

**AGREEMENT AUTHORIZING ATTACHMENT OF
COMMUNICATION CABLE and FACILITIES ON CERTAIN
NIAGARA MOHAWK POWER CORPORATION¹
ELECTRIC TRANSMISSION POLES**

THIS AGREEMENT, made this day of _____, 20____, between Niagara Mohawk Power Corporation, 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, “Niagara Mohawk”, and _____, a corporation organized and existing under the Laws of the State of New York, having its principal office at _____, hereinafter known as “Licensee”, and collectively referred to as the “Parties”.

W I T N E S S E T H

WHEREAS, Niagara Mohawk is the owner of certain Electric Transmission Poles, and

WHEREAS, Licensee desires to install a communication cable and accessory facilities on certain Electric Transmission Poles of Niagara Mohawk; and

WHEREAS, Niagara Mohawk is willing to permit, under the conditions described herein, the placement of said Licensee cables and facilities on certain Electric Transmission Poles, and

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:

Actual Cost - expenses incurred by Niagara Mohawk, to be paid by Licensee, in connection with Licensee’s request, installation and ongoing use of Electric Transmission Poles, which shall include but are not limited to Niagara Mohawk’s fully allocated costs and expenses including appropriate overhead costs.

Agreement – This agreement and any attachments and exhibits.

Cable - Overhead communication cable or fiber optic filaments in any suitable jacket or sheath.

Cable Accessories - Attachment and suspension hardware, splice closures, and other equipment and components necessary for overhead Cable placement or for continuity of the fiber filaments within the Cable.

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 are located that can be accessed by a Qualified Communication Worker.

Competent Person – one who is properly trained and capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has the authorization to take prompt corrective measures to eliminate them (i.e., as defined in 29 C.F.R. Part 1926.32(g) of the OSHA Regulations).

Electric Space - shall mean that portion of usable space where Niagara Mohawk 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).

Electric Transmission Poles or “**Poles**”- Niagara Mohawk designated wood or steel poles supporting electric transmission circuits and recorded in Niagara Mohawk transmission system plant accounting records (PSC and FERC Account No. 355, NMPC Account No. 345).

Estimated Cost - Reasonable, good faith estimate of the Actual Cost.

Event of Abandonment - Failure to maintain the Cable and Cable Accessories in accordance with this Agreement, for a period of 180 days or longer.

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 judgement 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 Niagara Mohawk. Good Utility Practice shall include conformance to the policies, criteria, practices, guidelines and requirements of National Electric Reliability Council, the Northeast Power Coordination Council and the NY Independent System Operator, or their successor organizations.

Licensee Network or **Licensee System** - The Licensee owned Cable and Cable Accessories.

Make-Ready Work or Make-Ready - All work performed by Niagara Mohawk or an existing Third Party attachee to accommodate the installation of Licensee’s Cable and Cable Accessories, including but not limited to the rearrangement, modification or replacement of existing Niagara Mohawk facilities. All material provided or services performed by Niagara Mohawk shall be in accordance with Good Utility Practice and Niagara Mohawk’s terms and conditions for the supply of material and construction services (Exhibit 1)

Occupancy Fee - shall mean the fee Licensee shall pay to Niagara Mohawk under this Agreement for each attachment to or use of an electric transmission pole.

Payment Commencement Date - the date the initial Occupancy Fee shall begin. For each Route, the Payment Commencement Date shall be sixty (60) days after the release of the Electric Transmission Poles by Niagara Mohawk for attachment of Licensee System.

Periodic Inspection - The inspections conducted by Niagara Mohawk on all or portions of the Route for the purpose of determining that Licensee's occupancies of Niagara Mohawk's Property are authorized and/or maintained in conformance with the terms and conditions contained in this Agreement.

Property - shall mean Niagara Mohawk's real property, Right-of-Way and the Electric Transmission Poles thereon, collectively.

