
POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE

OF EXPANSION POWER AND ENERGY

TO YAHOO! INC.

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and Energy (“Agreement”) with YAHOO! INC. (“Customer”), with offices at 701 First Avenue, Sunnyvale, California 94089. The Authority and the Customer are from time referred to in this Agreement as “Party” or collectively as “Parties” and agree follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, known as “Expansion Power” (or “EP”), as further defined in this Agreement, to qualified businesses in New York State in accordance with PAL § 1005(5) and (13);

WHEREAS, EP consists of 250 megawatts (“MW”) of firm hydroelectric power and associated firm energy produced by the Niagara Power Project;

WHEREAS, the Authority is authorized pursuant to PAL § 1005(13)(a) to award EP based on, among other things, the criteria listed in the PAL, including but not limited to an applicant’s long-term commitment to the region as evidenced by the current and planned capital investment; the type and number of jobs supported or created by the allocation; and the state, regional and local economic development strategies and priorities supported by local units of governments in the area in which the recipient’s facilities are located;

WHEREAS, PAL § 1005(11) provides that the Authority is authorized to “[t]o exercise all the powers necessary or convenient to carry out and effectuate the purposes and provisions of ... title [1 of article 5 of the PAL] ... and as incidental thereto to ... sell ... electric power, and generally to do any and every thing necessary or convenient to carry out the purposes of ... title [1 of article 5 of the PAL] ...”;

WHEREAS, the Customer applied to the Authority for an allocation of EP for use by the Customer at facilities located at 5319 Enterprise Drive, Lockport, New York 14094 (defined in Section I of this Agreement as the “Facility”), which the Customer is constructing and intends to operate beginning on April 1, 2010;

WHEREAS, on May 19, 2009, the Authority’s Board of Trustees (“Trustees”) approved a 15,000 kilowatt (“kW”) allocation of EP to the Customer for a fifteen (15) year term (defined in Section I of this Agreement as the “Allocation”) as further described in this Agreement;

WHEREAS, on May 19, 2009, the Trustees authorized the Authority to, among other things, take any and all actions and execute and deliver any and all agreements and other documents necessary to effectuate its approval of the Allocation;

WHEREAS, the provision of Electric Service (defined in Section I of this Agreement) associated with the Allocation is an unbundled service separate from the Authority’s sale of power and energy to the Customer, which will be performed by New York State Electric & Gas

Corporation (“NYSEG”);

WHEREAS, such transmission and delivery service will be made in accordance with a separate agreement between the Customer, the Authority and NYSEG (defined in Section I of this Agreement as the “Supplemental Agreement”), and NYSEG tariffs as applicable;

WHEREAS, on March 15, 2010, the Parties executed an Interim Agreement for the Sale of Expansion Power and Energy (defined in Section I of this Agreement as the “Interim Agreement”), to enable the Customer to receive a portion of the Allocation pending the execution of a long-term agreement, or until December 31, 2010, whichever first occurs;

WHEREAS, in accordance with the Supplemental Agreement, the Authority, the Customer and NYSEG, on March 15, 2010, executed the “Interim Sale Agreement Appendix,” which is attached to the Interim Agreement as Exhibit A;

WHEREAS, the Parties reached an agreement on the terms of a long-term contract for the sale of EP to the Customer;

WHEREAS, the Authority has complied with requirements of PAL § 1009 which specifies the approval process for contracts negotiated by the Authority; and

WHEREAS, the Governor of the State of New York has approved the terms of this Agreement pursuant to PAL § 1009(3).

NOW THEREFORE, in consideration of the mutual covenants herein, the Authority and the Customer agree as follows:

NOW THEREFORE, the Parties hereto agree as follows:

I. Definitions

- A. Agreement** means this Agreement.
- B. Allocation** refers to the allocation of 15,000 kW of EP awarded to the Customer for a term of fifteen (15) years as specified in Schedule A.
- C. Contract Demand** is as defined in the applicable Service Tariffs.
- D. Electric Service** is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, the Service Tariffs and the Rules.
- E. Expansion Power** (or **EP**) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005 (5) and (13).
- F. Facility** means the Customer’s facilities at 5319 Enterprise Drive, Lockport, New York 14094.

