

**Appendix 7-2 to Amended & Restated OSA**

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

**SEPTEMBER [XX], 2013**

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**CONTRACT TO PROVIDE  
POWER SUPPLY MANAGEMENT  
SERVICES**

**TO**

**LONG ISLAND POWER AUTHORITY**

**BY**

**PSEG ENERGY RESOURCES & TRADE LLC**

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

**WITNESSETH:**

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

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

WHEREAS, Buyer provides such electricity to the public from a number of generating units and over transmission facilities that it either owns, or has rights to, under existing contracts, and plans to procure additional generation and transmission resources during

the Base Term, and Extended Term, if applicable, to meet the growing electricity needs of the public;

WHEREAS, Buyer and PSEG Long Island LLC (also referred to herein as the “Service Provider”), an Affiliate of PSMFB Service Provider, are parties to that certain Amended and Restated Operations Services Agreement, dated as of September [REDACTED], 2013 (“Amended and Restated OSA”) pursuant to which PSEG Long Island LLC has established PSMFB Service Provider as its designated Affiliate (as defined therein) and has assigned its right and obligation to provide PSMFB Services and PSMMO Services to Buyer to PSMFB Service Provider and Buyer has consented to such assignment pursuant to, and in accordance with, the Amended and Restated OSA; and

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

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

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

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

## ARTICLE 1 - DEFINITIONS

### 1.1 Definitions:

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

*Acceptable Credit Support* – means (a) a performance bond from an entity with an investment grade rating satisfactory to Buyer, (b) a letter of credit from an entity with an investment grade rating satisfactory to Buyer, (c) a Guaranty substantially in the form set forth in Appendix XIII provided by a Guarantor satisfactory to Buyer, or (d) an escrow arrangement satisfactory to Buyer.

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

*Administrative Protocols and Procedures* – is defined in Section 4.11.

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

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

*Aggrieved Party* – is defined in Section 15.1.



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

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

*Annual Fee* – is defined in Appendix IV Part 2.

*Annual Penalty* – is defined in Appendix V.

*Appendix* – means an appendix of the Agreement.

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

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

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

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

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

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

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

*Back-Office Services* – means those PSMFB Services described in Appendix II Part2 as to PSMFB Services and is defined in Appendix XIV as to PSMMO Services.

*Base Term* – is defined in Section 2.1.

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

*Btu* – means British thermal unit.

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

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

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

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

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

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

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

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

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

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

*Buyer Owned Property* – is defined in Section 8.1.

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

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

*Buyer Related Data* – means any and all information and data related to and/or created or owned by, or on behalf of, Buyer or any of Buyer’s Related Parties, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, including without limitation PSM Confidential

Information, Non-Technical Information, Technical Information and any such other information and data about Buyer and/or any Buyer's Related Parties, including without limitation information and data about the Buyer's or any of Buyer's Related Parties' business, the Buyer's or any of Buyer's Related Parties' customers (current, former, and prospective), and any other Buyer data or data of Buyer's Related Parties about Buyer's or any of Buyer's Related Parties' facilities and systems, operations, purchases, consumption, products, services, markets, marketing, business plans, assets or finances.

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

*Buyer Related Technology* – means any and all Software, related to, and/or created or owned by, or on behalf of, Buyer or any of Buyer's Related Parties and any and all Intellectual Property Rights in any such Software but excluding any PSMFB Service Provider Related Technology.

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

*Buyer's Representatives* – is defined in Section 9.1.

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

*Buyer Sub-licensee* – is defined in Section 8.4.

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

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

*Capacity* – means the capability to generate electrical power.

*CEE PSMFB Service Provider* – means Consolidated Edison Energy Inc.

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

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

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

*Contract Off-Hours Staffing* – means the Front Office staffing during Off-Hours as set forth in Section 4.10(b).

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

*CPLR* – is defined in Section 17.8.

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

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

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

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

*DOE* – means the United States Department of Energy.

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

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

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

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

*EPT* – means Eastern Prevailing Time.

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

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

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

*Extended Term* – is defined in Section 2.1.

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

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

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

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

*FM Service Provider* – means Fuel Management Service Provider.

*Force Majeure Event* – is defined in Section 11.1(a).

*Freedom of Information Law or FOIL* – is defined in Section 18.3.

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

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

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

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

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

*Front-Office Off-Hours Work* - means those Front-Office Services, required in the exercise of Prudent Utility Practice, to be performed during Off-Hours, including, but not limited

to: monitoring and managing Power Supply Resources in the Real Time Market, or other appropriate market; Off-System Sales and Purchases; updates to load forecast and load bids, generation outage reporting to NYISO; and monitoring fuel prices.

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

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

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

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

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

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

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

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



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

*HE* – means Hour Ending.

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

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

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

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

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

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

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

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

*IPP* – means independent power producer.

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

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

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

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

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

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

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

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

*IT* – means information technology.

*IT System* – is defined in Appendix VI.

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

*Liquidated Damages* – means PSMFB Transition Date Liquidated Damages.

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

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

*Maximum Aggregate Penalty* – is defined in Appendix V.

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

*MMBtu* – means one million Btus.

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

*Modified Off-Hours Staffing* – has the meaning set forth in Section 4.10(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*PSM* – means Power Supply Management.

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

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

*PSM EDM* – is defined in Appendix IX.

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



*PSMFB Effective Date Delay* – is defined in Section 2.1.

*PSM Service Provider*-is defined in the Preamble and includes the entities performing PSMFB and PSMMO Services.

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

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

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

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

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

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

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

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

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

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

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

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

*PSMFB Services Information* – is defined in Section 7.4.

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

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

*PSMFB Sub-licensee Agreement* – is defined in Section 8.2(h).

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

*PSMMO Services Management Fee* – is defined Appendix XIV.

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

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

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

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

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

*Records* – is defined in Section 17.16(d).

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

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

*RTO* – means regional transmission organization.

*ServCo* – means Long Island Electric Utility ServCo LLC.

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

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

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

*Statute* – is defined in Section 17.16(d).

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

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

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

*Termination Date* – is defined in Section 2.3.

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

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

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

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

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

*VaR* – means Value at Risk analysis.

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

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

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

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

## **1.2 Construction:**

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

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

## **ARTICLE 2 - TERM OF AGREEMENT**

### **2.1 Base Term; Extended Term:**

(a) This Agreement shall become effective on the date on which it is executed by both Parties (“PSMFB Effective Date”) and shall remain in effect for its Term subject to: (x) the occurrence of the “Effective Date” of the Amended and Restated OSA as defined therein; and (y) pursuant to Section 4.2(A)(6)(a) of the Amended and Restated OSA, Service Provider providing Buyer with written notice of its election to provide the PSMFB Services hereunder (and assigning such obligation to PSMFB Service Provider) by not later than ten (10) Business Days following the Effective Date of the Amended and Restated OSA (as such term is defined therein). In the event that the Effective Date of the Amended and Restated OSA does not occur by June 30, 2014, or such later date as the parties to the Amended and Restated OSA may mutually agree in writing or Service Provider does not provide Buyer of its election to proceed with the PSMFB Services, as provided for in this Section 2.1, then this Agreement shall terminate and neither Party shall have any further obligation to the other hereunder, except for those obligations set forth in Section 3.1(a)(i). If for any reason the PSMFB Effective Date does not occur by December 1, 2013 (“PSMFB Effective Date Delay”), PSMFB Service Provider agrees to use commercially reasonable efforts to achieve the Target PSMFB Services Start Date and Buyer agrees (i) to increase the Milestone Payments set forth in Table IV of Appendix IV by 20% to compensate for the PSMFB Effective Date Delay, and pay them as they are achieved, and (ii) to waive its right to collect PSMFB Transition Date Liquidated Damages pursuant to Section 4.5 herein. If despite PSMFB Service Provider’s Commercially Reasonable Efforts PSMFB Service Provider fails to commence the PSMFB Services on the Target PSMFB Services Start Date, Buyer shall not terminate this Agreement in accordance with Section 2.3(b).



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

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

(iii) This Agreement shall automatically be extended until December 31, 2033, if there is an extension of the Term of the Amended and Restated OSA pursuant to Section 2.1(B) thereof (“Extended Term”); provided, however, that no event of an Event of Default by PSMFB Service Provider shall have occurred during the Base Term. The PSMFB Management Fee and

Annual Fee applicable for the services rendered during such Extended Term shall be calculated in accordance with Appendix IV and the PSMMO Services Management Fee shall be calculated in accordance with Appendix XIV.

## **2.2 Intentionally Omitted**

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

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

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

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

(e) In the event of termination pursuant to this Section 2.3, Buyer shall pay the PSMFB Service Provider for all services provided pursuant to this Agreement, if any,

up to the Termination Date; provided however that Buyer has not already paid PSMFB Service Provider for such services.

#### **2.4. Early Termination and Back-End Transition:**

(a) In the event of Early Termination by either Party for any reason specified in Section 2.3, Section 11.6, or Article 13 of this Agreement, the Parties agree that, subject to Section 13.12, if applicable, Buyer may require (i) Back-End Transition Services pursuant to Section 3.1(b), (ii) a modified form of Back-End Transition Services (“Modified Back-End Transition Services”), (iii) Buyer Data Transfer Services or (iv) No Back-End Transition Services. During the Interim Period, the Parties shall agree in writing to the specific details of such services and the date that shall be the Termination Date. For the avoidance of doubt and the purpose of clarity, the options of Modified Back End Transition Services, Buyer Data Transfer Services, and/or No Back-End Transition Services shall only be available for an Early Termination, and shall not be available upon the expiration of this Agreement at either the end of the Base Term, or the Extended Term, as applicable, in which case only Back-End Transition Services shall be available.

(b) If Buyer requires Back-End Transition Services, then Buyer shall, in all cases, provide PSMFB Service Provider with at least twelve (12) months prior written notice of the Termination Date. Buyer shall pay PSMFB Service Provider the Back-End Transition Payment for such services in accordance with Appendix IV Part 4 as to PSMFB Services and for the Back-End Transition Payment for such services in accordance with Appendix XIV as to PSMMO Services.

(c) If Buyer requires Modified Back-End Transition Services, then Buyer shall send PSMFB Service Provider written notice of its intent to terminate, which notice shall set forth Buyer's proposed Termination Date in accordance with Section 13.6. During the Interim Period, Buyer and PSMFB Service Provider shall negotiate in good faith and agree in writing on the scope of, and schedule for Modified Back-End Transition Services to be provided, and PSMFB Service Provider shall be compensated for its performance of such Modified Back-End Transition Services and for its termination costs in accordance with Appendix IV Part 5.

(d) If Buyer does not require Back-End Transition Services or Modified Back-End Transition Services, Buyer may require that PSMFB Service Provider transfer to Buyer or Buyer's designated Agent all existing Buyer Related Data in PSMFB Service Provider's control which has not been previously transferred to Buyer or Buyer's Representatives ("Buyer Data Transfer Services") in which case, then, Buyer shall send PSMFB Service Provider written notice of its intent to terminate, which notice shall set forth Buyer's proposed Termination Date in accordance with Section 13.6. During the Interim Period, Buyer and PSMFB Service Provider shall negotiate in good faith and agree in writing on the schedule for Buyer Data Transfer Services, and PSMFB Service Provider shall be compensated for its performance of such Buyer Data Transfer Services and for its Severance Costs in accordance with Appendix IV Part 5 as to PSMFB Services.

(e) If Buyer terminates this Agreement pursuant to Section 2.3, Section 11.6, or Article 13, and Buyer chooses No Back-End Transition Services, Buyer shall

reimburse PSMFB Service Provider for its Severance Costs in accordance with Appendix IV Part 5 as to PSMFB Services.

(f) Buyer and PSMFB Service Provider may mutually agree in writing to extend the Termination Date in order to allow for the completion of (i) Back-End Transition Services, (ii) Modified Back-End Transition Services, or (iii) Buyer Data Transfer Services.

(g) PSMFB Service Provider acknowledges that, if it were to breach its obligation to provide the Buyer with (i) Back-End Transition Services, (ii) Modified Back-End Transition Services or (iii) Buyer Data Transfer Services, the Buyer would be irreparably harmed. In such circumstances, the Buyer shall be entitled to proceed directly to a court of competent jurisdiction and seek such injunctive, declaratory or other injunctive relief as may be reasonably necessary to prevent such breach, without the requirement of posting any bond and without any additional findings of irreparable injury or other conditions to injunctive relief. Notwithstanding anything herein to the contrary, PSMFB Service Provider's obligation to provide any services during any Interim Period, including, but not limited to transition services, pursuant to this Agreement, shall terminate if Buyer fails to pay for such services in accordance with Appendix IV and Article 6, or fails to provide appropriate security in accordance with Section 13.12, if applicable. In the event of such failure to pay or to provide such security, if applicable, by Buyer, PSMFB Service Provider may advance the Termination Date by providing Buyer at least three (3) Days prior written notice of the new Termination Date.

## **2.5 Buyer's Rights During Interim Period**

(a) During the Interim Period, the Buyer shall on reasonable notice and during normal business hours have access to information, data and Records concerning the PSMFB Services in order to monitor the performance of the PSMFB Service Provider and to ensure that the PSMFB Service Provider complies with the provisions of this Agreement during such Interim Period.

(b) In the event that PSMFB Service Provider is the defaulting Party, Buyer, at its sole option, may elect at any time during the Interim Period to direct in writing the PSMFB Service Provider and its employees in the day-to-day performance of the PSMFB Service Provider's obligations under this Agreement. In addition to the Total Annual Fee as provided in Appendix IV Part 2, the Buyer shall reimburse the PSMFB Service Provider for its resulting actual, reasonable and verifiable incremental costs, if any, incurred in the performances of such services during the Interim Period.

## **ARTICLE 3 - PSMFB SERVICES DURING TRANSITION PERIODS**

### **3.1 Services during Transition Periods:**

This Agreement covers two transition periods: (i) a period prior to the PSMFB Services Start Date (“Front-End Transition Period”) and (ii) a period preceding the end of the Base Term or Extended Term, if applicable, (“Back-End Transition Period”) (jointly referred to as “Transition Periods”).

#### **(a) Front-End Transition Period:**

(i) The PSMFB Service Provider shall commence Front-End Transition Services on the PSFMB Effective Date (the “Front-End Transition Date”) and shall continue performing such services through the Day before the PSFMB Services Target Date (the “Front-End Transition Period”). In the event that the Effective Date of the Amended and Restated OSA has not occurred by June 30, 2014 or such other date as may be agreed to by the parties to the Amended and Restated OSA and the Amended and Restated OSA is terminated, then this Agreement, following reimbursement by LIPA of all Milestone Payments for completed items and all transition expenses and costs incurred by PSFMB Service Provider associated with any partially completed items between PSMFB Effective Date and the date on which this Agreement terminates pursuant to this Section 3.1, shall terminate on the termination date of the Amended and Restated OSA. The PSMFB Service Provider shall perform Front-End Transition Services consistent with this Agreement, and as more fully set forth in the Front-End Transition Plan set forth in Appendix III. The PSMFB Service Provider shall be paid in accordance with Appendix IV Part 1 for such Front-End Transition Services upon completion of the milestones set forth in Appendix IV Table IV-1 and in accordance with Appendix XIV.

In addition to PSMFB Service Provider's rights hereunder, if PSMFB Service Provider's provision of Front End Transition Services is prevented or delayed by a Force Majeure Event or by Buyer's failure or inability to perform any of its obligations under this Agreement on a timely basis (each an "Excused Delay"), the Milestone Payments set forth in Table IV-1 of Appendix IV as to PSMFB Services the Milestone Payments set forth in Appendix XIV as to PSMMO Services shall be increased by 0.5% for each Day that such delay event continues.

(ii) The PSMFB Service Provider and Buyer shall mutually develop a draft final Back-End Transition Plan during the Front-End Transition Period based on the Back-End Transition Plan set forth in Appendix III Part 2 as to PSMFB Services and set forth in Appendix XIV as to PSMMO Services. The draft final Back-End Transition Plan shall be set forth in the Administrative Protocols and Procedures.

(b) Back-End Transition Period: Buyer shall provide the PSMFB Service Provider at least twelve (12)-Months notice in writing prior (i) to the end of the Base Term, or the Extended Term, if applicable or (ii) to the Termination Date in accordance with Section 2.4(b). Following the provision of such notice, Buyer's Representatives shall contact the PSMFB Services Provider's Representatives to review the transition of PSMFB Services to Buyer or its contractor. After receipt of notice, in accordance with this paragraph, PSMFB Service Provider shall update the draft final Back-End Transition Plan contained in the Administrative Protocols and Procedures, for review by Buyer. Buyer may make reasonable changes to such draft final Back-End Transition Plan consistent with Prudent Utility Practices in order to ensure an orderly transition of responsibilities to Buyer or its contractors by providing PSMFB Service Provider with written notice of such changes within ten



(10) Business Days of receiving the final draft Back-End Transition Plan. Provided any such changes are consistent with Prudent Utility Practices, such changes shall be deemed to be mutually agreed upon. The updated draft final Back-End Transition Plan with Buyer's changes, if any, shall be the final Back-End Transition Plan ("Final Back-End Transition Plan"). If the cost for performing the Final Back-End Transition Plan, including Severance Costs, exceeds the Back-End Transition Payment, as set forth in Appendix IV as to PSMFB Services and set forth in Appendix XIV as to PSMMO Services, respectively, then Buyer shall pay for such requested changes as an Additional Service. The PSMFB Service Provider shall be paid for such Back-End Transition Services upon satisfactory completion of the milestones set forth in the Final Back-End Transition Plan. The Parties agree that in the interest of successfully completing the Final Back-End Transition Plan in a manner that provides for a smooth transition from the PSMFB Service Provider to Buyer or to another service provider, the milestones may be modified by their mutual written agreement.

### **3.2 Intentionally Omitted**

### **3.3 Obligations Upon Termination or Expiration of Agreement:**

(a) Upon the termination or expiration of the Agreement including, without limitation, by Buyer under Section 2.3, under Section 11.6, or for a breach by Buyer as provided in Section 13.2(a), 13.2(d), or 13.2(e) (subject, in each case, to Section 13.12) hereof, Buyer shall advise PSMFB Service Provider whether Buyer requires Back-End Transition Services, Modified Back End Transition Services or Buyer Data Transfer Services, and, if required, the terms and conditions for the provision of such services shall be negotiated and such services shall be provided in accordance with Section 2.4. Whether Back-End Transition Services, Modified Back End Transition Services or Buyer Data Transfer Services are provided, the Parties shall cooperate, in good faith and

consistent with Prudent Utility Practices, in accomplishing the smooth transition of PSMFB Service responsibilities, to a new service provider or to Buyer, as directed by Buyer.

(b) In the event of the termination or expiration of this Agreement, and by no later than the effective date of such termination or expiration:

(i) PSMFB Service Provider shall provide, or shall cause PSMFB Service Provider Related Parties and/or PSMFB Service Provider Personnel to provide, Buyer, or Buyer's Representatives, with a copy of all PSMFB Service Provider Owned Property (as defined in Section 8.3) to which Buyer has a license under Section 8.4 of this Agreement, which are not in the possession of Buyer.

(ii) Buyer shall provide, or shall cause Buyer Related Parties and/or Buyer Personnel to provide, PSMFB Service Provider, or PSMFB Service Provider's Representatives, with a copy of all Buyer Owned Deliverables (as defined in Section 8.1) to which PSMFB Service Provider has a license under Article 8.2(b) of this Agreement, which are not in the possession of PSMFB Service Provider.

(c) In the event of the termination or expiration of this Agreement, and by no later than the effective date of such termination or expiration, PSMFB Service Provider shall provide, or shall cause PSMFB Service Provider Related Parties and/or PSMFB Service Provider Personnel to provide, Buyer, or Buyer's Representatives, with a copy of all of Buyer Owned Property, (as defined in Section 8.1) (other than the Buyer Owned Deliverables to which PSMFB Service Provider has a license under Section 8.2(b) of this Agreement, which extends beyond such termination or expiration, and which shall be

provided to Buyer or Buyer's Representatives promptly after any termination of such license), which is in the possession of PSMFB Service Provider, its PSMFB Service Provider Related Parties and/or its PSMFB Service Provider Personnel and that has not been previously provided to Buyer, and such property shall be returned to Buyer by PSMFB Service Provider, or shall at Buyer's request be destroyed by the PSMFB Service Provider (including without limitation, with respect to any hard copy, cross-shredded). Subject to the same limitations set forth in the penultimate and ultimate sentences of Section 18.7 hereof with respect to the erasing or deleting of PSM Confidential Information from a Party's computer system, all electronic copies of the Buyer Owned Property in PSMFB Service Provider's or its agents' or contractors' possession or control shall be deleted in a manner that makes the Buyer Owned Property non-readable and non-retrievable. PSMFB Service Provider shall certify to Buyer in writing that PSMFB Service Provider has complied with its obligations under this Section 3.3.

(d) Subject to Section 2.4, and, in the case of a termination for a breach by Buyer as provided in Section 13.2(a), 13.2(d) or 13.2(e), (subject, in each case, to Section 13.12) hereof, the PSMFB Service Provider shall cease providing PSMFB Services on the established or agreed upon Termination Date.

(e) The PSMFB Service Provider shall promptly after receipt of notice of termination (but no later than fifteen (15) Days prior to the Termination Date or thirty (30) Days prior to expiration, as applicable), deliver to Buyer copies of all Buyer Contracts and other third party agreements to which Buyer is a party or which were entered into on behalf of Buyer in accordance with this Agreement, that were developed

and executed while performing PSMFB Services that have not previously been provided to Buyer, together with a summary statement of:

- (i) any Product purchased but not yet scheduled for delivery to Buyer pursuant to each agreement;

- (ii) the expected date when Product would be scheduled for delivery to Buyer;

- (iii) the Monthly costs to be paid pursuant to each agreement and the terms of payment;

- (iv) with respect to Table II-1 in Appendix II, PSR Item Nos. 6 - 10, a listing of any remaining obligations that survive this Agreement.

- (f) The PSMFB Service Provider shall advise the Buyer promptly after receipt of notice of termination (but no later than fifteen (15) Days prior to the Termination Date or thirty (30) Days prior to the expiration, as applicable), in writing of any disputes or legal proceedings against the PSMFB Service Provider by any contractor, subcontractor, or other third party relating to the PSMFB Services, including the termination thereof; of which PSMFB Service Provider has actual knowledge.

- (g) In the event of the termination or expiration of this Agreement, the Parties may mutually agree in writing to transfer ownership of any PSMFB Service Provider Equipment owned by PSMFB Service Provider and used by PSMFB Service Provider solely to provide the PSMFB Services under this Agreement. The purchase price for any PSMFB Service Provider Equipment purchased by the Buyer shall be as agreed to by the

Parties. The Buyer shall pay the purchase price to PSMFB Service Provider concurrently with PSMFB Service Provider's delivery to the Buyer of the PSMFB Service Provider Equipment and a bill of sale acceptable to the Buyer. In addition, the Parties may mutually agree to assign any lease of PSMFB Service Provider Equipment leased by PSMFB Service Provider and used by PSMFB Service Provider primarily to provide the PSMFB Services; provided that third parties with lease agreements with PSMFB Service Provider consent to the assignment or assumption of the lease by the Buyer, and provided further that such parties consent to the release of PSMFB Service Provider of all of its lease obligations arising on and after the effective date of the assignment. PSMFB Service Provider Equipment purchased by Buyer or assigned to Buyer under Section 3.3(i) shall be free and clear of all liens, security interests or other encumbrances as of the date of the closing of such purchase and/or assignment, and PSMFB Service Provider shall be released from any and all obligations and liabilities with respect to PSMFB Service Provider Equipment from and after the effective date of the purchase and/or assignment.

(h) In consultation with Buyer and with Buyer's prior written consent, the PSMFB Service Provider shall take such other actions, and execute such other documents, as may be necessary to effectuate and confirm the foregoing matters.

## **ARTICLE 4 - PSMFB SERVICES**

The PSMFB Service Provider shall sell and provide, and Buyer shall purchase and receive, the PSMFB Services set forth in Sections 4.2 through 4.4 below commencing on the PSMFB Services Start Date until the end of the Base Term, or Extended Term, if applicable, or until the Termination Date, as applicable. Notwithstanding its designation of the PSMMO Service Provider pursuant to Section 4.12, the PSMFB Service Provider shall remain responsible for the performance and obligations of the PSMFB Service Provider and PSMMO Service Provider throughout the Term.

### **4.1 Conditions to Achieving the PSMFB Services Start Date:**

(a) The PSMFB Services Start Date shall occur on the Target PSMFB Services Start Date, provided that (A) PSMFB Service Provider has completed all milestones set forth in the Front-End Transition Plan as referenced in Appendix III Part 1 as to PSMFB Services and as referenced in Appendix XIV as to PSMMO Services, and (B) all the necessary systems and processes are in place for the PSMFB Service Provider to provide PSMFB Services as agreed to by the Parties in the Front End Transition Plan that is set forth in Appendix III Part 1 as to PSMFB Services and as set forth in Appendix XIV as to PSMMO Services.

(b) The PSMFB Service Provider shall give written notice to Buyer when the PSMFB Service Provider has met the conditions in Section 4.1(a) above.

### **4.2 Front - Office Services:**

Front-Office Services are those services specified in Appendix II Part

1. Beginning on the PSMFB Services Start date, and throughout the Base Term, or

Extended Term, if applicable, the PSMFB Service Provider shall perform those services specified in Appendix II Part 1.

#### **4.3 Mid Office Services:**

Mid Office Services are those services specified in Appendix XIV. Beginning on the PSMFB Services Start date, and throughout the Base Term, or Extended Term, if applicable, the PSMMO Service Provider shall perform those services specified in Appendix XIV.

#### **4.4 Back - Office Services:**

Back Office Services are those services specified in Appendix II Part 2. Beginning on the PSMFB Services Start Date, and throughout the Base Term or Extended Term, if applicable, the PSMFB Service Provider shall perform those services specified in Appendix II Part 2.

#### **4.5 Consequences for Delay in PSMFB Services:**

(a) If the PSMFB Services Provider does not commence the Live System and Simultaneous Operations with CEE PSMFB Service Provider (as provided in Table IV-1) by October 17, 2014 and such delay is not caused by an Excused Delay or PSMFB Effective Date Delay, then the PSMFB Service Provider shall pay Buyer Liquidated Damages in the amount of \$500,000 (“PSMFB Transition Date Liquidated Damages”). In the event that PSMFB Service Provider commences PSMFB Services by the Target PSMFB Services Start Date, the Buyer shall immediately refund to the PSMFB Service Provider the PSMFB Transition Date Liquidated Damages paid. If PSMFB Service Provider does not commence PSMFB Services by the Target PSMFB Services Start Date, Buyer may at that time exercise its option to terminate this Agreement, subject to the limitations set forth in Section 2.3.

(b) PSMFB Transition Date Liquidated Damages owed pursuant to Section 4.5(a) shall be paid by PSMFB Service Provider to Buyer in accordance with Section 6.2, and shall be limited to five hundred thousand dollars and zero cents (\$500,000.00).