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

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

Right-of-Occupancy or License - The right granted by Niagara Mohawk to Licensee under this Agreement to install, or have installed consistent with this Agreement, Cable and Cable Accessories and to operate the Licensee Network upon the Property.

Right-of-Way - shall mean the parcel of land owned or controlled by Niagara Mohawk, whether in fee, easement, lease, license, permit, franchise, or otherwise as specified in this Agreement.

Route - That portion of Niagara Mohawk's electric transmission system to be occupied by Licensee System.

Third Party - Any party, person or entity that is not a signatory to this Agreement.

2. **RIGHT TO USE**

2.1 Niagara Mohawk agrees to authorize installation of the Licensee Network within the Communication Space on Niagara Mohawk owned Electric Transmission Poles when such installation is consistent with Niagara Mohawk's core electric transmission and distribution business and generally accepted safety, operational, reliability and engineering requirements. THIS AGREEMENT IS NOT APPLICABLE TO AND DOES NOT AUTHORIZE LICENSEE USE OF THE ELECTRIC SPACE ON NIAGARA MOHAWK OWNED ELECTRIC TRANSMISSION POLES.

2.2 The rights granted to Licensee by this Agreement shall constitute a License, hereafter called a "Right-of-Occupancy", to the extent that such Right-of-Occupancy is permitted pursuant to the terms of the applicable contracts, deeds, agreements, easements, leases, licenses, permits or franchises conveying to Niagara Mohawk its individual legal rights in any Right-of-Way subject to this Agreement. The Right-of-Occupancy does not provide Licensee with any ownership interests in Niagara Mohawk's Electric Transmission Poles, real property or the Right-of-Way and is for Licensee's sole use and purpose, except for "third party" uses provided for in this Section.

2.3 It is understood that Niagara Mohawk's Right-of-Way may not be sufficient to permit Licensee to use the Property for the purpose set forth. In any instance where it is determined that the Right-of-Way may not be sufficiently broad to permit Licensee to use the Property, Licensee shall obtain the required land use rights. All costs and expenses arising out of, in connection with or as a

consequence of obtaining such land use rights (including, but not limited to, settlements made with fee owners to purchase land use rights) shall be paid by Licensee.

- 2.4 Licensee shall obtain, at its own cost and expense, all necessary franchise, licenses, permits or rights which relate to Licensee's use of the Property and the performance of its obligations hereunder, and Licensee shall provide a copy of such documents to Niagara Mohawk upon request at Licensee's sole cost and expense.
- 2.5 Licensee shall be responsible for payment of or upon invoice, reimbursement of any fees payable to any landowner or federal, state, or local agency for the use of any private or public property, including but not limited to, Rights-of-Way as a result of Licensee's placement of Licensee's System or use of or right to operate the Licensee System. Costs incurred by Niagara Mohawk shall be compensated as part of Niagara Mohawk's Actual Cost, including, without limitation, all costs associated with determining the adequacy of existing permits or authorizations, costs to obtain any additional permits or authorizations, and costs or fees associated with the placement of Licensee's System or use of or right to use the Licensee System. Licensee shall indemnify, defend and hold harmless Niagara Mohawk and its employees, agents and contractors from and against any and all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, sustained or incurred by Niagara Mohawk or its employees, agents or contractors arising out of or in connection with placement of, use of, or right to use Licensee's System on the Right of Way.
- 2.6 Licensee's right to use the Property shall at all times be subordinate to Niagara Mohawk's obligation to maintain and operate a safe and reliable electric transmission system and provision of electric service to its wholesale and retail customers, and shall be limited to the terms and conditions of this Agreement. This grant is solely for Licensee's use providing telecommunication services to Third Parties, which may include leasing or licensing of dark fiber, subject to the provisions of this Agreement. Any agreement entered into between Licensee and a Third Party for the use, lease, or license of the Cable shall incorporate by reference the terms of Sections 2.10, 7.4, 13, 23, 27, 40.2, 41.10 and 41.11.
- 2.7 Pole space Licensed hereunder is for Licensee's sole use, and Licensee shall not lease, sublicense, share with, convey or resell to others any such space or rights granted hereunder. Licensee shall not allow a Third Party, including Licensee affiliates, to overlash on a Licensee Attachment without the prior written consent of Licensor. Such consent shall be in Licensor's sole discretion, and is contingent upon such Third Party entering into a separate license agreement with Licensor.
- 2.8 In the event that Niagara Mohawk attempts, in connection with this Agreement, to secure nondefeasance agreements or other releases, approvals, consents and waivers as may be required to ensure that such grant to Licensee is not subject to the prior rights of other persons, Licensee shall pay all of Niagara Mohawk's costs attributable to such action by Niagara Mohawk or its agents associated with application or requests for such releases.
- 2.9 This Agreement shall not be construed as limiting or restricting Niagara Mohawk in any manner from using its Electric Transmission Poles, easements, licenses, permits and/or Rights of Way for the installation of fiber optic cables or telecommunication or other facilities for its own use in any manner or for use by Third Parties under separate agreements, so long as such use by Third Parties does not