- G. Firm Power** is as defined in the Service Tariffs.
- H. Firm Energy** is as defined in the Service Tariffs.
- I. FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- J. FERC License** means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project's original license which became effective in 1957.
- K. Hydro Projects** is a collective reference to the Project (defined below) and the Authority's St. Lawrence-FDR Project, FERC Project No. 2000.
- L. Interim Agreement** means the Interim Agreement for the Sale of Expansion Power and Energy, executed by the Parties on March 15, 2010.
- M. Load Serving Entity (or LSE)** means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.
- N. NYISO** means the New York Independent System Operator or any successor organization.
- O. NYISO Tariffs** means the NYISO's Open Access Transmission Tariff or the NYISO's Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.
- P. NYSEG** has the meaning set forth in the eighth recital.
- Q. Project** means the Niagara Power Project, FERC Project No. 2216.
- R. Replacement Power (or RP)** is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(5) and (13).
- S. Rules** are the applicable provisions of Authority's rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.
- T. Sales Agreement Appendix** refers to the form Sales Agreement Appendix which is Attachment B to the Supplemental Agreement, a completed and executed copy of which is annexed to this Agreement as Exhibit A.
- U. Service Tariffs** is a collective reference to the Authority's Service Tariff No. EP-1 and Service Tariff No. WNY-1.

- V. Service Tariff No. EP-1** means the Authority’s Service Tariff No. EP-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement. Service Tariff No. EP-1 shall be applicable to Electric Service provided prior to July 1, 2013.
- W. Service Tariff No. WNY-1** means the Authority’s Service Tariff No. WNY-1, as may be modified from time to time by the Authority, which contains, among other things, the rate schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement. Service Tariff No. WNY-1 shall be applicable to Electric Service provided on and after July 1, 2013.
- X. Schedule A** refers to the Schedule A entitled “Expansion Power Allocations” which is attached to and made part of this Agreement.
- Y. Schedule B** refers to the Schedule B entitled “Expansion Power Commitments” which is attached to and made part of this Agreement.
- Z. Substitute Energy** means energy that the Authority provides at the request of the Customer to replace hydroelectricity that would otherwise have been supplied to the Customer under this Agreement. Unless otherwise agreed upon by the Parties, Substitute Energy refers to energy purchased by the Authority for the Customer from markets administered by the NYISO.
- AA. Supplemental Agreement** means an agreement entitled “Supplemental Agreement for the Delivery of Power Allocations between Power Authority of the State of New York and New York State Electric & Gas Corporation,” made as of July 18, 2007.
- BB. Unforced Capacity (or “UCAP”)** means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

II. Electric Service

- A. The Authority shall provide Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, the Service Tariffs and the Rules.
- B. The Authority shall provide UCAP in amounts necessary to meet the Customer’s NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs.
- C. The Contract Demand for the Customer’s Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision. The Authority will use reasonable efforts to provide at least thirty (30) days prior written notice to the Customer

of any such modification unless such notice is inconsistent with such ruling, order or decision.

- D. The Contract Demand may not exceed the Allocation.