(c) For breach of any provision for which PSMFB Transition Date Liquidated Damages are provided in this Article 4.5, such damages are the sole and exclusive remedy of Buyer and PSMFB Service Provider's liability will be limited as set forth herein.

(d) PSMFB Transition Date Liquidated Damages owed pursuant to this Section 4.5 shall be due and payable in accordance with Article 6.

#### **4.6 Use of Information Technology Systems:**

(a) A description of the IT System that will be used to provide PSMFB Services is set forth in Appendix VI.

(b) The IT System shall be compatible with the PSM EDM as generally described in Appendix IX. In addition, the PSMFB Service Provider shall provide the IT System as necessary for the performance of PSMFB Services for the Base Term, and Extended Term, if applicable. The PSMFB Service Provider shall ensure that during the Base Term, or Extended Term, if applicable, each component of the IT System is: (i) functionally current to meet the needs of the PSMFB Service Provider business processes, (ii) technically supported by the manufacturer or its designee, and (iii) compatible with the specifications of the PSM EDM as generally described in Appendix IX and as shall be set forth in additional detail in the Administrative Protocols and Procedures.



(c) The PSMFB Service Provider shall establish during the Front-End Transition Period, and maintain during the Base Term, and Extended Term, if applicable, an IT System as described in Appendix VI in order to provide data processing, storage and retrieval of information for (i) itself, in order to (1) perform the PSMFB Services hereunder, including, but not limited to, processing, storage and retrieval of all information necessary to verify calculations made pursuant to this Agreement, (2) comply with all the requirements of Appendix II, and (3) provide uploads to PSM EDM as set forth in Appendix IX; and (ii) Buyer's use, review and copying of settlement quality data regarding all aspects of Buyer's business operations for which the PSMFB Service Provider is responsible hereunder.

(d) In the event that Buyer requires PSMFB Service Provider to procure additional or substitute components with respect to the IT System identified in Appendix VI, Buyer shall reimburse PSMFB Service Provider its actual, reasonable and verifiable cost and expenses of procuring such components and training personnel in the use of such additional or substitute IT System components.

(e) For the avoidance of doubt and the purpose of clarity, the PSMFB Service Provider's IT System is intended to be compatible and to interface with Buyer's PSM EDM for the purposes of PSMFB Service Provider performing the PSMFB Services hereunder. PSMFB Service Provider's IT System is not intended to replace and/or perform the functions of the PSM EDM.

#### **4.7 Business Continuity:**

Subject to the provisions of Article 11, the PSMFB Service Provider is responsible during the Base Term, and Extended Term, if applicable, for maintaining and shall

maintain continuity of its PSMFB Services through the development and implementation of the Business Continuity Plan as described in and in accordance with Appendix VIII.

#### **4.8 Performance Standards:**

(a) Without limiting PSMFB Service Provider's specific obligations under this Agreement, including the performance of all of the PSMFB Services hereunder, the PSMFB Service Provider's performance will be evaluated on a regular basis using Performance Standards as described in and in accordance with Appendix V and as may be further detailed in the Administrative Protocols and Procedures.

The Annual Penalty due, if any, for a Contract Year shall be calculated following the last Day of the applicable Contract Year as described in and in accordance with Appendix V.

If the PSMFB Service Provider's performance for a Contract Year results in an Annual Penalty pursuant to Appendix V, Buyer shall provide written notice to PSMFB Service Provider, and following receipt of such notice, the PSMFB Service Provider shall reduce its next Monthly invoice to Buyer by the amount of such Annual Penalty. In the event that the next Monthly invoice is less than the Annual Penalty, PSMFB Service Provider shall continue to reduce its monthly invoices until Buyer has been fully credited with the amount of the applicable Annual Penalty. In no event shall the Annual Penalty for any Contract Year exceed the Maximum Aggregate Penalty for the applicable Contract Year.

(b) The PSMFB Service Provider shall exert commercially reasonable efforts in its performance under this Agreement by using the same good faith and diligent level

of effort consistent with the standard of care used to provide services to its own Affiliates; provided that such standard of care is consistent with, and not less than Prudent Utility Practices (“Commercially Reasonable Efforts”).

Notwithstanding the foregoing and, except for any Annual Penalty, which may be applicable pursuant to Appendix V and which Annual Penalty shall not exceed the applicable Maximum Aggregate Penalty, the PSMFB Service Provider shall not be responsible and/or liable for any other costs, damages, claims or liabilities arising, directly or indirectly from its failure to meet the Performance Standards.

#### **4.9 Manage Payment and Collection Process:**

As part of the Back-Office Services, the PSMFB Service Provider shall use its Commercially Reasonable Efforts to (i) notify Buyer of payments owing from Buyer to third parties in connection with ISO/RTO transactions, transactions with trading counterparties and other PSMFB Services as described in Appendix II so that Buyer can make timely payments and (ii) ensure the timely collection by Buyer of all amounts due to Buyer from third parties in connection with ISO/RTO transactions, transactions with trading counterparties and other PSMFB Services as described in Appendix II. The PSMFB Service Provider shall provide current and historical billing information concerning the PSMFB Services to Buyer on a Monthly basis in such form as reasonably requested by the Buyer.

In the event the PSMFB Service Provider receives any monies from third parties in connection with the performance of PSMFB Services, such amounts, shall be promptly returned to the third parties with instructions to remit such monies to Buyer. In the event PSMFB

Service Provider inadvertently collects such monies, the PSMFB Service Provider shall promptly notify Buyer and deposit such monies as directed by Buyer.

#### **4.10 Staffing:**

The PSMFB Service Provider shall employ or contract for personnel in sufficient numbers to provide the PSMFB Services as required by this Agreement. Prior to the PSMFB Start Date, PSMFB Service Provider shall supply a Front Office Manager who shall oversee the Front Office Services and shall be the Buyer's primary point of contact during Business Days.

#### **4.11 Administrative Protocols and Procedures**

Sixty (60) Days prior to the Target PSMFB Services Start Date, the Parties shall compile and/or develop, to the extent not already developed by the Parties, mutually acceptable written administrative protocols and procedures for performing PSMFB Services on those topics including, without limitation, those set forth in Appendix XI ("Administrative Protocols and Procedures").

The policies and procedures included in the Administrative Protocols and Procedures, which shall include the operating procedures pertaining to PSMFB Services, shall be designed to assure that the PSMFB Service Provider's responsibilities hereunder are performed without consideration of the ownership of, or economic return to, the PSMFB Service Provider or its Affiliates. The Parties shall comply with the Administrative Protocols and Procedures during the Base Term, and Extended Term, if applicable.

#### **4.12 Designation of PSMMO Service Provider**

As of the PSMFB Effective Date, PSM Service Provider designates as PSMMO Service Provider, PSEG Services Corporation, an Affiliate of PSM Service Provider that provides similar services to PSM Service Provider with respect to its other business activities (“Internal Mid-Office Services”). In the event that another entity shall become the provider of Internal Mid-Office Services to PSM Service Provider, PSM Service Provider may designate such entity to be the PSMMO Service Provider, provided that the entity and PSM Service Provider comply with the procedures set forth in Appendix II, Part 3.

## **ARTICLE 5 – PSMFB SERVICES AND TRANSITION PERIOD PAYMENTS**

The PSMFB Service Provider payments pursuant to this Agreement shall be calculated as set forth below.

### **5.1 Management Fee and Annual Fee for PSMFB Services:**

Commencing upon the PSMFB Services Start Date and continuing during the Base Term, and Extended Term, if applicable, unless terminated earlier by either Party in accordance with the terms of this Agreement. Buyer shall, on a Monthly basis, in accordance with Article 6, pay the PSMFB Service Provider one-twelfth (1/12) of the PSMFB Services Management Fee and Annual Fee set forth in Table IV–3 of Appendix IV Part 2 as to the PSMFB Services and one-twelfth (1/12) of the PSMMO Services Management Fee as set forth in Appendix XIV as to PSMMO Services as consideration for performing the PSMFB Services and PSMMO Services hereunder, as more specifically described and set forth in Appendix II and Appendix XIV, respectively.

### **5.2 Payments during Transition Periods:**

(a) Front-End Transition Period: During the Front-End Transition Period, PSMFB Service Provider shall be paid for performing Front-End Transition Services as described in Appendix III. Payments shall be made pursuant to the transition plan milestones set forth in Table IV-1 of Appendix IV as to the PSMFB Services and the transition plan milestones to be agreed upon as set forth in Appendix XIV as to the PSMMO Services, as applicable, as such milestones may be mutually modified in writing by the Parties.

(b) Back-End Transition Period: During the Back-End Transition Period, the PSMFB Service Provider shall be paid pursuant to the transition plan milestones set forth in the Final Back-End Transition Plan, for performing Back-End Transition Services in accordance with Appendix IV Part 4 as to the PSMFB Services and for performing Back-End Transition Services in accordance with Appendix XIV as to the PSMMO Services, as such milestones may be mutually modified in writing by the Parties.

(c) Early Termination: In the event of Early Termination, the PSMFB Service Provider shall be paid for performing Modified Back-End Transition Services, Buyer Data Transfer Services, or No Back-End Transition Services, in accordance with the payment provisions of Appendix IV Part 5 as to the PSMFB Services and for performing Modified Back-End Transition Services, Buyer Data Transfer Services, or No Back-End Transition Services, in accordance with the payment provisions of Appendix XIV as to PSMMO Services, as such provisions may be mutually modified in writing by the Parties. If no payment schedule is agreed to by the Parties, PSMFB Service Provider shall be paid in accordance with Section 6.1(c), hereof.

(i) No Back-End Transition Services: In the event of Early Termination, if Buyer does not require any transition services, the PSMFB Service Provider shall be paid its Severance Costs, if any, in accordance with Appendix IV Part 5 and Appendix XIV. If no payment schedule is agreed to by the Parties, PSMFB Service Provider shall be paid in accordance with Section 6.1(c), hereof.

### **5.3 Additional Services**

(a) PSMFB Service Provider shall be paid for performing Additional Services in accordance with Article 6 at the rates set forth in Appendix IV Part 3 as to PSMFB Services and at the rates set forth Appendix XIV as to PSMMO Services, or as otherwise agreed to by the Parties in writing.

(b) In the interest of better ensuring efficient, reliable and comprehensive risk management operations, it is the desire of the Parties to include within the scope of this Agreement all of the risk management functions, with the exception of the hedge advisory functions, that are currently provided by Pace Global Energy Management, LLC (“PGEM”) and Pace Global, LLC (“PG”) (PGEM and PG collectively, “Pace”) pursuant to that certain Contract for Providing Power Supply Management Mid Office Services to Long Island Power Authority by Pace Global Energy Management, LLC entered into between PGEM and Long Island Power Authority dated August 11, 2008, and that certain Letter Agreement to provide Energy Risk Management Advisory & System Services entered into between PG, the Long Island Power Authority and its wholly-owned subsidiary, the Long Island Lighting Company d/b/a LIPA dated May 10, 2012 (collectively, the “Pace Agreements”). To this end, following approval of the Fuel Management Agreement and this Agreement by the LIPA Board, the Parties will delete Appendix XIV this Agreement and substitute therefore Alternative Appendix XIV; provided that, the compensation shown on Alternative Appendix XIV is no greater than the total compensation that LIPA has paid under the Pace Agreements on an average annual basis over the most recent two (2) years for the risk management functions under the Pace Agreements, except for the hedge advisory functions, as adjusted to take into account known future changes (“Total Pace Compensation”). In the event that the compensation shown on Alternative



Appendix XIV is greater than the Total Pace Compensation, PSMFB Service Provider shall have the option to perform the scope of services shown on Alternative Appendix XIV at the amount of the Total Pace Compensation.

## **ARTICLE 6 - BILLING AND COLLECTIONS**

### **6.1 Billing By PSMFB Service Provider:**

(a) Front-End Transition Payments: On or about the tenth (10th) Day of each Month following the Month in which the Front-End Transition Start Date occurs, PSMFB Service Provider shall send Buyer a Monthly invoice for the Front-End Transition Payments, if applicable, for the previous Month determined pursuant to Appendix IV Part 1 for PSFMB Services, and Appendix XIV for PSMMO Services.

(b) Intentionally Omitted.

(c) Base Term and Extended Term Payments: On or about the tenth (10th) Day of each Month following the Month in which the PSMFB Services Start Date occurs through the Base Term, and Extended Term, if applicable, the PSMFB Service Provider shall send Buyer a Monthly invoice containing:

(i) the amount of the Monthly PSMFB Services Management Fee and Annual Fee for the preceding Month (and any unpaid Front-End Transition Payments and Delay Payments, if applicable for previous Months in the case of the first invoice in the Base Term) determined pursuant to Table IV–3 of Appendix IV Part 2 as to PSMFB Services and pursuant to Appendix XIV as to PSMMO Services; and

(ii) charges for Additional Services, additional IT System components, or additional insurance, if any, which charges shall be in accordance with Appendix IV Part 3 as to PSMFB Services and in accordance with Appendix XIV

as to PSMMO Services, and shall be separately stated on the PSMFB Service Provider's Monthly invoice prepared and sent to Buyer pursuant to this Article 6.

(d) Back-End Transition Payments: On or about the tenth (10th) Day of each Month following the Month in which the Back-End Transition Period Start Date occurs, PSMFB Service Provider shall include, in Buyer's Monthly invoice, charges for the Back-End Transition Services, Modified Back-End Transition Services, Buyer Data Transfer Services or No Back-End Transition Services, for the previous Month determined pursuant to Appendix IV Part 4 or Part 5 as to PSMFB Services and determined pursuant to Appendix XIV as to PSMMO Services, as applicable.

(e) Buyer shall be obligated to pay to PSMFB Service Provider, within thirty (30) Days of the receipt of each invoice, any undisputed amounts owed to PSMFB Service Provider.

(f) PSMFB Service Provider shall deliver each invoice to Buyer's billing address as set forth in Section 17.5 herein. Such Monthly invoice shall include the basis of the calculation of the payment amounts, the applicable rates, and any interest charges pursuant to Section 6.4 below, or other adjustments, if any, to the amounts due.

## **6.2 Billing by Buyer:**

(a) Commencing at the end of the first (1<sup>st</sup>) Month after any PSMFB Transition Date Liquidated Damages or other charges are owed by PSMFB Service Provider to Buyer, Buyer shall send PSMFB Service Provider an invoice for any applicable PSMFB Transition Date Liquidated Damages or other charges for the preceding Month.

(b) PSMFB Service Provider shall be obligated to pay Buyer, within thirty (30) Days of the receipt of any invoice for PSMFB Transition Date Liquidated Damages, or other charges, if any, any undisputed amounts owed to Buyer.

(c) Buyer shall deliver each invoice to PSMFB Service Provider's billing address as set forth in Section 17.5 herein. Such invoice shall include the basis of the calculation of the payment amounts, the applicable rates and any interest charges pursuant to Section 6.4 below, or other adjustments, if any, to the amounts due.

### **6.3 Billing and Final Accounting:**

(a) If either Party contests the amount or propriety of any amount claimed by the other Party to be due and owing pursuant to this Agreement, the contesting Party shall be entitled to withhold payment of such disputed amount.

(b) In the event either Party contests the correctness of any calculations made by the other Party in developing a Monthly invoice, including, but not limited to, the calculation of the Annual Penalty, if any, the contesting Party shall provide the invoicing Party with written notice of such dispute, the basis for the contesting Party's dispute and supporting documentation regarding such dispute by the due date for payment of said invoice. The invoicing Party shall promptly review the contested invoice and shall notify the contesting Party of any error in the invoicing Party's calculations of the relevant invoice amounts and, in the event of an error, shall issue an amended invoice together with either (i) any payment owed to, or (ii) a request for payment of any amount owed by, the contesting Party, as the case may be, in light of the review and/or recalculation. To the extent the invoicing Party disagrees with the contesting Party's basis for contesting the original invoice, the invoicing Party shall provide a written explanation of

its position. If the Parties cannot resolve such matter, either Party may submit the matter for dispute resolution pursuant to the procedure set forth in Article 15.

(c) Either Party shall have two (2) years after its delivery of an invoice to correct the calculations made by the invoicing Party in developing the invoice and deliver a revised invoice to the other Party. Either Party shall have two (2) years after its receipt of any invoice from the other Party to contest the correctness of such invoice. If payment already has been made on an invoice, which is disputed within the two (2) year period, and if, as a result of such dispute the contested invoice is corrected but the correction is, itself, contested, neither Party shall be required to refund or pay the contested amount, as the case may be, until there is a final determination regarding such matters either as a result of the invoice reconciliation process set forth in this Section 6.3 or the dispute resolution process pursuant to Article 15 hereof.

#### **6.4 Interest:**

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

## **6.5 Billing and Payment Records:**

Until the end of six (6) years after the receipt of any Monthly invoice, Buyer shall have the right to audit such books and Records of PSMFB Service Provider as are reasonably necessary for Buyer to verify the calculation of the amounts charged and payments required under this Agreement as set forth in such Monthly invoice as well as all other information provided to Buyer pursuant to this Article 6. Such audit shall be on at least seven (7) Days' prior written notice. Audits should be conducted during normal business hours.

## **ARTICLE 7 – ADMINISTRATIVE ISSUES**

### **7.1 Sufficient Resources:**

The PSMFB Service Provider shall employ or contract for personnel in sufficient numbers and possessing sufficient skills, and supervise and monitor its personnel on an on-going basis, in order for the PSMFB Service Provider to perform as required under this Agreement consistent with Prudent Utility Practices. The PSMFB Service Provider shall provide proper training for the PSMFB Service Provider's personnel in the performance of PSMFB Services. The PSMFB Service Provider shall assure that its personnel are qualified to perform PSMFB Services, and that the services contemplated by this Agreement are performed by its personnel in accordance with Prudent Utility Practices. The PSMFB Service Provider shall also give due consideration to any comments of Buyer with respect to the performance of specific PSMFB Service Provider personnel. At all times, the PSMFB Service Provider shall comply, and cause its personnel to comply, with Prudent Utility Practices, Legal Requirements and Buyer's and, as referred to elsewhere in this Agreement, PSMFB Service Provider's Standards of Conduct with respect to performing its obligations under this Agreement. Notwithstanding the foregoing, the employees of the PSMFB Service Provider providing services to Buyer under this Agreement will remain employees of the PSMFB Service Provider only. This Agreement does not create a co-employment relationship between the PSMFB Service Provider and Buyer. All employment decisions regarding these individuals, including compensation and discipline, shall be made exclusively by the PSMFB Service Provider.

### **7.2 Availability of PSMFB Service Provider's Representatives:**

- (a) The PSMFB Service Provider's Representatives shall be made available at the PSMFB Service Provider's office(s) during Buyer's normal business hours between

the hours of 8:00 am to 5:00 pm (EPT), on Business Days for communication with Buyer's Representatives.

(b) The PSMFB Service Provider shall provide certain PSMFB Services, as agreed to by the Parties, on a 24 x 7 basis. PSMFB Service Provider shall maintain telephone number(s) for use by Buyer's Representatives on a 24 x 7 basis.

### **7.3 Compliance with Legal Requirements:**

The PSMFB Service Provider and Buyer shall each perform all of its obligations hereunder in accordance with Legal Requirements. Subject to Section 13.10 ("Limitation of Liability, Remedies and Damages"), in the event that the PSMFB Service Provider or Buyer, as the case may be, fails at any time to comply with Legal Requirements, then the PSMFB Service Provider or Buyer, as the case may be, shall immediately remedy such failure at its sole cost and expense and shall bear all loss and expense of either Party and shall pay any resulting damages, fines, assessments or other charges resulting therefrom to the extent provided in Section 7.7 hereof. Any such damage, fine, assessment or other charge paid by the PSMFB Service Provider or Buyer, as the case may be, due to a violation of Legal Requirements for which the other Party is responsible under Section 7.7 shall be reimbursed to the paying Party.

### **7.4 Books and Records:**

The PSMFB Service Provider shall prepare and maintain proper, accurate and complete books, Records and accounts as the Buyer reasonably requests setting forth in accurate and reasonable detail the information regarding PSMFB Services in accordance with the requirements of Appendix II ("PSMFB Services Information"). Without limiting the generality



of the foregoing, the PSMFB Services Information shall include, by way of example, the following:

- (a) Sales for resale;
- (b) Off-System sales;
- (c) Fuel costs and volumes of fuel consumed;
- (d) Power purchases; and
- (e) NYISO ICAP/Ancillary Services sales;

The PSMFB Service Provider shall maintain by Month the PSMFB Services Information applicable to each Month of each Contract Year and cumulatively for each Contract Year and for past Contract Years, and shall provide copies thereof to the Buyer within four (4) Business Days of each Month end to allow the Buyer to verify the propriety of any request for payment or charge hereunder. Upon the termination of the Agreement, the PSMFB Service Provider shall promptly provide the PSMFB Services Information to Buyer's Representatives in accordance with the Final Back-End Transition Plan or as otherwise instructed by Buyer.

All such PSMFB Services Information is subject to the confidentiality provisions of Article 18.

#### **7.5 Cash Deposits:**

All cash, if any, held or collected by the PSMFB Service Provider, which is not returned by PSMFB Service Provider to the third party payee from which it was received, with directions for such third party to remit directly to Buyer, shall be deposited promptly in bank accounts in such bank or banks as the Buyer may direct.

## **7.6 Litigation; Permit Lapses:**

Promptly upon obtaining knowledge thereof, each Party shall submit to the other Party written notice of (and, upon request, copies of any relevant non-privileged documents in the Party's possession relating to): (a) any litigation, claims, disputes or actions actually filed, or any litigation, claims, disputes or actions which are threatened, concerning in each case, the PSMFB Services, or the Buyer's or PSMFB Service Provider's obligations relating thereto; (b) any actual refusal to grant, renew or extend, or any action pending or any action filed with respect to, the granting, renewal or extension of any permit or any threatened action regarding the same; (c) any dispute with any Governmental Authority relating to the PSMFB Services, or the Buyer's or PSMFB Service Provider's obligations relating thereto; and (d) without regard to their materiality, all penalties or notices of violation issued by any Governmental Authority relating to PSMFB Services, or the Buyer's or PSMFB Service Provider's obligations relating thereto.

## **7.7 Other Services:**

(a) The PSMFB Service Provider's representatives shall provide billing services as set forth in Appendix II Table II-1 and Appendix II Back Office Service No. 4 and shall forward in a timely manner to Buyer those bills which are proper and appropriate for payment.

(b) The PSMFB Service Provider's Representative shall attend and participate in meetings scheduled by the Buyer, in connection with providing PSMFB Services.

## **7.7 Responsibility for Losses or Expenses Incurred by PSMFB Service Provider or Buyer:**

Except to the extent due to or PSEMFB Service Provider Fault or Buyer Fault, as the case may be, and solely to the extent due to a circumstance described in subsections (a), (b) or (c) below, in each case as determined by either a final non-appealable order or judgment of a court of competent jurisdiction (including administrative tribunals), and subject to Section 13.10, each Party shall be responsible and liable for, and shall not be entitled to reimbursement from the other Party for, any loss or expense incurred by such Party:

(a) due to any negligence or willful misconduct by such Party during the period commencing from the PSMFB Effective Date, and during the Base Term, and Extended Term, if applicable, in carrying out its obligations hereunder, including without limitation violations of the Administrative Protocols and Procedures;

(b) due to any violation of, or failure of compliance with, Legal Requirement by such Party during the period commencing from the PSMFB Effective Date, during the Base Term, and Extended Term, if applicable, and until such time as the Agreement is terminated in accordance with its terms and conditions; or

(c) due to any criminal violation of Legal Requirements by such Party.

## **7.8 Third Party Contracts:**

(a) The PSMFB Service Provider shall provide the PSMFB Services set forth in this Section 7.8 and Appendix II for Buyer's (i) contracts existing as of the PSMFB Effective Date and (ii) new contracts entered into after the PSMFB Effective Date with third parties for the purchase and sale of Products, including, but not limited to, financial agreements for the purposes of hedging the price of Products (contracts in clause (i) being "Existing Buyer Contracts", contracts in clause (ii) being "New Buyer Contracts", and

contracts in clauses (i) and (ii) collectively referred to as “Buyer Contracts”). For avoidance of doubt and the purpose of clarity, Buyer Contracts are those Buyer agreements related to Power Supply Resources.

(b) New Buyer Contracts: In its performance of PSMFB Services, at Buyer’s request, the PSMFB Service Provider shall as an Additional Service negotiate New Buyer Contracts including, but not limited to financial agreements and physical agreements for the purposes of hedging the price of Products which shall be of a type listed in PSR Item No. 6, as set forth in Table II-1 Appendix II. New Buyer Contracts shall be in Buyer’s name acting through the PSMFB Service Provider its agent and shall be executed by Buyer. Any and all expenses incurred in connection with the negotiation and execution of New Buyer Contracts, including, but not limited to, any and all legal fees shall be the responsibility of, and shall be paid directly by, Buyer. The PSMFB Service Provider shall in no event provide any legal services or credit management services (other than those credit management services described in Appendix XIV) in connection with New Buyer Contracts and/or the negotiation of such agreements.

(c) Transaction Confirmations: In connection with managing Buyer Contracts, PSMFB Service Provider may, in accordance with the procedures to be developed and agreed to by the Parties and set forth in writing by the Parties or Buyer’s specific written request, negotiate transactions pursuant to such Buyer Contracts. Unless otherwise agreed to by the Parties, such transactions and/or transaction confirmations shall be in Buyer’s name and shall be executed either by Buyer, or by PSMFB Service Provider as Buyer’s Agent, in accordance with Appendix II Front-Office Services and any process

that may be agreed to by the Parties in writing. The costs for negotiating such transactions are included in the Total Annual Fee in Appendix IV Table IV-3.

(d) No Credit Management Services: Any and all payments and credit support, including, but not limited to payments of collateral, due to third parties pursuant to Buyer Contracts and associated transactions shall be paid or provided, as the case may be, directly by Buyer to the third parties. Except as provided in Appendix XIV, the PSMFB Service Provider is not responsible for providing any credit support, including margin, to any third party and that this is the sole responsibility of Buyer. The PSMFB Service Provider is acting solely as agent for Buyer. The PSMFB Service Provider shall administer such Buyer Contracts in accordance with Appendix II, and as agreed to by the Parties. For the avoidance of doubt and the purpose of clarity except as provided in Appendix XIV, PSMFB Service Provider shall not be responsible for processing, reconciling, or monitoring any margin or collateral requirements with regard to Buyer Contracts.

(e) Additional Billing Services: Upon Buyer's written request, the parties shall negotiate in good faith to develop the terms, conditions, fixed annual payment, and schedule for the PSMFB Service Provider to perform Billing Services for some or all of the PPA Units and/or Cable Resources (listed as PSR Type Nos. 2 and 4 of the Power Supply Resources column of Table II-1 of Appendix II).

