

**License Amendment and Addendum to
Distribution Pole Attachment Agreement**

THIS AMENDMENT and ADDENDUM, made this day of _____, 20__, between Niagara Mohawk Power Corporation¹, a corporation organized and existing under the Laws of the State of New York, having its principal office at 300 Erie Boulevard West, Syracuse, New York, “Licensor”, and _____, a _____ corporation, having its principal office at _____, “Licensee”, collectively referred to as the “Parties”. The Parties hereto agree to amend the existing pole attachment agreement between the Parties, dated _____. Except as modified herein, all other terms and conditions of the existing pole attachment agreement shall remain unchanged. In the event of conflict, the language in this amendment and addendum shall prevail.

W I T N E S S E T H

WHEREAS, Licensee desires to install, own and operate wireless facilities on wood electric system Poles of Licensor; and

WHEREAS, Licensor is willing to permit, under the conditions described herein, the placement of said wireless facilities on Licensor Poles, and

WHEREAS, Licensor and Licensee have previously entered into an agreement for use of Licensor’s wood electric distribution Poles for traditional wireline attachments;

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions herein, and other good and valuable consideration, the parties do hereby mutually covenant and agree as follows:

1. DEFINITIONS:

As used in this Amendment and Addendum:

Addendum – shall mean this agreement authorizing via license, Licensee’s attachment of Wireless Facilities to Licensor’s electric system Poles.

Agreement – shall mean the existing Pole Attachment Agreement between Licensor and Licensee, under which Licensee is permitted to attach communication wires and related devices to or upon the Communication Space of electric distribution Poles.

¹ Niagara Mohawk Power Corporation, d.b.a. National Grid. The National Grid companies include: Granite State Electric, Massachusetts Electric Co., Nantucket Electric Co., National Grid USA Service Co. Inc., New England Power Co., Niagara Mohawk Power Corp., and The Narragansett Electric Co.

Communication Space – shall mean that portion of the usable Pole space in which communication wires and devices have traditionally been located and that can be accessed by a Qualified Communication Worker.

Electric Space or Supply Space - shall mean that space on Licensor's wood electric distribution Poles where Licensor has installed or may install energized electric conductors and related electric equipment. This space is the "supply space", as defined in the National Electric Safety Code (NESC). All work performed within this space shall be performed by Qualified Electrical Workers.

Good Utility Practice – shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any practices, methods and acts which, in the exercise of good judgment in light of the facts known at the time the decision was made, could have expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the Licensor. Good Utility Practice shall include conformance to the policies, criteria, practices, guidelines and requirements of the National Electric Reliability Council, the Northeast Power Coordination Council and the New England or New York Independent System Operators, or their successor organizations.

Pole - shall mean a wood pole supporting electric system circuits of 34,500 volts or less and available for attachment of Wireless Facilities.

Qualified Communication Worker – a worker meeting all current training and experience requirements of all applicable federal, state and local work rules and of the Licensee, including OSHA 1910.268.

Qualified Electrical Worker – a worker meeting all training and experience requirements of all applicable federal, state, and local work rules and Licensor work rules, including OSHA 1910.269.

Wireless Facilities – shall mean any antenna, hardware, equipment, apparatus, device or other hardware, and cables or wires connecting such antenna to such equipment, apparatus, device or other hardware placed on the same Pole (Exhibit #3). This shall not include any microwave dishes and/or wires or cables used to connect to other wireless or wired communication facilities or equipment not on the same pole. All facilities that comprise a portion of an attachment authorized under this Addendum, whether owned by Licensee or by others, shall, for the purposes of this Addendum, be considered part of "Licensee's Wireless Facilities" and Licensee shall accept full responsibility for such facilities under the provisions of this Addendum.

2. SCOPE OF THE AMMENDMENT and ADDENDUM:

- 2.1 Licensor agrees to license installation of Wireless Facilities on Licensor's Poles consistent with Licensor's core business requirements and generally accepted safety, operational, reliability and engineering requirements. Notwithstanding the above, nothing contained herein shall be construed to compel the Licensor to construct, reconstruct, retain, extend, repair, place, replace, maintain or make space available for attachment of Wireless Facilities on Licensor's Poles. Licensor reserves the right to revoke any licenses provided hereunder as necessary to ensure the safe and reliable operation and maintenance of Licensor's electric system.
- 2.2 The rights granted to Licensee by this Addendum shall constitute a revocable license to the extent such use is permitted pursuant to the terms of the applicable contracts, deeds, agreements, easements, leases, licenses, permits or franchises conveying to Licensor its individual legal rights in any public or private right-of-way.
- 2.3 Subject to the provisions of the Agreement and this Addendum, where Licensee has actually installed its Wireless Facilities at the top of a specific Pole, and such Pole is replaced, Licensee shall continue to have a right to use the top of the replacement Pole.
- 2.4 It is understood that Licensor's rights may not be sufficient to permit installation of Wireless Facilities and Licensee's use of the Pole. Licensee shall obtain, at its own cost and expense, all necessary franchise, licenses, permits or rights which relate to Licensee's installation and use of the Wireless Facilities and/or the Pole and the performance of its obligations hereunder. Licensee shall provide a copy of such documents to Licensor prior to attachment at Licensee's sole cost and expense.
- 2.5 Licensor will, upon written request by Licensee, subject to confidentiality provisions, provide available information and copies of documents in its files pertinent to the nature of the rights Licensor possesses. All costs, fees and expenses (including labor) of providing such information and reproducing documents shall be paid by Licensee.
- 2.6 Subject to Licensor review and acceptance, Licensee shall design, specify, and supply all material associated with the installation, operation and maintenance of Wireless Facilities.
- 2.7 The license granted Licensee shall provide Licensee a non-exclusive right-of-occupancy of Licensor's Pole, authorizing the installation, operation, use and maintenance of Wireless Facilities for the transmission and/or receiving of wireless telecommunication signals. The license does not provide Licensee