interfere and is consistent with Licensee's rights hereunder. Niagara Mohawk reserves the right and privilege of granting other rights-of-occupancy and rights of use on any part of the Property or Electric Transmission Poles to any Third Party for any purpose.

2.10 Licensee acknowledges that certain activities, including, but not limited to, installation, maintenance and modification of Licensee Network on Niagara Mohawk Electric Transmission Poles and Right of Way, to be performed in connection with this Agreement may pose great hazards to human beings and personal property. Licensee agrees to warn all of its employees, agents and contractors accessing the Rights-of-Way of these hazards as well as the potential consequences associated with exposure to these hazards. All employees, agents and contractors of Licensee accessing the Rights-of-Way will be given a copy of New York State's High Voltage Proximity Act and advised of required clearances to electric conductors. Furthermore, Licensee shall be responsible for any and all injury and damages to persons or property resulting from these hazards or any failure by Licensee to advise its employees, agents or contractors accessing the rights-of-way of these hazards as required herein or any failure by Licensee, it's employees, agents or contractors to comply with New York State's High Voltage Proximity Act.

3. NIAGARA MOHAWK'S PRIMARY OBLIGATION

3.1 Niagara Mohawk consent to Licensee's proposed attachments shall be subject to Niagara Mohawk's primary obligation to provide and maintain a safe and reliable electrical transmission system. Further, Niagara Mohawk's obligation to perform under this Agreement is subject to manufacturing and supplier delays; governmental regulatory delays and delays experienced by Niagara Mohawk as a result of its obligation to provide and maintain reliable electric services; events of Force Majeure, or the unavailability of transmission line outages necessary to permit required Make-Ready Work or the installation of the Cable. Notwithstanding the above, nothing contained herein shall be construed to compel Niagara Mohawk to authorize Licensee attachments or to construct, reconstruct, retain, extend, repair, place, replace, maintain or make available space for Cable attachment to or Licensee occupancy of Electric Transmission Poles.

4. ROUTE DESIGN and ENGINEERING

4.1 Licensee, at its sole cost and expense, shall design the Cable and Cable Accessories for the Licensee System along the Route. Licensee shall provide to Niagara Mohawk, details of the Route, the specific listing of Electric Transmission Poles Licensee seeks authorization to make attachment to, and other necessary data including, without limitation, the Cable and Cable Accessories specifications, Cable pull tensions, and construction working prints points and method of attachment, which are required for Niagara Mohawk review and analysis of the proposed attachments along the Route.

4.2 Licensee's proposed attachments, including all information directly related to the design, installation or maintenance of the Cable shall be subject to Niagara Mohawk's review and acceptance,. Niagara Mohawk shall have the right to require modifications, additions or deletions to the foregoing documents or data if modifications, additions or deletions may be required to maintain the integrity of and safe and reliable operation of Niagara Mohawk's electric transmission system, Niagara Mohawk's Electric Transmission Poles or Niagara Mohawk's property rights or permits associated with any of them.