## **ARTICLE 8 – OWNERSHIP OF INTELLECTUAL PROPERTY**

### **8.1 Buyer Owned Property:**

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

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

(i) by the PSMFB Service Provider or its Affiliates or any of their employees, directors and officers (“PSMFB Service Provider’s Related Parties”), by itself or jointly with Buyer, any of Buyer’s Related Parties (as defined in Section 8.1 (b) below) or others, and/or

(ii) by agents, consultants, subcontractors and/or suppliers of the PSMFB Service Provider or PSMFB Service Provider’s Related Parties, by itself or jointly with Buyer, any of Buyer’s Related Parties (as defined in 8.1(b) below) or others, (collectively, the “Buyer Owned Deliverables”);

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

To the extent any of the Buyer Owned Deliverables are not deemed a "work for hire" by operation of law, PSMFB Service Provider hereby irrevocably assigns to Buyer, and will cause the PSMFB Service Provider's Related Parties and each applicable agent, consultant, subcontractor and supplier of the PSMFB Service Provider and/or the PSMFB Service Provider's Related Parties (collectively, the "PSMFB Service Provider Personnel") to assign to Buyer, all of its and their right, title and interest in and to such Buyer Owned Deliverables, including all Intellectual Property Rights in and to such Buyer Owned Deliverables. The PSMFB Service Provider agrees to execute, and shall cause the applicable PSMFB Service Provider's Related Parties and other PSMFB Service Provider Personnel to execute, any documents or take any other actions as may reasonably be necessary, or as Buyer may reasonably request, to evidence, perfect, maintain and enforce Buyer's ownership of any such Buyer Owned Deliverables, whether during the Base Term, and Extended Term, if applicable of this Agreement or thereafter.

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

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

(d) Writings, works of authorship, and other copyrightable or non-copyrightable subject matter of any kind (“Writings”), including without limitation, derivative works, to the extent containing any portion of the items described in



subparagraphs (a), (b) and (c) above, whether or not obtained, created, generated, collected, designed, developed or fixed by the PSMFB Service Provider or PSMFB Service Provider's Related Parties under, pursuant to, or as a result of, this Agreement but excluding all PSMFB Service Provider Owned Property contained therein, and other than those Writings created or developed by the PSMFB Service Provider or PSMFB Service Provider's Related Parties which are not relating solely to Buyer and/or Buyer's Related Parties; and

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

To the extent that the PSMFB Service Provider or PSMFB Service Provider's Related Parties or any permitted PSMFB Sub-licensee (as defined in Section 8.2, below) creates any Derivatives to, or of, any Buyer Owned Property which are owned by Buyer as set forth in Section 8.1(e) above or Buyer Licensed Intellectual Property, the PSMFB Service Provider hereby assigns, and will cause the PSMFB Service Provider's Related Parties and each applicable PSMFB Sub-licensee to assign, to Buyer all right, title and interest in and to such Derivatives and all Intellectual Property Rights in the foregoing.

## **8.2 Buyer License Grant:**

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

(a) a fully paid-up, royalty-free, non-exclusive, non-transferable (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the "Assignment" section of Article 14 below) and sub-licensable limited license during the Base Term, and Extended Term, if applicable, for the sole purpose of performing and solely to the extent necessary to perform, the PSMFB Services under this Agreement, to use, copy, modify and create derivative works of, as applicable, the Buyer Owned Property which is not Buyer Licensed Intellectual Property, and, to the extent sub-licensable, Buyer Licensed Intellectual Property (which, for avoidance of doubt, includes the Buyer Owned Deliverables whether or not, when used, such Buyer Owned Deliverables will result in a competitive disadvantage to Buyer and/or any of the Buyer's Related Parties), solely for use by, or on behalf of, the PSMFB Service Provider and/or the PSMFB Service Provider's Related Parties, including by their respective sub-licensees in performing PSMFB Services pursuant to this Agreement; and

(b) a fully paid-up, royalty-free, non-exclusive, non-transferable (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the "Assignment" section of Article 14 below) perpetual and non-sub-licensable limited license, to use, copy, modify and create derivative works of, as applicable, those of the Buyer Owned Deliverables (except to the extent that it contains Buyer Owned Property which is information and data which is solely related to

Buyer and/or Buyer's Related Parties and/or information and data of third parties) which, when used, will not result in a competitive disadvantage to Buyer and/or any of the Buyer's Related Parties, solely for use by the PSMFB Service Provider and/or the PSMFB Service Provider's Related Parties in its/their business for the sole purpose of performing (and solely to the extent necessary to perform) services to its/their customers. With respect to the license granted in subsection (b), in the event the PSMFB Service Provider and/or PSMFB Service Provider's Related Parties needs to grant a sub-license for the use of the materials for its customers or its PSMFB Service Provider Related Parties' customers in order to perform services for such customers, PSMFB Service Provider shall request that Buyer give its prior written approval, which approval shall not be unreasonably withheld. PSMFB Service Provider shall not grant a Sub-license without Buyer's prior written approval. For the avoidance of doubt and purpose of clarity, Buyer disapproval is deemed reasonable if Buyer determines, in its sole discretion, that such sub-license would create a competitive disadvantage to Buyer and/or Buyer's Related Parties.

In addition, during the Base Term, and the Extended Term, if applicable, the Parties shall fully evaluate and shall jointly approve the need for, and the expenditures to be made to any third parties associated with, any sub-license of Buyer Licensed Intellectual Property to the PSMFB Service Provider, PSMFB Service Provider's Related Parties or any other Person to whom a sub-license is granted pursuant to this Section 8.2 (each, a "PSMFB Sub-licensee"), such approval not to be unreasonably withheld.

Such licenses shall be subject to the following:

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

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

(e) Except as otherwise expressly permitted pursuant to the first paragraph of this Section 8.2, or as otherwise agreed by the Parties in writing, the PSMFB Service Provider and PSMFB Service Provider's Related Parties shall not sell, sub-license, rent,

lease, distribute or otherwise permit the use of the Buyer Owned Property or Buyer Licensed Intellectual Property.

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

(g) The PSMFB Service Provider shall be responsible for compliance by all PSMFB Service Provider's Related Parties and PSMFB Sub-licensees with the terms and conditions of this Section 8.2 and PSMFB Service Provider fully and unconditionally guarantees such compliance by PSMFB Service Provider's Related Parties and the PSMFB Sub-licensees with the terms of this Section 8.2.

(h) PSMFB Service Provider shall ensure, and shall cause all PSMFB Service Provider's Related Parties and PSMFB Sub-licensees to ensure, that each permitted PSMFB Sub-licensee agrees in writing to terms and conditions at least as restrictive as

the terms of this Article 8 and Article 18 prior to being given access to any of the Buyer Owned Property or Buyer Licensed Intellectual Property.

(i) The PSMFB Service Provider agrees to enforce, and shall cause all PSMFB Service Provider's Related Parties to enforce, the terms of the sub-license or other agreement agreed to by the applicable PSMFB Service Provider's Related Parties and/or PSMFB Sub-licensee(s) affecting Buyer's or any Buyer's Related Party's rights (the "Applicable PSMFB Sub-license Terms") against the applicable PSMFB Service Provider's Related Parties and/or PSMFB Sub-licensee(s) at the PSMFB Service Provider's own expense. It is understood and agreed, however, (and each sub-license or other agreement agreed to with respect to use of the Buyer Owned Property and/or the Buyer Licensed Intellectual Property (each, a "PSMFB Sub-license Agreement") shall provide) that Buyer shall be a third party beneficiary of all PSMFB Sub-license Agreements agreed to by the applicable PSMFB Service Provider's Related Parties and/or PSMFB Sub-licensee(s) relating to Buyer Owned Property and/or Buyer Licensed Intellectual Property, with the power to enforce the terms of this Section 8.2 and/or Section 18 and the Applicable PSMFB Sub-license Terms directly against any applicable PSMFB Service Provider's Related Parties and/or PSMFB Sub-licensee(s).

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

### **8.3 PSMFB Service Provider Owned Property:**

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

(a) PSMFB Service Provider Related Data, PSMFB Service Provider Related Technology, PSMFB Service Provider Related Work Product and PSMFB Service Provider Equipment, but excluding any and all Buyer Owned Property.

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

(c) Inventions to the extent relating to and based upon the PSMFB Service Provider Owned Property described in subparagraphs (a) and (b) above, obtained, created, generated, collected, designed, developed or discovered by the PSMFB Service

Provider or PSMFB Service Provider's Related Parties, but excluding all Buyer Owned Property contained therein;

(d) Writings including, without limitation, derivative works, relating to the PSMFB Service Provider Owned Property described in (a) (b) or (c) above, obtained, created, generated, collected, designed, developed or fixed by the PSMFB Service Provider or PSMFB Service Provider's Related Parties, but excluding all Buyer Owned Property contained therein, and

(e) all Derivatives to or of any of the PSMFB Service Provider Owned Property described in subparagraphs (a), (b), (c) and/or (d) above created pursuant to this Agreement or otherwise (excluding any Buyer Owned Property), and all Intellectual Property Rights in and to the foregoing items described in this subparagraph (e) and all items described in subparagraphs (a), (b), (c) and/or (d).

(i) To the extent that the Buyer or Buyer's Related Parties or any permitted Buyer Sub-licensee creates any Derivatives to, or of, any PSMFB Service Provider Owned Property which are owned by PSMFB Service Provider as set forth in Section 8.3(e) above or PSMFB Service Provider Licensed Intellectual Property, Buyer hereby assigns, and will cause Buyer's Related Parties and each applicable Buyer Sub-licensee to assign, to PSMFB Service Provider all right, title and interest in and to such Derivatives and all Intellectual Property Rights in the foregoing.



#### **8.4 PSMFB Service Provider License Grant:**

Subject to the terms and conditions of this Agreement, the PSMFB Service Provider hereby grants, and shall cause its Affiliates to grant, to Buyer and Buyer's Related Parties a fully paid-up, royalty-free, non-exclusive, non-transferable, (except to the extent transfer or assignment is permitted pursuant to the terms of this Agreement, including without limitation the "Assignment" section of Article 14 below) perpetual sub-licensable limited license to use, copy, and modify and create derivative works of, as applicable, the PSMFB Service Provider Owned Property and PSMFB Service Provider Licensed Intellectual Property (if it can be sub-licensed) solely for use in conducting the business of Buyer and/or Buyer's Related Parties, by, or on behalf of, Buyer or Buyer's Related Parties, including by its and their respective sub-licensees. In addition, during the Base Term and the Extended Term, if applicable, the Parties shall fully evaluate and shall jointly approve the need for, and the expenditures to be made to any third parties associated with, any sub-license of PSMFB Service Provider Licensed Intellectual Property to the Buyer, the Buyer's Related Parties, or any other Person to whom a sub-license is granted pursuant to this Section 8.4 (each, a "Buyer Sub-licensee"), such approval not to be unreasonably withheld. Such licenses shall be subject to the following:

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

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

(c) Except as expressly permitted pursuant to the first paragraph of this subsection 8.4, or as otherwise agreed by the Parties in writing, Buyer and Buyer's Related Parties shall not sell, sub-license, rent, lease, distribute or otherwise permit the use of the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property.

(d) Buyer and Buyer's Related Parties shall not copy, translate, modify, adapt, decompile, disassemble, or reverse engineer the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property except as necessary to exercise the rights granted pursuant to this Section 8.4. The PSMFB Service Provider shall own all rights in any copy, translation, modification, adaptation, or other results of the decompilation, disassembly or reverse engineering, of the PSMFB Service Provider

Owned Property or PSMFB Service Provider Licensed Intellectual Property, whether or not authorized, and all Intellectual Property Rights in and to the foregoing, and Buyer hereby assigns, and shall cause Buyer's Related Parties and each applicable Buyer Sub-licensee to assign, all right, title and interest in and to them and all Intellectual Property Rights in and to them (including moral rights) to the PSMFB Service Provider.

(e) Buyer shall be responsible for compliance by all Buyer's Related Parties and Buyer Sub-licensees with the terms and conditions of this Section 8.4 and Buyer fully and unconditionally guarantees such compliance by Buyer's Related Parties and the Buyer Sub-licensees under this Section 8.4.

(f) Buyer shall ensure, and shall cause all Buyer's Related Parties and Buyer Sub-licensees to ensure, that each permitted Buyer Sub-licensees agrees in writing to terms and conditions at least as restrictive as the terms of this Article 8 and Article 18 prior to being given access to any of the PSMFB Service Provider Owned Property or PSMFB Service Provider Licensed Intellectual Property.

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

(each, a “Buyer Sub-license Agreement”) shall provide) that the PSMFB Service Provider shall be a third party beneficiary of all Buyer Sub-license Agreements agreed to by the applicable Buyer’s Related Parties and/or Buyer Sub-licensee(s) relating to PSMFB Service Provider Owned Property and/or PSMFB Service Provider Licensed Intellectual Property, with the power to enforce the terms of this Section 8.4 and/or Article 18 and any Applicable Buyer Sub-license Terms directly against any applicable Buyer’s Related Parties and/or Buyer Sub-licensee(s).

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

## **8.5 Reservation of Rights:**

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

## **8.6 Independent Development; Residuals:**

The obligations of confidentiality and limited use under this Agreement shall not be construed to limit a Party's right to independently develop or acquire products without use of the other Party's PSM Confidential Information. Further, each Party shall be free to use for any purpose the "residuals" (as defined below) resulting from access to or work with such PSM Confidential Information, provided that such party shall maintain the confidentiality of such PSM Confidential Information as provided in this Agreement and otherwise comply with the provisions of Article 18 and any other obligations of limited use and non-disclosure set forth in this Agreement. The term "residuals" means information in non-tangible form, which is retained in unaided memory by persons who have had access to the PSM Confidential Information, including generalized ideas, concepts, know-how or techniques contained therein. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either Party a license under the other Party's copyrights, patents or other Intellectual Property Rights. In addition, in no event shall either party be precluded from independently developing for itself, or for others, anything, whether in tangible or non-tangible form, which is competitive with, or similar to, the deliverables provided by the PSMFB Service Provider to the Buyer, provided that, with respect to the same, such party at all times (a) maintains the confidentiality of the PSM Confidential Information as provided in this Agreement and (b) otherwise complies with the provisions of Article 18 and all other obligations of limited use and non-disclosure set forth in this Agreement.

## **8.7 Feedback Rights:**

In the event that a Party and/or its Related Parties provides the other Party with any suggestions or recommendations concerning the PSMFB Service Provider Owned Property or Buyer Owned Property, as applicable, owned by the other Party (collectively “Feedback”); the Party providing such Feedback hereby grants the other Party, without any obligation to pay the providing Party for such use, unless otherwise agreed to in writing by the Parties prior to such Feedback being given to the other Party, a paid-up worldwide right and license to use and incorporate such Feedback into the PSMFB Service Provider Owned Property or Buyer Owned Property, as applicable, owned by such other Party, in “as is” condition and with all faults, and to modify all or any portion of such PSMFB Service Provider Owned Property or Buyer Owned Property, as applicable, regardless of the medium (now or hereafter known) into which such Feedback may be modified and regardless of the effect of such modifications on the integrity of such the PSMFB Service Provider Owned Property or Buyer Owned Property, as applicable. The providing Party and/or its Related Parties, as applicable, further waive any "moral" rights, or other rights with respect to attribution of authorship or integrity of such Feedback, such Party or its Related Parties may have under any applicable law, whether under copyright, trademark, unfair competition, defamation, right of privacy, contract, tort or other legal theory. The Party receiving and using such Feedback shall retain all responsibility and liability for such Feedback and its use thereof. For the avoidance of doubt and the purpose of clarity, except as otherwise expressly set forth in this Section 8.7, nothing contained in this section shall in any way alter the ownership rights and restrictions on use set forth in this Agreement.

## **8.8 Intellectual Property and Administrative Protocols and Procedures**

Examples of the Parties intent with respect to this Article 8 shall be set in forth the Administrative Protocols and Procedures.

### **8.9 Ownership of Additional Services Intellectual Property**

The Parties acknowledge and agree that (a) this Agreement provides for the ability of the Parties to agree to Additional Services to be provided hereunder by the PSMFB Service Provider as described and provided in Appendix IV Part 3 and as shall be further described in the Administrative Protocols and Procedures (b) notwithstanding the other provisions of this Article 8 (Ownership of Intellectual Property), with respect to Buyer Related Data, Buyer Related Technology, Buyer Related Work Product and/or Buyer Equipment obtained, created, generated, collected, designed, developed, licensed, leased, owned or provided pursuant to this Agreement as a result of Additional Services (collectively, the “Additional Services IP”), the Parties may agree in writing to ownership, license and/or payment provisions or use limitations with respect to such Additional Services IP which are different than the provisions of the preceding sections of this Article 8. The types of provisions to which the Parties may agree include, without limitation, provisions pursuant to which (regardless of whether such Additional Services IP relates solely to Buyer and/or any Buyer’s Related Parties):

(a) Buyer shall be the sole and exclusive owner of such Additional Services IP, and such Additional Services IP shall be Buyer Owned Property for the purposes of this Article 8 and subject to the license provisions of Section 8.2, and the other provisions of Article 8;

(b) the PSMFB Service Provider shall be the sole and exclusive owner of such Additional Services IP, and such Additional Services IP shall be PSMFB Service

Provider Owned Property for the purposes of this Article 8 and subject to the license provisions of Section 8.4 and the other provisions of Section 8;

(c) Buyer shall be the sole and exclusive owner of such Additional Services IP, and such Additional Services IP shall be Buyer Owned Property for the purposes of this Article 8 but subject to mutually agreed license provisions which provide for a license which is broader than the license provisions of Section 8.2;

(d) the PSMFB Service Provider shall be the sole and exclusive owner of such Additional Services IP, and such Additional Services IP shall be PSMFB Service Provider Owned Property for the purposes of this Article 8, but subject to certain mutually agreed upon use limitations, such as an agreement that the license granted to Buyer and Buyer's Related Parties with respect to such Additional Services IP will be exclusive for a mutually agreed period of time and/or that the PSMFB Service Provider will not, for a mutually agreed period of time, use the Additional Services IP for the benefit of any competitor of Buyer or any Buyer's Related Parties (each, a "Buyer Competitor") or allow a Buyer Competitor to use the Additional Services IP; and/or

(e) the Additional Services IP is subject to other mutually agreed ownership, license and/or payment provisions or use limitations.

In the event the agreement of the Parties is silent with respect to the ownership of the Additional Services IP, such ownership shall be allocated in accordance with the terms set forth in this Article 8.

**8.10 Specific IP Ownership.** For the avoidance of doubt, the PSM EDM is Buyer Owned Property. Any data links or IT Systems from and to the PSM EDM that PSMFB



Services Provider establishes are PSMFB Service Provider Property. All IT Systems and Intellectual Property Rights developed, purchased or licensed by Service Provider are PSFMB Service Provider Owned Property.

## **ARTICLE 9 - DESIGNATION OF REPRESENTATIVES**

### **9.1 Buyer's Representatives:**

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

### **9.2 PSMFB Service Provider's Representatives:**

Not later than thirty (30) days after the execution and delivery of this Agreement, PSMFB Service Provider shall select representatives who shall be authorized by PSMFB Service Provider who shall be listed in the Administrative Protocols and Procedures to act and who shall act for and on behalf of PSMFB Service Provider concerning all matters to the extent authorized (the "PSMFB Service Provider's Representatives"). In all such matters, PSMFB Service Provider shall be bound by the communications, directions, requests and decisions made by the PSMFB Service Provider's Representatives acting within the scope of their authority. PSMFB Service Provider shall promptly notify Buyer's Representatives in writing of PSMFB Service Provider's Representatives selection and any subsequent

replacement(s) and of the telephone numbers or other means by which such persons and their designees may be contacted at all times. The PSMFB Service Provider's Representatives shall have appropriate experience with respect to the supervision and management of services of the type contemplated by this Agreement and shall be responsible for the day-to-day supervision of the PSMFB Service Provider's performance of this Agreement as set forth in more detail in the Administrative Protocols and Procedures. Recognizing the need for an amicable working relationship between the Buyer and the PSMFB Service Provider, the Buyer shall have the right to approve the appointment of the PSMFB Service Provider Representatives and any successors thereto, such approval not to be unreasonably withheld. The PSMFB Service Provider's Representatives or pre-approved designees shall attend Monthly meetings with the Buyer, following Buyer's receipt and review of the Monthly reports delivered pursuant to Appendix II hereof, to discuss such matters as the Buyer deems appropriate.

## **ARTICLE 10 - PSMFB SERVICE PROVIDER SECURITY**

### **10.1 Base Term and Extended Term Security Amount:**

As security for the PSMFB Service Provider to meet (a) its PSMFB Transition Date Liquidated Damages payment obligations as set forth in Section 4.5(a)(i), (b) its other payment obligations, including its obligations to pay the Annual Penalty, if any, associated with any Contract Year, during the Base Term, and Extended Term, if applicable, and (c) its obligations in an Event of Default under Article 13, the PSMFB Service Provider shall post PSMFB Service Provider Security commencing thirty (30) days prior to the Target PSMFB Services Start Date and maintain same throughout the Base Term, and Extended Term, if applicable, in the amount of \$2,000,000. PSMFB Service Provider shall have the right to replace such PSMFB Service Provider Security with a renewed or substitute PSMFB Service Provider Security conforming to the requirements of this Agreement in the required amount subject to the PSMFB Service Provider providing ten (10) Days prior notification to Buyer describing such replacement and confirming that Buyer is satisfied that such replacement conforms to the requirements of this Agreement. For the avoidance of doubt and the purpose of clarity, the aforesaid ten (10) Day notice is not required when PSMFB Service Provider is amending the Guaranty to extend the expiration date of the Guaranty.

### **10.2 Replenishment and Reinstatement:**

Within ten (10) Days after a draw by Buyer on any PSMFB Service Provider Security, PSMFB Service Provider shall cause the PSMFB Service Provider Security to be replenished or reinstated to the applicable amount as set forth above; provided, however, that the obligation to reinstate the PSMFB Service Provider Security described in Section 10.1 shall

terminate upon the termination or expiration of this Agreement. Buyer shall return such PSMFB Service Provider Security to PSMFB Service Provider within ten (10) Business Days of the termination or expiration of this Agreement; provided, however, that, in the event an assessment of performance for the then current Contract Year under Section 4.8 and Appendix V hereof, if applicable, has not been completed as of the date of termination or expiration of this Agreement, then Buyer shall not return such PSMFB Service Provider Security to PSMFB Service Provider until within three (3) Days of (i) the completion of the assessment, if no Annual Penalty is required by PSMFB Service Provider as a result of such assessment, or, (ii) payment of such Annual Penalty by PSMFB Service Provider to Buyer (if an Annual Penalty payment is due as a result of the assessment); provided, further, however, that the outstanding assessment of performance shall be completed by Buyer in a time frame consistent with the average length of time for similar annual performance assessments over the prior three (3) Contract Years.

## **ARTICLE 11 – FORCE MAJEURE**

### **11.1 Definition:**

The term “Force Majeure Event” means an event that was not within the control of the Party claiming its occurrence, including without limitation, acts of God and public enemies, war, terrorism, civil disobedience, floods, fires, strikes, explosions or other catastrophes, failure of utilities, sabotage, failure of communication facilities, including, but not limited to Party internet service provider facilities and could not have been prevented, avoided, or minimized by such Party through the exercise of due diligence, which includes the development of reasonable contingency plans consistent with Prudent Utility Practices. The Parties agree that the Business Continuity Plan described in Appendix VII of this Agreement, which shall be set forth in the Administrative Protocols and Procedures, once developed and implemented (and provided it is maintained and implemented consistent with Prudent Utility Practices), shall be deemed a reasonable contingency plan.

For the avoidance of doubt and the purpose of clarity, the PSMFB Service Provider’s performance hereunder shall be excused by a Force Majeure Event if the PSMFB Service Provider has (1) implemented the Business Continuity Plan, but such implementation has not been successful with respect to a Force Majeure Event despite its exercise of Prudent Utility Practices, or (2) not implemented the Business Continuity Plan at the time of such Force Majeure Event, in whole or in part, because of (i) the applicability of Section 2.4, (ii) Buyer’s, CEE PSMFB Service Provider’s or Servco’s failure to provide Buyer Related Data, which is reasonably necessary for PSMFB Services Provider to implement the Business Continuity Plan or (iii) a separate Force Majeure Event.

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

### **11.2 Force Majeure Event.**

If due to a Force Majeure Event either Party is wholly or partially unable to perform its obligations under this Agreement so long as such Party is in compliance with this Article 11, such Party (i) shall be excused from performance solely for the duration of, and solely to the extent that, such Force Majeure Event prevents such Party from performing its obligations under this Agreement, and (ii) shall not be in default in respect of any obligation hereunder.

### **11.3 Due Diligence.**

A Party claiming a Force Majeure Event ("Claiming Party") shall: (i) provide prompt notice of such Force Majeure Event to the other Party ("Non-Claiming Party"); (ii) within two (2) Business Days after providing the prompt notice, provide to the Non-Claiming Party a detailed written explanation of the event and an estimate of its expected duration and probable effect on the performance of the Claiming Party's obligations hereunder; (iii) use Commercially Reasonable Efforts in accordance with Prudent Utility Practices and the Business Continuity Plan to continue to perform its obligations under this Agreement and to remedy the condition that prevents performance and mitigate the effects of same; and (iv) keep the Non-Claiming Party informed in writing of all efforts to mitigate and remedy the Force Majeure

Event, including periodic updates to the duration estimate and, if applicable, notice of the Force Majeure Event's cure.

#### **11.4 Suspension of Performance.**

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

#### **11.5 Extended Force Majeure Events.**

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

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

#### **11.6 Right to Terminate.**

The Non-Claiming Party may at any time terminate this Agreement upon thirty (30) Days prior written notice if the Claiming Party: (a) fails to provide a Force Majeure Remedy Plan as provided for in this Article 11; (b) fails to commence implementation of, and diligently



pursue, the Force Majeure Remedy Plan; provided, however, that the Claiming Party shall have five (5) Days from receipt of Non-Claiming Party's notice to cure its failure to commence and diligently pursue its Force Majeure Remedy Plan (unless a cure of such failure is not reasonably capable of being effected within five (5) Days, in which case the Claiming Party shall have an additional five (5) Days in which to commence such cure provided that the Claiming Party is thereafter diligently pursuing efforts to perform such cure); or (iii) fails to remedy the effects of the Force Majeure Event within thirty (30) Days following the date on which the Force Majeure Remedy Plan was required to be submitted.

## **ARTICLE 12 INSURANCE**

### **12.1 Insurance Required:**

The PSMFB Service Provider shall, at its sole cost and expense, procure and maintain in full force and effect the types and amounts of insurance coverage described in this Article 12 and Appendix VII for the full term of this Agreement. Such insurance shall be in place with responsible and reputable insurance companies that comply with applicable laws and have an A.M. Best rating of at least “A-”. The PSMFB Service Provider shall give Buyer prompt notice of any material change to any such insurance coverages, but in no event later than ten (10) days after it learns of such material change.

### **12.2 Certificates of Insurance:**

Within five (5) days of the PSMFB Effective Date, the PSMFB Service Provider shall provide Buyer with certificate(s) of insurance evidencing the required coverage as set forth in this Article 12. Such certificate(s) shall provide for a minimum of thirty (30) days advance notice to Buyer of cancellation, but ten (10) days advance notice to Buyer in the event of cancellation for non-payment of premium. Failure by the PSMFB Service Provider to obtain the insurance coverage or certificates of insurance required by this Article 12 shall not relieve the PSMFB Service Provider of the insurance requirements set forth herein or in any way relieve or limit PSMFB Service Provider’s obligations and liabilities under any other provision of this Agreement. A form of the certificate of insurance is set forth in Appendix VII.