with any ownership interests in Licensor Pole, real property or the right-of-way and is for Licensee's sole use and purpose.

- 2.8 Wireless Facilities shall be installed and maintained by the Licensee at Licensees' sole cost and expense.
- 2.9 All make-ready work on Licensor facilities shall be performed by the Licensor or Licensor's contractor.
- 2.10 Licensor's Poles may be jointly owned. Prior to the Licensor authorizing use of jointly owned Poles, Licensee agrees to obtain and provide to Licensor the joint owner's prior written consent for proposed installation of Wireless Facilities. In the event Licensee does not obtain the joint owner(s) consent, no Wireless Facilities shall be installed.

3. INSTALLATION OF LICENSEE FACILITIES:

- 3.1 Licensee will provide Licensor with a listing of all Poles Licensee seeks to make attachment to, including copies of the installation plans and specifications for such Wireless Facilities for Licensor's review and acceptance.
- 3.2 Following submittal, Licensor shall either (a) accept such plans and specifications in whole or in part, or (b) raise bona fide objections or reject the same, in which case Licensor shall describe in reasonable detail the basis for such objections or rejection and any modifications to such plans and specifications that can be made in order to obtain its acceptance. Notwithstanding anything herein to the contrary, Licensor agrees to exercise Good Utility Practice, with deference to Licensor's public service responsibilities, to assure that Licensee submittal is reviewed and accepted by Licensor in support of Licensee's construction schedule.
- 3.3 All proposed Wireless attachments will require a make-ready survey, to be performed by the Licensor at Licensee cost. Should joint owner or existing third party user participation be required for a field survey, Licensee shall coordinate and be responsible for obtaining joint owner and third party attendee participation in any required field survey. Licensee shall pay all joint owner and third party costs related to required field surveys.
- 3.4 Upon the completion of field survey and assessment of the survey results, Licensor shall provide Licensee a listing of required make-ready work (if any) including the cost to perform such make-ready work and the projected work schedule to complete.
- 3.5 License applications received by Licensor from two or more Licensees for Wireless Facilities accommodations on the same pole, prior to commencement of any field survey or make-ready work required to accommodate any

Licensee, will be processed by Licensor in accordance with the procedures detailed in Exhibit #5.

- 3.6 Licensor agrees to submit an estimated schedule for the completion of make-ready work within fifteen (15) days of receipt by Licensor of Licensee's advance payment for the make-ready work. Actual completion of make-ready work by Licensor will depend on completion of all required make-ready work by Licensee, other joint users or joint owners that must be completed prior to Licensor's performance of its make-ready work. In performing all make-ready work to accommodate Licensee's Wireless Facilities, Licensor will endeavor to include such work in its normal workload schedule.
- 3.7 Upon completion of all required make-ready work and Licensee securing all required permits and approvals, and prior notice by Licensee in accordance with Article 10 herein, the Licensee may proceed to install the approved Wireless Facilities with a qualified workforce. Installation of Wireless Facilities shall commence within sixty (60) days of release and shall be worked continuously until completion unless otherwise agreed to by Licensor.
- 3.8 Wireless Facilities installed by Licensee or Licensee's contractor, are subject to one (1) Licensor inspection during construction and one (1) Licensor inspection upon completion of construction: the cost of Licensor inspections are to be paid by the Licensee. Licensor shall estimate the cost of any Licensor inspection and Licensee shall pre-pay the estimated inspection costs and shall remain liable for any actual Licensor inspection costs in excess of the pre-paid estimated inspection fees. Post construction inspection of Wireless Facilities by Licensor shall be performed within thirty (30) days of Wireless Facilities installation.
- 3.9 In the event Pole replacement is required to accommodate the installation of Licensee Wireless Facilities, Licensee shall pay all costs related to Pole replacement including but not limited to Pole replacement, transfer of all existing facilities, and removal and disposal of the old Pole. Payment of Pole replacement costs does not provide Licensee with any ownership interest in the replaced Pole.
- 3.10 Licensee shall not be entitled to reimbursement from Licensor of any amounts paid to Licensor for Pole replacements or for rearrangement of attachments on Licensor's Poles by reason of the use by Licensor or other user(s) of any additional space resulting from such replacement or rearrangement.
- 3.11 In the event Licensor agrees to install and/or maintain Licensee Facilities, such installation and maintenance shall be performed under the terms and conditions of Licensor's standard agreement for provision of such services

(Services Agreement), the terms and conditions of which may be revised from time to time (Exhibit #2).

