

DRAFT FORM OF CONTRACT FOR PUBLIC HEARING

**CONTRACT FOR THE SALE OF FIRM HYDROELECTRIC POWER AND ENERGY
FOR
RESALE TO THE BROOKHAVEN NATIONAL LABORATORY
BETWEEN
THE NEW YORK POWER AUTHORITY
AND
THE LONG ISLAND POWER AUTHORITY**

This Contract for the Sale of Firm Hydroelectric Power and Energy for Resale to the Brookhaven National Laboratory is made and entered into as of this ____ day of _____, 2010, by and between the **Power Authority of the State of New York**, created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 of Article V of the New York Public Authorities Law ("NY PAL"), having an office for the transaction of business at 30 South Pearl Street, Albany, New York 12207 ("NYPA") and the **Long Island Power Authority** ("LIPA"), created pursuant to Chapter 517 of the New York Laws of 1986 and existing under Title 1-A of Article V of the NY PAL, having an office for the transaction of business at 333 Earle Ovington Boulevard, Suite 403, Uniondale, New York 11553 ("LIPA") for the sale of 15 megawatts ("MW") of firm hydroelectric power and energy from NYPA to LIPA for resale to United States Department of Energy ("DOE") as owner of Brookhaven National Laboratory (together with DOE, collectively referred to as "BNL"). NYPA and LIPA are from time to time referred to in this Agreement individually as a "Party" or collectively as the "Parties."

RECITALS:

- I.** NYPA is a New York State corporate municipal instrumentality and political subdivision of the State of New York engaged in the generation and transmission of electricity.
- II.** LIPA is a New York State corporate municipal instrumentality and political subdivision of the State of New York engaged in the transmission, distribution and sale of electricity.

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III. NYPA has available firm hydroelectric power and energy from both its St. Lawrence-FDR Project and its Niagara Project (collectively, the “Hydro Projects” as defined in Article 1.12 below) not currently allocated to end-use customers.

IV. NYPA’s Board of Trustees at their January 27, 2009 meeting authorized NYPA to enter into a contract for the sale of 15 MW of Hydroelectric Power (as defined in Article 1.13 below) to LIPA for resale to BNL.

V. The sale of Hydroelectric Power by NYPA to LIPA for resale to BNL is authorized under section 1005 (5) of the NY PAL.

VI. LIPA owns and operates electric distribution facilities capable of providing service to end-use customers in its service area.

VII. Hydroelectric Power generated from the Hydro Projects serve an important economic development function by providing competitively priced electricity to support economic activity and employment in New York State.

VIII. Since 1982, NYPA has provided firm power service to BNL, both a large employer and a leading physical sciences laboratory within the U. S. Department of Energy performing vital scientific research which benefits industries throughout New York State pursuant to the terms of the NYPA/BNL Agreement (as defined in Article 1.23 below) and, associated with such historical service, NYPA has maintained grandfathered transmission agreements, currently designated as contract number 76 in Attachment L to the New York Independent System Operator’s Open Access Transmission Tariff (“Transmission Agreements”).

IX. The Parties anticipate that LIPA and BNL will enter into a LIPA/BNL Agreement for the resale and delivery to BNL of the Hydroelectric Power sold to LIPA under this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein, NYPA and LIPA agree as follows:

1. DEFINITIONS

1.1. Agreement means this Contract for the Sale of Firm Hydroelectric Power and Energy for Resale to the Brookhaven National Laboratory, dated as of [date], between NYPA and LIPA, including any Appendix attached hereto and any amendments to this Agreement that may be made from time to time in accordance herewith.

1.2. Allocation means the amount of Hydroelectric Power approved by NYPA’s Board of Trustees to be sold to LIPA for resale to and exclusive use by BNL, as set forth in Article 2.1.