### **12.3 Summary of Insurance Policies, Limits and Requirements:**

Throughout the Base Term, and Extended Term, if applicable, the PSMFB Service Provider shall, at its own cost, maintain the following insurance:

(a)     **Workers' Compensation and Employer's Liability:** Workers' Compensation, including coverage for occupational disease, covering all employees in compliance with all applicable state and federal laws, and Employer's Liability not less than \$10,000,000 each accident/\$10,000,000 disease-policy limit/\$10,000,000 disease-each employee.

(b)     **Automobile Liability:** Automobile Liability covering all owned, non-owned and hired vehicles with a Combined Single Limit for Bodily Injury and Property Damage not less than \$10,000,000 each accident or occurrence and in the aggregate for each policy year.

(c)     **Third Party Liability:** Commercial General Liability including operations of independent contractors and contractual liability coverages with a Combined Single Limit for Bodily Injury, Personal Injury and Property Damage not less than \$10,000,000 each occurrence and in the aggregate for each policy year.

(d)     **Umbrella or Excess Liability:** The limits of insurance specified in Sections 12.3.1.1 through 12.3.1.3 may be satisfied: (i) by the purchase of the specified limits in the separate policies, or (ii) with the purchase of Umbrella or Excess Liability insurance which, in combination with the limits of the separate policies, provides the total limit required by each type of insurance.

(e)     In addition to the insurance coverages required to be procured and maintained by PSMFB Service Provider under this Article 12, Buyer may also require PSMFB Service Provider to procure and maintain other forms and/or types of insurance, which PSMFB Service Provider agrees to procure and maintain, as long as the insurance

is available at commercially reasonable terms and conditions; provided that Buyer shall pay the insurance premium for such other insurance as it requires PSMFB Service Provider to procure and maintain.

#### **12.4 General Provisions:**

(a) Additional Insured: With the exception of PSMFB Service Provider's Workers' Compensation and Employer's Liability insurance policies, Buyer shall be included as an additional insured on all other insurance policies required hereunder for occurrences arising out of, or in connection with, this Agreement. With respect to PSMFB Service Provider's Worker's Compensation and Employer's Liability insurance policies, Buyer shall be named an Alternate Employer. With respect to the Alternate Employer Endorsement, PSMFB Service Provider agrees to obtain such Alternate Employer endorsement only for so long as (i) such endorsement is available from PSMFB Service Provider's insurers and (ii) PSMFB Service Provider can procure such endorsement at a reasonable premium, as reasonably determined by PSMFB Service Provider. In the event, that PSMFB Service Provider is unable to procure the Alternate Employer endorsement at a reasonable premium as reasonably determined by PSMFB Service Provider, PSMFB Service Provider shall notify Buyer and, if Buyer so agrees, shall procure the Alternate Employer endorsement, provided Buyer agrees to pay the actual and verifiable amount of the premium that is in excess of the reasonable premium as reasonably determined by the PSMFB Service Provider for such Alternate Employer endorsement for so long as Buyer requires PSMFB Service Provider to maintain such endorsement.

(b) PSMFB Service Provider shall procure all insurance, that is required to be procured and maintained hereunder, in the name of PSMFB Service Provider and shall not be required to procure and/or maintain any insurance in the name of Buyer, except for PSMFB Service Provider's obligations hereunder to include Buyer as an Additional Insured or as an Alternate Employer, as applicable.

(c) Waiver of Subrogation: Buyer shall be granted waivers of subrogation by PSMFB Service Provider's insurers providing coverage as required by this Section.

(d) Severability of Insureds: Except with respect to applicable limits of insurance, all insurance policies required in this Article 12, except for the Workers Compensation and Employer's Liability policy, shall provide that the coverage afforded under each such policy shall apply separately to each insured, including any additional insured who is seeking coverage or against whom a claim is brought.

(e) Deductibles: Any and all deductible amounts due under insurance policies provided by the PSMFB Service Provider pursuant to this Article 12 shall be assumed by, for the account of, and at the sole expense of the PSMFB Service Provider.

(f) Claims Made: When coverage(s) are written on a "claims made" or "first made" form, the "claims made" coverage must be maintained for three (3) years after the expiration or earlier termination of this Agreement.

#### **12.5 PSMFB Service Provider Disclosure and Cooperation.**

Where PSMFB Service Provider is (i) providing insurance coverage, which includes Buyer as an additional insured or, (ii) procuring insurance at request of Buyer, which insurance policies shall be procured and maintained by PSMFB Service Provider's sole cost and

expense, PSMFB Service Provider shall make complete and timely disclosure of all information related to such insurance coverage as Buyer may reasonably request, including an exact copy of the applicable insurance policy wording. Where PSMFB Service Provider is securing coverage at the expense of Buyer, PSMFB Service Provider shall make complete and timely disclosure of all information related to such insurance coverage as Buyer may request and shall provide full cooperation in securing such coverages as Buyer may request. Such disclosure and cooperation shall include, without limitation, an exact copy of the applicable insurance policy wording, premium calculation and/or other fees or expenses which may be incurred in conjunction with the procurement of said insurance.

## ARTICLE 13 - DEFAULT AND REMEDIES

### 13.1 Default by PSMFB Service Provider:

The occurrence of one or more of the following events shall constitute an Event of Default by PSMFB Service Provider unless it results from a breach of this Agreement by Buyer. a PSMFB Effective Date Delay or is otherwise excused pursuant to the terms of this Agreement:

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

(b) Any representation or warranty made by PSMFB Service Provider herein or in any certificate delivered to Buyer pursuant hereto which proves to be incorrect in any material respect when made and such error has a material and adverse effect on the ability of PSMFB Service Provider or Buyer to perform its respective material obligations under this Agreement, unless PSMFB Service Provider is able to promptly commence and diligently pursue action to cause the facts or circumstances which are the subject of such representation or warranty to become true in all material respects and does so within ten (10) Days after written notice thereof has been given

to PSMFB Service Provider by Buyer and provided that such actions remove any material adverse effect on Buyer as a result of such representation or warranty having been incorrect, unless such action is reasonably not capable of being undertaken or completed within such ten (10) Day period, in which case, PSMFB Service Provider shall have an additional ten (10) Day period in which to take and complete such action.

(c) PSMFB Service Provider fails to pay any amount payable by PSMFB Service Provider to Buyer (other than amounts in dispute that are not expressly required by this Agreement to be paid, and other than amounts for which draw-downs are made under PSMFB Service Provider Security; provided however, that such security is renewed or replaced in accordance with Section 13.1(f) below) pursuant to this Agreement after the same shall have become due and payable and such failure continues for a period of thirty (30) Days after receipt of written demand therefore from Buyer.

(d) A court having jurisdiction enters:

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

(ii) a decree or order adjudicating PSMFB Service Provider bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of, or in respect of, PSMFB Service Provider under any applicable Federal or state law, or appointing a custodian,



receiver, liquidator, trustee, sequestrator or other similar official for PSMFB Service Provider.

(e) PSMFB Service Provider:

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

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

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

(iv) consents to the filing of any petition or to the appointment of, or taking possession by, a custodian, receiver, liquidator, trustee, sequestrator or similar official for PSMFB Service Provider;

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

(vi) admits in writing its general inability to pay its debts as they become due.

(f) The failure of PSMFB Service Provider to provide, renew, maintain, extend or replace the PSMFB Service Provider Security pursuant to Article 10 at least

thirty (30) Days prior to the expiration of such security, and such failure is not cured within thirty (30) Days after written notice thereof has been given to PSMFB Service Provider.

### **13.2 Default by Buyer:**

The occurrence of any of the following events shall constitute an Event of Default by Buyer unless it results from a breach of this Agreement by PSMFB Service Provider or is otherwise excused.

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

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

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

(d) A court having jurisdiction enters:

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

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

(e) Buyer:

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

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

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

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

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

(vi) admits in writing its general inability to pay its debts as they become due.

### **13.3 Notice of an Event of Default:**

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

### **13.4 Dispute of Claim of Event of Default:**

If, within three (3) Days of the service of a Notice of Default pursuant to Section 13.3, (provided that the Event of Default is not pursuant to Sections 13.1(c), 13.1(d), 13.1(e) or 13.2(a), 13.2 (d) and 13.2(e)), the Party alleged to be in default provides written notice to the other Party of a dispute as to whether an Event of Default has occurred, either Party may seek resolution of such dispute pursuant to the terms of Article 15, and this Agreement shall not be terminated with respect to the event for which such Notice of Default was given prior to conclusion of the procedures set forth in Article 15.

### **13.5 Remedies:**

(a) If an Event of Default has occurred, which is not cured as provided herein, then the non-defaulting Party may take, at its discretion, any or all of the following actions (unless a specific, other remedy is expressly provided in this Agreement as the sole and exclusive remedy for the breach of a particular obligation):

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

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

(b) Buyer shall also be entitled to draw upon any PSMFB Service Provider Security established pursuant to Article 10 to satisfy in whole or in part any PSMFB Service Provider obligations under this Agreement, provided that Buyer is not the defaulting Party, and, provided further that such draw down of such security shall not relieve the PSMFB Service Provider of its liability for amounts due and owing or for damages in excess of such PSMFB Service Provider Security.

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

### **13.6 Procedure for Termination For Cause:**

Twenty (20) Day Notice: If any Party shall have a right to terminate in accordance with this Article 13 (after allowing for any applicable cure periods) the same may be exercised by written notice of termination given to the Party in default at least twenty (20) Days prior to (or, in the case of a bankruptcy or insolvency default simultaneously with) the Termination Date provided, however, that if Back-End Transition Services, Modified Back-End Transition Services or Buyer Data Transfer shall be required, said notice shall specify a proposed Termination Date in accordance with the applicable provision of Section 2.4 and shall indicate the service required.

### **13.7 No Consequential Damages:**

Notwithstanding any other provision of this Agreement, neither Buyer, Buyer's Related Parties, PSMFB Service Provider, PSMFB Service Provider's Related Parties nor their respective successors and assigns shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with, the performance or non-performance of this Agreement or any of the obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise.

### **13.8 Damages:**

To the extent any damages required to be paid under this Agreement are liquidated, the Parties agree that the damages are difficult or impossible to determine, otherwise obtaining an adequate remedy is inconvenient and the PSMFB Transition Date Liquidated Damages set forth in this Agreement constitute a reasonable approximation of the harm or loss. For breach of any provision for which PSMFB Transition Date Liquidated Damages are provided, subject to Buyer's termination rights in Section 2.3 and suspension of performance rights in Section 13.9, such PSMFB Transition Date Liquidated Damages are the sole and exclusive remedy and PSMFB Service Provider's liability will be limited as set forth herein.

### **13.9 Suspension of Performance:**

In addition to the remedies set forth above and, notwithstanding other provisions herein, whenever any Event of Default shall have occurred and is continuing, the non-defaulting Party, to the extent permitted by law and to the extent of such default, shall be entitled to suspend immediately its performance under this Agreement until such Event of Default is cured; provided, however, that PSMFB Service Provider's right to suspend performance shall only

apply to (a) Buyer's default pursuant to Section 13.2(a), 13.2(d), and/or 13.2(e) herein, (b) Buyer's failure to pay for any services during the Interim Period and/or (c) Buyer's failure to comply with the requirements of Section 13.12, if applicable.

### 13.10 Limitations of Liability, Remedies, and Damages:

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[REDACTED]

**13.11 Termination Rights:**

For the avoidance of doubt and the purpose of clarity, nothing in this Article 13 shall in any manner limit or modify Buyer’s rights of termination for convenience set forth in Sections 2.3(c) and 2.3(d).

**13.12 Buyer Default and Security**

In the event of Early Termination due to a Buyer default pursuant to Section 13.2(a) or 13.2(e), the Parties agree that if Buyer requires Back-End Transition Services, Modified Back End Transition Services, Buyer Data Transfer Services, or the continuation of PSMFB Services and/or Additional Services during the Interim Period, PSMFB Service Provider shall not be obligated to provide such services until Buyer provides PSMFB Service Provider

with cash collateral (“Cash”) or a Letter of Credit in a form reasonably acceptable to PSMFB Service Provider, provided that such Letter of Credit must comply with the requirements set forth in Appendix XII. The amount of such Letter of Credit or Cash shall equal the sum of (i) PSMFB Service Provider’s reasonable estimate of the costs of providing the Back-End Transition Services, Modified Back-End Transition Services, Buyer Data Transfer Services, as Buyer requests in accordance with Section 2.4, (ii) the amount of any monies currently due, if any, to the PSMFB Services Provider in accordance with Article 5, plus (iii) if Buyer also requires PSMFB Services and/or Additional Services during the Interim Period, the applicable Total Annual Fee and Additional Services Fee, if applicable, in accordance with Appendix IV for the period of time during which such PSMFB Services are required. In the event that Buyer posts a Letter of Credit and Buyer fails to maintain such Letter of Credit in accordance with Appendix XII, or if there is a Letter of Credit Default as set forth in Appendix XII, PSMFB Service Provider may without the Buyer’s consent advance the Termination Date by providing Buyer at least three (3) Days prior written notice of the new Termination Date.

## **ARTICLE 14 - ASSIGNMENT**

### **14.1 PSMFB Service Provider's Right to Assign:**

In accordance with Section 138 of the State Finance Law, this Agreement may not be assigned by PSMFB Service Provider or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of Buyer which consent shall not be unreasonably withheld or delayed, and any attempts to assign this Agreement without Buyer's written consent are null and void. PSMFB Service Provider may, however, assign its right to receive payment without Buyer's prior written consent unless this Agreement concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law. PSMFB Service Provider may, however, also assign this Agreement and its rights and obligations hereunder without the consent of Buyer to its Affiliate; provided that (i) such Affiliate's secured or unsecured debt is rated at least investment grade by Moody's and Standard and Poor's, (ii) such Affiliate agrees in writing to be bound by and assume the obligations under this Agreement and (iii) the Affiliate has a level of experience of performing PSMFB Services that is comparable to that of PSMFB Service Provider.

### **14.2 Buyer's Right to Assign:**

This Agreement may not be assigned by Buyer or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the PSMFB Service Provider which consent shall not be unreasonably withheld or delayed, and any attempts to assign this Agreement without the PSMFB Service Provider's written consent are null and void. Buyer may, however, assign this Agreement and its rights and obligations hereunder without the consent of PSMFB Service Provider to an Affiliate; provided that (i) such Affiliate's secured or unsecured debt is rated at least investment grade by Moody's

and Standard and Poor's, and (ii) such third party agrees in writing to be bound by and assume the obligations under this Agreement.

## **ARTICLE 15 - DISPUTE RESOLUTION**

### **15.1 Notice:**

Subject to Section 13.4, either Party (“Aggrieved Party”) shall have the right to give written notice to the other Party (“Noticed Party”) that the Noticed Party is not performing in accordance with the terms and conditions of this Agreement or that a determination or matter under this Agreement is in dispute. Such notice shall describe with specificity the basis for the Aggrieved Party’s belief and may describe the recommended options to correct the failure or to address the dispute or concern.

### **15.2 Response:**

If the Noticed Party agrees with the Aggrieved Party’s concern, the Noticed Party shall take appropriate action to correct the failure or to satisfactorily address the dispute or concern. In such circumstance, the Noticed Party shall respond to the Aggrieved Party’s written notice within three (3) Days of receipt thereof describing the action taken in response to the notice and shall bear all costs incurred by both Parties associated with the corrective action.

### **15.3 Resolution of Dispute:**

If the Noticed Party disagrees with the Aggrieved Party’s concern, each Party shall designate a member or members of senior management to discuss the matter and attempt to resolve the dispute. The representatives of the Parties shall meet in a location mutually agreed upon by the Parties within five (5) Days of the Aggrieved Party’s notice to the Noticed Party of the Aggrieved Party’s concern. The Parties agree to use their Commercially Reasonable Efforts to settle promptly any disputes or claims between them arising out of, or related to, this

Agreement through their respective representatives and shall negotiate in good faith to resolve the dispute. All negotiations and discussions pursuant to this Section shall be confidential, subject to applicable law, and shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and applicable state rules of evidence. If, after at least an initial good faith discussion by senior management, either Party believes in good faith that continued discussions will not result in a resolution of the dispute, then such Party may pursue its rights and remedies at law. The Parties may also mutually agree to use alternative forms of dispute resolution including mediation or arbitration in lieu of, or prior to, pursuing their respective rights and remedies at law. The Aggrieved Party may exercise any right of termination that it has pursuant to this Agreement, if any, by giving reasonable Notice to the other Party whether or not the Noticed Party is pursuing its rights and remedies at law; provided that, should the Noticed Party prevail in any litigation, its relief shall be subject to the limitations set forth in this Agreement.

#### **15.4 Tolling Statute of Limitations:**

All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the discussions specified in this Article 15 are pending. The parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article 15, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Notwithstanding such action, the Parties will continue to participate in good faith in the procedures specified in this Article 15.

## **ARTICLE 16 - REPRESENTATIONS, WARRANTIES AND INDEMNITIES**

### **16.1 PSMFB Service Provider's Representation and Warranties:**

PSMFB Service Provider represents and warrants to Buyer that as of the date of execution of this Agreement:

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

(b) PSMFB Service Provider represents and warrants that it is capable of suing and being sued in the State of New York, and that it will assert no legal defense(s) to the assertion of jurisdiction in the courts of the United States of America for the Eastern District of New York having subject matter jurisdiction, but in the event that such courts refuse to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement, then the Parties shall submit to the exclusive jurisdiction of the New York state courts located in the Borough of Manhattan in New York City, New York;

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

(d) The execution, delivery and performance of this Agreement by PSMFB Service Provider will not conflict with its governing documents, any Legal Requirements,

or any covenant, agreement, understanding, decree or order to which PSMFB Service Provider is a party or by which it is bound or affected;

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

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

(g) PSMFB Service Provider represents and warrants that it is in compliance in all material respects to the extent compliance is required as of such date, with all Legal Requirements, judicial and administrative orders, rules and regulations, and permits:



(i) which govern PSMFB Service Provider's ability to perform its obligations under this Agreement, or

(ii) the noncompliance with which would have a material adverse effect on PSMFB Service Provider's ability to perform its obligations under this Agreement.

## **16.2 Buyer's Representation and Warranties:**

Buyer represents and warrants to PSMFB Service Provider that as of the date of execution of this Agreement:

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

(b) Buyer represents and warrants that it is capable of suing and being sued in the State of New York, and that it will assert no legal defense(s) to the assertion of

jurisdiction in the courts of the United States of America for the Eastern District of New York having subject matter jurisdiction, but in the event that such courts refuse to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement, then the Parties shall submit to the exclusive jurisdiction of the New York state courts located in the Borough of Manhattan in New York City, New York;

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

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

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

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

(g) Buyer represents and warrants that it is in compliance in all material respects to the extent compliance is required as of such date, with all Legal Requirements, judicial and administrative orders, rules and regulations, and permits:

(i) which govern Buyer's ability to perform its obligations under this Agreement, or

(ii) the non-compliance with which would have a material adverse effect on Buyer's ability to perform its obligations under this Agreement.

## **ARTICLE 17 - MISCELLANEOUS PROVISIONS**

### **17.1 Next Business Day:**

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

### **17.2 Amendments:**

This Agreement may be amended only by a written instrument duly executed by authorized representatives of Buyer and PSMFB Service Provider.

### **17.3 Binding Effect:**

This Agreement and any extension there of shall inure to the benefit of, and shall be binding upon the Parties and their respective successors and permitted assigns.

### **17.4 Counterparts:**

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

### **17.5 Notices:**

Unless otherwise specified, where notice is required by this Agreement, such notice shall be in writing and shall be deemed given:

- (a) upon receipt, when mailed by United States registered or certified mail, postage prepaid, return receipt requested;

(b) upon the next Business Day, when sent by overnight delivery, postage prepaid using a recognized courier service; or

(c) upon receipt, when sent by facsimile transmission, provided receipt of such facsimile transmission is confirmed before 5:00 P.M. EPT and written confirmation of such notice is sent on the same Day in accordance with either Subsection (i) or (ii) above. In all instances, notice to the respective Parties should be directed as follows:

To PSMFB Service Provider:      Shahid Malik  
President  
PSEG Energy Resources & Trade LLC  
80 Park Plaza, T-19  
Newark, New Jersey 07102  
Telephone:      (973) 430-7835  
Fax:              (973) 643-8385

With a copy to:                      Vice President – Commercial Law  
PSEG Energy Resources & Trade LLC  
80 Park Plaza, T-19  
Newark, New Jersey 07102  
Telephone:      (973) 430-7698  
Fax:              (973) 643-8385

To Buyer:                              Vice President, Power Markets  
Long Island Power Authority  
333 Earle Ovington Boulevard, Suite 403  
Uniondale, New York 11553  
Telephone: 516-222-7700  
Fax: 516-222-9137

with a copy to:                      Lynda Nicolino  
General Counsel  
Long Island Power Authority  
333 Earle Ovington Boulevard, Suite 403  
Uniondale, New York 11553  
Telephone: 516-222-7700  
Fax: 516-222-9137

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

**17.6 Entire Agreement:**

This Agreement (including the attached Appendices) constitutes the entire understanding between the Parties and supersedes any previous agreements between the Parties with respect to PSMFB Services.

**17.7 Governing Law and Jurisdiction:**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, except where the Federal supremacy clause requires otherwise, without regard to principles of conflicts of law. Actions arising from this Agreement shall be subject to the exclusive jurisdiction of the courts of the United States of America for the Eastern District of New York having subject matter jurisdiction, but in the event that such courts refuse to exercise jurisdiction or venue over the Parties or any claims made pursuant to this Agreement, then the Parties shall submit to the exclusive jurisdiction of the New York state courts located in the Borough of Manhattan in New York City, New York.

**17.8 Service of Process:**

In addition to the methods of service allowed by the New York Civil Practice Law & Rules (“CPLR”), each Party hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Party’s actual receipt of process or upon the serving Party’s receipt of the return thereof by the United States Postal Service as refused. Each Party must promptly notify the other Party, in writing, of each and every change of address to which service of process can be made. Service to the last known address provided pursuant to Section 17.5 shall be sufficient.

#### **17.9 Waiver:**

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

#### **17.10 Headings:**

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

#### **17.11 Third Parties:**

Except for the license grants, indemnification obligations, and otherwise specified in this Agreement, this Agreement is intended solely for the benefit of the Parties herein. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party to this Agreement.

#### **17.12 Relationship of the Parties:**

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party, except as provided for herein.

#### **17.13 Severability:**

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

**17.14 Negotiated Agreement:**

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

**17.15 Indemnification:**

Except as otherwise provided herein, each Party (the “Indemnifying Party”) shall indemnify and hold harmless the other Party (the “Indemnified Party”) and its Affiliates and each of their trustees, shareholders, owners, managers, directors, officers, partners, members, agents and employees, from and against any and all claims, liability, costs or expenses for loss, damage, or injury, including damage and liability for bodily injury to or death of third Persons or damage to property of third Persons (collectively, "Loss"), to the extent arising out of, in connection with, or resulting from, the Indemnifying Party's breach of this Agreement, including any of the representations or warranties made in this Agreement, or the Indemnifying Party's negligent action, which it takes or fails to take related to this Agreement, which is inconsistent with its obligations under this Agreement; ; provided, however, that neither Party shall have any indemnification obligations hereunder in respect of any Loss to the extent caused by the other Party's negligence or willful misconduct. Each Party hereto shall furnish the other Party with



notice promptly (but in no event later than ten (10) Days prior to the time any response is required by law) of any event or circumstances, or the threat thereof, which might give rise to such indemnification. Such notice shall be given as soon as reasonably practicable after the Party obligated to give such notice becomes aware of such claim or proceeding and shall include a complete copy of all notices, pleadings and other papers related thereto. Failure to give such notice shall not excuse an indemnification obligation. PSMFB Service Provider shall not, however, be required to reimburse, defend, or indemnify any LIPA Indemnified Party for any Loss to the extent such Loss is due to (a) PSMFB Service Provider being directed by LIPA to take or refrain from taking any action which is contrary to PSMFB Service Provider's advice; (b) any act or omission of any LIPA Indemnified Party determined to be responsible for or contributing to the Loss; or (c) any customer claim brought by a retail or wholesale electric customer of LIPA that is not directly related to a breach by PSMFB Service Provider of its obligations under this Agreement ; or (d) LIPA's failure to make payments to third Persons required by this Agreement.

#### **17.16 Provisions Required by Law.**

(a) Intentionally Omitted.

(b) **Worker's Compensation Benefits:** In accordance with Section 142 of the State Finance Law, this Agreement shall be void and of no force and effect unless PSMFB Service Provider provides and maintains coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

(c) **Non-Discrimination Requirements:** In accordance with Article 14 of the Executive Law (also known as the Human Rights Law) and all other New York State and Federal statutory and constitutional non-discrimination provisions, PSMFB Service Provider shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, marital status, sexual orientation, genetic predisposition, or carrier status. Furthermore, in accordance with Article 220-e of the New York Labor Law, and to the extent that this Agreement shall be performed within the State of New York, PSMFB Service Provider agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, national origin, sexual orientation, genetic predisposition or carrier status;

(i) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or

(ii) discriminate against or intimidate any employee for the performance of work under this Agreement.

(d) **Records:** The PSMFB Service Provider shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Agreement (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. Buyer shall take reasonable steps to protect from public disclosure any of the Records which are exempt from the disclosure under Article 87 of the Public Officers Law (the "Statute") provided that:

(i) PSMFB Service Provider shall timely inform Buyer, in writing, that said Record should not be disclosed;

(ii) said Record shall be sufficiently identified; and

(iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, either Party's right to discovery in any pending or future litigation.

(e) **Equal Employment for Minorities and Women:** In accordance with Article 312 of the New York Executive Law:

(i) PSMFB Service Provider shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability marital status, sexual orientation, genetic predisposition or carrier status and shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(ii) at the request of Buyer, PSMFB Service Provider shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic

predisposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of the PSMFB Service Provider's obligations herein; and

(iii) PSEG is an equal opportunity employer. PSMFB Service Provider shall include the provisions of (i), (ii) and (iii) above, in every subcontract over twenty-five thousand dollars (\$25,000.00) for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of PSMFB Service Provider.

(f) **MacBride Fair Employment Principles:** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the New York Laws of 1992), PSMFB Service Provider hereby stipulates that PSMFB Service Provider either:

(i) has no business operations in Northern Ireland; or

(ii) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Article 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

(g) **Omnibus Procurement Act of 1992:** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from: NYS Department of Economic

Development Division for Small Business One Commerce Plaza, Albany, New York 12245.