- 4.3 Niagara Mohawk shall review and analyze the Licensee attachment request and the Poles along the Route to determine the acceptability of the attachments including required make-ready work, if any. Licensee shall prepay Niagara Mohawk's Estimated Costs for Route review, engineering analysis and all required Make-Ready Work.
- 4.4 All plans and specifications shall remain the property of Licensee and shall be treated as confidential materials of Licensee. Niagara Mohawk shall receive, at no cost or expense, two (2) copies of all as-built drawings, maps, site plans and surveys, and shall not knowingly permit or suffer any person to copy or utilize the plans for any purpose other than as provided in this Agreement.
- 4.5 In the event Licensee requests an extension or modification to a pending Licensee application, the Licensee shall mutually re-establish with Niagara Mohawk, the scheduling of such modified or extended work.

5. MODIFICATIONS TO THE ROUTE

In the event the Licensee wishes to extend or modify a Licensed Route, the Licensee shall make such request in accordance with Section 4 above.

6. MAKE READY WORK

- 6.1 In the event Niagara Mohawk's review and analysis of Licensee's proposed attachments reveals Make-Ready Work is required prior to the installation of the Licensee's Cable and Cable Accessories, Niagara Mohawk, or at the sole discretion of Niagara Mohawk, Niagara Mohawk's contractor, will perform such Make Ready Work. Niagara Mohawk work will be performed in accordance with Good Utility Practice and with Niagara Mohawk's collective bargaining agreement.
- 6.2 Niagara Mohawk review, modification, rearrangement, or replacement of Electric Transmission Poles and electric facilities necessary to permit installation of the Cable, shall be compensated by the Licensee as part of Niagara Mohawk's Actual Cost. Licensee shall prepay Niagara Mohawk's Estimated Costs for Route review, analysis and required Make-Ready Work. Licensee shall compensate Niagara Mohawk for its Actual Costs, for Make-Ready Work, including any amounts above the Estimated Costs for Make-Ready Work performed.

7. INSTALLATION OF CABLE AND CABLE ACCESSORIES

- 7.1 At the completion of all Make-Ready Work and upon release by Niagara Mohawk, Licensee may proceed with the installation of Licensee Cable and Cable Accessories.
- 7.2 Unless otherwise agreed to in writing, Licensee shall install all Cable within ninety (90) days of the Niagara Mohawk release date(s). After such time, if the Licensee has failed to install the Cable or Cable Accessories, Niagara reserves the right to reassign the pole space.
- 7.3 The Licensee shall label their Cable with the company name and with an emergency contact number at the point of attachment at (i) all points of termination, and (ii) at each road crossing and intersection, and (iii) at each cable departure from the pole line and, and (iv) at intervals not exceeding 1000 ft.

7.4 Licensee's employees, contractors and subcontractors shall possess the minimum qualifications or certification required by OSHA, including, but not limited to, the requirements of 29 C.F.R. Parts 1910.268, the National Electrical Safety Code, Niagara Mohawk, and other appropriate standards reasonably required by law, statute or regulatory order. Further, when performing work on or associated with Niagara Mohawk's Electric Transmission Poles, Licensee or its contractor or subcontractor shall provide at all times an onsite qualified Competent Person to identify existing and predictable hazards in the surroundings or working conditions and shall promptly report to Niagara Mohawk identified electric system deficiencies or hazards. Niagara Mohawk, or as directed by Niagara Mohawk, the Licensee, shall take prompt corrective measures to eliminate them. At no time shall Licensee's employees, agents, or contractors access the Electric Space of Niagara Mohawk's Electric Transmission Poles without Niagara Mohawk's written authorization and, to the extent deemed necessary by Niagara Mohawk, without an authorized Niagara Mohawk representative present.