- 3.12 Licensee agrees to provide site specific radio frequency (RF) emission data and required worker clearances from operational Wireless Facilities.
- 3.13 Should Licensor, or other authorized Pole attachees require access to the Pole and such access is restrained as a result of Licensee's operational Wireless Facilities, Licensee shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with Licensor safety standards, which may require temporarily ceasing wireless operations to comply with such standards.
- 3.14 Licensee shall post a notice at each wireless site providing a twenty-four (24) hour contact number and as applicable, radio frequency emission hazards.

4. MAINTENANCE OF LICENSEE FACILITIES:

- 4.1 Maintenance of all Wireless Facilities shall be performed by Licensee at Licensee's sole cost and expense. Licensee shall provide Licensor a minimum of ten (10) business days advance notice of the Licensee's need to perform routine or scheduled maintenance on Wireless Facilities located in the Electric Space.
- 4.2 Licensor agrees to not unreasonably delay, restrict or deny Licensee access to Wireless Facilities located in the Electric Space for emergency maintenance. Notwithstanding the above, Licensee shall make at least 1 hour notification to and receive authorization from Licensor prior to accessing any Wireless Facilities located in the Electric Space.
- 4.3 Unless otherwise agreed to, Licensee will perform routine maintenance and installation of Wireless Facilities in the Electric Space only during daylight hours.
- 4.4 In accordance with Article 6 of the Agreement, in the event Licensor's core business needs necessitate Pole replacement, and Licensor's business needs could have been accomplished by facilities relocation or modification but for the presence of the Licensee's Wireless Facilities, Licensee shall reimburse Licensor a pro-rata share of the Pole replacement costs consistent with the number of existing Licensees sharing in such replacement costs.
- 4.5 Notwithstanding Article 4.4 above, in the event Licensor requires relocation of Licensee Wireless Facilities for its sole need and benefit within two (2) years of licensing such attachment, Licensor shall be responsible for the actual cost of relocating the Wireless Facilities on the Pole or to another Pole owned by

Licensor. Licensor shall have no obligation to reimburse Licensee for relocation costs (i) after 2 years or, (ii) if the Wireless Facilities are removed and not relocated, or (iii) the Wireless Facilities are relocated to a location other than a Licensor owned Pole.

- 4.6 Each Party shall be responsible for its relocation costs associated with Pole replacement resulting from routine Pole maintenance.
- 4.7 Each Party shall be responsible for all costs associated with the relocation of its facilities arising from mandated Pole relocations or modifications ordered by a government or a regulatory agency having appropriate jurisdiction.
- 4.8 Both Parties agree that in the event of wide spread interruptions of Licensor and Licensee Facilities (e.g., a major storm) in connection with damage to the Licensor's Poles, Licensor shall use Good Utility Practice to support restoration of Poles and Licensee's efforts to restore Wireless Facilities, consistent with Licensor's priority obligations to its core electric utility business. In the event of localized interruptions (e.g., motor vehicle accidents), Licensor shall notify Licensee of the incident after taking any required actions to clear and restore the site. Licensee shall reimburse Licensor for all support services provided by Licensor to clear and/or assist in the restoration of Licensee Wireless Facilities.

5. SPECIFICATIONS:

- 5.1 All Licensee Facilities shall be installed and maintained in accordance with applicable nationally codes and standards, Good Utility Practice, applicable Licensor's policies, procedures and standards including GS 1169 (Exhibit 4), and any applicable Federal, State, and Local Laws and Ordinances. All fees, notices, permits, approvals, certifications and licenses, required for the installation, maintenance and operation of Licensee Wireless Facilities, shall be obtained and paid for by Licensee and shall be provided to Licensor at no charge and upon request by Licensor, prior to the start of work.