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

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

(h) Requirements of Omnibus Procurement Act: The Omnibus Procurement Act of 1992 requires that by signing this Agreement, PSMFB Service Provider certifies that:

(i) PSMFB Service Provider has made Commercially Reasonable Efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and woman-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(ii) PSMFB Service Provider has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; and

(iii) PSMFB Service Provider agrees to make Commercially Reasonable Efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing

collective bargaining contracts or agreements. PSMFB Service Provider agrees to document these efforts and to provide said documentation to Buyer upon request.

(iv) PSMFB Service Provider acknowledges that the State may seek to obtain offset credits from foreign countries as a result of this Agreement and agrees to cooperate with the State in these efforts.

(i) **Prohibition on Purchase of Tropical Hardwoods:** The PSMFB Service Provider certifies and warrants that all wood products to be used under this Agreement award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the PSMFB Service Provider to establish to meet with the approval of the State.

(j) **Purchases of Apparel:** In accordance with State Finance Law 162 (4-a), Buyer shall not purchase any apparel from PSMFB Service Provider if PSMFB Service Provider is unable or unwilling to certify that:

(i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws; and

(ii) the PSMFB Service Provider will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with Buyer), if known,

the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by PSMFB Service Provider.

(iii) **Affirmation of Compliance and Certification of Disclosure:**

PSMFB Service Provider affirms that it understands and agrees to comply with the procedures of the Governmental Entity relative to permissible contacts as required by the State Finance Law § 139-j (3), § 139-j (6)(b) and § 139-k (5).

(k) **Optional Termination by the Buyer:** The Buyer reserves the right to terminate this Agreement in the event it is found that the certification filed by PSMFB Service Provider in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Buyer may exercise its termination right by providing written notification to the PSMFB Service Provider in accordance with the written notification terms of this Agreement.

(l) **Late Payment:** Timeliness of payment and any interest to be paid to the PSMFB Service Provider for late payment shall be governed by Section 2880 of the Public Authorities Law and the guidelines adopted by the Buyer thereto and the provisions of this Agreement and where such provisions are in conflict, the terms of this Agreement shall govern.

(m) **Reciprocity and Sanctions Provisions:** PSMFB Service Provider is hereby notified that if its principal place of business is located in a state that penalizes New York State vendors, and if the goods or services it offers are substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 amendments

(Chapter 684, Laws of 1994) require that the PSMFB Service Provider be denied contracts which it would otherwise obtain.

(n) Minority and Women-Owned Business Enterprise Procedures: The PSMFB Service Provider shall comply the terms set forth in Appendix XIV - Minority And Women-Owned Business Enterprise Procedures.

**17.17 Local Workers:**

To the extent possible and subject to the collective bargaining agreement of PSMFB Service Provider and/or its affiliates, PSMFB Service Provider shall make a good faith effort given its commercial requirements to hire local workers while performing PSMFB Services and its obligations under the terms of this Agreement.

**17.18 Wage and Hour Provisions:**

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



#### **17.19 International Boycott Prohibition:**

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

#### **17.20 Set-Off Rights:**

Each Party shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, a Party's option to withhold for the purposes of set-off any monies due to the other Party under this Agreement up to any amounts due and owing to the Party initiating set-off with regard to this Agreement, or any other contract with the Party initiating set-off, including any contract for a term commencing prior to the PSMFB Effective Date, plus any amounts due and owing to the Party initiating set-off for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. Each Party shall exercise its set-off rights in accordance with such Party's normal practices including, in cases of set-off pursuant to an audit, the finalization of such audit by such Party or its representatives, as applicable.

#### **17.21 Non-Collusive Bidding Requirement:**

In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, PSMFB Service Provider warrants, under penalty of perjury, that its bid was arrived at independently and without collusion, consultation, communication, or agreement aimed at restricting competition. PSMFB Service Provider further warrants that, at the time PSMFB Service Provider submitted its bid, an authorized and responsible person executed and delivered to the Buyer a non-collusive bidding certification on PSMFB Service Provider's behalf.

#### **17.22 Contingency Fees:**

PSMFB Service Provider hereby certifies and agrees that:

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

#### **17.23 Survival:**

All obligations with respect to confidentiality and Section 4.8, Article 6, Article 8, Section 13.7, Section 13.10, Section 17.15, Section 17.25, Article 18, and any related Administrative Protocols and Procedures of this Agreement shall survive the expiration or termination of this Agreement.

#### **17.24 Change In Legal Requirements**

In the event that a change in Legal Requirements should prevent the PSMFB Service Provider from performing any of the PSMFB Services (“Legal Restriction”), then such Legal Restriction shall be treated as a Force Majeure Event and the Parties shall comply with the procedures set forth in Section 11. If there is a change in Legal Requirements that has a material adverse effect upon PSMFB Service Provider’s ability to perform the PSMFB Services at the compensation rates as provided herein the PSMFB Service Provider shall have the right on and after the first day of Contract Year six (6) to notify the Buyer of same (“Notice of Change in Legal Requirements”). Thereafter, the Parties shall, in good faith negotiate an equitable adjustment to the Agreement, to address the change in Legal Requirements. If after ninety (90) Days from the date that the Buyer receives a Notice of Change in Legal Requirements, the Buyer and PSMFB Service Provider have not reached agreement on an equitable adjustment to this Agreement, then PSMFB Service Provider, upon written notice to Buyer seek resolve any disputes related to the Notice of Change In Legal Requirements in accordance with Article 15 (“Dispute Resolution”). If such dispute resolution proceeding that is not resolved by mediation pursuant to Section 15.3, then the matter shall be submitted to binding arbitration in accordance with the AAA rules. Such arbitration will be venued in New York. The Arbitrator shall determine (a) if there is a change in Legal Requirements and if so (b) does the change in Legal Requirements have a material adverse effect upon PSMFB Service Provider’s ability to perform the PSMFB Services. If the Arbitrator determines that (a) and (b) in the PSMFB Service Provider’s favor, then the Arbitrator will determine what equitable adjustments should be made to the Agreement. The PSMFB Service Provider shall not be responsible to Buyer for any losses suffered or increased costs incurred by Buyer as a result of any change in Legal Requirements.

### **17.25 Segregation of Duties**

At all times during the Base Term and the Extended Term, if any, the PSMMO Services will be provided independently from the PSMFB Services Provider and as more particularly described in Appendix II and Appendix XIV.

### **17.26 Taxes**

The Parties acknowledge that PSMFB Service Provider shall not have title to any of the commodities purchased or sold by Buyer hereunder and shall not be responsible for any taxes related to Buyer-owned, leased or licensed assets or revenues, or transactions conducted under this Agreement, including any taxes imposed on Buyer's transactions conducted hereunder and any sales taxes and similar taxes imposed on payments made by PSMFB Service Provider on behalf of Buyer.

## **ARTICLE 18 - CONFIDENTIALITY**

### **18.1 Confidential Articles and Sections:**

The Parties agree that the following articles, sections and appendices of the Agreement include rate, cost, financial, and other economic and material terms, the disclosure of which would cause substantial injury to the competitive position of both Buyer and PSMFB Service Provider (and/or their Related Parties) and that such articles, sections and appendices are PSM Confidential Information: Sections 13.10; and Appendices IV, V, VI, XII and XIV.

### **18.2 Claim of Confidentiality:**

(a) The Receiving Party shall hold the PSM Confidential Information of the Disclosing Party in confidence and shall protect the PSM Confidential Information from disclosure to third parties consistent with the definition of PSM Confidential Information and the provisions of this Article and subject to applicable Legal Requirements, provided, however, that a Party may disclose PSM Confidential Information to its Affiliates, Lenders and potential Lenders, and potential and actual equity investors, as well as to trustees, directors, employees, consultants, agents or representatives of such Party, its Affiliates or Lenders (“Representatives”) provided that any such Representatives is (i) obligated by Legal Requirements, professional rules of conduct or a legally binding obligation, to maintain the confidentiality, and restrict the use, of such PSM Confidential Information in a manner at least as restrictive as set forth in the provisions of this Article 18 and the other obligations of limited use and non-disclosure set forth in this Agreement, and (ii) has a need to know such PSM Confidential Information in order to fulfill its obligations to the Receiving Party with respect to (x) the Receiving Party’s exercise of

the rights granted to the Receiving Party to use such PSM Confidential Information, or (y) with respect to the PSMFB Service Provider as the Receiving Party, assisting Receiving Party to perform the PSMFB Services under this Agreement; and, with respect to the Buyer as the Receiving Party, assisting Receiving Party to fulfill its obligations under this Agreement or to use the PSMFB Services. Further, the Parties acknowledge and agree that the Receiving Party will be responsible to the Disclosing Party for all acts and omissions of any Representatives that cause a breach of any of the provisions of this Article 18 and/or any other obligations of limited use and non-disclosure set forth in this Agreement, to the same extent as if such acts or omissions were the acts or omissions of the Receiving Party.

(b) Except with the Disclosing Party's prior written consent, the Receiving Party shall not at any time: (i) use the PSM Confidential Information for any purpose other than to (A) exercise the rights granted to it to with respect to the PSM Confidential Information or (B) with respect to the PSMFB Service Provider as the Receiving Party, perform the PSMFB Services; and, with respect to Buyer as the Receiving Party, to fulfill its obligations under this Agreement or to use the PSMFB Services (subsections (i) (A) and (B) being the "Permitted Purposes") or (ii) publish, disclose or otherwise divulge the PSM Confidential Information to any person or entity, except as set forth in this Agreement.

(c) The Receiving Party shall employ every reasonable procedure available to prevent the unauthorized disclosure or use of the PSM Confidential Information. At a minimum, these procedures will be no less restrictive than procedures currently being

used by Receiving Party to protect its own confidential information and data of similar import. In the event that a Receiving Party shall have knowledge of any breach of the confidentiality of, or the misappropriation of, any PSM Confidential Information of the Disclosing Party, that such Receiving Party shall promptly give notice thereof to the Disclosing Party.

### **18.3 Media Release:**

The Parties agree that no media releases or public announcements shall be made by any Party relating to this Agreement, its subject matter or the PSM Confidential Information unless and until coordinated with and approved in writing by, the other Party, such approval not to be unreasonably withheld or delayed. The Parties agree that, in addition to other remedies pursuant to this Agreement and applicable law, the Parties are entitled to injunctive relief to enforce this Section 18.3 and enjoin any violations or threatened violations of this Section. Notwithstanding the foregoing, Buyer agrees that the PSMFB Service Provider may mention the fact that they provide certain PSMFB Services to Buyer in the context of their private sales meetings with their prospective and actual clients.

### **18.4 Compliance with the Freedom of Information Law:**

PSMFB Service Provider hereby expressly acknowledges that Buyer is subject to the requirements of the New York Freedom of Information Law (“FOIL”) and must comply therewith. If a third party requests that Buyer disclose PSM Confidential Information that Buyer has received from PSMFB Service Provider, Buyer will:

(a) notify PSMFB Service Provider of the request;

(b) provide PSMFB Service Provider the opportunity to provide information regarding the need for confidential treatment;

(c) evaluate the third party's request for disclosure and PSMFB Service Provider's request for confidential treatment; and

(d) determine if the PSM Confidential Information is subject to disclosure under FOIL.

If Buyer determines that the PSM Confidential Information is subject to disclosure, it will provide prompt written notice of such determination to PSMFB Service Provider so that PSMFB Service Provider may seek a protective order or other appropriate remedy. If PSMFB Service Provider does not obtain a protective order or no formal proceeding has been initiated by PSMFB Service Provider within a reasonable period of time after Buyer provides notice to PSMFB Service Provider of its intent to make public the PSM Confidential Information, then Buyer may disclose such information with no liability or further obligation to PSMFB Service Provider as to such disclosed PSM Confidential Information.

#### **18.5 Treatment of Otherwise Publicly Available Information:**

Notwithstanding anything to the contrary in this Article 18, neither Party shall be required to hold confidential, and the Parties' obligations set forth in Section 18.2 shall not apply to, any information to the extent which such information:

(a) is or becomes publicly available other than through the a disclosure by the Receiving Party or its Representatives;

(b) is required to be disclosed by a governmental or judicial order, rule or regulation, subject to the remaining provisions of this Section 18.5;



(c) is independently developed by the Receiving Party without use or knowledge of the Disclosing Party's PSM Confidential Information; or

(d) becomes available to the Receiving Party without restriction from a third party.

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

#### **18.6 Remedies:**

The Parties agree that the PSM Confidential Information furnished hereunder is of a special and unique nature, of extraordinary value and of such a character that any unauthorized use or disclosure thereof by the Receiving Party or any Representative of the Receiving Party will cause injury to the Disclosing Party for which the Disclosing Party will not have an adequate remedy at law. Accordingly, in such event, the Disclosing Party shall have the right to have the

provisions of this Article 18 and the obligations of limited use otherwise set forth in this Agreement specifically enforced by any court having equity jurisdiction and to obtain a temporary or permanent injunction or order prohibiting the Receiving Party or its Representatives from such unauthorized use or disclosure of any PSM Confidential Information. In any proceeding by the Disclosing Party to obtain injunctive or other equitable relief to enforce the provisions hereof, the Receiving Party's ability to answer in damages shall not be a bar or interposed as a defense to the granting of such relief and the Disclosing Party shall not be required to post a bond or other undertaking in such proceeding. Except as specifically stated, the provisions of this Section 18.6 shall not otherwise limit any of the Disclosing Party's remedies at law or equity.

#### **18.7 Return of PSM Confidential Information:**

Any tangible PSM Confidential Information of the Disclosing Party which is made available to the Receiving Party by the Disclosing Party or to which the Receiving Party may have access shall not be copied, reproduced or duplicated in any form or manner for any purpose other than the Permitted Purposes. Upon the written request of the Disclosing Party, and except as otherwise provided below, the Receiving Party shall, at the Disclosing Party's election, either (i) promptly deliver to the Disclosing Party all copies of any and all PSM Confidential Information` and promptly destroy all copies of, any and all analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party or its Representatives based on the use of PSM Confidential Information` (and confirm such destruction to the Disclosing Party in writing), or (ii) promptly destroy all copies of any and all written PSM Confidential Information and all copies of any and all analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party or its Representatives based on the use of PSM Confidential

Information (and confirm such destruction to the Disclosing Party in writing), in each case at the Receiving Party's expense and regardless of whether such PSM Confidential Information, analyses, compilations, forecasts, studies or other documents are in the possession of the Receiving Party or in the possession of any of its Representatives. Notwithstanding the foregoing, the Receiving Party may retain any documents (such analysis, compilations, forecasts, studies or other documents) submitted to its or its Affiliates' board of directors or board of trustees or screening or investment committee in connection with, or related to, this Agreement that contain or are based on the use of PSM Confidential Information to the extent required by applicable law or regulation, but the Receiving Party shall keep all such documents and PSM Confidential Information confidential in accordance with this Agreement. Moreover, neither the Receiving Party, nor its Representatives, shall be obligated to erase PSM Confidential Information contained in an archived computer system backup in accordance with its security and/or disaster recovery procedures, provided that the Receiving Party and its Representatives shall not cause or permit access to or recovery of PSM Confidential Information from such computer system backup and the Receiving Party and its Representatives shall keep all such documents and PSM Confidential Information confidential and restrict the use thereof in accordance with this Agreement. Regardless of any return or destruction of PSM Confidential Information or analyses, compilations, forecasts, studies or other documents based on the use of PSM Confidential Information, all PSM Confidential Information, including, without limitation, any and all oral PSM Confidential Information, shall continue to be subject to the terms of this provisions of this Article 18 and the other obligations of limited use and non-disclosure set forth in this Agreement.

**18.8 No Licenses:**

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

**18.9 Term of Confidentiality:**

Without limiting the survival of the obligations set forth in Article 8, the obligations set forth in this Article 18 (with respect to PSM Confidential Information not related to, included in, or encompassed by, the provisions of Article 8 hereof) shall survive expiration or termination of this Agreement for a period of two (2) years thereafter.

*[The next page is the signature page]*

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

**THE LONG ISLAND POWER AUTHORITY**

By:

Name:

Title:

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

By:

Name:

Title:

**PSEG ENERGY RESOURCES & TRADE LLC**

By:

Name:

Title:

STATE OF NEW JERSEY    )

)       ss.:

COUNTY OF ESSEX        )

On the \_\_ day of \_\_\_\_\_, in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and office of individual taking acknowledgment:

STATE OF NEW JERSEY    )

)       ss.:

COUNTY OF ESSEX        )

On the \_\_ day of \_\_\_\_\_, in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and office of individual taking acknowledgment:

**APPENDIX I**  
**REQUIRED PROCUREMENT FORMS AND CERTIFICATIONS**

Attached, are the following required procurement forms and certifications:

- Non-Collusive Bidding Certification
- Vendor Responsibility Questionnaire
- MacBride Fair Employment Principles
- Contingent Fee Certification
- Buyer Standard of Conduct
- Affirmation of Understanding of Guidelines Regarding Procurement Lobbying
- Offerer Disclosure of Prior Non-Responsibility Determinations]



## **APPENDIX II**

### **PSM FRONT AND BACK OFFICE SERVICES**

#### **PART 0 – INTRODUCTION, OVERVIEW, AND GENERAL DESCRIPTION OF PSMFB SERVICES**

##### **1. Introduction:**

Consistent with the provisions of Article 4 and Article 7, this Appendix describes in greater detail the PSMFB Services to be provided by the PSMFB Service Provider during the Base Term, and the Extended Term, if applicable. The Parties agree and acknowledge that (i) the descriptions of services are not static, (ii) some changes in Buyer's requirements (e.g., new or expiring power contracts, added or retired generation assets, changes in ISO/RTO or other applicable regulations, added reporting requirements) for, or with respect to, PSMFB Services may occur from time to time over the Base Term, or Extended Term, if applicable, and (iii) such changes are contemplated to be included within the scope of this Agreement and within the descriptions set forth in this Appendix, even if not specifically stated or described. Such changes are consistent with, and to be expected or anticipated within, normal business operations similar to those of Buyer, and do not alter the essential purpose, objective or nature and character of the described service or services to be provided by PSMFB Service Provider, even if such changes result in reasonably different volumes or require reasonable modifications in or to specific business processes. Unless otherwise specifically stated in Appendix IV, all costs associated with the performance of PSMFB Services, including such changes as described above, shall be borne by the PSMFB Service Provider. The Parties also agree and acknowledge that other changes, while in the nature of PSMFB Services, may be outside the scope of such services, as defined herein, and such changes shall be dealt with as an Additional Service under Part III of this Appendix.

The Parties further agree that (i) services in connection with the generation units identified in Table II-1f are not within the scope of PSMFB Services and that any services for such generating units may be provided as Additional Services and (ii) PSMFB Services shall in no event include services provided directly to or with any or all of Buyer's retail customers. Any such services may be provided as Additional Services. Table II-1 sets forth the Front Office Services and Back Office Services to be provided for each category of Power Supply Resources.

In the event of a conflict between Table II-1 and the Appendix, the Table shall control as to the services which PSMFB Service Provider shall provide with respect to each Power Supply Resource, while the Appendix shall control with respect to the description of, and Buyer's requirements for, such services.

By way of example, and not by way of limitation, the Parties agree that the number of agreements in each category of "Power Supply Resources" specified in Table II-1 may change. For example, the number of agreements included under PSR Type No. 1, PSA Units, may increase or decrease from time-to-time. Such fluctuations in any of the Power Supply Resources are contemplated within the scope of PSMFB Services and not as Additional Services. However, the addition of a single agreement to any Power Supply Resources where the Product delivery point is in an ISO/RTO other than the NYISO, ISO-NE, or PJM, would require an Additional Service with respect to providing front and back office services for that particular agreement. In addition, the Parties agree that additions to the specific Front Office Services or Back Office Services required for any Power Supply Resources would also be an Additional Service. For example, bidding and scheduling of an existing or new agreement under PSR No. 1 is contemplated within PSMFB Services, while Back-Office Service No. 4 ("Billing Services") with regard to PSR Type No. 1 is not contemplated as PSMFB Services. Thus, an Additional Service would be required if Buyer chose to request Billing Services with respect to PSR Type No. 1. In addition, the Parties agree that addressing and responding to changes in ISO/RTO reporting requirements are part of PSMFB Services while providing credit management services and credit support are not. The inclusion of credit management services either as a Front Office or a Back Office service for any Power Supply Resources would be an Additional Service.

PSMFB Service Provider is expected to use its resources, experience and expertise obtained in the course of providing PSMFB-type services for its Affiliates in conjunction with its provision of PSMFB Services to Buyer under this Agreement.

## **2. Overview:**

In providing the PSMFB Services, the PSMFB Service Provider shall interact and coordinate as necessary to provide the PSMFB Services with a variety of suppliers, vendors, businesses, individuals and other entities, including, but not limited to, the following:

- (a) Each of the Generating Facilities, and the operators and managers thereof,
- (b) Other Buyer suppliers,
- (c) Cable Resources operators and representatives,
- (d) Buyer's Control Center,
- (e) Buyer's planning committee,
- (f) Buyer's ISO/RTO representatives
- (g) CEE PSMFB Service Provider (during Front-End Transition Period),
- (h) the PSMMO Service Provider,
- (i) Power Asset Management,
- (j) the NYISO, ISO-NE and PJM, and any other market operators in which Buyer is a member, provided that Buyer and PSMFB Service Provider have agreed in writing to procure PSMFB Services with respect to such "other market operators" as an Additional Service.
- (k) Fuel Management Service Provider,
- (l) FERC,
- (m) DOE,
- (n) NERC,
- (o) New York State Reliability Council, L.L.C. ("NYSRC"), and
- (p) Others, as requested by Buyer within the scope of this Agreement.

## **3. General Description of Services**

This Agreement requires the PSMFB Service Provider to provide PSMFB Services, which are comprised of Front Office Services and Back Office Services, designed to meet Buyer's requirements. The following is a brief overview description of the Front and Back Office services:

- (a) Front Office Services: Refers to the various tasks related to, and the responsibilities for, the purchase and sale of all capacity, energy, ancillary services, and transmission congestion contracts on a 24 hours per day – 7 day week basis to meet the

needs of Buyer's customer load in a least cost manner consistent with Buyer's existing agreements, policies, regulations, and reliability constraints. In addition, such tasks and responsibilities include performing ISO/RTO bidding and scheduling of all assets under contract to Buyer, as well as dispute resolution support in accordance with Front Office Service No. 9(b), and related services, in order to maximize the benefits of such assets to Buyer's customers as a whole, minimize the overall cost to Buyer's customers, and meet electric system reliability standards.

(b) Back Office Services: Refers to the various tasks related to, and the responsibilities for, providing accounting, settlement, dispute resolution support (other than ISO/RTO credit dispute resolution support unless mutually agreed to by the PSMFB Service Provider and Buyer in the future), and related reporting and support services.

The PSMFB Service Provider shall provide all of the PSMFB Services described in this Appendix II, as required, to meet Buyer's service requirements as described herein. In providing the PSMFB Services, any strategies, procedures, and protocols developed by the PSMFB Service Provider, whether or not referenced herein, shall be subject to the Buyer's policies and procedures, and require Buyer's prior written approval prior to implementation, and once approved shall be set forth in the Administrative Protocols and Procedures.

## **PART 1: POWER SUPPLY MANAGEMENT FRONT-OFFICE SERVICES**

As part of the primary function and purpose of the Front Office Services component of the PSMFB Services, PSMFB Service Provider shall purchase and sell Energy, Capacity, and Ancillary Services on a 24 hours per day - 7 day a week basis to meet the needs of Buyer's customer load in a least cost manner consistent with Buyer Contracts, other applicable agreements, ISO/RTO requirements, applicable policies, reliability constraints, and in compliance with applicable Legal Requirements.

**1. PSMFB Service Provider shall perform ISO/RTO bidding and/or scheduling and/or Dispatch, as applicable, of all Power Supply Resources in a manner that maximizes the benefits to Buyer's customers as a whole, minimizes the overall cost to Buyer's customers, and meets electric system reliability standards. The following provides**

**additional detail regarding PSMFB Service Provider’s responsibilities and obligations under the Front Office Services component of the PSMFB Services (“Front Office Service No. 1”):**

In providing the Front Office Services component of the PSMFB Services, beginning on the PSMFB Services Start Date, and continuing through the Base Term, and Extended Term, as applicable:

(a) The PSMFB Service Provider shall, consistent with Prudent Utility Practices, perform the Dispatching, bidding and scheduling of Power Supply Resources, which are used to provide power to, and in order to serve the Load Requirements of, Buyer’s customers, into the respective ISO/RTOs.<sup>1</sup> In addition, the PSMFB Service Provider shall participate in the NYISO, ISO-NE, PJM, and any other markets in which Buyer is a member, provided, however, that prior thereto, Buyer and PSMFB Service Provider must have agreed in writing to the provision of PSMFB Services with respect to such “other markets” as an Additional Service.

(b) In furtherance of the foregoing, the PSMFB Service Provider shall utilize the Power Supply Resources.

(c) In performing the Dispatch, bidding, scheduling and RTO/ISO participation functions of the PSMFB Services, PSMFB Service Provider shall:

(i) bid and schedule the Power Supply Resources in a manner that is in accordance with all FERC, NERC, NYSRC and ISO/RTO rules and procedures, recognizing that Buyer’s load requirements include the NYISO Zone K requirements less certain municipal loads, New York Power Authority

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<sup>1</sup> For ease of reference, Power Supply Resources includes the PSA Units, PPA Units, IPP Units, Buyer Owned Units, Cable Resources, Industry Standard Master Agreements (e.g., EEI Agreements and ISDAs), agreements for the purchase and sale of emission credits and allowances, transmission capacity, firm transmission rights, transmission congestion contract rights, and transmission and related resources. A listing of the PSA Units, PPAs, IPPs, Cable Resources, and Buyer Owned Units, as of the Effective Date, is found in Table II-1. It is anticipated that generating facilities and other resources will be added from time-to-time, while others will be retired or repowered from time-to-time, over the Base Term and Extended Term, if applicable. Updates to Table II-1 shall be reflected in updates to the Administrative Protocols and Procedures.

(“NYPA”) loads and loads served under retail access programs (collectively the “Load Requirements”);

(ii) coordinate the bidding and scheduling of Buyer’s Load Requirements and Buyer’s Power Supply Resources with the ESO and/or Buyer’s Control Center, as applicable;

(iii) ensure that all PSMFB Services are provided in an independent manner and in Buyer’s best interest. In order to accomplish this objective, the PSMFB Service Provider shall:

A) develop and recommend strategies and procedures, including bidding and scheduling strategies and procedures, for the Dispatch and utilization of the Power Supply Resources, which shall be submitted to Buyer for its prior written approval before implementation;

1. Such strategies and procedures shall include components for optimizing, coordinating and undertaking scheduled transactions including those with adjacent ISO/RTO markets;

2. Such strategies and procedures shall also include components for participating effectively in the Real-Time Market under relevant ISO/RTO market rules and any subsequent revisions or updates to such rules.