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- 1.3. **Ancillary Services** shall have the meaning set forth in the NYISO Tariffs, as such definition may be modified from time to time.
- 1.4. **BNL** has the meaning set forth in the preamble.
- 1.5. **Commencement Date** shall be as set forth in Article 13.2.
- 1.6. **Conditions Precedent** shall be as set forth in Article 13.1.
- 1.7. **Contract Demand** will be the amount of Hydroelectric Power set forth in Article 2.1.
- 1.8. **Covered Matters** shall have the meaning set forth in Article 6.2.
- 1.9. **DOE** has the meaning set forth in the preamble.
- 1.10. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- 1.11. **FERC Licenses** mean the first new license issued by FERC to NYPA for the continued operation and maintenance of the St. Lawrence-FDR Power Project, pursuant to Section 15 of the Federal Power Act, which new license became effective October 31, 2003 after expiration of the Project's original license issued in 1953, and further means the first new license issued by FERC to NYPA for the continued operation and maintenance of the Niagara Power Project, pursuant to Section 15 of the Federal Power Act, which new license became effective September 1, 2007 after expiration of the Project's original license issued in 1958.
- 1.12. **Hydro Projects** is a joint reference to both the St. Lawrence-FDR Power Project, FERC Project No. 2000 and the Niagara Power Project, FERC Project No. 2216.
- 1.13. **Hydroelectric Power** is as defined in NYPA's Service Tariff No. 2B and is intended to be available at all times except for limitations provided in this Agreement, the Service Tariff or the Rules.
- 1.14. **ICAP** refers to Installed Capacity as such term is defined in the NYISO Tariffs as may be modified from time to time.
- 1.15. **International Joint Commission (or "IJC")** is the commission that prevents and resolves disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The Commission rules upon applications for approval of projects

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affecting boundary or transboundary waters and may regulate the operation of these projects.

- 1.16. **LIPA** has the meaning set forth in the preamble.
- 1.17. **LIPA/BNL Agreement** refers to an agreement between LIPA and BNL for the purpose of reselling and delivering to BNL Hydroelectric Power purchased by LIPA under this Agreement.
- 1.18. **LIPA Parties** shall have the meaning set forth in Article 6.2.
- 1.19. **Load Serving Entity (or “LSE”)** shall have the meaning set forth in the NYISO Tariffs, as such definition may be modified from time to time.
- 1.20. **MW** is an abbreviation for megawatts as set forth in the preamble.
- 1.21. **NRA** means the federal Niagara Redevelopment Act (16 USC §§836, 836a).
- 1.22. **NYISO** means the New York Independent System Operator or any successor organization.
- 1.23. **NYISO Tariffs** means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, or any successor tariffs to such NYISO Tariffs.
- 1.24. **NYPA** has the meaning set forth in the preamble.
- 1.25. **NYPA/BNL Agreement** means the existing power sales agreement entered into between NYPA and BNL in 1982, as modified from time to time.
- 1.26. **NY PAL** has the meaning set forth in the preamble.
- 1.27. **Point of Withdrawal** means the load bus established with the NYISO for service to BNL as contemplated under this Agreement.
- 1.28. **Rules** are the applicable provisions of the NYPA's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as they may be modified from time to time.
- 1.29. **Service Tariff** is NYPA’s Service Tariff No. 2B, a schedule establishing rates and other conditions for sale of Hydroelectric Power to LIPA for resale to BNL.
- 1.30. **State Comptroller** means the Comptroller of the State of New York.
- 1.31. **Transmission Agreements** has the meaning set forth in Recital VIII.

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- 1.32. UCAP** means Unforced Capacity as such term is defined in the NYISO Tariffs as may be modified from time to time.

