this Agreement with the Securities and Exchange Commission (“SEC”) as may be necessary under the Holding Company Act and the rules and regulations thereunder in connection with Seller’s application to the SEC for such orders and approvals as may be required for the financing of the Off-Island Generator or Controllable Cable and/or the issuance and sale of interests in Seller. Seller shall request confidential treatment of the Confidential Information in this Agreement in connection with such filing; 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 by the SEC to such information.

19.8 **Confidential Treatment.** Seller shall request confidential treatment of the Confidential Information in this Agreement in connection with filings under Sections 19.6 and 19.7; provided, however, that the Parties acknowledge that such request may be denied in whole or in part, and accordingly, that confidential treatment may not be afforded to such information.

[The next page is the signature page]

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

LONG ISLAND POWER AUTHORITY

[“PROPOSER’S COMPANY NAME”]

By

By

Name

Name

Title

Title

APPROVED BY:

APPROVED AS TO FORM:

Office of the State Comptroller

Office of the New York State Attorney General

Name

Name

Title

Title

Date

Date

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

STATE OF _____)

ss.:

COUNTY OF _____)

On the [DATE] day of [MONTH], [YEAR] before me personally came _____, to me known to be the individual described in the foregoing instrument in his/her capacity as _____ of [PROPOSER COMPANY’S NAME], the [ENTITY] described in and which executed the foregoing instrument, who being duly sworn did acknowledge that he/she executed the same on behalf of, and that he/she was authorized to execute same on behalf of the aforementioned entity.

Notary Public

STATE OF NEW YORK)

ss.:

COUNTY OF NASSAU)

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

Notary Public

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 2

TESTS

1. Generator Capacity Test

The results of each DMNC test conducted in accordance with NYISO Rules and Off-Island ISO Rules for each Summer Capability Period or Winter Capability Period, as adjusted to ISO Conditions, will be used to determine the Generator Capacity for the Month in which such test occurs and continuing until the next Generator Capacity Test under NYISO Rules and Off-Island ISO Rules; provided, however, that if the Off-Island Generator is re-tested and the Generator Capacity of the Off-Island Generator is re-determined for NYISO purposes in accordance with the applicable NYISO Rules and Off-Island ISO Rules at any time prior to the next required NYISO Contract Capacity Test, such re-test results, as adjusted to ISO Conditions, shall be used to determine Generator Capacity for the Month in which such re-test occurs and continuing until the next succeeding Generator Capacity Test under NYISO Rules and Off-Island ISO Rules.

The DMNC procedures in effect under NYISO Rules and Off-Island ISO Rules from time to time shall be the test used to establish the Generator Capacity, provided if NYISO Rules and Off-Island ISO Rules are amended or discontinued such that no equivalent test procedures are included, the Parties will utilize the last set of procedures in such NYISO Rules and Off-Island ISO Rules prior to such amendment or discontinuance.

If a material change occurs to any DMNC test procedures as established by the NYISO and Off-Island ISO which makes it impossible or impracticable for the Parties to utilize such test procedures to establish Generator Capacity, or which imposes a material hardship upon or deprives a Party of a material benefit of the Agreement, then the Parties agree to use the DMNC test procedures as they existed prior to such material change or alternatively to discuss and agree in good faith upon a replacement set of test procedures that fairly represent the test procedures in effect upon the Execution Date.