7.5 Except for emergency related work, Licensee shall provide Niagara Mohawk a minimum of two (2) business days advance notice of any Cable installation or modification.

8. OPERATIONS AND MAINTENANCE

8.1 Provided that Licensee has been given the permission to access the Route and the planned maintenance has been reviewed and accepted by Niagara Mohawk, Licensee, at its sole cost and expense, shall perform the maintenance and repair of the Licensee System

8.2 Niagara Mohawk shall at all times have the right to take all action necessary to maintain Niagara Mohawk's services to its customers, unconstrained by this Agreement. In the event of any service outage affecting the Cable, Niagara Mohawk shall have the right to repair its facilities first. If conditions permit, Licensee may repair its facilities concurrently with Niagara Mohawk's performance of its own repairs. Licensee acknowledges that all or a portion of the Cable will be placed on Electric Transmission Poles that are part of Niagara Mohawk's electric transmission system and that at all times the safe and continuous operation of such system and the provision of electric service is Niagara Mohawk's foremost priority.

8.3 Licensee shall provide Niagara Mohawk a minimum of two (2) business days advance notice of any planned Cable maintenance.

9. RELOCATION OF THE CABLE

9.1 In the event that Licensee requests relocation, replacement, or rebuild of the Cable during the term of this Agreement for any reason, the cost of any such work shall be paid by Licensee. Requests for relocations, replacements, or rebuilding shall be provided in writing to Niagara Mohawk. No relocation, replacement, or rebuild shall be performed on Niagara Mohawk's Electric Transmission Poles without prior written acceptance by of Niagara Mohawk.

9.2 In the event that during the term of this Agreement Niagara Mohawk requests relocation of the Cable, or Niagara Mohawk requires to relocate or modify any or all Electric Transmission Poles upon which Licensee System or any part thereof is located, Niagara Mohawk and Licensee shall cooperate in

performing such relocation or modifications so as to minimize any interference to Niagara Mohawk's ability to provide safe and reliable delivery of electricity. Except in instances where Niagara Mohawk requests relocation for Niagara Mohawk's sole need and benefit, Licensee shall pay all cost of moving Cable and Cable Accessories. In instances where Niagara Mohawk requests relocation for Niagara Mohawk's sole need and benefit, Niagara Mohawk shall be responsible for the actual Licensee cost of moving the Cable.

9.3 In the event that during the term of this Agreement relocation or modification of the Cable or Electric Transmission Poles is required by public authorities or by lawful order or decree of a regulatory agency or court having jurisdiction, Niagara Mohawk and Licensee shall cooperate in performing such relocation or modifications so as to minimize interference to the continued operation of the Licensee System or Niagara Mohawk's ability to provide a safe and reliable electric transmission system. Licensee shall pay (i) all cost of moving the Cable and Licensee System, and (ii) an equal share in obtaining and clearing the new pole line corridor, and (iii) any incremental pole costs Niagara Mohawk incurs to accommodate the Licensee's System on the relocated Electric Transmission Poles.

9.4 In the event that Niagara Mohawk and Licensee both require or request relocation or replacement of the Electric Transmission Pole(s) during the term of this Agreement, Niagara Mohawk and Licensee shall cooperate in performing such relocation or modifications so as to minimize interference to the continued operation of the Licensee System or Niagara Mohawk's ability to provide a safe and reliable electric transmission system. Licensee shall pay (i) all cost of moving the Cable and Licensee System, and (ii) an equal share in obtaining and clearing the new pole line corridor, and (iii) any incremental pole costs Niagara Mohawk incurs to accommodate the Licensee's System on the relocated Electric Transmission Poles.

10. RIGHT-OF-WAY RESTORATION

10.1 In the event Licensee damages or disturbs the Property or any access roads, Licensee, at its sole cost and expense, will promptly restore such Property or access roads to Niagara Mohawk's reasonable satisfaction, normal wear and tear and damage from the elements and condemnation excepted. During construction activities, daily restoration shall be performed with final restoration activities completed within 120 days of the Cable installation.