B) implement and apply, on a daily and hourly basis as applicable, 365 days a year, 7 days per week and 24 hours per day, the approved and selected bidding and scheduling strategies and procedures with respect to the Dispatch, bidding and scheduling the Power Supply Resources, in order to ensure and coordinate the delivery and/or sale of Capacity, Energy and Ancillary Service with, or into, the NYISO PJM and ISO-NE;

C) facilitate and ensure Buyer’s efficient and effective participation in the ISO/RTO and bilateral capacity resources markets for

purposes of purchasing and selling Capacity on a Monthly and/or seasonal basis in order to satisfy Buyer's capacity requirements;

D) develop load forecasts (including daily forecasts) and scheduling requirements for Buyer's consideration;

E) develop load forecasts and capacity requirements with Buyer's Electric System operations as well as the Buyer's planning group, taking into appropriate consideration unit outages in accordance with the applicable Standards of Conduct;

F) prepare and submit day-ahead and hour-ahead generation offers with full consideration of fuel availability, fuel price forecasts, resource availability, oil and gas inventory, transportation, environmental considerations, and other related matters. Such offers shall be based on current fuel availability and fuel price information as provided by the Fuel Management Service Provider and coordinated with other Buyer functions;

G) Request information regarding, and consider, oil delivery and inventory constraints available from the Fuel Management Service Provider.

(d) In connection with PSMFB Service Provider's performance of the bidding, scheduling, Dispatch, and RTO/ISO participation functions, to the extent that the Required Data (defined below) is not available through the PSM EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data. "Required Data" is information consistent with Prudent Utility Practices, required to perform the bidding, scheduling, Dispatch, and RTO/ISO participation functions, which includes, but is not limited to, fuel prices, fuel availability, fuel inventory, generator availability, generator outage schedules, Cable Resource availability, Electric System reliability requirements, reserve requirements and identification of must-run generation resources.

(e) For the purpose of clarity and the avoidance of doubt, the PSMFB Service Provider is acting solely as agent for Buyer and as such with respect to its agency status the respective RTO/ISOs shall look to Buyer and not to PSMFB Service Provider with respect to any RTO/ISO costs, charges, penalties, etc. associated with the PSMFB Service Provider's membership in such RTO/ISOs. The PSMFB Service Provider shall pass-through to Buyer any such RTO/ISO costs charges, penalties, etc. that are the responsibility of, and result from, the PSMFB Service Provider being a member company of the RTO/ISOs.

(f) In connection with the PSMFB Services provided herein, Buyer will ensure that it provides sufficient and satisfactory credit support to the RTO/ISOs and with all of its counterparties who are member companies of the RTO/ISOs in order that the PSMFB Service Provider can perform all of its duties under this Agreement. The PSMFB Service Provider will be excused for any action taken or not taken in the event that Buyer has not provided sufficient and satisfactory credit support in a timely manner to the RTO/ISOs.

**2. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, proactively manage the Power Supply Resources to minimize Buyer's costs, maximize benefits to Buyer's customers, and meet the requirements of all applicable FERC, NERC, NYSRC, ISO/RTO rules and procedures and electric system reliability criteria ("Front Office Service No. 2").**

(a) In so managing such resources and assets, the PSMFB Service Provider shall:

(i) utilize sound asset management practices, which are designed to address financial, time, materials, supply, reliability, safety, Legal Requirements and other risks, in order to maximize the value of the Power Supply Resources related to Buyer's Electric System;



(ii) recommend asset management strategies for Buyer's consideration and approval. Upon receipt of Buyer's approval, the PSMFB Service Provider shall implement such strategies through, and with respect to, all pertinent activities;

(iii) measure, monitor, and adjust the asset management strategies to adapt to changing markets;

(iv) participate in mid- and long-range planning with Buyer with respect to the Power Supply Resources;

(v) coordinate with Buyer's contractors and agents, and with market participants and system operators, in compliance with applicable PSMFB and Buyer Standards of Conduct, as necessary regarding generation and transmission availability;

(vi) provide strategic asset management analysis, and participate in Transmission Congestion Contract ("TCC") auctions in order to optimize the acquisition or sale of TCCs with respect to ISO/RTO congestion charges;

(vii) verify amount and accuracy of payments received for TCCs that are grandfathered, purchased or otherwise allocated to Buyer;

(viii) conduct on-going market research;

(ix) develop forecasts of prices at proxy trading hubs and conduct transmission analysis in order to stay abreast of current market opportunities related to potential physical transactions between adjacent ISO/RTOs or specific unit participation purchases or sales opportunities;

(x) identify long-term market opportunities through independent market research and coordination with Buyer and its service providers;

(xi) manage the utilization of Cable Resources including (A) monitoring availability, and scheduling transactions accordingly, (B) coordinating with other service providers or directly assuming the responsibility of determining the overall value of hedging cable services, and (C) determining the causes and

legitimacy of curtailments related to cable congestion and derates; (xii) develop, coordinate, and integrate emission/environmental considerations into the management of, and the bidding and scheduling strategies for, the Power Supply Resources; and

(xiii) execute power and fuel forward hedges in accordance with specific instructions provided by Buyer.

(b) In connection with PSMFB Service Provider's management of the Power Resources to the extent that the Required Data is not available through the PSM EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data.

**3. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, develop pre- and post- production-day analysis to aid in achieving strategic objectives ("Front Office Service No. 3").**

(a) The PSMFB Service Provider shall:

(i) In a manner acceptable to Buyer, develop segregated Mid Office Services to monitor and evaluate the performance of the PSMFB Service Provider's strategies in the relevant markets;

(ii) adapt rapidly to changing market conditions by developing and adjusting the utilization of Power Supply Resources, and trading activities;

(iii) optimize the performance of Power Supply Resources through on-going assessments, which compare planned operations to actual performance;

(iv) provide Buyer with timely reports on all aspects of the operations of Power Supply Resources, including, without limitation:

A) Statistics on Capacity, Energy and Ancillary Services;

B) Changes in applicable markets, including the identification and assessment of the potential impact of such changes on Buyer;

C) Generator test schedules;

D) Generator bid and award summaries;

E) Cable curtailments, provided required information is provided by Cable Owners in a timely manner;

F) Generator derates, provided required information is provided by ESO in a timely manner; and

G) Generators run out of merit, including results of ESO's Supplemental Resource Evaluation, provided information is provided by ESO in a timely manner;

(v) provide all required and requested reports in a timely manner as required by Buyer. Reports shall be provided either electronically via a web portal or other reporting database available to Buyer; and

(vi) not provide the Electric System Bulletin Board Data Report.

**4. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide data and analysis to assist Buyer in planning, asset acquisition, and marketing activities (“Front Office Service No. 4”).**

(a) The PSMFB Service Provider shall proactively provide fundamental, technical and quantitative data, analysis, recommendations and feedback to Buyer, its consultants, or agents, regarding the near-term, intermediate, and long-term power supply, Energy, Capacity, transmission, Ancillary Services needs, forecasts and conditions related to Buyer's Electric System, and regarding marketing activities. In order to accomplish the above, the bidding and scheduling strategies and processes for the Power Supply Resources shall:

(i) use economic data (e.g. production, consumption, heat rates) to forecast prices with suitable accuracy for short, medium and long term market participation and resource planning activities including market clearing prices, locational based marginal pricing, forward prices, and fuel prices;

(ii) use load forecasting methodologies that support and provide input to short- and long-term load forecasting for Buyer's Electric System operations,

long term strategy development and power system planning, and support bidding and scheduling, and trading activities including short term optimization; and

(iii) use volumetric forecasting methodologies of Energy, Capacity and fuels appropriate for the short and medium terms (less than 3 years).

**5. Subject to Appendix IX, PSMFB Service Provider shall, consistent with Prudent Utility Practices, establish communication processes and interfaces with Buyer's operational agents, contractors and entities, (e.g., Buyer's Control Center, DRM, PSA Units, PPA Units, IPP Units, Buyer Owned Units, Cable Resources, Other Resources, Fuel Management Service Provider, and others as required) ("Front Office Service No. 5").**

(a) In furtherance of the foregoing, PSMFB Service Provider shall:

(i) communicate, coordinate and interact, on a daily basis, if needed or as requested by Buyer, with Buyer's operational agents, contractors and entities and with third parties as necessary or required, to ensure effective and comprehensive communication. In this regard, PSMFB Service provider shall establish communication processes and interfaces, which shall include, but not be limited too, processes and interfaces for:

- (A) each of Buyer's power suppliers,
- (B) Cable Resources operators and representatives,
- (C) Buyer's Control Center,
- (D) Buyer's planning committee,
- (E) Buyer's ISO/RTO representatives,
- (F) CEE PSMFB Service Provider (during Front-End Transition Period),
- (G) the PSMMO Service Provider,
- (H) Buyer's staff and Agents,
- (I) Power Asset Management,

- (J) the NYISO, ISO-NE and PJM, and any other market operators in which Buyer is a member, provided that Buyer and PSMFB Service Provider have agreed in writing that PSMFB Service Provider will provide PSMFB Services with respect to such “other market operators” as an Additional Service,
- (K) Fuel Management Service Provider,
- (L) FERC,
- (M) DOE,
- (N) NERC,
- (O) NYSRC, and
- (P) Others, as requested by Buyer within the scope of this Agreement.

(b) The PSMFB Service Provider shall maintain clear and effective relationships and communication channels with all of Buyer’s operational Agents, contractors, entities and their managers and operators or other representatives, as applicable, and shall communicate any and all concerns to Buyer in a timely manner.

(c) The PSMFB Service Provider’s communications requirements, additional details regarding which shall be set forth in the Administrative Protocols and Procedures, include, but shall not be limited to:

- (i) Gathering and immediately disseminating accurate and appropriate information on the status of the Power Supply Resources;
- (ii) Performing all ISO/RTO related responsibilities necessary for carrying out the PSMFB Services described herein;
- (iii) Conducting performance-related discussions with PPA Units to ensure PPA contract compliance;
- (iv) Maintaining and distributing all required information necessary to perform intermediate and long range Capacity and Energy planning functions;

(v) Maintaining and distributing all operational information needed to meet permit and regulatory requirements as such requirements have been defined by Buyer to PSMFB Service Provider; and

(vi) Conducting all communications with FERC or ISO/RTO market monitoring or enforcement staff in close consultation with Buyer's management team, and in accordance with Buyer's market monitoring communications procedures as specified in the Administrative Protocols and Procedures.

**6. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide Contract Administration and Compliance Services ("Front Office Service No. 6").**

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) Administer the Buyer Contracts and other agreements related to Power Supply Resources identified in Table II-1 in accordance with their respective terms and conditions and perform the PSMFB Services for each Power Supply Resource as specified in Table II-1.

(ii) Contract administration and compliance services refers to the set of services related to a given contract, which may include, but is not limited to ensuring that required actions, are completed in conformance with the terms and conditions of said contracts and reviewing and monitoring invoices and operational reports upon which the invoices are based for accuracy.

**7. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide Data Management Services ("Front Office Service No 7").**

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) develop, maintain and utilize standard, secure, high-performance database(s) and data management software, as described in Appendix VI as the IT System, which supports all functions performed by the PSMFB Service Provider, and:

- (A) Efficiently adapts to meet changing market conditions;
- (B) Permits establishing various user privilege levels with Buyer Authorized Representatives;
- (C) Efficiently interfaces in a secure fashion with other public and private computer networks as may be required, and with Buyer, its contractors and Agents, and ISO/RTOs; and
- (D) Ensures that Buyer has full, complete and all-hours access to all posted data pertaining to the operational and economic performance of the Power Supply Resources for which such data is collected, processed and/or maintained under the Agreement, which access provides ad hoc, structured query, retrieval and report writing capability. Buyer shall have full read access to copies of both operating and archival databases through a dedicated portal, or functional equivalent, for direct access by Buyer and its authorized representatives to all data and reports.

(ii) The PSMFB Service Provider shall store such information in databases so that it is reasonably accessible to Buyer in a usable format.

(iii) The PSMFB Service Provider shall provide the necessary interfaces in accordance with Appendix IV and IX so that Buyer and its contractors/consultants may access information related to PSMFB Services during the Base Term and Extended Term, if applicable.

(iv) Ensures the capture of all Capacity, Energy, Ancillary Services and energy commodity transactions, deal types, and transactions utilizing other contracting instruments that Buyer uses consistent with the Power Supply Resources set forth in Table II-1;

(v) Ensures IT System can properly interface with PSM EDM and ISO/RTOs; and

(vi) Provides regular uploads of PSM Front Office data to the PSM EDM.

(b) Data storage must, at a minimum, include an operational and an archival database that can store operational data to comply with Buyer's Record retention policies in accordance with Section 17.16(d) of the Agreement.

**8. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, comply with ISO/RTO required certification, testing and other submissions required for PSMFB Service Provider and Buyer to participate in such ISO/RTO Markets ("Front Office Services No. 8").**

The PSMFB Service Provider shall effectively manage the applicable ISO/RTO certificate process for both its and Buyer's employees (Buyer's employees are defined as direct employees of Buyer, and not employees of any of Buyer's other consultants, contractors, service providers or other third parties) ensuring personnel have appropriate access to all necessary data, ISO/RTO systems and other relevant systems for purposes of their participation in such ISO/RTO Markets on Buyer's behalf and in order for PSMFB Service Provider to provide the PSMFB Services hereunder. The PSMFB Service Provider shall perform periodic reviews (quarterly or semi-annually) of applicable ISO/RTO certificates, authorizations, and permissions in order to assure that they are up-to-date, in proper form and that PSMFB Service Provider and Buyer are in compliance with the terms thereof.

**9. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide compliance assurance, and regular, timely and complete regulatory updates, to Buyer subject to the Conflict of Interest of Part 6 of Appendix II ("Front Office Service No. 9").**

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) Facilitate compliance with all Legal Requirements, including federal, state and regulatory requirements related to the purchase and sale of Capacity, Energy and Ancillary services;

(ii) Ensure that units are bid, scheduled and Dispatched into the appropriate and relevant ISO/RTO Market in accordance with approved strategies and processes, and in compliance with all Legal Requirements, operating



instructions, requirements, limitations, permits, NPDES permits, interstate and intrastate requirements and federal permit compliance as appropriate;

(iii) Immediately report to Buyer operational developments or other activities that may violate applicable Legal Requirements and/or otherwise result in fines or other penalties, as well as in conjunction with such reports, identify the corrective actions required and performed to address the facts and circumstances giving rise to the violations or the assessment of fines or penalties;

(iv) Prepare and provide to Buyer, for submission to applicable Governmental Authority, all monthly, quarterly and/or yearly, forms or reports directly relating to the PSMFB Services provided or performed under the Agreement and required by DOE, FERC, NERC or any other regulatory agency. A list of such reports shall be set forth in, and maintained as part of the Administrative Protocols and Procedures;

(v) Promptly inform Buyer of any and all regulatory changes to these reporting requirements; and

(vi) Promptly provide relevant information to Buyer's ISO/RTO representatives on ISO/RTO market rule changes and developments and with respect to issue resolution.

(b) The PSMFB Service Provider shall provide support to Buyer's ISO/RTO representatives, business representatives, and legal counsel on any FERC, other regulatory proceeding, arbitration or state/federal court proceeding. For the avoidance of doubt and the purpose of clarity, the PSMFB Service Provider's obligations hereunder shall be limited to providing:

(i) factual support (including business advice and analysis) for Buyer's ISO/RTO representatives and legal counsel work in any FERC regulatory and policy proceeding (including any associated appellate proceeding) involving developments in the markets in which the PSMFB Service Provider is providing PSMFB Services to Buyer pursuant to the Agreement. To the extent practicable, Buyer shall use its employees or other non-PSMFB Service Provider employees

to provide any necessary testimony or direct advocacy in such above-described FERC regulatory and policy proceedings. Notwithstanding anything herein, the provision of testimony by PSMFB Service Provider in support of Buyer in connection with such above-described FERC regulatory and policy proceedings, shall only occur with the prior consent of the PSMFB Service Provider, after a determination by PSMFB Service Provider in its sole discretion that such testimony does not present a conflict of interest. [In the event that PSMFB Service Provider determines in its sole discretion that providing testimony on behalf of Buyer would present a conflict of interest, the PSMFB Service Provider further agrees that its employees directly providing PSMFB Services under the Agreement to Buyer with specific titles to such dedicated employees to be provided by PSMFB Service Provider to Buyer and updated from time to time as necessary shall not provide testimony on behalf of another entity (including an Affiliate) in such proceeding. For the avoidance of doubt and the purpose of clarity, PSMFB Service Provider, in any case, is not prohibited from providing testimony in any proceeding on behalf of itself or another entity (including an Affiliate) or representing itself or any of its Affiliates before any regulatory or governmental authority in accordance with Section 4.18 of the Amended and Restated OSA (“Conflicts of Interest”). If testimony is provided by PSMFB Service Provider on behalf of Buyer, PSMFB Service Provider shall be reimbursed by Buyer for its actual, reasonable and verifiable travel expenses.

(ii) in proceedings other than those FERC regulatory and policy proceedings addressed in subsection (i) above, factual support (including business advice and analysis) for Buyer's ISO/RTO representatives, business representatives and legal counsel working on any FERC proceeding, other regulatory proceeding, state or federal court proceeding or arbitration, which relates to the performance of the PSMFB Services by the PSMFB Service Provider under the Agreement. To the extent that such support requires the provision of testimony, such testimony shall be limited to testimony by one or more PSMFB Service Provider employees (each a “PSMFB Service Provider Witness”) engaged in performing PSMFB Services hereunder regarding the

nature of the circumstances and the facts involved in, or with respect to, the PSMFB Services under review in such proceeding. On such occasions that Buyer reasonably believes that it shall require one or more PSMFB Service Provider Witnesses to testify in such proceeding, the following process shall be adhered to:

(A) Buyer shall notify PSMFB Service Provider of the need for PSMFB Service Provider Witness testimonial support;

(B) upon receipt of such notice, PSMFB Service Provider shall promptly determine, in its discretion exercising good faith and reasonable judgment, whether the provision of such testimony presents an actual conflict of interest with PSMFB Service Provider or its affiliates and shall promptly notify Buyer of its determination;

(C) if there is no conflict, PSMFB Service Provider shall provide the requested PSMFB Service Provider Witness or Witnesses and testimony;

(D) if a conflict has been identified by PSMFB Service Provider, then senior representatives of Buyer and PSMFB Service Provider shall promptly meet and confer regarding the conflict and whether and how the PSMFB Service Provider testimony can be limited to avoid the conflict;

(E) whether or not the PSMFB Service Provider Witness testimony can be so limited, if the failure to provide the PSMFB Service Provider Witness testimony is determined by Buyer, in its discretion exercising good faith and reasonable judgment, to prejudice Buyer's ability to defend/support its position in the proceeding, then, Buyer shall promptly notify PSMFB Service Provider, and, notwithstanding any identified conflict, PSMFB Service Provider shall provide the needed PSMFB Service Provider Witness and testimony;

(F) if the failure to provide the PSMFB Service Provider Witness testimony will not prejudice Buyer's ability to defend/support its position in the proceeding, then Buyer shall promptly notify PSMFB Service Provider, and PSMFB Service Provider shall not be required to provide

PSMFB Service Provider Witness testimony unless the PSMFB Service Provider Witness testimony can be limited to avoid the conflict pursuant to paragraph (D) above; and

(G) if PSMFB Service Provider declines to provide the PSMFB Service Provider Witness and testimony under paragraphs (C), (E) or (F) above, then Buyer reserves all rights to seek a subpoena under applicable rules, in order to compel PSMFB Service Provider Witness appearances and testimony, and PSMFB Service Provider reserves all rights to oppose issuance of the subpoena and to move to quash the subpoena.

If testimony is provided by PSMFB Service Provider, PSMFB Service Provider shall be reimbursed by Buyer for its actual, reasonable and verifiable travel expenses in providing the PSMFB Service Provider witness and testimony.

**10. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide asset planning services to Buyer (“Front Office Service No. 10”).**

In furtherance of the foregoing, the PSMFB Service Provider shall:

(a) Engage in asset planning activities with Buyer in order to address the financial, time, materials, supply, reliability, safety, Legal Requirements needs and other risks, associated with maximizing the value of the Power Supply Resources through asset utilization strategies;

(b) Provide data, reports, evaluations and recommendations to Buyer or its contractors and Agents in order to facilitate the planning, construction and operation of Buyer’s Electric System and existing and new Power Supply Resources that can serve Buyer’s Load Requirements in a manner that maximizes the benefits to Buyer’s customers, and minimizes the overall costs to Buyer’s customers, while meeting Buyer’s Electric System and other applicable reliability requirements.

(c) Provide its bidding and scheduling approach and strategy to Buyer’s planners to enhance their ability to model the behavior of the Long Island Energy market and Energy flows.

- (d) Not provide Buyer's integrated resource plan.

**11. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide Operational Planning Services to Buyer ("Front Office Service No. 11").**

- (a) In furtherance of the foregoing, the PSMFB Service Provider shall:

- (i) participate in and provide input to the development and implementation of Buyer's long-term operational planning and market strategy for Buyer's Power Supply Resources and market opportunities in order to maximize the benefits to Buyer's customers, minimize the overall costs to Buyer's customers, and meet Buyer's Electric System and other applicable reliability requirements; and

- (ii) recommend discretionary outages of the Power Supply Resources, and if approved by the appropriate operating authority (e.g., ESO, ISO/RTO) schedule such discretionary outages of the Power Supply Resources, use merchant generation and transmission facilities to effectuate lower operating costs, and/or make market sales without impacting Buyer's Electric System security or reliability.

- (b) In connection with PSMFB Service Provider's provision of operational planning services, to the extent that the Required Data is necessary for the provision of such services, and not available through the PSM EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data.

## **PART 2. POWER SUPPLY MANAGEMENT BACK OFFICE SERVICES**

The primary function of the Back Office Services component of the PSMFB Services is to provide accounting, administrative, transaction documentation, reconciliations, and settlement, financial reporting, compliance, dispute resolution support, and related reporting and support services for all PSMFB Front Office Services' transactions performed and undertaken by the PSMFB Service Provider, which, as set forth in Part 1, includes the bidding, scheduling and Dispatch of the Power Supply Resources. A listing of the PSA Units, PPA Units, IPP Units, Cable Resources, and Buyer Owned Resources, as of the date of this Agreement, is found in Table II-1,<sup>2</sup> and PSMFB Service Provider shall provide the Back Office Services component of the PSMFB Services with respect to Power Supply Resources in accordance with the allocation of responsibility set forth in Table II-1 and as further detailed below in this Part 2. The following provides additional detail regarding PSMFB Service Provider's responsibilities and obligations under the Back Office Services component of the PSMFB Services:

In providing the Back Office Services component of the PSMFB Services, beginning on the PSMFB Services Start Date, and continuing through the Base Term, and Extended Term, as applicable:

**1. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, maintain accurate books and accounting records; provide information as requested by Buyer ("Back Office Service No. 1").**

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) maintain accurate books and accounting records for all PSMFB Services performed under the Agreement;

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<sup>2</sup> As stated above, it is anticipated that generating facilities and other resources will be added from time-to-time to Power Supply Resources, while others will be retired or repowered from time-to-time, over the Base Term and Extended Term, if applicable. Updates to Table II-1 shall be reflected in updates to the Administrative Protocols and Procedures. As also indicated above, for the avoidance of doubt and the purpose of clarity, it is again noted that PSMFB Service Provider shall not be providing any credit management services and shall not be responsible for processing, reconciling, or monitoring any margin or collateral requirements with regard to any Contract Type on Table II-1 or any other agreement.

(ii) shall maintain and retain all data and accounting records in compliance with Buyer's Record retention policies, as they may be amended from time to time, and in accordance with Section 17.16(d) of this Agreement;

(iii) make available to Buyer, all records/data pertaining to the PSMFB Services provided under the Agreement (including data to be obtained from the Power Supply Resources related to PSMFB Services).

**2. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, develop and implement a generation performance reporting system and processes ("Back Office Service No. 2").**

In furtherance of the foregoing, the PSMFB Service Provider shall:

(a) in consultation with Buyer, develop the most appropriate daily, weekly, and monthly reporting packages for reporting on the performance of Buyer's Power Supply Resources.

(b) in consultation with Buyer and subject to Section 4.6(d), develop the information services and IT Systems necessary for providing on-going reporting to Buyer, or Buyer's designee, in order to undertake various independent analyses of the Power Supply Resources.

(c) In connection with PSMFB Service Provider's development of the generation performance reporting system and processes, to the extent that the Required Data is not available through the PSM -EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data necessary for the development and/or implementation of such generation performance reporting system and processes.

**3. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, identify, verify and reconcile on a timely basis all amounts due Buyer pursuant to Buyer Contracts with respect to applicable Power Supply Resources, and with respect to ISO/RTO transactions for all PSMFB Services provided under the PSMFB Services Contract ("Back Office Service No. 3").**

In furtherance of the foregoing, the PSMFB Service Provider shall, on a daily basis, verify, validate and reconcile with Front Office personnel the details regarding pricing and quantity scheduled and delivered or received, as the case may be of all Buyer Contracts and ISO/RTO transactions, including the dollar amounts thereof and resolve and reconcile any discrepancies and provide such information and data to the billing services personnel for originating and processing invoices with respect thereto.

**4. Billing Services - The PSMFB Service Provider shall, consistent with Prudent Utility Practices, develop an efficient payment process (“Back Office Service No. 4”).**

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) perform billing services with respect to those Power Supply Resources Contract types so specified in Table II-1, column “Back Office Service No. 4”. In general, such billing services shall include, but not be limited to:

(A) Informing Buyer of charges and payments associated with PSMFB Services;

(B) Originating, processing and reconciling of invoices from, or to, third parties with respect to the Power Supply Resources, the ISO/RTO Markets and as otherwise relates to the PSMFB Services to verify proper documentation, operational data, and accuracy, to support the invoice, and appropriate payment;

(C) Issuance of payment instructions with appropriate supporting documentation to Buyer;

(D) Verify that invoices are in compliance with contract terms;

(E) Providing Buyer with summary reports for settled and accrual amounts for each corresponding activity; and

(b) PSMFB Service Provider shall not provide Billing Services related to Power for Jobs billing or Economic Development Program billing.



(c) Billing Services for any transmission service charge billing shall be limited to provision of related ISO/RTO data.

**5. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, develop an accurate and efficient payment/invoice schedule (“Back Office Services No. 5”).**

(a) In furtherance of the foregoing, the PSMFB Service Provider shall in consultation with Buyer, develop an accurate and efficient payment/invoice schedule that details Buyer’s anticipated cash disbursements related to PSMFB Services for the Month by Day in order to assist Buyer manage its cash.

The following cash management services are not included in the PSMFB Services: receive, review and reconcile bank accounts and tie balances to the general ledger, reconcile any outstanding balances, and communicate outstanding balances and/or discrepancies.