[THE TEST WILL NEED TO INCLUDE REQUIREMENTS OF THE NYISO AS WELL AS THE OFF-ISLAND ISO]

2. Transmission Capacity Test

3. Cable Loss Test

4. Other Tests

[PROPOSER TO SPECIFY]

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 3

MONTHLY CAPACITY RATE (\$/MW-MONTH)

[PROPOSER TO SPECIFY]

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 4

ENERGY PAYMENT

[PROPOSER TO SPECIFY]

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 5

AVAILABILITY ADJUSTMENT FOR MONTHLY CAPACITY PAYMENT

For each Month, the Availability Adjusted Contract Rate (in \$/MW-month) applicable to that Month will be calculated in accordance with the following formula:

$$\text{Availability Adjusted Contract Rate} = E \times F \times G \times H / I$$

Where:

- E = The Monthly Capacity Rate determined in accordance with Appendix 3 for the current Month (in \$/MW-Month).
- F = The average Equivalent Availability as defined in Section 5.10 for the twelve (12) Months preceding the current Month. For purposes of this calculation the Equivalent Availability will be adjusted to remove from the numerator of the calculation 50% of the hours the Projects are not available due to a Force Majeure Event. The Equivalent Availability for any Month prior to the Project COD will be deemed to be equal to 100%. “F” shall be no greater than 1.0.
- G = (Dedicated Capacity – Cable System Losses)/(Dedicated Capacity – Design Cable Losses). “G” shall be no greater than 1.0.
- H = Generator Capacity / Dedicated Capacity (not to exceed 1.0)
- I = 95%.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 6

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 required by this Appendix 6. 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. Seller shall give Buyer prompt notice of any material alteration to any of such insurance coverages, but in no event later than thirty (30) Days after it learns of such material alteration.

1. Insurance Policies and Limits:

1.1 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 \$25,000,000 each accident.

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 \$25,000,000 each accident.

1.3 Third Party Liability:

Third Party Liability insurance on a Commercial, Comprehensive, or similar “occurrence” general liability insurance policy form or AEGIS, or equivalent, claims-first made form, unless otherwise agreed to in writing by Buyer, including coverage for operations of independent contractors; 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 \$25,000,000 each occurrence and in the aggregate each policy year.

1.4 Business Interruption Insurance:

Business Interruption Insurance covering loss of revenues and/or the increased expense to resume operations attributable to the Projects by reason of total or partial suspension or delay of, or interruption in, the operation of the Projects as a result of damage to or mechanical failure of the Projects, provided that such coverage shall be in a minimum amount required to cover Seller’s continuing or increased expenses for a period of at least six (6) Months.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

1.5 Umbrella or Excess Liability:

The limits of insurance specified in the foregoing Sections 1.1 through 1.4 may be satisfied by the purchase the specified limits in the separate policies or with the purchase of Umbrella or Excess Liability insurance which, in combination with the limits of the separate policies provides the total limit required by each type of insurance.

1.6 Additional Insurance:

It is the intent that the insurance requirements of this Appendix 6 represent reasonable and customary minimum requirements that at all times meet or exceed all Legal Requirements and are consistent with generally accepted standards of Prudent Utility Practices. Buyer may determine that other forms or types of insurance, including increased (or reduced) amounts of insurance, may be required or appropriate to substitute for, or secure, the obligations undertaken in the Agreement. Such insurance coverage may include, but not be limited to protection for:

- All risks of loss of or damage to, and for the full replacement value of, all property and equipment of Seller (including without limitation, at all times during the construction, operation, maintenance, and repair of the Project) utilized for or in connection with the Project in accordance with this Agreement.
- 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, within thirty (30) Days following the Effective Date of this Agreement, and within five (5) Days after each reasonable request by Buyer, provide certificates of insurance to Buyer’s insurance consultant for all insurance policies required hereunder.

2.2 Additional Insureds:

With the exception of Workers’ Compensation and Employer’s Liability, Buyer shall be included as an additional insured, and any other party reasonably requested by Buyer shall be named as additional insured for occurrences arising out of or in connection with this Agreement with respect Sections 1.2, 1.3, 1.4 and 1.5 of this Appendix 6, as their interests may appear. With respect to Workers’ Compensation and Employer’s Liability, Buyer and any other party reasonably

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

requested by Buyer, shall be named as Alternate Employer; provided that, Seller’s insurance shall not include coverage for Buyer’s employees or any employee of any other party requested by Buyer.