6. INTERFERENCE:

- 6.1 Licensee will use and operate the Wireless Facilities in a manner that will not cause interference (including, but not limited to, blocking of access to the Pole, radio frequency (RF) interference, mechanical interference or any interference with underground utilities) in Licensor's and other users' use of the Pole, provided that such other users' installation predates the installation of such Wireless Facilities. Licensor agrees to supply Licensee with a list of Licensor licensees on any Pole, which is to be the subject of a license, together with the respective transmission frequencies thereof. In the event any such interference occurs, Licensee will (i) remedy such interference within thirty-six

(36) hours after receipt of written notice from Licensor, conditioned on Licensor's ability to support corrective actions, if required, or (ii) cease operation of its Wireless Facilities until such interference can be eliminated with Licensor's support, if required, and if such interference is not eliminated within said thirty-six (36) hour period, Licensor will have the right, in addition to any other rights that it may have at law or in equity, to take all necessary and reasonable steps, at Licensee's sole cost and expense, to eliminate such interference (after giving reasonable prior notice to Licensee of its intent to do so), and should it be unable to so eliminate such interference, Licensor shall have the right to terminate the license related to the Wireless Facilities causing such interference by giving at least sixty (60) days notice to Licensee, in which case any and all future obligations Licensor may have hereunder (except for the indemnities and hold harmless provisions contained elsewhere in this Agreement) will cease with respect to such terminated license.

- 6.2 Licensor agrees to obtain an agreement with future wireless licensees of the Pole to cease using any equipment, which causes interference to Licensee's or its Sub-licensees' then existing Wireless Facilities. Subsequent to the Installation of Licensee's Wireless Facilities, Licensor will not knowingly permit or suffer the installation or modification by third parties of any other improvement (including, without limitation, transmission or reception antennas or other devices) on the Pole if such improvement could cause or is likely to cause interference (including, but not limited to, blocking of access to the Pole, radio frequency interference, mechanical interference or any interference with underground utilities) with Licensee's then existing Wireless Facilities. In the event any such interference occurs, Licensor shall direct such third party to remedy such interference within thirty-six (36) hours after receipt of notice or cease operation of such improvement until such interference can be eliminated, and if such interference is not eliminated within said thirty-six (36) hour period, Licensor shall take reasonable steps eliminate such interference, including, but not limited to, terminating the occupancy agreement of such third party.
- 6.3 Licensee agrees to provide site-specific radio frequency (RF) emission data and required worker clearances from operational Licensee Wireless Facilities.
- 6.4 Should Licensor, Licensee, or other authorized users require access to the Pole and such access is restrained as a result of Licensor's or Licensee's operational equipment, Licensee and Licensor shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with Licensor safety standards, which may require temporarily ceasing wireless operations to comply with such standards.

7. COSTS:

- 7.1 Licensee shall reimburse Licensor for any and all Costs of services provided by Licensor in support of the design, installation, and maintenance of Licensee's Wireless Facilities. Licensor costs for make-ready surveys, make-ready work and Licensor inspections are to be paid by Licensee in advance of scheduling the field survey, make-ready work or inspections. All survey and make-ready costs that are required by a joint owner or existing third party user(s) in connection with Licensee's Wireless Facilities shall be paid by the Licensee directly to the joint owner(s) or existing third party user(s).
- 7.2 Licensor field surveys, make-ready work and inspection costs are established by unit price, the cost of which shall periodically revised.
- 7.3 All reimbursable Licensor costs shall be invoiced and paid by Licensee prior to the start of work.
- 7.4 In the event Licensor elects to contract Licensor work activities in connection with attachment of Wireless Facilities, the Licensee shall be invoiced to the actual contractor cost plus ten percent (10%).
- 7.5 Payment to Licensor must be received within 30 days of the invoice date. Late fees of 1.5 percent per month will be applied to all outstanding balances in excess of thirty (30) days. Failure to pay such costs by the specified payment date shall constitute a default under the Agreement.

8. FEES:

- 8.1 The annual attachment fee payable to Licensor by Licensee for Wireless Facilities attachments is established in Exhibit 1. Should the Licensor obtain regulatory approval for a revised attachment fee and terms, the Parties agree that the approved attachment fee and terms shall apply in accordance with any such regulatory approval. Attachment fees, if any, owed to the joint owner of the Pole are not included in Exhibit #1 and are subject to separate, independently negotiated terms and conditions. Licensee shall be liable for all attachment related fees owed Licensor's joint owner(s).
- 8.2 The annual attachment fee shall be developed by using the Licensor's annual carrying charge rate, the average net book cost of a bare wood pole at fiscal year end, and the ratio of the occupied space to the total usable space per pole, as determined within NMPC DAS Order, PSC Case No. 03-E-1578. (Reference Exhibit #1 for rate methodology.).
- 8.3 Licensee acknowledges that due to the nature of its attachments the charges established within Exhibit #1 for wireless attachments to Licensor's Poles are

not based on established regulatory formulas for wire-line attachments, but rather in accordance with NMPC DAS Order, PSC Case No. 03-E-1578.

- 8.4 Attachment fees shall be due and payable annually in advance on the July 31st each year. The attachment fee shall commence thirty (30) days after the start of installation of Licensee Facilities or at the completion of installation, whichever is first. First year payments shall be prorated for the remainder of the billing period ending June 30th. The attachment fee will be recalculated annually.
- 8.5 Payment to Licensor must be received within thirty (30) days of the invoice date. Late fees of 1.5 percent per month will be applied to all outstanding balances in excess of thirty (30) days. Failure to pay such fees by the specified payment date shall constitute a default under the Agreement.
- 8.6 Electric service for each wireless site shall be metered and billed per the applicable Licensor tariff for electric service.