**6. The PSMFB Service Provider shall, consistent with Prudent Utility Practices and subject to Appendix IX, automate data transfer between the IT System and Buyer (“Back Office Service No. 6”).**

(a) In furtherance of the foregoing, the PSMFB Service Provider shall:

(i) in consultation with Buyer, develop an accurate, efficient, and reliable IT System to transfer relevant accounting data and information from the IT System to Buyer as more fully described in Appendix IX, which IT System shall:

(A) provide regular uploads of Back Office Services data to the PSM EDM system as described in Appendix IX;

(B) provide necessary interface and connectivity to Buyer and its contractors/consultants to such IT System and copies of databases as necessary for PSMFB Service Provider’s performance of all PSMFB Services, and in order for Buyer to conduct its business in an efficient and effective manner over the Base Term, and Extended Term, if applicable;

(C) For the avoidance of doubt and the purpose of clarity, this data shall not be provided by PSMFB Service Provider in real time unless otherwise specifically provided for herein or in the Administrative Protocols and Procedures. Further, PSMFB Service Provider shall not provide Buyer with direct access to the IT System.

(b) In connection with PSMFB Service Provider's development of the IT System in accordance with the Agreement and as set forth in Appendix VI, to the extent that the Required Data is not available through the PSM-EDM, Buyer shall provide PSMFB Service Provider with, or reasonable access to, the Required Data necessary for the development and/or implementation of such IT System also in accordance with Appendix VI.

**7. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, provide reconciliation of ISO/RTO charges and payments, daily settlement documentation, and dispute tracking mechanism ("Back Office Service No. 7").**

(a) In furtherance of the foregoing, and in conjunction with Back Office Service No. 3, the PSMFB Service Provider shall:

- (i) provide a complete reconciliation of all ISO/RTO charges and payments;
- (ii) prepare and provide to Buyer daily settlement documentation;
- (iii) provide to Buyer electronic copies of invoices;
- (iv) establish and maintain a dispute tracking mechanism;
- (v) submit disputes to ISO/RTOs in a timely manner; and
- (vi) support Buyer in the dispute resolution process in accordance with Front Office Service 9(b).

(b) In addition, the PSMFB Service Provider shall, to the extent necessary, be responsible for the reconciliation of all ISO/RTO rebills for production Months not yet "finalized" by the PSMFB Services Start Date. Additional details regarding these

processes and procedures shall be set forth in the Administrative Protocols and Procedures.

**8. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, continually inform Buyer of outstanding ISO/RTO billing issues, and support the resolution process (“Back Office Service No. 8”).**

(a) In furtherance of the foregoing, and in conjunction with Back Office Service No. 3, No. 7, and No. 9, the PSMFB Service Provider shall:

(i) be involved in the applicable ISO/RTO committees relating to settlement issues;

(ii) provide Monthly reports to Buyer outlining the important current and future settlement issues to the extent that they exist;

(iii) whenever possible, quantify billing code errors; and

(iv) participate in ISO/RTO settlement working groups/task forces to the extent deemed necessary by both Buyer and the PSMFB Service Provider.

(b) PSMFB Service Provider’s obligations hereunder are limited to as set forth in Front Office Service No. 9(b).

**9. The PSMFB Service Provider shall, consistent with Prudent Utility Practices, be knowledgeable with respect to, and monitor Legal Requirements, including regulatory developments in order to provide regulatory updates and compliance assurance to Buyer (“Back Office Service No. 9”).**

(a) In furtherance of the foregoing, for all relevant matters pertaining to Back Office operations Services the PSMFB Service Provider shall:

(i) be knowledgeable of GAAP accounting requirements, accounting requirements relating to Financial Account Standards Board (“FASB”) and Emerging Issues Task Force (“EITF”) issues, Sarbanes-Oxley requirements, required Quarterly FERC sales reporting, and all Legal Requirements, including other regulatory requirements; and

(ii) inform Buyer of regulatory changes to reporting requirements.

(b) In conjunction with the provision of Back Office Services as a component of the PSMFB Services, PSMFB Service Provider shall also provide support to Buyer's ISO/RTO representatives, business representatives, and legal counsel on any FERC, other regulatory proceeding, arbitration or state/federal court proceeding under the same terms and conditions as Front Office Service No. 9(b).

### **PART 3: FRONT OFFICE, MID OFFICE, AND BACK OFFICE COORDINATION:**

As a matter of appropriate and effective operating procedures, including accounting and financial controls (which operating procedures shall be reviewed with Buyer and further detailed in the Administrative Protocols and Procedures), the PSMFB Service Provider shall maintain a Front Office Services staff whose sole responsibility is to perform Front Office Services and a separate Back Office Services staff that is solely responsible for performing Back Office Services. The PSMMO Service Provider staff responsible for Mid Office Services, as defined in Appendix XIV, shall be separated from staff performing PSMFB Services and FM Services and shall report to different executive management. At no time, will an individual with Front-Office Services or Back- Office Services responsibilities associated with the PSMFB Services or services provided by the FM Services Provider be performing PSMMO Services. Provided PSM Service Provider exercises appropriate supervision and employs appropriate and effective accounting and financial controls consistent with Prudent Utility Practices, nothing herein shall prevent PSMFB Service Provider from reassigning and transferring staff to, and from, the Front Office, Mid Office or Back Office, or prevent such reassigned or transferred staff from performing Back Office Services or Front Office Services, respectively, when so reassigned.

(a) Front Office Services Staff Coordination with Back Office Services Staff: The Front Office Services staff shall provide Front Office Services data including: schedules, invoices, receipts, transaction records, and regular reports of its purchase, sales and scheduling activities to (i) Back Office Services staff, (ii) the PSMMO Service Provider, as well as to (iii) Buyer and its consultants. In addition, the Front Office Services staff shall notify the Back Office Services staff, and the PSMMO Service Provider, as well as Buyer and its consultants when a New Buyer Contract is established, and provide a detailed description of the contract terms and conditions; and, as appropriate, provide corresponding contract administration services for such contract.

(b) PSMMO Service Provider Coordination: The PSMMO Service Provider is responsible for monitoring the performance of the PSMFB Service Provider and for providing regular reports to Buyer on how well the PSMFB Service Provider is (ii)

meeting Buyer's Load Requirements and (ii) managing the Power Supply Resources in a least cost manner that is consistent with Buyer Contracts, and with applicable Buyer policies, and regulations and reliability constraints. Accordingly, the Front Office Services staff and Back Office Services staff shall provide regular reports of its, and their, activities to the PSMMO Service Provider, as well as to Buyer and its consultants. For the avoidance of doubt and the purpose of clarity and except as provided in Appendix XIV, the Parties agree that PSMFB Service Provider shall not be providing any credit management services to Buyer and shall not be responsible for processing, reconciling, or monitoring any margin or collateral requirements for Buyer with regard to any contract associated with Power Supply Resources on Table II-1. In the event that such services are hereafter required and provided that the Parties mutually agree with respect to the terms and conditions of providing such services, such undertaking shall be treated, priced and performed as an Additional Service hereunder.

(c) Back Office Staff Coordination with Front Office Services Staff: The Back Office Services staff shall provide all Back Office Services data including: schedules, invoices, receipts, transaction records, and regular reports of its purchase, sales and scheduling activities to the (i) Front Office Services staff, (ii) the PSMMO Service Provider, as well as (iii) Buyer and its consultants. In addition, the Back Office Services staff shall provide all pertinent records for access by the Front Office Services staff, the PSMMO Service Provider, and Buyer and its consultants, including but not limited to, all accounting, administrative, transaction documentation, reconciliations, and settlement, financial reporting, compliance, dispute resolution support, and related reporting and support services for all Front Office Services transactions performed and undertaken by the PSMFB Service Provider.

#### **PART 4: AUDITS**

Buyer shall have the right upon prior written notice and on Business Days to audit all PSMFB Service transactions.

## **PART 5: BUSINESS CONTINUITY**

As set forth in Section 4.7 and in Appendix VIII, the PSMFB Service Provider shall provide services that ensure business continuity in the event of a business disruption(s).

PSMFB Service Provider recognizes and acknowledges that the PSMFB Services are critical services to Buyer, and that Buyer relies on the performance of the PSMFB Service Provider, which is critically significant to the conduct of Buyer's business and to its ability to serve its customers.

A brief description of how the PSMFB Service Provider shall maintain continuous service during periods of business disruptions is set forth in Appendix VIII and a further detailed description shall be set forth in the Administrative Protocols and Procedures ("Business Continuity Plan"). The pricing to maintain and implement, if necessary, the Business Continuity Plan is included in the Total Annual Fees set forth in Appendix IV.

In the event of a business disruption, including but not limited to a Force Majeure Event, that adversely impacts the PSMFB Service Provider's performance to such an extent that it jeopardizes Buyer's ability to conduct its business and meet the needs of its customers, Buyer may, at its sole discretion, transfer such responsibilities to an alternate service provider in accordance with the provisions of the Agreement and as further detailed in the Administrative Protocols and Procedures until such business disruption has been resolved to Buyer's satisfaction.

## **PART 6: CONFLICT OF INTEREST**

Unless otherwise prohibited from such disclosure pursuant to the terms of a particular contract, the PSMFB Service Provider shall provide a list of, and shall disclose, any contracts it has with third parties to provide services similar to PSMFB Services. Such list shall be maintained and updated in the Administrative Protocols and Procedures.

The PSMFB Service Provider shall ensure that during the Base Term, and Extended Term, if applicable, the PSMFB Service Provider's services for, and involvement with clients other than Buyer, shall not create any conflict of interest with Buyer. The PSMFB Service Provider shall not perform any new services for an existing client or engage a new client

that would involve a potential conflict of interest with Buyer without receiving from Buyer the express prior written waiver of the conflict. For the purpose of this Part 6, a new or existing client does not include any Affiliates of the PSMFB Service Provider. Further, notwithstanding any provision contained in this Agreement to the contrary, nothing herein shall preclude the PSMFB Service Provider from representing itself or any of its Affiliates before any regulatory or governmental authority, and if a conflict of interest should arise, then such conflict will be addressed in accordance with the procedures as provided in Section 4.18 of the Amended and Restated OSA.

The Parties acknowledge that, as of the PSMFB Effective Date, the PSMFB Service Provider shall comply with its own standards of conduct, which are set forth in the Administrative Protocols and Procedures, as they may be amended from time-to-time (“PSMFB Service Provider’s Standards of Conduct”), and with Buyer’s Standards of Conduct referenced in Appendix I, as amended from time-to-time. In the event of a conflict in such standards with respect to the PSMFB Services, the more restrictive standards of conduct shall control. In addition to the foregoing, PSMFB Service Provider specifically warrants that it shall not, and it shall monitor and supervise its employees and contractors engaged in trading activities on Buyer’s behalf so that they shall not, disclose to any Person not authorized under this Agreement or by the specific, prior written consent of Buyer, or use information about Buyer, including, without limitation, information regarding Buyer’s trading activities, the operation or status of the Power Supply Resources, for, with, on behalf of, or for any reason with respect to PSMFB Service Provider, its Affiliates, any other client of PSMFB Service Provider and/or any other third party.

#### **PART 7: ADDITIONAL SERVICES:**

In accordance with Section 5.3, the Parties may agree that the PSMFB Service Provider shall perform additional services beyond those described or specified in this Agreement (“Additional Services”). Additional Services, which do not have a stated fee set forth in Appendix IV (e.g., negotiation of New Buyer Contracts) shall be paid by Buyer to PSMFB Service Provider in accordance with Appendix IV Part 3 and shall be performed by PSMFB Service Provider as agreed upon in writing by and between the Parties.



## **PART 8: LEGAL SERVICES:**

Notwithstanding anything contained in this Agreement to the contrary, PSMFB Service Provider shall in no event and at no time provide legal services of any kind, including, but not limited to contract interpretation, tariff interpretation, legal representation, or advice and counsel on any matter to Buyer, Buyer's Related Parties or Buyer's Personnel. PSMFB Service Provider will comply with all rules, regulations, orders and laws.

**Table II-1a: PSA Units:**

<b>PSA Units:</b>	<b>Capacity (MW)</b>	<b>Contract Expiration<sup>3</sup></b>	<b>Type Facility<sup>1</sup></b>	<b>Fuel</b>
National Grid E.F. Barrett 1,2	385	2028	ST	Gas, Resid <sup>2</sup>
National Grid Northport 1,2,3,4	1,552	2028	ST	Gas, Resid
National Grid Port Jefferson 3,4	383	2028	ST	Gas, Resid
National Grid E.F. Barrett 1-12	305	2028	SC	Gas, Resid
National Grid Wading River 1-3	241	2028	SC	Distillate
National Grid East Hampton 1	18	2028	SC	Distillate
National Grid Glenwood 1-3	115	2028	SC	Distillate
National Grid Holtsville 1-10	524	2028	SC	Distillate
National Grid Northport GT-1	13	2028	SC	Distillate
National Grid Port Jefferson GT	12	2028	SC	Distillate
National Grid Shoreham 1-2	64	2028	SC	Distillate
National Grid Southampton 1	7	2028	SC	Distillate
National Grid Southold 1	12	2028	SC	Distillate
National Grid West Babylon 4	49	2028	SC	Distillate
National Grid East Hampton 2-4	6	2028	IC	Distillate

1 CC – Combined Cycle, ST – Steam, IC – Internal Combustion, SC – Simple Cycle Combustion Turbine, PS – Pumped Storage

2 Resid means residual oil.

3 The original Power Supply Agreement expired by its terms on May 27, 2013. The Amended and Restated Power Supply Agreement (“A&R PSA”) commenced its term on May 28, 2013 and ends April 30, 2028; however the terms of the A&R PSA provides LIPA the flexibility to terminate the contract any time after 12 years to the extent LIPA no longer needs the National Grid plants. If LIPA chose to exercise all of the repowering and ramp down provisions in the contract, there is the potential that LIPA could terminate earlier than 12 years. LIPA would have to provide at least two years advance notice to National Grid of LIPA’s election to terminate the contract.

**Table II-1b: PPA Units<sup>1</sup>:**

PPA Units	Capacity (MW)	Contract Expiration	Type Facility <sup>2</sup>	Fuel
Calpine Bethpage	77	2025	CC	Gas
Equus	47	2017	SC	Gas, Distillate
FPLE Bayswater	54	2020	SC	Gas
FPLE Jamaica Bay	55	2018	SC	Gas, Distillate
Pinelawn	75	2025	CC	Gas, Distillate
PPL Global Shoreham	76	2017	SC	Distillate
PPL Edgewood - Brentwood	79	2018	SC	Distillate
Village of Freeport	10	2034	SC	Gas, Distillate
NYPA Flynn	136	2014 <sup>4</sup>	CC	Gas, Distillate
NYPA Gilboa	50	2015	PS/Hydro	Water
Global Common Greenport	48	2018	SC	Distillate
Bear Swamp	345	2021	PS/Hydro	Water
FPLE Marcus Hook	685	2030	CC	Gas
Caithness <sup>3</sup>	326	2029	CC	Gas, Distillate
National Grid Glenwood	80	2027	SC	Gas, Distillate
National Grid Port Jefferson GT 2-3	79	2027	SC	Gas, Distillate
FitzPatrick	Energy Only	2014 <sup>4</sup>	Nuc	Nuc
Brookfield Energy	Energy and RECs Only	2019	R	Hydro and Wind
PPL EnergyPlus – Cumberland Landfill	Energy and RECs Only	2019	R	Landfill Gas
Eastern Long Island Solar Project	11.3	2032	R	PV
Long Island Solar Farm	31.5	2031	R	PV

1 Any new generating facilities selected in the 2010 G&T RFP, or any subsequent procurement for capacity and/or energy resources are considered to be included in the scope of services for power supply management front and back office services.

2 CC – Combined Cycle, ST – Steam, IC – Internal Combustion, SC – Simple Cycle Combustion Turbine, PS – Pumped Storage

3 LIPA's share is 286 MW, however the total capacity of the Caithness Plant is 326 MW.

4 All contracts with 2014 expiration will be included if extended beyond 2014.

**Table II-1c: IPP Units:**

<b>IPP Units</b>	<b>Capacity (MW)</b>	<b>Contract Expiration</b>	<b>Type Facility [1]</b>	<b>Fuel</b>
Babylon Resource Recovery <sup>1</sup>	14	2017; 5 year extension	ST	Refuse
Hempstead Resource Recovery <sup>2</sup>	71	2017; 5 year extension	ST	Refuse
Huntington Resource Recovery <sup>3</sup>	24	2017; 5 year extension	ST	Refuse
Islip Resource Recovery <sup>4</sup>	9	2017; 5 year extension	ST	Refuse
Suez Nassau Energy	46	2016	CC	Gas, Distillate

1 The original Babylon Resource Recovery Parallel Generation Agreement was set to expire in 2013. LIPA entered into an Amended and Restated Parallel Generation on May 25, 2012 which has a 5-year base term, and Babylon's option to extend for an additional 5 years.

2 The original Hempstead Resource Recovery Parallel Generation Agreement expired in 2009. LIPA continued to purchase the facilities' output under LIPA SC-11 Tariff. LIPA entered into a Power Purchase Agreement on May 25, 2012 which has a 5-year base term, and Hempstead's option to extend for an additional 5 years.

3 The original Huntington Resource Recovery Parallel Generation Agreement was set to expire in 2012. LIPA entered into an Amended and Restated Parallel Generation on May 25, 2012 which has a 5-year base term, and Huntington's option to extend for an additional 5 years.

4 The original Islip Resource Recovery Parallel Generation Agreement expired in 2010. LIPA continued to purchase the facilities' output under LIPA SC-11 Tariff. LIPA entered into a Power Purchase Agreement on May 25, 2012 which has a 5-year base term, and Islip's option to extend for an additional 5 years.

**Table II-1d: Buyer Owned Power Supply Resources:**

<b><u>Buyer Owned Power Supply Resources</u></b>	<b>Capacity (MW)</b>	<b>Type Facility<sup>[1]</sup></b>	<b>Fuel</b>
Nine-Mile Point 2*	224	ST	Nuclear
* Jointly-owned with Constellation Energy			

**Table II-1e: Cable Resources:**

<b>Cable Resources</b>	<b>Capacity (MW)</b>	<b>Contract Expiration</b>	<b>Type Facility<sup>[1]</sup></b>
Cross Sound Cable	330	2032	DC Tie
Neptune Cable	660	2027	DC Tie
1385 Cable (also known as the Northport-Norwalk Cable)	200	N/A*	Scheduled AC Tie

\* Jointly owned with Northeast Utilities, Inc.

*[Remainder of the page is intentionally left blank. See next page.]*

**Table II-1f: Generating Units for which No Services are Provided:**

If Buyer requires services in connection with one or more of these Generating Units, such services would be provided as an Additional Service.

Bethpage (Oyster Bay) Landfill  
Birchwood Nursing Home  
Brookhaven National Lab  
Central General Hospital  
Connetquot High School  
East Northport Landfill  
Entenmanns  
Fairway Manor  
Fala Direct Marketing  
Hofstra University  
Hubbard Power and Light  
Huntington Lodge  
Huntington YMCA  
Islip Landfill  
John F Kennedy Junior High School  
Lasalle Academy  
Mercy Hospital  
Nathan Hale Housing  
Nesconset Nursing Home  
Nissequogue Cogen  
Oceanside Landfill  
Park Nursing Home  
Resort Nursing Home  
Robert Frost Junior High School  
Rockaway Care Center  
Ronkonkoma Junior High School  
Sayville Junior High School  
Smithtown High School  
South Oaks Hospital  
Southampton College  
St. Charles Hospital  
St. Johnsland Nursing Center  
SUNY Farmingdale  
TBG Cogen  
Village of Rockville Centre  
Waldbaums  
Yaphank Landfill

## **APPENDIX III - TRANSITION PLANS**

### **PART 1: FRONT-END TRANSITION PLAN**

Pursuant to Section 3.1(a) and Appendix IX, the PSMFB Service Provider shall perform and support the services set forth below (“Front-End Transition Services”) with all such services collectively being referred to as the “Front-End Transition Plan”. The PSMFB Service Provider will assist Buyer in preliminary planning for Front-End Transition Services prior to the PSMFB Effective Date, subject to PSMFB Service Provider limitations on manpower and expenses recognizing that Buyer’s payments to the PSMFB Service Provider for Front-End Transition Services shall be made in accordance with the completion of milestones set forth in Appendix IV.

Subject to Section 2.1 and Appendix IX, and upon the Front-End Transition Start Date, the PSMFB Service Provider shall promptly commence performance of the following activities:

- Meet with all the current and future Buyer stakeholders (e.g., Buyer, CEE and the PSMMO Service Provider) on a regular basis to assess the progress of transition processes;
- Allocate PSMFB Service Provider personnel for the new responsibilities related to this Agreement, and start training the regular and back up personnel who will perform the PSMFB Services;
- Design, build and test the web portal in order for Buyer to provide and receive relevant data and reports;
- In conjunction with Buyer and the PSMMO Service Provider prepare and compile the Administrative Protocols and Procedures for PSMFB Services, as required by the various processes and communication protocols set forth or described in Appendix II, or otherwise in this Agreement;
- File applications for issuance or transfer of any permits and other licenses as required by this Agreement with ISO/RTO, FERC and other regulatory agencies;

- Collect all relevant information about Buyer's Power Supply Resources such as: MW rating versus temperature curves, heat rate ratings and start up times and ramp rates in order to build a short-term economic dispatch model. Research mid and long-term economic dispatch models for possible purchases and sales of power;
- Simulate dispatch and power purchase and sale decisions for evaluation by Buyer;
- Collect all the information required to update and upgrade the IT System in order to implement hardware installation and in order to upgrade and customize the software platform for Buyer, and work on any software compatibility issues;
- Transfer market and accounting data from CEE and Buyer as necessary to perform PSMFB Services;
- Using historical data, test applicable trade, accounting and IT System and verify all the reports for accuracy;
- Test (i) the interface with Buyer's servers and (ii) the information look up capability and production of the reports needed by Buyer, as described in the Administrative Protocols and Procedures; and
- Test and demonstrate that the PSMFB Services work in parallel with those PSMFB Services being provided by CEE for SIXTY (60) Days, and then begin performing PSMFB Services starting January 1, 2015 or such other date in accordance with the Agreement.



## **PART 2: BACK-END TRANSITION PLAN**

Pursuant to Section 3.1(b) of this Agreement, the PSMFB Service Provider shall perform and support the services outlined below and as may be more fully set forth in the Administrative Protocols and Procedures (“Back-End Transition Services”) with all such services collectively being referred to as the “Back-End Transition Plan”. Payments for Back-End Transition Services shall be made in accordance with Appendix IV Part 4 and the Final Back-End Transition Plan developed in accordance with Section 3.1(b).

The Back-End Transition Services include those services required to accomplish an orderly “hand off” of responsibilities, if necessary, to a subsequent service provider or Buyer which shall include:

- Transfer of ISO/RTO-related and historical data;
- Transfer of accounts payable and receivable information;
- Transfer of risk system data (contracts, positions, counterparties, and credit); and
- Completion of 60 Days of live system and simultaneous operation with new PSMFB service provider.

Details regarding the Back-End Transition Plan shall be set forth in the Administrative Protocols and Procedures.

## **PART 3: MODIFIED BACK-END TRANSITION SERVICES, BUYER DATA TRANSFER SERVICES AND NO BACK-END TRANSITION SERVICES**

In accordance with Section 2.4 and subject to Section 13.12, in the event of an Early Termination, the PSMFB Service Provider shall perform Modified Back End Transition Services, or Buyer Data Transfer Services, or No Back-End Transition Services as specified by Buyer. Payment for Modified Back End Transition Services, Buyer Data Transfer Services, or No Back-End Transition Services shall be in accordance with Appendix IV Part 5.

The Modified Back-End Transition Plan and Buyer Data Transfer Services shall include the following services:

- Those services required to accomplish an orderly “hand off” of responsibilities, if necessary, to a subsequent service provider or Buyer which shall include, transfer of ISO-related and historical data;
- Transfer of accounts payable and receivable information; and
- Transfer of risk system data (contracts, positions, counterparties, and credit).

Details regarding the Modified Back-End Transition Plan, Buyer Data Transfer Services and No Back-End Transition Services shall be set forth in the Administrative Protocols and Procedures.