III. Rates, Terms and Conditions

- A. From the effective date of this Agreement through and including June 30, 2013, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, Service Tariff No. EP-1 and the Rules.
- B. From July 1, 2013 until the termination of this Agreement, Electric Service shall be sold to the Customer based on the rates, terms and conditions determined in accordance with this Agreement, Service Tariff No. WNY-1 and the Rules.
- C. The Service Tariffs and the Rules may be amended from time to time by the Authority. Any amendment made by the Authority to Service Tariff EP-1 or to the Rules shall not affect the base rates as specified in Section III.A of Service Tariff EP-1 for the period prior to July 1, 2013, provided, however, that this limitation shall not limit the Authority from making adjustments to the base rates based on application of the Annual Adjustment Factor as provided in Article V of Service Tariff EP-1 during such time period. The Authority shall provide at least thirty (30) days prior written notice to Customer of any proposed change in the Service Tariffs or the Rules, but in no event shall Authority provide less notice than that provided to similarly affected customers within New York State. No subsequent amendment to the Service Tariffs or the Rules shall affect the determination of rates for EP to the Customer during the term of the Agreement except insofar as otherwise authorized by this Agreement. This provision shall not limit the Authority's discretion to determine rates applicable to allocations of power and energy awarded to the Customer beyond or in addition to the Allocation.
- D. Notwithstanding any provision of this Agreement to the contrary, for Electric Service provided from July 1, 2013 through the term of this Agreement, the power and energy rates shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. Any rate increase to Customer under this subsection shall be on a non-discriminatory basis as compared to other Authority customers after giving consideration to the factors set forth in the first sentence of this subsection. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of

increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.

IV. Expansion Power Commitments

Schedule B sets forth the Customer's specific "Expansion Power Commitments." The commitments agreed to in Schedule B are in addition to any other rights and obligations of the Parties provided for in the Agreement.

V. Rules and Service Tariffs

The Rules and the Service Tariffs are hereby incorporated into this Agreement with the same force and effect as if set forth herein at length. In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariffs and the Rules, the provisions of the Service Tariffs shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariffs, the provisions of this Agreement shall govern.

VI. Transmission and Delivery of Firm Power and Firm Energy; Responsibility for Charges

- A.** The Customer will pay NYSEG for transmission and delivery service associated with the Allocation in accordance with the Supplemental Agreement, and all applicable tariffs, rulemakings, and orders, in order to deliver to the Customer the Allocation of Firm Power and Firm Energy supplied by the Authority under this Agreement. To the extent the Authority incurs transmission and delivery service charges or other costs associated with the Allocation during the term of this Agreement, the Customer agrees to compensate the Authority for all such charges and costs incurred.
- B.** Each Party hereby represents that nothing in this Agreement conflicts with the Supplemental Agreement, and the event of any such conflict, the terms of the Supplemental Agreement shall control.
- C.** The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in the Service Tariff or any successor service tariff, regardless of whether such NYISO Charges are transmission-related. Such NYISO Charges shall be in addition to the charges for power and energy.

VII. Billing and Billing Methodology

- A.** The billing methodology for the Allocation shall be determined on a “load factor sharing” basis consistent with Attachment B of the Supplemental Agreement.
- B.** The Authority will render bills by the 10th business day of the month for charges due for the previous month. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and other applicable charges.
- C.** All other provisions with respect to billing are set forth in the applicable Service Tariffs.

VIII. Hydropower Curtailments and Substitute Energy

- A.** If, as a result of reduced water flows caused by hydrologic conditions, there is insufficient energy from the Hydro Projects to supply the full power and energy requirements of the Authority’s firm power customers served by the Authority from the Hydro Projects, curtailments (*i.e.* reductions) in the amount of Firm Power and Firm Energy associated with the Allocation to which the Customer is entitled shall be applied on a *pro rata* basis to all firm power and energy customers served from the Hydro Projects, consistent with the Service Tariffs as applicable.
- B.** The Authority shall provide reasonable notice to Customer of any curtailments referenced in Section VII.A of this Agreement that could impact Customer’s Electric Service under this Agreement. Upon written request by the Customer, the Authority will provide Substitute Energy to the Customer to replace the Firm Power and Firm Energy that would otherwise have been supplied pursuant to this Agreement.
- C.** For each kilowatt-hour of Substitute Energy supplied by the Authority, the Customer will pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Billing and payment for Substitute Energy shall be governed by the Billing and Payments provision of the Authority’s Rules (Section 454.6) and shall apply directly to the Substitute Energy service supplied to the Customer.
- D.** The Parties may enter into a separate agreement to facilitate the provision of Substitute Energy, provided, however, that the provisions of this Agreement shall remain in effect notwithstanding any such separate agreement. The provision of Substitute Energy may be terminated by the Authority or the Customer on fifteen (15) days’ prior written notice.
- E.** Nothing in this Agreement shall prevent the Customer from procuring energy from a supplier other than the Authority in the event that the delivery of Firm Power and Firm Energy to which the Customer is entitled is curtailed pursuant to Section VIII.A of this Agreement, or from generating its own power and energy for use at the Facility under any circumstances.