Such insurance shall be endorsed as follows:

“Such insurance as afforded by this policy for the benefit of [Buyer] shall be primary as respects to any claims, losses, damages, expenses, or liabilities arising out of the [Agreement] between [Seller and Buyer] dated [execution date] and any insurance carried by [Buyer] shall be excess of, and non-contributing with the insurance afforded by this policy.”

2.3 Waiver of Subrogation:

Under each policy under which Buyer is required by this Appendix 6 to be named as an additional insured, Buyer and any other party reasonably requested by Buyer shall be granted waivers of subrogation by insurers providing coverage as required by this Exhibit.

2.4 Severability of Insureds:

Each policy under which Buyer is required by this Appendix 6 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 6 to be named as an additional insured, the insurance coverage required by this Appendix 6 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 6.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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 6, within thirty (30) 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 6 shall (as between Seller and Buyer) be assumed by, for the account of, and at the sole risk of Seller.

3. Seller Disclosure and Cooperation:

Where Seller is providing insurance coverage for the benefit of Buyer, procuring insurance at the request of Buyer, and/or securing coverage at the expense of Buyer, Seller shall furnish an exact copy of said policies, upon Buyer’s request.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 7

FORM OF SELLER GUARANTY

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

W I T N E S S E T H:

WHEREAS, [ENTITY], a [STATE] [TYPE], (the “Seller”), an affiliate of the Guarantor, and the Buyer have previously entered into that certain Power Purchase Agreement dated as of [DATE] (as the same may be modified, amended, supplemented or extended, the “Purchase Agreement”), pursuant to which the Seller has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Seller, certain capacity of and electricity generated and transmitted by the Projects (capitalized terms used herein and not defined herein shall have the meanings given such terms in the Purchase Agreement); and

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

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

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

(a) the maximum recovery which may be collected pursuant to the provisions of this Guaranty shall not exceed U.S. \$ _____ (_____ United States dollars) in the aggregate, excluding interest, collection and enforcement costs payable hereunder; and

(b) the Guarantor’s liability hereunder shall be and is specifically limited to payments expressly required to be made under or in connection with the Purchase Agreement (even if such payments are deemed to be damages) as well as successful costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Buyer, but, except to the extent specifically provided herein or in the Purchase Agreement, the Guarantor will not be subject

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

hereunder to consequential, exemplary, equitable, loss of profits, punitive or tort damages, or, any other damages (except to the extent any such damages constitute third party claims that Seller is liable for under the Purchase Agreement).

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

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

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

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

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

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

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Guarantor under, any instrument or agreement to which the Guarantor is a party or by which the Guarantor or any of the Guarantor’s properties or assets are bound or affected;

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

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

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

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

6. **WAIVER.**

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

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

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

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

(f) Any obligations of Seller to Guarantor, now or hereafter existing, are hereby subordinated to the Obligations. Guarantor agrees that, if Buyer so requests, Guarantor shall not demand, take, or receive from Seller, by setoff or in any other manner, payment of any other obligations of Seller to Guarantor until the Obligations have been paid in full. If any payments are received by Guarantor in violation of such waiver or agreement, such payments shall be received by Guarantor as trustee for Buyer and shall be paid over to Buyer on account of the Obligations, but without reducing or affecting in any manner the liability of Guarantor under the provisions of this Guaranty.

(g) Each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Guaranty.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

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

With a copy to:
Long Island Power Authority
333 Earle Ovington Boulevard
Uniondale, New York 11553
Attn: General Counsel
Phone: (516) 222-7700
Facsimile: (516) 222-9137

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

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

9. COLLECTION COSTS. In addition to any other obligation or indebtedness of the Guarantor pursuant to this Guaranty, the Guarantor shall be liable to the Buyer for, and shall pay to the Buyer on demand, all reasonable costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses (including those for appellate proceedings)) incurred by the Buyer in enforcing performance of or collection of this Guaranty. Such costs shall be in addition to the amount set forth in Section 1(a) above.