**Table IV – 1: Front-End Transition Milestone Payment Schedule**

Case No.	Case Name	Case Address	Case City	Case State	Case Zip	Case Country	Case Phone	Case Email	Case Website	Case Social Media	Case Other Info
1	John Doe	123 Main St	New York	NY	10001	USA	212-555-1234	john.doe@example.com	john.doe.com	John Doe	John Doe
2	Jane Smith	456 Elm St	Los Angeles	CA	90001	USA	310-555-5678	jane.smith@example.com	jane.smith.com	Jane Smith	Jane Smith
3	Bob Johnson	789 Oak St	Chicago	IL	60601	USA	312-555-9012	bob.johnson@example.com	bob.johnson.com	Bob Johnson	Bob Johnson
4	Alice Brown	101 Pine St	San Francisco	CA	94101	USA	415-555-3456	alice.brown@example.com	alice.brown.com	Alice Brown	Alice Brown
5	Charlie Davis	202 Maple St	Seattle	WA	98101	USA	206-555-7890	charlie.davis@example.com	charlie.davis.com	Charlie Davis	Charlie Davis
6	Diana Prince	303 Cedar St	Portland	OR	97201	USA	503-555-2345	diana.prince@example.com	diana.prince.com	Diana Prince	Diana Prince
7	Ethan Hunt	404 Birch St	San Diego	CA	92101	USA	619-555-6789	ethan.hunt@example.com	ethan.hunt.com	Ethan Hunt	Ethan Hunt
8	Fiona Glenanne	505 Spruce St	Denver	CO	80201	USA	303-555-0123	fiona.glenanne@example.com	fiona.glenanne.com	Fiona Glenanne	Fiona Glenanne
9	Gary Cooper	606 Ash St	Phoenix	AZ	85001	USA	602-555-4567	gary.cooper@example.com	gary.cooper.com	Gary Cooper	Gary Cooper
10	Helen Mirren	707 Willow St	San Jose	CA	95101	USA	408-555-8901	helen.mirren@example.com	helen.mirren.com	Helen Mirren	Helen Mirren
11	Ian McKellen	808 Redwood St	San Francisco	CA	94101	USA	415-555-2345	ian.mckellen@example.com	ian.mckellen.com	Ian McKellen	Ian McKellen
12	Jennifer Lawrence	909 Sycamore St	Los Angeles	CA	90001	USA	310-555-6789	jennifer.lawrence@example.com	jennifer.lawrence.com	Jennifer Lawrence	Jennifer Lawrence
13	Kevin Spacey	1010 Dogwood St	San Francisco	CA	94101	USA	415-555-0123	kevin.spacey@example.com	kevin.spacey.com	Kevin Spacey	Kevin Spacey
14	Liam Neeson	1111 Magnolia St	Los Angeles	CA	90001	USA	310-555-4567	liam.neeson@example.com	liam.neeson.com	Liam Neeson	Liam Neeson
15	Mel Gibson	1212 Palm St	San Francisco	CA	94101	USA	415-555-8901	mel.gibson@example.com	mel.gibson.com	Mel Gibson	Mel Gibson
16	Nicole Kidman	1313 Cypress St	Los Angeles	CA	90001	USA	310-555-2345	nicole.kidman@example.com	nicole.kidman.com	Nicole Kidman	Nicole Kidman
17	Orlando Bloom	1414 Fir St	San Francisco	CA	94101	USA	415-555-6789	orlando.bloom@example.com	orlando.bloom.com	Orlando Bloom	Orlando Bloom
18	Penelope Cruz	1515 Gum St	Los Angeles	CA	90001	USA	310-555-0123	penelope.cruz@example.com	penelope.cruz.com	Penelope Cruz	Penelope Cruz
19	Ryan Murphy	1616 Hickory St	San Francisco	CA	94101	USA	415-555-4567	ryan.murphy@example.com	ryan.murphy.com	Ryan Murphy	Ryan Murphy
20	Sandra Bullock	1717 Juniper St	Los Angeles	CA	90001	USA	310-555-8901	sandra.bullock@example.com	sandra.bullock.com	Sandra Bullock	Sandra Bullock
21	Tom Cruise	1818 Laurel St	San Francisco	CA	94101	USA	415-555-2345	tom.cruise@example.com	tom.cruise.com	Tom Cruise	Tom Cruise
22	Uma Thurman	1919 Locust St	Los Angeles	CA	90001	USA	310-555-6789	uma.thurman@example.com	uma.thurman.com	Uma Thurman	Uma Thurman
23	Will Smith	2020 Maple St	San Francisco	CA	94101	USA	415-555-0123	will.smith@example.com	will.smith.com	Will Smith	Will Smith
24	Zoe Saldana	2121 Oak St	Los Angeles	CA	90001	USA	310-555-4567	zoe.saldana@example.com	zoe.saldana.com	Zoe Saldana	Zoe Saldana

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**AMENDED AND REPLACED  
APPENDIX V  
PERFORMANCE STANDARDS**

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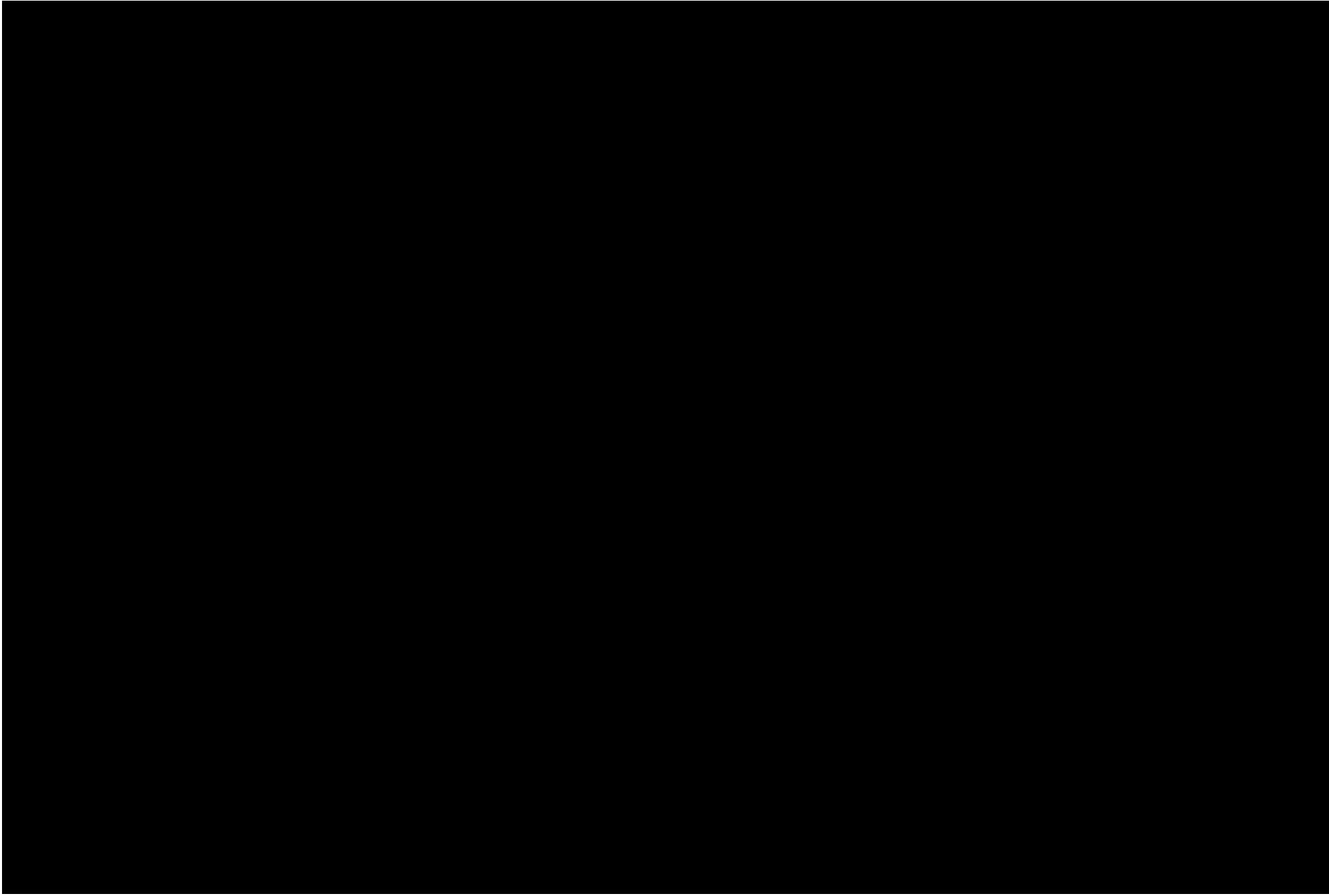
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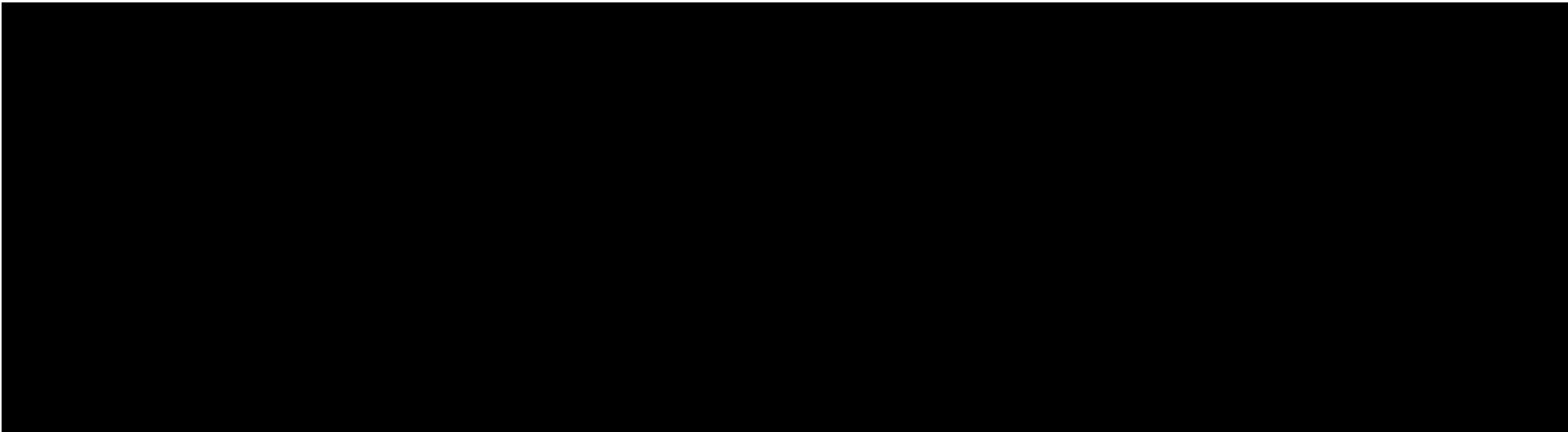
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**APPENDIX VI**  
**IT SYSTEM USED TO PROVIDE PSMFB SERVICES**

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## **APPENDIX VII – FORM OF INSURANCE CERTIFICATION**

**To be attached.**

## **APPENDIX VIII**

### **BUSINESS CONTINUITY PLAN**

In the event it becomes necessary for the PSMFB Service Provider to implement its Business Continuity Plan, it shall immediately notify the Buyer's Representative and provide information on the nature and extent of the disruption, its expected duration, and the extent to which the Business Continuity Plan has successfully restored PSMFB Services. In addition, the PSMFB Service Provider shall provide to Buyer's Representative regular updates on the status of event causing the disruption of service, and the actions taken by the PSMFB Service Provider to restore PSMFB Services to their normal state.

The PSMFB Service Provider shall implement the Business Continuity Plan, as provided in this Appendix VIII, except to the extent prevented, in whole or in part by a Force Majeure Event.

The specific details of the Business Continuity Plan shall be set forth in the Administrative Protocols and Procedures.

#### **1. Strategy and Approach**

This Business Continuity Plan addresses the need for and requirement of the PSMFB Service Provider to continue performing PSMFB Services and fulfilling all contractual obligations of this Agreement.

The Business Continuity Plan for the PSMFB Service Provider, includes the following categories of service:

- Backup IT System;
- Office Facilities; and
- Telecommunications.

##### **(a) Backup IT System:**

The PSMFB Service Provider shall provide a backup to its IT System at the PSMFB Service Provider's disaster recovery site such that all critical PSMFB Services can be provided in the event the Business Continuity Plan is implemented.

The backup IT System shall include critical infrastructure components such as: network servers, the Local Area Network (“LAN”), the Wide Area Network (“WAN”), PC Hardware and operating system components, and telecommunications capability remain functional. The PSMFB Service Provider shall ensure that it is able to connect to its critical business applications at its disaster recovery site using the Virtual Private Network (“VPN”).

(b) Office Facilities:

The PSMFB Service Provider shall provide alternative office facilities in the event the Business Continuity Plan is implemented.

(c) Telecommunication:

The PSMFB Service Provider shall arrange for back-up telecommunication systems which shall be activated in the event the Business Continuity Plan is implemented.

## **2. Lessons Learned Review**

After all PSMFB Services have been restored to normal and the Business Continuity Plan has been de-activated, the Parties shall meet to identify any lessons learned.

In addition, the PSMFB Service Provider shall prepare a written report describing the nature and details of the event, including, but not limited to, root cause of the service disruption, the extent of its impact on PSMFB Services and third parties, the actions that were taken concerning critical applications and critical infrastructure, and any other details of the event as requested by Buyer. Such further details shall be described in the Administrative Protocols and Procedures.

## **APPENDIX IX**

### **PSM ENTERPRISE DATA MANAGEMENT**

#### **1. PSM Enterprise Data Management – Overview:**

Buyer's PSM enterprise data management system is used to manage Buyer's enterprise data ("PSM EDM") and is the conduit and storage facility for all information provided to and by the PSMFB Service Provider and the FM Service Provider and shall also be used by the Buyer and its contractors involved in PSMFB Services. The PSMFB Service Provider shall utilize the PSM EDM in order to access and exchange information with Buyer, the PSMMO Service Provider, Buyer's suppliers, contractors, consultants and agents; provided, however, that nothing herein shall preclude the PSMFB Service Provider from obtaining data from other sources or by other methods. The PSMFB Service Provider shall strictly control access of the PSMFB Service Provider Personnel to the PSM EDM and the use of the information contained in the PSM EDM shall be in accordance with this Agreement and may not be used for any other purpose without Buyer's prior written approval. Unless otherwise prohibited by Legal Requirements or applicable license agreements, the PSMFB Service Provider agrees to allow Buyer, its consultants, contractors and agents the use of any data the PSMFB Service Provider contributes to the PSM EDM. The PSM EDM is intended to:

- (a) Provide a system for multiple vendors, under contract to Buyer, to share data that is required by or from each other in order to accomplish their primary responsibilities under their respective contracts with Buyer;
- (b) Provide an interface mechanism for the data, which is the basis for a Buyer management dashboard, or for meeting other Buyer reporting requirements;
- (c) Provide data management and reporting in order to support Buyer decision-making and for meeting Buyer's customer service obligations;
- (d) Satisfy Buyer's long-term information technology strategies requiring that all proposed information systems to be owned or utilized by Buyer in connection with its business activities must utilize a common interface model for the sharing of data; and

(e) Provide an end-state system ready for use on a schedule that is intended to allow for a smooth transition of the responsibilities for the existing services to the PSMFB Service Provider and the PSMMO Office Service Provider, as applicable.

The PSM EDM is also intended to contain the following types of information relevant to the PSMFB Services including, but not limited to (details and sources of information to be set forth in the Administrative Protocols and Procedures):

- (a) NYISO, PJM, and ISO-NE information;
- (b) Power sales and purchases, including bidding and scheduling information;
- (c) Short-term load forecast information;
- (d) Generating data (e.g., operational data, performance, dispatch notices, fuel consumption, emissions, scheduled maintenance and forced outages) for those generating units under contract with Buyer;
- (e) Power purchase and sales contracts information;
- (f) Generation bidding and scheduling information;
- (g) Fuel purchase and tolling contracts information;
- (h) Physical and financial hedging information;
- (i) Reports, data and other information provided by the PSMMO Service Provider; and
- (j) Reports, data and other information provided by the PSMFB Service Provider.

## **2. PSM EDM Operation and Maintenance**

The PSM EDM shall be operated and maintained at Buyer's cost and expense. The PSMFB Service Provider shall develop, establish, install, test, and maintain, at PSMFB Service Provider's cost and expense, two data repositories necessary and required in order to either receive or send data and other information from and to the PSM EDM (such repositories, the "Staging Areas"). The PSM EDM shall be made available to the PSMFB Service Provider

by Buyer to support each Business Process as required in order for the PSMFB Service Provider to perform the PSMFB Services hereunder. For the purposes of this Agreement, a “Business Process” is defined as: a collection of coordinated and sequenced tasks and sub-processes performed to deliver defined products and services. The Business Processes required by the PSMFB Service Provider in order to perform PSMFB Services shall be set forth in the Administrative Protocols and Procedures.

The Buyer represents and warrants to the PSMFB Service Provider that the operational and functional capabilities of the PSM EDM are capable to support all Business Processes and Primary Solutions. A “Primary Solution” is defined as an electronic system that uses the Buyer provided network integration solution and Staging Areas as a common means of communication among Buyer and its various service providers, and which provides all Required Data in a timely manner.

### **3. Primary Solution Employed For All Business Processes**

#### **(a) PSM EDM Interface:**

The PSMFB Service Provider shall provide the Staging Areas for each Business Process, which shall be used by the PSMFB Service Provider to provide and receive information as required for the PSMFB Service Provider to perform the PSMFB Services. The two Staging Areas shall be developed, constructed, installed and tested during the Front-End Transition Period.

#### **(b) IT System and Data Sources:**

The IT System shall be configured to allow for the regular input and extraction of data and other information from and to the PSM EDM in order for the PSMFB Service Provider to perform the PSMFB Services and for Buyer to obtain information for managing its business. The costs for the PSMFB Service Provider to develop and implement such IT System are included in the PSMFB Service Provider’s Front-End Transition Period pricing as set forth in Appendix IV. The costs for the PSMFB Service Provider to maintain such IT System and the Staging Areas are included in its Total Annual Fee as set forth in Appendix IV.

#### **4. Administrative Protocols and Procedures**

The Parties shall set forth details of the PSM EDM in the Administrative Protocols and Procedures.

## APPENDIX X

### MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROCEDURES

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

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

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

### II. DEFINITIONS.

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

ALBANY OFFICE: (518) 292-5250  
30 South Pearl Street  
Albany, New York 12245

NEW YORK CITY OFFICE: (212) 803-2200  
633 Third Avenue  
New York, New York 10017

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



(3) CONTRACT.

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

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

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

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

(a) Specific tasks required by the Contract;

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

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

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

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

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

- (9) **GOAL.** A percentage of participation, which is not a set aside or quota, that represents a target toward which the prime PSMFB Service Provider must aim in expending good faith efforts to subcontract with or otherwise ensure the commercial involvement of minority and women-owned businesses on specific Buyer contracts.
- (10) **NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, MINORITY AND WOMEN'S BUSINESS DIVISION.** Office in the Executive Department created by Article 15-A of the Executive Law (hereinafter referred to as the "Office").
- (11) **MINORITY GROUP MEMBER.** A United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
- (a) Black persons having origins in any of the Black African racial groups;
  - (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic Origin, regardless of race;
  - (c) Native American or Alaskan native persons having origins in any of the original peoples of North America;
  - (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
  - (e) Other groups which the Office may determine to be eligible for M/WBE status.
- (12) **MINORITY-OWNED BUSINESS ENTERPRISE.** A business enterprise, including a sole proprietorship, partnership or corporation that is:
- (a) At least fifty-one percent owned by one or more Minority Group Members;

- (b) An enterprise in which such minority ownership is real, substantial and continuing;
- (c) An enterprise in which such minority ownership has, and exercises the Buyer to control independently, the day-to-day business decisions of the enterprise; and
- (d) An enterprise authorized to do business in New York State and is independently owned and operated.

(13)SUBCONTRACT. An agreement in which a portion of a PSMFB Service Provider's obligation under an Buyer contract is under-taken or assumed.

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

- (a) At least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
- (b) An enterprise in which the ownership interest of such women is real, substantial and continuing;
- (c) An enterprise in which such women ownership has, and exercises the Buyer to control independently, the day-to-day business decisions of the enterprise; and
- (d) An enterprise authorized to do business in New York State and is independently owned and operated.

### III. BIDDING PROCESS PROCEDURES

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

- (2) Each bidder will designate, and make known to the Buyer, an M/WBE Officer who will have the responsibility for and Buyer to effectively administer the M/WBE Program.
- (3) As a part of its proposal, each bidder shall submit its Preliminary Subcontracting Plan, which shall identify the Certified Businesses it will utilize to meet its M/WBE Contract Goals. Approval of any such firm is solely within the discretion of the Buyer.

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

- (4) To help prospective bidders with M/WBE participation, they may inspect the current New York State Certification Directory of Minority and Women Owned Businesses, prepared for use by state agencies and contractors in complying with Executive law Article 15-A, (the Directory) at the same location where the Buyer's bid document or request for proposals may be obtained or inspected and also at the Buyer's office at 333 Earle Ovington Boulevard, Suite 403, Uniondale, NY 11553. In addition, printed or electronic copies of the Directory may be purchased from the New York State Department of Economic Development, Minority and Women's Business Division.
- (5) Firms certified as both MBE and WBE may count toward either the MBE or WBE Goal on a single contract, but not both, regardless of whether either Goal is thus exceeded. The Bidder must choose the Goal to which the participation value is to be applied in the Preliminary Subcontracting Plan.

#### IV. PROCEDURES AFTER CONTRACT AWARD

- (1) Within ten (10) days after contract award the PSMFB Service Provider may submit a complete Utilization Plan, which shall include identification of the M/WBEs which the

PSMFB Service Provider intends to use; the dollar amount of business with each such M/WBE; the Contract Scope of Work which the PSMFB Service Provider intends to have performed by such M/WBEs; and the commencement and end dates of such performance. The Buyer will review the plan and, within twenty (20) days of its receipt, issue a written acceptance of the plan or comments on deficiencies in the plan.

- (2) The Buyer shall consider a partial or total waiver of Goal requirements only upon the submission of a written request for a waiver following PSMFB Service Provider's unsuccessful good faith efforts at compliance. (See Section VI, below). Such wavier request may be made simultaneously with the submission of the Utilization Plan.
- (3) The PSMFB Service Provider shall include in each Subcontract, in such a manner that the provisions will be binding upon each Subcontractor, all of the provisions herein including those requiring Subcontractors to make a good faith effort to solicit participation by M/WBEs.
- (4) The PSMFB Service Provider shall keep records, canceled checks and documents for at least one (1) year following completion of the Contract. These records, and canceled checks, documents or copies thereof will be made available at reasonable times upon written request by the Buyer or any other authorized governmental entity.
- (5) The PSMFB Service Provider shall submit monthly compliance reports regarding its M/WBE utilization activity. Reports are due on the first business day of each month, beginning thirty (30) days after Contract award.
- (6) The Buyer will conduct compliance reviews for determination of the PSMFB Service Provider's performance relative to meeting the specified M/WBE Goal which may include review and inspection of documents pertaining to the PSMFB Service Provider's efforts towards meeting the Goals and on-site interviews with personnel of PSMFB Service Provider and its Subcontractors. The PSMFB Service Provider will fully cooperate to assist the Buyer in this endeavor.

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

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

- (1) If the PSMFB Service Provider is unable to meet the Goals with Certified Businesses by making all of the good faith efforts defined herein (under section VI), the PSMFB Service Provider shall actively solicit uncertified M/WBEs to satisfy the Goals. Uncertified firms will be required to submit an application for certification (to the New York State Department of Economic Development, Minority and Women's Business Division) and will be counted as contributing towards the contract Goals only after they have been certified.
- (2) The PSMFB Service Provider must keep records of efforts to utilize certified M/WBE's including:
  - (a) The firm's name, address and telephone number.
  - (b) A description of the information provided to the M/WBE.
  - (c) A written explanation of why an agreement with the M/WBE was not obtained.
- (3) Price alone will not be an acceptable basis for rejecting M/WBE bids if any of the bids are reasonable.
- (4) Geographical limitation in the M/WBE search is not an acceptable reason for not meeting the M/WBE goal when traditionally non-local firms have been generally utilized.

- (5) The Buyer reserves the right to reject any firm as counting toward meeting the PSMFB Service Provider's M/WBE goal if, in the opinion of the Buyer, the facts as to that firm's business and technical organization and practices justify the rejection.

VI. PSMFB SERVICE PROVIDER'S GOOD-FAITH EFFORTS. To satisfy the M/WBE participation requirements, the PSMFB Service Provider agrees to make the following good-faith efforts in a timely manner:

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

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

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

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

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

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

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

**AMENDED AND REPLACED  
APPENDIX XI  
ADMINISTRATIVE PROTOCOLS AND PROCEDURES**

In accordance with Section 4.11 of this Agreement, the Administrative Protocols and Procedures shall be jointly developed by PSMFB Service Provider and Buyer and shall include the following topics with a level of detail reasonably required by the Parties to perform their obligations under this Agreement, with jointly developed written updates prepared periodically by Buyer and PSMFB Service Provider, as circumstances may dictate:

1. Each Party's Representatives
2. PSMFB Service Provider Staffing
  - (a) List of PSMFB Service Provider's staffing (e.g., name, title, responsibilities); and
  - (b) Notification Process for PSMFB Service Provider Staffing Changes.
3. List of Power Supply Resources:
  - (a) PSA Units;
  - (b) PPA Units;
  - (c) IPP Units;
  - (d) Cable Resources;
  - (e) Buyer-Owned Units;
  - (f) Industry Standard Master Agreements;
  - (g) Capacity, Energy, and Ancillary Services Purchase and Sale;
  - (h) Emission Credits Purchase and Sale;
  - (i) Transmission Purchase and Sale; and
  - (j) TCC and FTR Purchase and Sale.
4. Communications protocols with regard to:
  - (a) the PSMMO Service Provider;
  - (b) each of Buyer's power suppliers;
  - (c) Buyer's Electric Systems Operation ("ESO") center;
  - (d) Buyer, including Servco resource planning personnel providing planning services to Buyer;
  - (e) the Fuel Manager;
  - (f) CEE (in connection with Front-End Transition Services);
  - (g) Power Asset Management;
  - (h) the NYISO, ISO-NE and PJM; and
  - (i) the FERC.
5. Buyer's Policies and Procedures applicable to PSMFB Services, including Buyer's Standards of Conduct



6. PSMFB Service Provider's Operating Procedures applicable to PSMFB Services, including PSMFB Service Provider's Standards of Conduct
7. The PSMFB Service Provider's and the PSMMO Service Provider's report schedule and description of reports
8. List of reports to applicable Governmental Authority, all monthly, quarterly and/or yearly, forms or reports directly relating to the PSMFB Services required by DOE, FERC, NERC or any other regulatory agency
9. Performance Standards, Performance Metrics and Measurement Instructions
10. PSM EDM specifications
11. IT System Components
12. PSMFB Service Provider IT System – description of functionality
13. Intellectual Property Examples
14. Business Continuity Plan
15. Draft Final Back-End Transition Plan
16. PSMFB Service Provider's Disclosure of Contracts regarding Potential Conflicts of Interest – list of any contracts it has with third parties to provide services similar to PSMFB Services (excluding contracts prohibited from disclosure pursuant to the terms of such contracts)

Appendix XII

**LETTER OF CREDIT PROVISIONS**

[REDACTED]

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**APPENDIX XIII**  
**FORM OF PAYMENT GUARANTEE**

Date

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

Ladies and Gentlemen:

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

In consideration of Counterparty entering into the Agreement with ER&T and in accordance with Section 10.1 of such Agreement, PSEG Power LLC a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 80 Park Plaza, T-6, Newark, New Jersey 07102 (“Guarantor”), to the extent of **\$2,000,000.00 (TWO MILLION DOLLARS)** (the “Guarantee Limit”), and subject to the terms and conditions hereof, hereby absolutely, irrevocably and unconditionally guarantees to Counterparty, with effect from the date hereof, the full and prompt payment of all present and future amounts payable by ER&T under the Agreement when the same shall become due and payable, whether on scheduled payment dates, upon oral or written demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace or cure

period. Upon failure of ER&T promptly to pay any such amounts, and upon written demand by Counterparty to Guarantor to the address set forth herein (or to such other address as Guarantor may specify in writing to Counterparty), Guarantor, subject to the Guarantee Limit, agrees promptly to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Payment Guarantee. This is a guarantee of payment and not of collection. Guarantor will be liable for direct damages only and to the extent provided for herein. In no event shall Guarantor be liable hereunder for consequential, incidental, punitive, exemplary or indirect damages, lost profits or revenues by statute, in tort or contract, under any indemnification provision or otherwise.

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

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

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

Guarantor represents to Counterparty that:

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

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

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



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

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

**If to Guarantor:**

PSEG Power LLC  
80 Park Plaza, T-4  
Newark, New Jersey 07102,

Attention: Corporate Secretary

**If to Counterparty:**

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

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

This Guarantor's guarantee of payment up to the Guarantee Limit, is a continuing guarantee from the date hereof for the term of this Payment Guarantee. This Payment Guarantee

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

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

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

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

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

No failure on the part of the Counterparty to exercise, and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Counterparty of any right, remedy or power hereunder preclude any other future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted

to the Counterparty or allowed to it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Counterparty from time to time.

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

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

Nothing herein is intended to deny to Guarantor, and it is expressly agreed that Guarantor shall have and may assert, any and all of the defenses, set-offs, counterclaims and other rights which ER&T is or may be entitled arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of ER&T.

**PSEG POWER LLC**

By: \_\_\_\_\_  
Name:  
Title: Vice President and Treasurer

**Accepted and Agreed:**

**Long Island Power Authority**, acting on behalf of itself and its operating subsidiary, the Long Island Lighting Company d/b/a LIPA

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

**APPENDIX XIV**  
**PSM MID OFFICE SERVICES**

[REDACTED]

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A series of horizontal black bars of varying lengths, some aligned to the left and others indented, creating a visual structure. The bars are arranged in a way that suggests a list or a sequence of items, with some bars being longer than others and some being indented from the left margin. The overall effect is a minimalist, abstract representation of text or data.

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**ALTERNATIVE APPENDIX XIV**  
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