9. INSURANCE

- 9.1 This article replaces the insurance provisions in Article X of the Pole Attachment Agreement to which this Addendum is attached. Prior to any access to the property, including surveying and the initial installation and during the entire term of this Agreement and any amendments, Licensee and its contractors and subcontractors must procure and maintain insurance in the kinds and amounts listed below:

A. Workers' Compensation Insurance, including Employer's Liability Insurance, as required by New York State. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act and the Jones Act. Proof of qualification as a self-insurer may be acceptable in lieu of a Workers' Compensation Policy.

B. Comprehensive or Commercial General Liability, including Contractual Liability, and Product/Completed Operations coverage covering all insurable operations required under the provisions of this Agreement and, where applicable, coverage for damage caused by any explosion, collapse or underground peril (XCU), with the following minimum limits of liability:

| | |
|---------------------------|-------------|
| Bodily Injury Liability | \$5,000,000 |
| Property Damage Liability | \$5,000,000 |

If a combined single limit is provided, the limit shall not be less than \$5,000,000 per occurrence.

C. Licensor shall be named as an additional insured on the Licensee's liability insurance policy(ies) as respects the activities governed by this Agreement and,

if applicable, each contractor's and subcontractor's policy(ies). In addition, the policy(ies) should include a cross liability endorsement. Licensee shall not be required to name subcontractors as additional insureds on any insurance policy.

D. Automobile Liability covering all owned, non-owned and hired vehicles used in connection with the work or services to be performed under this Agreement with minimum limits of:

Bodily Injury & Property Damage Combined Single limit - \$1,000,000

E. Property Insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon the Wireless Facilities. Licensor and Licensee hereby mutually release each other (and their respective successors or assigns) from liability and waive all right of recovery against the other for any loss or damage to their property resulting from the negligent or other unintentional acts or omissions of the other party covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

9.2 Licensee shall furnish bond or other satisfactory evidence of financial security in an amount as Licensor from time to time may require, in an initial amount of \$10,000 for each 100 poles or portion thereof licensed under this Addendum but not exceeding \$50,000 for each 100 poles or portion thereof licensed under this Addendum, to guarantee the payment of any sums which may become due to Licensor for fees due hereunder or charges for work performed for the benefit of Licensee under this Addendum, including the removal of Licensee's Wireless Facilities upon termination of this Addendum or upon termination of any License issued hereunder. The bond or other satisfactory evidence of financial security shall remain in full force and effect until all Wireless Facilities have been removed and all sums due to Licensor have been fully paid. Such bond shall contain a provision that it may not be canceled without 90 days' prior notice to Licensor.

9.3 Neither Licensee nor any of its contractors or subcontractors shall commence any work under this Addendum until Licensor has been furnished with the original Pole attachment Bond or other satisfactory evidence of financial security and a completed Certificate(s) of Insurance showing that Licensee and, if applicable, such contractor or subcontractor has complied with this Insurance Article, and that the policies shall not be, diminished or canceled until at least thirty (30) days prior written notice of such, diminishment or cancellation has been given to Licensor. Such certificate of insurance, and any renewals or extensions thereof, shall outline the coverages and limits required, including the amount of deductibles or self-insured retentions which shall be for the account of Licensee, and shall be sent to the following address:

National Grid
Attn.: Risk Management, Bldg. B-3
300 Erie Boulevard West
Syracuse, NY 13202

- 9.4 Licensee represents that it has full policy limits available and shall notify Licensor's Risk Management Department in writing when any coverage required herein has been reduced as a result of claim payments, expenses, or both.
- 9.5 If any insurance coverage is not secured, maintained or is canceled before final payment by Licensee to Licensor and Licensee fails immediately to procure other insurance as specified, Licensor reserves the right to procure such insurance and to add the cost thereof to any sum due Licensor under this Agreement.
- 9.6 Licensee shall promptly furnish Licensor's Risk Management Department with copies of any accident or incident report(s) sent to Licensee's insurance carriers covering accidents/incidents occurring in connection with and/or as a result of the performance of the work under this Agreement.
- 9.7 Nothing contained in these insurance requirements is to be construed as limiting the extent of either Party's responsibility for payment of damages resulting from either Party's use of the property or limiting, diminishing or waiving either Party's obligation to indemnify, defend and save harmless the other as set forth in the indemnification Article included in this Addendum.
- 9.8 It is the intent of both Parties that the liability insurance placed in accordance with the provisions of this Insurance Article shall be primary insurance and shall protect both Licensee and Licensor from losses arising from the performance of this Agreement.