2. SERVICES PROVIDED BY NYPA

- 2.1.** NYPA, consistent with section 1005 (5) of the NY PAL, shall generate, sell and deliver or cause to be delivered to LIPA at the Point of Withdrawal 15 MW of Hydroelectric Power from the Hydro Projects, consisting of 14 MW from the St. Lawrence-FDR Project and 1 MW from the Niagara Project. The Contract Demand under this Agreement shall be 15 MW, or such other amount as may be mutually agreed upon by the Parties.
- 2.2.** The Parties agree that this 15 MW Allocation of Hydroelectric Power is for the exclusive use of BNL.
- 2.3.** NYPA represents that the Hydroelectric Power sold under this Agreement is not subject to the federal preference provisions of the NRA. LIPA represents that such resale to BNL under the LIPA/BNL Agreement is in accordance with section 1020-dd of the NY PAL.
- 2.4.** NYPA shall sell to LIPA 15 MW of firm capacity associated with the Allocation. NYPA shall ensure that such capacity associated with the Allocation qualifies as ICAP under the NYISO Tariff. NYPA and LIPA agree to cooperate in good faith to enable such ICAP to satisfy a portion of applicable LSE responsibilities associated with the BNL retail load served by this Agreement and the NYPA/BNL Agreement, as described in Section 2.7 below. Such cooperation shall include LIPA's conveyance of the same amount of firm capacity to NYPA and such certifications and confirmations as may be required under the NYISO Tariffs with respect to installed capacity suppliers, LSEs and bilateral transactions.
- 2.5.** NYPA shall sell and arrange for delivery to LIPA at the Point of Withdrawal firm energy associated with the Allocation based on 15 MW multiplied by the forecasted load factor for BNL's total usage in each month. Such load factor shall not be greater than unity (1.0). The firm energy shall be made available at the Point of Withdrawal at 69 kilovolts, as three-phase alternating current at a frequency of 60 Hertz.
- 2.6.** NYPA has the right to reduce the amount of firm energy provided to LIPA in any month under this Agreement in the event of low flow (i.e., hydrologic) conditions that reduce the amount of such energy produced at the Hydro Projects. Any such reductions will be scheduled prior to the start of the month and made on a pro rata basis to all NYPA customers purchasing Hydroelectric Power from either of the Hydro Projects. The amount of firm energy not sold to LIPA under this Agreement due to low flow conditions may be replaced with

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resources supplied by NYPA to BNL under the NYPA/BNL Agreement, up to the Contract Demand.

- 2.7.** The Parties agree that NYPA is, and intend for NYPA to continue to be, the LSE for the entire BNL retail load. Accordingly, NYPA shall perform all LSE functions under the NYISO Tariff related to the (i) sale and delivery of energy and sale of capacity to LIPA under this Agreement, and (ii) the consumption of the Allocation by the BNL retail load. NYPA shall be responsible for all NYISO charges arising under this Agreement, including but not limited to:
- A. NYISO charges associated with the scheduling and delivery of all energy and capacity (*i.e.*, ICAP/UCAP) sold under this Agreement, as well as the consumption of the Allocation by the BNL retail load;
 - B. the procurement of Ancillary Services, marginal losses, the NYPA Transmission Adjustment Charge (“NTAC”) and congestion costs applicable to NYPA’s scheduling and delivery of energy and capacity sold under this Agreement, as well as the consumption of the Allocation by the BNL retail load; and
 - C. the procurement of any other products or services required by the NYISO related to the sale, scheduling or delivery of energy or capacity sold under this Agreement as well as the consumption of the Allocation by the BNL retail load.
- 2.8.** Notwithstanding the foregoing, to the extent the NYISO imposes any charges upon LIPA with respect to the sale and delivery of firm energy and the sale of firm capacity to LIPA under this Agreement or the consumption of the Allocation by the BNL retail load, those costs will either be (a) reimbursed by NYPA, or (b) deducted from LIPA’s payment to NYPA, as directed by NYPA in written notice to LIPA.
- 2.9.** Nothing in this Agreement precludes NYPA from recovering all NYISO charges it has incurred related to sales under this Agreement directly from BNL under the NYPA/BNL Agreement.
- 2.10.** NYPA shall provide at least 30 days prior written notice to LIPA for any changes or termination of the Contract Demand, unless otherwise agreed upon in writing by the Parties.