10. MISCELLANEOUS.

(a) Guarantor shall provide Buyer audited financial statements within one hundred twenty (120) days of the end of each fiscal year, unless Guarantor is a publicly

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

traded company that files a Form 10K with the U.S. Securities and Exchange Commission.

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

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

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

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

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

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

11. **TERM & TERMINATION.** Subject to the terms of Section 6(e), this Guaranty shall be and continue to be in full force and effect from the Effective Date until the earlier of the

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

date that the Purchase Agreement terminates and all obligations of the Seller to the Buyer thereunder shall have been paid and satisfied in full. Thereafter, subject to the terms of Section 6(e), this Guaranty shall terminate and no claim may be made against the Guarantor under this Guaranty. In addition to the foregoing, this Guaranty shall be terminated and released upon and to the extent that there shall have been a substitution under the Purchase Agreement of substitute Seller Security satisfying the requirements of the Purchase Agreement, to the extent permitted by the Purchase Agreement.

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

[GUARANTOR]

By: _____
Name: _____
Title: _____

LONG ISLAND POWER AUTHORITY

By: _____
Name: _____
Title: _____

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 8

FORM OF SELLER LETTER OF CREDIT

[ISSUING BANK NAME]

IRREVOCABLE STANDBY

LETTER OF CREDIT No. _____

DATE:

BENEFICIARY:

Long Island Power Authority
333 Earle Ovington Boulevard, Suite 403
Uniondale, New York 11553
Attn: Vice President, Power Markets

APPLICANTS:

[_____]

INITIAL AMOUNT: USD \$

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

PLACE OF EXPIRY: At our Counters

We hereby issue in your favor our Irrevocable Standby Letter of Credit No. (this “Letter of Credit”) for the account of _____, [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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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 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 be transferred and beneficiary’s rights hereunder may be assigned in accordance with our standard Transfer Document duly executed properly submitted by Beneficiary. Any purported transfer or assignment other than in accordance with our Transfer Certificate 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.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

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

[ISSUING BANK NAME]

By:

Authorized Signature

Address: []
 []
 []

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

[Issuing Bank Name]

Date: _____, ____

[
[
[

Ladies and Gentlemen:

The undersigned _____, the duly elected and acting _____ of 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 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 [DATE] (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 \$ _____, because [indicate applicable reason]:

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

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

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

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

**LIPA "OFF-ISLAND PPA" 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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:

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

[Issuing Bank Name]

Date: _____, ____

[
[
[

Ladies and Gentlemen:

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

1. The Beneficiary is a party to that certain Power Purchase Agreement dated as of [DATE] (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 has provided at least thirty (30) 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.
4. 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 thirty (30) day period referred to in Paragraph 4 above.
5. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS & /100ths (U.S. \$).
6. The undersigned has concurrently presented to you its sight draft drawn in the amount specified in Paragraph 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.
7. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

**LIPA "OFF-ISLAND PPA" 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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:

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 9

FORM OF CONSENT AGREEMENT

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 Projects 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 Projects, 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 [DATE] (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Assigned Agreement”);

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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 Projects 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 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.

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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 Projects to be operated by an experienced, qualified operator of generating facilities such as the Projects.

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, for the avoidance of doubt, 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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

or condition (financial or otherwise) of the Projects, (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.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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 Power Authority
333 Earle Ovington Blvd., Suite 403
Uniondale, New York 11553
Attention: Vice President of Power Markets
Telephone: (516) 222-7700
Fax: (516) 222-9137

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
Fax: (516) 222-9137

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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 EXCEPT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(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.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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 term “Collateral Agent” or “Financing Parties” shall be

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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:

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Exhibit A to
Consent and Agreement

Payment Instructions

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**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

Exhibit B to
Consent and Agreement

Approvals

Part I – Final Approvals:

Part II - Deferred Approvals:

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 10

OPERATING LIMITS

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 11

GUARANTEED HEAT RATE /IF APPLICABLE/

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 12

OFF-ISLAND GENERATOR INTERCONNECTION POINT,

OFF-ISLAND WITHDRAWAL POINT

AND

CABLE DELIVERY POINT

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 13

CONNECTING TRANSMISSION OWNER’S INTERCONNECTION STANDARDS

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 14

FORM OF LONG ISLAND INTERCONNECTION AGREEMENT

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 15

CALCULATION OF GAINS AND LOSSES

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

APPENDIX 16

MONTHLY EXCESS CABLE LOSSES ADJUSTMENT

$ECLA_M$ = Sum of all $ECLA_H$ for each Hour of the Month

where

$ECLA_M$ = Excess Cable System Losses Adjustment for the Month

$ECLA_H$ = Excess Cable System Losses Adjustment for an Hour of the Month

$ECLA_H = (PR\ MWh)_H * (Cable\ System\ Losses - Gtd\ Loss) * (LBMP-Off-Island_H)$

where

$PR\ MWh_H$ = MWh recorded at the Off-Island Withdrawal Point during such Hour

Gtd Loss = [No.]%

Cable System Losses = % loss recorded in the most recent Cable Loss Test

$LBMP-Off-Island_H$ = Locational Based Marginal Price (LBMP) at the Off-Island Withdrawal Point for the Hour

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

SUPPLEMENT 1: STANDARD CLAUSES FOR LIPA’S CONTRACTS

For the purposes of this Supplement 1, (a) Buyer and Connecting Transmission Owner are hereinafter referred to as “LIPA,” and (b) Seller is hereinafter referred to as “Contractor”

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

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

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

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

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

WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State

**LIPA "OFF-ISLAND PPA" 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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 Agreement 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 this Agreement. The State Comptroller, the New York State Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Agreement, 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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

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

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, including 5 NYCRR 143.1 et seq. 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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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: 3%

Women-Owned Business Enterprise (WBE) Subcontracting Goal: 1.5%

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 Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

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.

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

SUPPLEMENT 2: LIPA’S STANDARD PROCUREMENT FORMS

Non-Collusive Bidding Certification

Required by Section 2878 of the Public Authorities Law

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 20 _____ as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

**LIPA "OFF-ISLAND PPA" 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES

LEGAL RESIDENCE

President

Secretary

Treasurer

President

Secretary

Treasurer

Identifying Data:

Potential Consultant:

Street Address: _____

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:

MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes ___ or No ___

If yes:

(2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes ___ or No ___

Signature

**LIPA “OFF-ISLAND PPA” 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

5. Has any Governmental Entity or other governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

Offerer certifies that all information provided to the Long Island Power Authority with respect to State Finance Law § 139-k in complete, true and accurate.

By: _____
Signature

Date: _____

**LIPA "OFF-ISLAND PPA" 9/20/2010
2010 GENERATION & TRANSMISSION RFP**

(FOR OFF-ISLAND GENERATION W/ CONTROLLABLE CABLE)

CONTINGENT FEE CERTIFICATION

In accordance with section F.2 of Article II of the Long Island Power Authority "Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts" (the "Guidelines"), Proposer, by submission of this proposal certifies the following with respect to the payment of contingent fees:

(1) Proposer has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Long Island Power Authority contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and

(2) Proposer will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Long Island Power Authority.

FAILURE TO PROVIDE THIS CERTIFICATION WILL BE GROUNDS FOR DISQUALIFICATION IN THE PROCUREMENT PROCESS.

VIOLATION OF EITHER (1) OR (2) OF THIS CERTIFICATION SHALL RESULT IN:

- (i) disqualification of Proposer from the procurement process; and
- (ii) prohibition of the Proposer from being awarded any contract for a period of three years from the commencement of the procurement process.

Certified as of the _____ day of _____, 20__.

Name of person, firm or corporation

By _____
(Name and Title)