IX. Effectiveness, Term and Termination

- A. This Agreement shall become effective and legally binding on the Parties: (1) upon execution of this Agreement by the Authority and the Customer; and (2) upon execution of a Sales Agreement Appendix by the Parties and NYSEG unless otherwise agreed to by the Parties and NYSEG pursuant to the Supplemental Agreement.
- B. Electric Service under the Agreement shall continue until the earliest of: (1) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (2) termination by the Authority pursuant to this Agreement, the Service Tariffs, or the Rules; (3) termination of the Supplemental Agreement or the Sales Agreement Appendix as provided for in the Supplemental Agreement and the Sales Agreement Appendix; or (4) expiration of the Allocation by its own term as specified in Schedule A.
- C. The Customer may exercise a partial termination of the Allocation upon at least thirty (30) days notice prior written notice to the Authority. The termination shall be effective commencing with the first billing period as defined in the applicable Service Tariffs.
- D. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, the Service Tariffs or the Rules. The Authority will use reasonable efforts to notify Customer of any proceeding before any regulatory or judicial body of competent jurisdiction that the Authority has knowledge of and that could result in the cancellation or modification of Electric Service under this Agreement. The Authority shall also provide at least thirty (30) days prior written notice to the Customer of such modification or cancellation unless such notice is inconsistent with such ruling, order or decision or the Service Tariff or the Rules provide for a shorter notice.

X. Notification

- A. Correspondence involving the administration of this Agreement shall be addressed as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: James.Pasquale@nypa.gov
Attention: Mr. James F. Pasquale, Senior Vice President, Marketing and Economic Development

To: The Customer

Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
Email: ogonzale@yahoo-inc.com
Attention: Vice President of Production Operations

With copy to:

Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089
Email: callahan@yahoo-inc.com
Attention: General Counsel

- B. 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: (1) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (2) 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; (3) if delivered by hand, with written confirmation of receipt; (4) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (5) 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.

XI. 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 Niagara Redevelopment Act (16 USC §§836, 836a).

XII. Venue

Each Party consents to the exclusive jurisdiction and venue of any state or federal court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement.

XIII. Successors and Assigns; Resale of Hydropower

- A. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto; provided, however, that the Customer may not assign or otherwise transfer an interest in this Agreement without written approval by the Authority whose approval shall not be unreasonably withheld.
- B. The Customer may not resell any quantity of EP it has purchased from the Authority under this Agreement.

XIV. Previous Agreements and Communications

- A. This Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale, transmission and delivery of the Allocation and supersedes all previous communications and agreements between the Parties hereto, either oral or written, with reference to said Allocation, including the Interim Agreement.
- B. No modification of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.

XV. Severability and Voidability

- A. 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 or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof.
- B. Notwithstanding the preceding paragraph, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

XVI. Waiver

- A. Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- B. 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 making the waiver.