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3. SERVICES PROVIDED BY LIPA

- 3.1.** LIPA shall purchase Hydroelectric Power associated with the Allocation from NYPA at the Point of Withdrawal and resell and deliver to BNL the Hydroelectric Power associated with the Allocation at the rates and charges set by NYPA in accordance with Article 4 below and such bills rendered by LIPA to BNL pursuant to the LIPA/BNL Agreement shall not include any mark-up or a profit component. LIPA's bills to BNL rendered pursuant to the LIPA/BNL Agreement are subject to increase in accordance with rates, terms and conditions specified in LIPA's *Tariff for Electric Service*.
- 3.2.** The Parties agree that this Agreement does not grant to NYPA any rights to transmission service over LIPA's transmission or distribution system with respect to the sale and delivery of either energy or capacity from NYPA to LIPA under this Agreement.
- 3.3.** As of the Commencement Date of this Agreement, NYPA hereby partially assigns and transfers to LIPA the rights and obligations associated with NYPA's supply of 15 MW of Direct Firm Power Service (as such term is defined in the NYPA/BNL Agreement) to BNL under the NYPA/BNL Agreement. Such partial assignment of the obligation to provide 15 MW of Direct Firm Power Service to BNL under the NYPA/BNL Agreement shall be conditioned upon and only effective to the extent that LIPA receives full delivery of 15 MW of the Hydroelectric Power associated with the Allocation from NYPA pursuant to Articles 2.4, 2.5 and 3.10 of this Agreement.

LIPA hereby accepts the partial assignment and transfer of such rights and obligations to provide 15 MW of Direct Firm Power Service to BNL under the NYPA/BNL Agreement, subject to the conditions of this partial assignment stated herein and the requirement that this partial assignment shall not impose any costs or liabilities upon LIPA prior to the Commencement Date of this Agreement, or as a result of the termination of this Agreement. Such partial assignment shall terminate, and the rights and obligations to provide 15 MW of Direct Firm Power Service to BNL shall revert to NYPA, immediately upon termination or expiration of this Agreement.

NYPA expressly retains all other rights and obligations under the NYPA/BNL Agreement, including those rights and obligations relating to the transmission of all Direct Firm Power Service to BNL under the NYPA/BNL Agreement.

- 3.4.** NYPA hereby agrees to utilize its grandfathered transmission congestion contracts ("TCCs") associated with the Transmission Agreements used for deliveries of Hydroelectric Power associated with the Allocation to BNL under the NYPA/BNL Agreement to schedule and deliver all energy to LIPA under this Agreement for resale of the Allocation to BNL in accordance with the

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partial assignment of the obligation to provide 15 MW of Firm Power Service from NYPA to LIPA pursuant to Article 3.3. In the event that it is determined that NYPA's grandfathered TCCs associated with deliveries of energy to BNL may not be utilized to facilitate the scheduling and delivery of energy by NYPA to LIPA under this Agreement, pursuant to the partial assignment described in Article 3.3 (above), then NYPA hereby agrees to make all necessary arrangements pursuant to the NYISO Tariffs to procure transmission service required for the sale and delivery of energy from NYPA to LIPA for resale to BNL under this Agreement.

- 3.5.** Nothing herein shall affect nor is intended to affect NYPA's rights and obligations including the quantity of transmission service purchased by NYPA under the Transmission Agreements, including the grandfathered transmission agreement dated as of October 1, 1981, as amended, between NYPA and LIPA.
- 3.6.** Nothing in this Agreement, express or implied, shall relieve or limit NYPA from its obligations (1) to uphold its LSE responsibilities in accordance with the NYISO Tariffs, and (2) to provide Hydroelectric Power free and clear of all liens, claims and encumbrances.
- 3.7.** LIPA shall supply NYPA with hourly meter data on a monthly basis for NYPA's use under the NYPA/BNL Agreement.
- 3.8.** The resale by LIPA of Hydroelectric Power to BNL shall be consistent with the terms and conditions provided herein. The LIPA/BNL Agreement shall include a provision that prohibits BNL from reselling any of the Hydroelectric Power purchased from LIPA.
- 3.9.** Nothing in this Agreement prohibits LIPA's application of the gross receipts tax and New York State assessment in its charges for service to BNL in accordance with applicable state and federal laws, regulations and tariffs.
- 3.10.** Except as provided in Article 2.4 and consistent with Article 2.7, LIPA shall have no obligation to purchase or supply any ICAP or UCAP related to BNL's load. Notwithstanding the parties' intent as described in the above referenced Articles, to the extent the NYISO imposes on LIPA the responsibility to provide any ICAP or UCAP related to BNL's retail load or otherwise imposes any charges or penalties upon LIPA with respect to the provision of ICAP or UCAP related to BNL's retail load, NYPA will, as applicable and pursuant to written notice from NYPA to LIPA, (a) arrange for LIPA to retain capacity conveyed by NYPA pursuant to Article 2.4 and provide to LIPA all additional quantities of capacity with appropriate locational characteristics as may be necessary to meet its responsibilities to the NYISO at no charge, or (b) reimburse LIPA for such NYISO charges or penalties, or (c) deduct such charges or penalties from LIPA's payment to NYPA.