10.2 If Licensee fails to effect such restoration within thirty (30) days of notice from Niagara Mohawk, or such faster time frame as reasonably demanded by Niagara Mohawk or a governmental or regulatory agency having appropriate jurisdiction, Niagara Mohawk shall have the right to proceed with restoration work, at Licensee's sole cost and expense.

11. LICENSEE COSTS

11.1 In addition to the cost of installing the Licensee System, Licensee shall pay all Niagara Mohawk's Actual Cost associated with implementing this Agreement, including, but not limited to, field surveys, design and engineering review, obtaining new or modified easements, licenses, permits or rights of way, Make-Ready Work, taxes and fees.

11.2 Fee - Licensee shall also pay Niagara Mohawk an annual Occupancy Fee.

11.3 Material – Licensee shall provide, at it’s sole cost, all Cable and Cable Accessories.

12. NIAGARA MOHAWK’S COSTS AND EXPENSES

12.1 Niagara Mohawk Actual Cost shall include, but not be limited to, personnel time, material, equipment and taxes. Labor, material and equipment costs shall consist of, but not be limited to, direct hourly rates, fringe benefits and applicable payroll taxes, and general administrative and overhead costs. Niagara Mohawk will not include a “profit”, except for work offered on a fixed price basis.

12.2 Niagara Mohawk work activities shall comply with Niagara Mohawk’s collective bargaining agreement, as well as Niagara Mohawk policies, rules and procedures.

12.3 Should Niagara Mohawk utilize contractors or consultants to perform Niagara Mohawk’s obligations under this agreement, Licensee shall reimburse Niagara Mohawk actual contracted or consultant costs plus ten percent (10%), and all applicable taxes.

12.4 Upon request, Niagara Mohawk shall provide to Licensee Estimated Costs of any work to be performed by Niagara Mohawk for Licensee and an estimated completion date for such work unless such work is necessary to correct unplanned or emergency events.

12.5 Invoices shall be issued in accordance with Niagara Mohawk’s standard billing practices and will itemize labor, material, equipment and taxes. Niagara Mohawk will provide readily available and reasonable supporting back-up for charges.

12.6 Niagara Mohawk shall receive full payment within thirty (30) days of issuance of an invoice. Late fees of 1 1/2 percent per month will be imposed on all outstanding balances in excess of thirty (30) days from date of Niagara Mohawk’s invoice.

13. INTERFERENCE WITH OTHER JOINT USERS

The Licensee shall design, engineer, construct and maintain the Cable within the Route in a manner intended not to physically conflict or interfere with Niagara Mohawk's property or any facilities attached thereon or placed therein by joint users or others.

14. REMOVAL OR MODIFICATION OF THE LICENSEE SYSTEM

14.1 Licensee shall give Niagara Mohawk thirty (30) days prior written notice of any removal(s) or material modification(s) to the Licensee System.

14.2 In the event Niagara Mohawk under the provisions of this Agreement shall remove any portion of the Cable from Niagara Mohawk's property, Niagara Mohawk will deliver to Licensee the Cable and Equipment so removed upon payment by Licensee of the cost of removal, storage and delivery, and all other amounts due Niagara Mohawk. If the removal follows termination of the Agreement or Route Segment, this Section 14.2 is applicable only for the twelve (12) months immediately following the termination.

15. CONSTRUCTION, POST CONSTRUCTION and PERIODIC INSPECTIONS

15.1 By Niagara Mohawk. The costs of inspections made during construction and post-construction, if any, shall be paid by the Licensee as part of make-ready charges. Niagara Mohawk shall have the right to make Periodic Inspections of any part of Licensee's Network occupying Niagara Mohawk's Property. Niagara Mohawk will give Licensee reasonable advance notice of any Periodic Inspections, except in those instances where safety considerations justify the need for a Periodic Inspection without the delay. A representative of Licensee may accompany Niagara Mohawk's representative on Periodic Inspections. The cost of Periodic Inspections, or special inspections conducted by Niagara Mohawk as a result of alleged or actual substandard or unauthorized attachments by Licensee, are to be paid by Licensee.