10. ACCESS TO THE ELECTRIC SPACE

- 10.1 Scheduled installation and maintenance of Licensee Facilities - Licensee shall provide written notice to Licensor of all contractors proposed to work within the Electric Space, for its review and acceptance, together with a summary of work to be completed and proposed work schedule, at least ten (10) business days prior to commencement of any installation, maintenance or modification of Licensee Wireless Facilities. No work shall commence until Licensor provides its acceptance of such contractors, summary of work and work schedule.
- 10.2 Emergency maintenance of Licensee Facilities Located in the Electric Space - In the event that Licensee requires emergency access to its facilities located in the Electric Space, Licensee shall provide Licensor prior notice at:

For Licensor

Western Division (716)831-7226 or (716)831-7325

Central Division (315)460-2417 or (315)460-2418

Eastern Division (518)356-6471 or (518)356-6478

These are 24-hour, 7-day per week emergency notification numbers. Calls shall be directed to the Supervisor on Duty, and the caller should be able to provide the following:

1. Name of Company making report;
2. Location reporting problem;
3. Name of contact person reporting problem;
4. Telephone number to call back with progress report;
5. Description of the problem in as much detail as possible;
6. Time and date the problem occurred or began;
7. Proposed corrective actions; and
8. If appropriate, a statement that **“This is an emergency”** and that a problem presents a jeopardy situation to the physical plant of National Grid, Licensee or others as the case may be.

11. COMPLIANCE WITH LAWS:

- 11.1 Licensee shall comply with all applicable Federal, State and local laws, ordinances, rules, regulations, permits, licenses, and requirements thereunder, herein after referred to as “the Laws” in this article, in connection with performance of their activities under this Addendum. Such laws, regulations, etc. shall include, but not be limited to, the current editions and any subsequent revisions of the regulations of the United States Occupational Safety & Health Administration (OSHA), the New York Industrial code, the National Electric Safety Code, and any and all applicable sections of the New York State General obligations Law and the New York State Labor Law.
- 11.2 Licensee shall indemnify and save Licensor harmless from and against any and all direct and indirect costs, expenses, damages and liability resulting from alleged or actual violations of said laws, ordinances, rules, regulations, permits and licenses.
- 11.3 If the Licensee observes that any requirement specified in this Addendum or to the Agreement to which the Addendum is attached, is at variance with any governing laws, ordinances, rules, regulations, permits, or license, Licensee

shall promptly notify Licensor in writing before incurring any further liability, expense, or obligation for the Licensee or the Licensor.

12. INDEMNIFICATION:

- 12.1 This article replaces the indemnification provisions contained in Article X of the original Agreement.
- 12.2 Licensee accepts the property in its present condition, as is, where is. To the fullest extent allowed by law, Licensee agrees to indemnify and save harmless Licensor, its officers, employees, agents and assigns from and against any loss, damage, liability, cost, suit, charge, cause of action, claim and expense, arising out of any damage to the property (including environmental damage) or injury to or death of any person as well as from any and all fines, levies, penalties, citations, assessments and fees from any local, state or federal agency, board, court or other governmental authority as a result of any alleged or actual violation of any laws, rules or regulations of such authorities or agencies arising out of, in connection with, or as a consequence of Licensees activities and/or the activities of Licensees agents, servants, employees, contractors or subcontractors, including but not limited to, the use or occupancy (including ingress and egress) of the property, Poles, structures, and right-of-way, and the transmission, installation, operation, use and maintenance of Licensee's Wireless Facilities and property.
- 12.3 Licensee shall take prompt action to defend and indemnify Licensor against claims, actual or threatened, but in no event later than notice by Licensor to Licensee of the service of a notice, summons, complaint, petition or other service of a process against Licensor alleging damage, injury, liability, or expenses attributed in any way to the Agreement, the Work, or the acts, fault, negligence, equipment, materials, properties, facilities, personnel, or property of the Licensee, it's agents, employees, sub-contractors or suppliers. Licensee shall defend any such claim or threatened claim, including as applicable, engagement of legal counsel, to respond to, defend, settle, or compromise any claim or threatened claim.
- 12.4 Furthermore, Licensee understands and agrees it is responsible for any and all costs and expenses incurred by Licensor to enforce this indemnification provision.
- 12.5 The obligations set forth in this article shall survive completion of the work, termination or expiration of this contract.

13. LIMITATION OF LIABILITY

- 13.1 Regardless of any other provision of this Addendum, and with the exception of any third party bodily injury or third party property damage obligations, under no circumstances will either Party be liable to the other, whether in contract, tort (including negligence and strict liability), warranty, or any other legal theory, for any incidental, indirect, special or consequential damages whatsoever, such as, but not limited to, loss of profits or revenue, cost of capital or of substitute use or performance, interruptions to operations or for claims for damages by or to the other Party's customers. Furthermore, Licensor will not be held liable for the accuracy or integrity of any data or message communicated over Licensee Wireless Facilities.
- 13.2 In addition, Licensee expressly acknowledges that Licensee Wireless Facilities are exposed to many risks beyond the reasonable control of Licensor, including acts of God or the public enemy, such as but not limited to, wind, rain, sleet, ice, floods, fire, riots, sabotage, expropriation or confiscation of facilities. Except as expressly provided in this Agreement, Licensee shall assume all risk of loss to Licensee Wireless Facilities that may arise in connection with these hazards.