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- 3.11. LIPA shall have no obligation to purchase Hydroelectric Power associated with this Allocation from NYPA nor to resell and deliver such Hydroelectric Power to BNL to the extent that BNL is in arrears on any payment due to LIPA or in the event of an early termination of the LIPA/BNL Agreement as contemplated in Article 13.3 in this Agreement.
- 3.12. LIPA shall have no obligation to make deliveries to BNL in the event that NYPA fails to make deliveries of the Hydroelectric Power associated with the Allocation to LIPA.

4. RATES

- 4.1. Rates shall be as set forth in the Service Tariff, which shall be subject to modification from time to time. NYPA will provide LIPA with 30 days written notice of any such modification.
- 4.2. LIPA shall pay NYPA the sum of charges indicated in Articles 4.2.1, 4.2.2., and 4.2.3 below for Hydroelectric Power purchased from NYPA for the billing periods under this Agreement.
 - 4.2.1. Demand Charge. The demand charge specified in the Service Tariff or any modification thereof applied to the Contract Demand.
 - 4.2.2. Energy Charge. The energy charge specified in the Service Tariff applied to the energy apportioned to service under this Agreement.
 - 4.2.3. Any taxes, surcharges, or other assessments by federal, state, or local governments that NYPA is required to pay associated with the sale of Hydroelectric Power under this Agreement.
- 4.3. Except as provided in Article 3.1, LIPA agrees that the bills it receives from NYPA under this Agreement for the sale of Hydroelectric Power will not be marked up or have a profit component added thereto when LIPA resells the Hydroelectric Power to BNL; provided however, LIPA reserves the right to recover charges from BNL for transmission service through the LIPA/BNL Agreement if and to the extent such charges become due and cannot be recovered from NYPA as described in Article 2 and Article 3.

5. BILLING AND PAYMENT PROVISIONS

- 5.1. NYPA will submit bills to LIPA on or before the 10th business day of each Billing Period (as such term is defined in the Service Tariff) for Hydroelectric Power furnished during the preceding Billing Period. Payments by LIPA to NYPA for such service will be due 30 days after bills are rendered. LIPA will be subject

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to late payment charges as specified below. Payments shall be made by wire transfer to JP Morgan Chase Bank, ABA # 021000021, for credit to New York Power Revenue Fund Account # 008-030383, unless otherwise indicated in writing by NYPA.

- 5.2.** All bills rendered by NYPA to LIPA for Hydroelectric Power under this Agreement shall contain sufficient information to permit LIPA to confirm that such bills have been correctly computed or sufficient back-up data will be provided by NYPA to permit LIPA to verify bills. Upon LIPA's request, NYPA shall furnish to LIPA any additional information reasonably necessary to permit LIPA to audit NYPA billings.
- 5.3.** LIPA will add such other charges, including those charges identified in Article 3.9, as provided for in LIPA's *Tariff for Electric Service* and submit the invoice for the total amount to BNL. Such invoices to BNL shall separately state Hydroelectric Power charges separate from all other LIPA charges.
- 5.4.** If LIPA fails to pay any bill when due, an interest charge equal to the interest rate specified in section 2880 of the NY PAL multiplied by the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including interest, is paid in full. In the event of a billing dispute, LIPA shall pay the full amount due, but NYPA shall refund to LIPA any disputed amounts determined to be billed in error within 30 days of such determination with interest calculated as above. NYPA shall have the right upon not less than 15 days advance written notice to discontinue furnishing Hydroelectric Power to LIPA for nonpayment of bills and to refuse to resume furnishing Hydroelectric Power to LIPA so long as any part of the amount due remains unpaid. The minimum charge for Hydroelectric Power as defined in the Service Tariff shall be pro rated to reflect the number of days in any Billing Period during which Hydroelectric Power is so discontinued.