XVII. Confidentiality

- A. The Parties recognize that information the Customer furnishes to the Authority in connection with this Agreement may comprise (1) a record which in whole or in part constitutes a trade secret, (2) information which if disclosed would cause substantial injury to the competitive position of the Customer, or (3) information that is otherwise exempted from disclosure pursuant to New York's Freedom of Information Law, New York Public Officers Law, Article 6 ("FOIL"), as determined by the Authority ("Confidential Information").
- B. The Authority agrees not to disclose Confidential Information to a third-party without the advance written consent of the Customer except to the extent disclosure is required: (1)

pursuant to a court order; (2) pursuant to an order of a regulatory body having jurisdiction over the matter; or (3) pursuant to a law or regulation requiring such disclosure.

- C. Except as otherwise prohibited by law, in the event of a request to the Authority for Confidential Information by a third party, the Authority shall: (1) timely notify the Customer of the request; (2) keep the Customer informed of the status of its processing of the request; and (3) afford the Customer the rights and remedies otherwise available to a third party whose Confidential Information is in the Authority's possession, including the rights and remedies available under FOIL and 21 NYCRR Part 453.
- D. The Authority shall not object to a Customer seeking protection from a court of competent jurisdiction to protect information from disclosure to a third party the Customer contends is Confidential Information.
- E. Nothing in this Article shall be construed as a waiver by the Authority of its obligations under FOIL to make a determination regarding disclosure, determine an appeal under FOIL, or make any other determination required pursuant to FOIL.

XVIII. Execution

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement by email as a PDF file shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

XIX. Federal Contractor Status

The Customer represents that it is an equal employment opportunity employer and is a federal contractor. Neither this representation nor the Customer's represented status as an equal opportunity employer or a federal contractor is intended to impose, and shall not be construed to impose, any obligations on the Authority beyond the specific obligations provided for under this Agreement.

XX. Use of Name, Trademarks and Service Marks

The Authority shall not use the Customer's name, trademarks, or service marks for the purpose of promoting any commercial services the Authority offers or proposes to offer without the Customer's prior written consent. For avoidance of doubt, the forgoing provision shall not preclude or otherwise limit the Authority from using the Customer's name, trademarks, or service marks or other descriptions of the Customer in: (a) any

report, document, disclosure or other communication (collectively, “communication”) made pursuant to any law, rule, regulation, request made pursuant to litigation or other legal process; or (b) any communication intended to inform any government official, any government agency or the public (individually or generally) of the Authority’s activities.

[SIGNATURES FOLLOW ON NEXT PAGE]

DRAFT

AGREED:

YAHOO! INC.

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Title: _____

Date: _____

DRAFT

SCHEDULE A TO AGREEMENT FOR THE SALE OF EXPANSION POWER AND ENERGY TO YAHOO! INC.

EXPANSION POWER ALLOCATIONS

Customer: YAHOO! Inc.

Facility: The Facility (located at 5319 Enterprise Drive, Lockport, NY 14094)

<u>Type of Allocation</u>	<u>Allocation (kW)</u>	<u>Expiration Date</u>	<u>Extended Expiration Date</u>
1. EP	15,000	March 31, 2025	N/A

TOTALS: 15,000 kW

**SCHEDULE B TO AGREEMENT FOR THE SALE OF EXPANSION POWER
AND ENERGY TO YAHOO! INC.**

EXPANSION POWER COMMITMENTS

I. Employment Commitments

A. Employment Levels

The Customer agrees to create and maintain the employment level (the “Base Employment Level”) set forth in the Appendix to this Schedule.

B. Employment Records and Reports

Records shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of employees at the Lockport Facilities and employed at the Other NYS Facilities (defined in Appendix to Schedule B to this Agreement), as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such records shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. In addition, the Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

II. Reductions of Contract Demand

A. Employment Levels

Commencing with calendar year 2015 and continuing through the term of this Agreement, if the year-end monthly average number of employees at the Lockport Facilities and new full time employees at Other NYS Facilities (defined in Appendix to Schedule B to this Agreement) is less than 90% of the Base Employment Level set forth in Schedule B for the subject calendar year, the Contract Demand may be reduced by Authority subject to Paragraph II.C of this Schedule A. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