14. MISCELLANEOUS PROVISIONS:

- 14.1. Licensee acknowledges that all work, including but not limited to any construction, maintenance or removal activities, to be performed in connection with this Addendum, may pose great hazard to human beings and personal property. Licensee warrants that it will make its employees, agents and contractors aware of these hazards as well as the potential consequences associated with exposure to these hazards. Furthermore, Licensee warrants that it has full responsibility for any and all injury and damages to persons or property resulting from these hazards and any failure by Licensee to advise its employees, agents or contractors as required herein.
- 14.2 Licensee shall inform each Licensee employee, agent, or contractor working on or about Wireless Facilities, energized or electric supply equipment and the associated lines, of the safety rules governing the employee's conduct while so engaged.
- 14.4 Licensor shall have the right to remove such Licensee or Licensee contracted employees at Licensor's sole discretion for cause, with notice provided to Licensee upon removal.
- 14.5 Licensee warrants that all Licensee employees, agents or contractors that work within the Electric Space are Qualified Electric Workers.
- 14.6 Except as otherwise expressly stated herein, the Parties have no intent, and do not create, any third party rights or interests in this Agreement.

15. TERM

- 15.1 Unless terminated pursuant to Article 16.0, this Addendum shall remain in effect for a term of twenty (20) years from the date hereof and shall extend thereafter until terminated by either party with at least twelve (12) months written notice to the other party.
- 15.2 Termination of this Addendum or any licenses issued hereunder shall not affect Licensee's liabilities and obligations incurred hereunder prior to the effective date of such termination.

16. TERMINATION

- 16.1 Licensor shall have the right to terminate any license issue hereunder, if:
- A. Licensee's Wireless Facilities are installed, operated, used, maintained and/or modified in violation of any law or in aid of any unlawful act or undertaking. Licensor agrees not to terminate any license under this provision for a period of 30 days, provided that Licensee ceases operations at the site and is making diligent efforts to correct the violation(s). Licensee shall provide Licensor with prompt written notice of any such action under which operation or use of the Wireless Facilities is denied, revoked or canceled or reinstated.
 - B. Any authorization which may be required by any federal and/or state governmental and/or regulatory authority with respect to the installation, operation, use, maintenance and/or modification of the Wireless Facilities is denied, revoked or canceled. Licensor agrees not to terminate any license under this provision for a period of 180 days after receipt of notice by the appropriate party, provided that Licensee ceases operations at the site and is making diligent efforts to obtain or reinstate such authorization. Licensee shall provide Licensor with prompt written notice of any such action under which operation or use of the Wireless Facilities is denied, revoked or canceled or reinstated.
- 16.2 Upon termination of any license, neither party will owe any further obligations to the other under such license, except for the indemnities and hold harmless provisions contained throughout this Addendum, Licensee's obligation to reimburse Licensor for all costs, expenses and losses properly incurred by Licensor pursuant to such license and Licensee's obligations under Section 15.4.
- 16.3 In the event of termination of this Addendum, Licensee shall within sixty (60) days from the date of termination submit a plan and schedule to Licensor under which Licensee will remove, or have its Wireless Facilities removed, within twelve (12) months from date of termination from Licensor's Poles; provided

however, that Licensee shall be liable for and pay all fees pursuant to the terms of this Addendum to Licensor until Licensee's Wireless Facilities are removed. In the event that Licensee fails to vacate the Pole or fails to remove all of its Wireless Facilities, Licensor shall have the right, after giving at least ten (10) days prior written notice to Licensee, to remove the remaining Wireless Facilities, in which event such Wireless Facilities may be retained by Licensor as its property without accounting to Licensee therefore, and the expense of such removal and repairs shall be charged to and paid by Licensee without credit for the value, if any, of such Wireless Facilities.

17. TAXES & CHARGES

17.1 Licensee shall pay all annual or periodic real property, personal property, gross receipts, franchise tax or other taxes, including any increase in such taxes levied or assessed to Licensor and based upon the license granted by this addendum or on account of its existence and shall indemnify, defend and hold harmless Licensor against the payment thereof. Licensor will provide reasonable notice to Licensee of receipt of notice of assessment of property or any portion thereof, which includes an increment of such assessment attributable to the license. Licensor shall bill for the payment of such taxes attributable to the license and Licensee will pay in accordance with Licensor real estate tax policies and procedures. In the event Licensor wishes to challenge any assessments on property that is subject to the license, Licensor will conduct such challenges and Licensee agrees to provide reasonable cooperation. In the event Licensee wishes to challenge an assessment or increase thereof related to the license, Licensee shall request Licensor to conduct such challenge and Licensor agrees to provide reasonable cooperation in conducting such challenges. Licensee shall pay all expenses incurred by Licensor in connection with conducting such challenges including but not limited to reasonable attorney's fees, expert witness fees and disbursements. To the extent any of the above taxes relating to the license are levied and assessed directly to Licensee, Licensee shall be responsible for any filings, timely payment of and any challenges to such taxes and Licensor agrees to provide reasonable cooperation in relation to same.