6. LIABILITY AND INDEMNIFICATION

- 6.1.** NYPA expressly agrees and acknowledges that LIPA's officers, trustees, employees, representatives and agents shall not be liable to NYPA for any monetary damages arising out of the performance of this Agreement. Further, in no case shall LIPA or any of its officers, trustees, employees, representatives or agents be liable to NYPA for any indirect, special, or consequential damages, economic losses or lost profits even if LIPA has been notified of the possibility of such damages or losses and regardless of whether such damages or losses are based on LIPA's, or its officers', Trustees', employees', representatives' or agents' negligence, breach of warranty, tort, strict liability or any other legal theory arising out of the performance of this Agreement.

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- 6.2. Without limiting any other remedies to which LIPA and LIPA’s officers, trustees, employees, representatives and agents may be entitled, NYPA shall: (a) indemnify and hold harmless LIPA, including LIPA’s successors, assigns, trustees, officers, employees, representatives and agents (the "LIPA Parties"), from and against any and all losses, liabilities, damages, costs and expenses including, without limitation, any consequential, indirect, incidental, punitive or special damages, as a result of any demands, claims or judgments asserted against the LIPA Parties by any third party (including BNL) arising out of, or related to, or resulting from acts or omissions of NYPA arising out of or related to this Agreement (the "Covered Matters"); and (b) at its own expense, defend the LIPA Parties in any dispute, action or proceeding on any of the Covered Matters.
- 6.3. The provisions of this Article 6 shall survive the expiration or termination of this Agreement for any reason.

7. TRANSFER OF INTEREST IN CONTRACT

No voluntary transfer of service or of the rights of either Party under this Agreement shall be made without the written approval of the other Party which Party’s approval shall not be unreasonably withheld, provided, that any successor to or assignee of the rights of either Party whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this Agreement, to the same extent as though such successor or assignee were the original Party, and provided further, that the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed a voluntary transfer within the meaning of this Article.

8. WAIVERS

- 8.1. Any waiver at any time by either LIPA or NYPA of their rights with respect to a default or of any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.
- 8.2. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party waiving such rights.

9. RULES AND SERVICE TARIFFS

- 9.1. NYPA’s Rules as may later be amended from time to time by NYPA, are incorporated by reference into this Agreement. Unless otherwise specifically provided for in this Agreement, the terms, charges and conditions for service shall be subject to the Rules.

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- 9.2.** Service Tariff No. 2B, as now in effect or later amended from time to time by NYPA, or such superseding tariff as NYPA may later promulgate is incorporated into this Agreement with the same force and effect as if herein set forth at length.
- 9.3.** In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariff and the Rules, the provisions of Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern.
- 9.4.** NYPA shall provide at least 30 days prior written notice to LIPA of any proposed change in the Rules and the Service Tariff.

10. SUPPLEMENTAL PROVISIONS

Certain provisions required by law (Standard Clauses for NYS Contracts) are attached to this Agreement in Appendix A and are hereby incorporated as part of this Agreement with the same force and effect as if herein set forth at length and may be modified from time to time as required.