B. Power Utilization Levels

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by this Agreement. Commencing with calendar year 2015 and continuing through the term of this Agreement, if the average of the Customer's six (6) highest billing demands for expansion power is less than 90% of the Customer's Contract Demand in such calendar year, the Authority may reduce the Contract Demand. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest billing demands for expansion power in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest fifty (50) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

C. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced as provided above, at least ninety (90) days prior written notice of such reduction shall be given to the Customer, specifying the amount of the reduction of the Contract Demand and the reason therefore provided, however, that before making the reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance or facilities upgrading periods when such

events temporarily reduce plant employment levels or electrical demand as well as business cycle.

III. Capital Investment

The Customer agrees to undertake the Capital Investment set forth in the Appendix to this Schedule.

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such Data Center Project access and documentation the Authority deems necessary to determine the Customer's compliance with the Customer's capital investment obligations.

IV. Energy Efficiency Audits; Information Requests

The Customer shall undergo an energy efficiency audit of its facilities and equipment at which the Allocation is consumed at the Customer's expense at least once during the term of this Agreement but in any event not less than once every five years. The Customer will provide the Authority with a copy of the audit or, at the Authority's option, a report describing the results of the audit, and provide documentation requested by the Authority to verify the implementation of any efficiency measures implemented at the facilities.

The Customer agrees to cooperate to make its facilities available at reasonable times and intervals for energy audits and related assessments that the Authority desires to perform, if any, at the Authority's own expense.

The Customer shall provide information requested by the Authority or its designee in surveys, questionnaires and other information requests relating to energy efficiency and energy-related projects, programs and services.

The Customer may, after consultation with the Authority, exclude from written copies of audits, reports and other information provided to the Authority under this Article trade secrets and other information which if disclosed would harm the competitive position of the Customer.

APPENDIX TO SCHEDULE B

Base Employment Level

No later than September 21, 2014, the Customer shall employ at least (i) one hundred (100) full-time employees at the Facility and/or other facilities located in Lockport, New York (the “Lockport Facilities”), and (ii) an additional twenty-five (25) full time employees at the Lockport Facilities and/or as new employees at other Customer facilities located in the State of New York (the “Other NYS Facilities”). (Collectively, these one hundred twenty-five employees shall constitute the “Base Employment Level”). A full-time employee shall mean an individual who works at least thirty-five (35) hours per week at the Facility. For the purpose of calculating the Base Employment Level, an individual working less than thirty-five (35) hours per week shall not be counted as a full-time employee; provided, however, that two individuals each working at least twenty (20) hours per week but less than thirty-five (35) hours per week at the Facility shall be counted as one full-time employee. In addition, for the purpose of calculating the number of new employees employed at the Other NYS Facilities, such number shall be determined based on the number of employees employed at such Other NYS Facilities as of May 19, 2009.

The Base Employment Level may not be created or maintained by transfers of employees from previously held positions with the Customer or from any of its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for bona fide economic or management reasons.

Capital Investment

The Customer will purchase up to thirty (30) acres of land, and will build, own and operate on such land, a new data center facility at 5319 Enterprise Drive, Lockport, New York (defined in Section I of the Agreement as the “Facility”).

The Customer will make a capital investment of at least \$150 million on the Facility (the “Capital Investment”). The Capital Investment in the Facility is expected to consist of the following specific expenditures:

Foundation	\$2 to \$4 million
Generators and UPS	\$ 7 million
Electric Infrastructure	\$ 25 million
Mechanical infrastructure	\$5 to 12 million
Fit-out and cabinet positions	\$10 million
<u>Servers</u>	<u>\$100 million</u>
Total:	\$149 to \$158 million

The Facility began operating on April 1, 2010. The Facility will be completed and fully operational, and the Capital Investment will be made, by May 19, 2012, i.e.,

within three (3) years of the Authority's approval of the Allocation. Upon request of the Customer, such date may be extended by the Authority in its reasonable discretion.