18. ASSIGNMENT

18.1 Licensee shall not assign or transfer this Addendum or any authorization granted hereunder, and this Addendum shall not inure to the benefit of Licensee's successors, without the prior written consent of Licensor, which shall not be unreasonably delayed or withheld.

18.2 In the event such consent or consents are granted by Licensor, then this Addendum shall extend to and bind the successors and assigns of the parties hereto.

18.3 Pole space licensed hereunder is for Licensee's use only, and Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder, except that Licensee may, (i) allow equipment of others to be placed within cabinets or boxes of Licensee placed on Poles of Licensor, or (ii) allow equipment of others to be placed on Poles of Licensor below the lowest communications cable on such Pole. If Licensee allows the placement of equipment of others within cabinets or boxes of Licensee placed on Poles of Licensor, Licensee's responsibilities under this Addendum shall be, in all respects, as though such equipment belonged to Licensee.

19. PROTECTION AGAINST LIENS ON PROPERTY

Licensee will keep the property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Licensee and shall indemnify, defend and hold harmless Licensor from all claims, demands, costs and liabilities, including reasonable attorney's fees and costs, in connection with or arising out of any such lien or claim of lien. Licensee will cause any such lien imposed on the property to be released of record by payment or posting of a proper bond within forty-five (45) days after receipt by Licensee of notice of the filing of such lien.

20. NOTICES

All notices, requests, demands and other communications hereunder will be in writing and will be deemed given if personally delivered, sent by facsimile or by an overnight courier provided proof of service is furnished therefore, or if mailed, certified mail, return receipt requested, to the parties at the following addresses:

If to Licensor:

National Grid
300 Erie Boulevard West
Syracuse, NY 13202
Attn: Director – Energy Delivery Services
(315) 428-6404

with a copy to:

National Grid
300 Erie Boulevard West
Syracuse, NY 13202
Attn: Law Dept.
(315) 428-3310

If to Licensee:

21. PUBLIC SERVICE COMMISSION APPROVAL

The Parties acknowledge that this Addendum and any amendments thereto may be filed with and may require the approval of the New York Public Service Commission (“PSC”) or that Licensor may seek approval of same from the PSC. If the PSC issues any rule, order or determination that directly or indirectly prohibits or prevents performance under this Addendum or otherwise makes such performance illegal or impossible, or takes any action or issues any rule, order or determination that directly or indirectly effects a material adverse change in any substantive provision of this Addendum, in the terms of performance or the rights or obligations of either party, then either party may (i) proceed with the Addendum so changed, (ii) seek to renegotiate the affected terms of the Addendum by providing written notice to the other party of its desire to do so or (iii) terminate the Addendum by providing sixty (60) days’ prior written notice; provided that, if such action or determination is rescinded prior to the effectiveness of such termination notice, the termination notice will be ineffective.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed as of the day and year first written above.

NIAGARA MOHAWK POWER CORPORATION (LICENSOR):

By: _____

Title: _____

Date: _____

_____ **(LICENSEE)**

By: _____

Title: _____

Date: _____

EXHIBITS:

- Exhibit 1 Wireless Facilities Fee Schedule
- Exhibit 2 Licensor Construction Services Agreement
- Exhibit 3 Proposed Wireless Facilities
- Exhibit 4 Licensor Standard GS 1169 (Wireless Attachments to Wood Poles)
- Exhibit 5 Procedure for Processing Multiple Applications

Wireless Attachments to
Niagara Mohawk Wood Poles
Fee Schedule

| Effective Annual Attachment Rate | Solely-Owned Poles Attachment Fee ² (\$/pole/yr) |
|-------------------------------------|--|
| Effective 04/13/04 | \$59.84 |

Annual Attachment Fee Methodology:

Note: For Attachment Fee calculations, the antenna is assigned 2ft of pole space and the accessory panels are assigned 5ft of pole space

Attachment Fee = [A x B x E]

(A) - Licensor annual carrying charge [47.34%]

(B) - Licensor net cost of bare pole adjusted for appurtenances not usable

[\$334.05]

(C) - Usable pole space [l = 13.5 +5 = 18.5ft]

(D) - Occupied Space [2 ft. at top of pole + 5 ft. accessory panel space = 7 ft. Total Occupied Space]

(E) - Percentage of Occupied to Usable Space [D/C = 37.84%]

² Attachment Rate per NMPC DAS Order, PSC Case No. 03-E-1578, p. 4). This rate is further reflected in the latest Tariff 207 at Rule 35.2.2.1. The Attachment Fee shall be adjusted for jointly owned poles in accordance with the Licensor's pole ownership interest.