11. NOTIFICATION

- 11.1.** All correspondence relating to this Agreement shall be directed to the following:

NYPA:

Ms. Caroline Garcia
Manager – Contract Administration
New York Power Authority
123 Main Street
White Plains, New York 10601
Fax: 914-390-8156
Email: carol.garcia@nypa.gov

Copy:

Gary D. Levenson, Esq.
Principal Attorney
New York Power Authority
123 Main Street
White Plains, New York 10601
Fax: 914-390-8040
Email: gary.levenson@nypa.gov

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LIPA:

Mr. Paul DeCotis
Vice President of Power Markets
Long Island Power Authority
333 Earl Ovington Blvd., Suite 403
Uniondale, New York 11553
Fax: 516-222-9137
Email: pdecotis@lipower.org

Copy:

Lynda Nicolino, Esq.
General Counsel
Long Island Power Authority
333 Earl Ovington Blvd., Suite 403
Uniondale, New York 11553
Fax: 516-222-9137
Email: lnicolino@lipower.org

- 11.2.** Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: a) if sent by U.S. First Class mail addressed to the Party at the address set forth above, b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above, c) if delivered by hand, with written confirmation of receipt, d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt, or e) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

12. MISCELLANEOUS TERMS

- 12.1.** LIPA may have disclosed to the public the estimated total cost of this Agreement with NYPA prior to LIPA's Board of Trustees authorization of the execution of this Agreement.
- 12.2.** Nothing in this Agreement, expressed or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies, under or by reason of this Agreement.
- 12.3.** Counterparts. This Agreement may be executed in counter parts, each of which shall be an original and all of which shall constitute a single agreement.

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

13. TERM AND TERMINATION

- 13.1. Conditions Precedent:** This Agreement shall become legally binding and effective only upon satisfaction of the following conditions precedent (each of Articles 13.1.1, 13.1.2 and 13.1.3 are collectively referred to as the “Conditions Precedent”):

13.1.1. NYPA Conditions: (a) receipt of approval by NYPA’s Board of Trustees to execute this Agreement; (b) receipt of approval of this Agreement by the Governor of the State of New York, pursuant to section 1009 of the NY PAL; (c) execution of this Agreement by NYPA and LIPA, and (d) execution of an amended and restated NYPA/BNL Agreement.

13.1.2. LIPA Conditions: (a) receipt of approval by LIPA’s Board of Trustees to execute this Agreement; (b) execution of this Agreement by NYPA and LIPA; (c) receipt of approval by LIPA’s Board of Trustees to execute the LIPA/BNL Agreement; (d) execution of the LIPA/BNL Agreement by LIPA and BNL; (e) receipt of approval of this Agreement by the New York State Attorney General (as to form) and by the New York State Comptroller pursuant to section 1020-cc of the NY PAL.

13.1.3. BNL Conditions: (a) receipt of approval from DOE to execute LIPA/BNL Agreement; (b) execution of the LIPA/BNL Agreement by LIPA and BNL; (c) receipt of approval from DOE to execute an amended and restated NYPA/BNL Agreement; and (d) execution of an amended and restated NYPA/BNL Agreement.

- 13.2.** The term of this Agreement shall be for a period of 10 years from the Commencement Date, which shall be the first day of the month following receipt of all Conditions Precedent, but may be extended for an additional five years by NYPA provided NYPA and LIPA receive prior notice from BNL in a form acceptable to the Parties indicating that BNL desires to continue to receive the Allocation for the length of such extension.

- 13.3.** This Agreement shall terminate: a) upon expiration; b) upon early termination of the LIPA/BNL Agreement; or c) in the event that NYPA can sell directly to BNL; provided, however, that NYPA shall be afforded a reasonable transition period to include the time necessary to establish a valid contract for the sale of hydroelectricity between NYPA and BNL. The obligation to make all payments

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due, including any final reconciliation, shall survive the termination of this Agreement.

14. SEVERABILITY AND VOIDABILITY

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC, action or order by NYISO or a court of competent jurisdiction, such action or order shall not be deemed to invalidate the remaining terms or provisions hereof, and the Parties shall renegotiate the terms of this Agreement to address such term or provision deemed to be invalidated, declared unlawful or ineffective.

15. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the NRA, as well as, rulings by the IJC and without regard to conflicts of law provisions.

16. REPRESENTATIONS AND WARRANTIES

16.1 NYPA represents and warrants to LIPA that as of the date of execution of this Agreement:

- A. NYPA is a public authority of the State of New York, is duly organized and validly existing, under the Power Authority Act, Title 1 of Article 5 of the NY PAL, Chapter 43-A of the Consolidated Laws of the State of New York, as amended. NYPA has the power pursuant to the Power Authority Act (sections 1000 – 1017 of the NY PAL) to execute the Agreement and to perform its obligations under the Agreement, and all such actions have been duly authorized by all necessary proceedings on its part; and
- B. The execution, delivery and performance of this Agreement by NYPA will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which NYPA is a party or by which it is bound or affected; and
- C. The Agreement has been duly and validly executed and delivered by NYPA, and no other authorization for NYPA's execution and delivery of the Agreement or performance by NYPA of its obligations thereunder is required under the Act; and
- D. The Agreement constitutes a legal, valid and binding obligation of NYPA, enforceable in accordance with its terms against NYPA, except to the extent that its enforceability may be limited by bankruptcy,

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insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

- E. NYPA holds the legal power and authority to perform this partial assignment and its officers have been duly authorized to do so.

16.2 LIPA represents and warrants to NYPA that as of the date of execution of this Agreement:

- A. LIPA is a public authority of the State of New York, is duly organized and validly existing, under the Long Island Power Authority Act, Title 1-A of Article 5 of the NY PAL, Chapter 43-A of the Consolidated Laws of the State of New York, as amended. LIPA has the power pursuant to the Long Island Power Authority Act (sections 1020 – 1020-ii of the Act) to execute the Agreement and to perform its obligations under the Agreement, and all such actions have been duly authorized by all necessary proceedings on its part; and
- B. The execution, delivery and performance of this Agreement by LIPA will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which LIPA is a party or by which it is bound or affected; and
- C. The Agreement has been duly and validly executed and delivered by LIPA, and no other authorization for LIPA's execution and delivery of the Agreement or performance by LIPA of its obligations thereunder is required under the Act; and
- D. The Agreement constitutes a legal, valid and binding obligation of LIPA, enforceable in accordance with its terms against LIPA, 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.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers there unto duly authorized on the date first above written.

AGREED:

LONG ISLAND POWER AUTHORITY

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

APPROVED BY:

Office of the State Comptroller

Name

Title

Date

APPROVED AS TO FORM:

Office of the New York State Attorney General

Name

Title

Date

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STATE OF NEW YORK)

COUNTY OF WESTCHESTER)

On the ___ day of _____, [2010] before me personally came _____, to me known to be the individual described in the foregoing instrument in his capacity as _____ of the Power Authority of the State of New York, the corporate municipal instrumentality and political subdivision of the State of New York described in and which executed the foregoing instrument, who being duly sworn did acknowledge that (s)he executed same on behalf of, and that (s)he was authorized to execute same on behalf of the aforementioned entity.

Notary Public

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STATE OF NEW YORK)

COUNTY OF NASSAU_____)

On the __ day of _____, [2010] before me personally came _____, to me known to be the individual described in the foregoing instrument in his capacity as _____ of the Long Island Power Authority, the corporate municipal instrumentality and political subdivision of the State of New York described in and which executed the foregoing instrument, who being duly sworn did acknowledge that (s)he executed same on behalf of, and that (s)he was authorized to execute same on behalf of the aforementioned entity.

Notary Public

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Appendix A

PROVISIONS REQUIRED BY LAW

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on the Contractor's behalf.

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

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

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RECORDS. The Contractor 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. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Agreement, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the “Statute”) provided that: (i) The Contractor shall timely inform the State in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

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

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

PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

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

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

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

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

(d) The Consultant 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.

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

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

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

CONTRACTOR CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW

SECTION 139-j. Contractor certifies and affirms that it understands and agrees to comply with the procedures of the Governmental Entity relative to permissible contacts as required by the State Finance Law § 139-j (3) and § 139-j (6)(b).

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

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

NON-PUBLIC PERSONAL INFORMATION. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the contractor's agents, officers, employees or subcontractors.