15.2 If any Cable or Cable Accessories of Licensee shall be found on an Electric Transmission Structure or the Property for which no authorization was granted, Niagara Mohawk, without prejudice to its other rights or remedies under this Agreement or otherwise, may: (1) impose a fee, and (2) require Licensee to remove such Cable or Cable Accessories forthwith or require Licensee to make application for the attachments. For the purpose of determining the fee, absent evidence satisfactory to Niagara Mohawk to the contrary, the unauthorized use shall be treated as having existed for a period of five (5) years or since the last inspection whichever period shall be the shorter; and the fee for any such period shall be calculated at the current Occupancy Fee for each year or portion thereof in such period, which fee shall immediately become due and payable. Any such fee imposed by Niagara Mohawk shall be in addition to its rights to any other sums due and payable and to any claims or damages under this Agreement or otherwise. No act or failure to act by Niagara Mohawk with regard to said fee or said unauthorized use shall be deemed as a waiver or ratification of the unauthorized use; and any authorization subsequently issued shall not operate retroactively or constitute a waiver by Niagara Mohawk of any of its rights or privileges under this Agreement or otherwise.

15.3 If in the event Licensee Cable or Cable Accessories are found to be violation of the National Electric Safety Code (NESC), or other applicable codes or Niagara Mohawk Standards, Licensee shall utilize best efforts, and at their own expense, to correct the violation(s) within seven (7) days of notice. Niagara Mohawk may, after failure by the Licensee to correct violations within seven (7) days of notice, proceed to make the necessary corrections, however, all costs of the required corrections shall be paid by the Licensee.

16. LEGAL TITLE & TAX ACCOUNTING

Legal title to the Licensee System installed upon Niagara Mohawk's Electric Transmission Poles shall be held by Licensee. Legal title to all Electric Transmission Poles shall be held by Niagara Mohawk at all times. Licensee shall for tax purposes account for all costs borne by it and shall be entitled to any investment tax credits, depreciation and any other tax attributes or liabilities with respect to the property for which Licensee has paid. Niagara Mohawk agrees that it will not, for tax purposes, account for property paid for by Licensee as though it were the tax owner thereof and shall not attempt to claim any of the tax attributes or liabilities with respect thereto. The parties agree they shall file all income tax returns and otherwise take all actions with respect to taxes in a manner, which is consistent with the foregoing.

17. REPRESENTATIONS AND WARRANTIES

17.1 Common Representations. Each of the parties represents and warrants that it has full authority to enter into and perform this Agreement and that this Agreement is fully enforceable in accordance with its terms.

17.2 Representations by Niagara Mohawk. Niagara Mohawk represents and warrants that Niagara Mohawk is a corporation duly organized, validly existing and in good standing under the laws of the New York.

17.3 Niagara Mohawk does not make any representation or warranty as to the present or future strength, condition, or state of repair of any Poles, wires, or apparatus. Licensee shall by test or observation determine that Poles are safe to climb. If the integrity of any Pole is in question or is marked by Niagara Mohawk as unsafe, Licensee shall confirm said condition with Niagara Mohawk and refrain from ascending the Pole. Should the Licensee decide to ascend a questionable Pole, Licensee shall assume all risk of loss to any person(s) who may be injured (including injuries resulting in death) or any property that may be damaged as a result of that action.

17.4 No Representation by Niagara Mohawk as to Timing. Niagara Mohawk makes no representation that it can guarantee outage availability on a schedule that may be required for the installation, maintenance or repair of the Cable.

17.5 Warranty Disclaimer. Representations by Licensee. Licensee represents and warrants that Licensee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and qualified to do business in New York and that the execution and delivery of this Agreement and the performance thereunder will not conflict with or violate or constitute a breach or default under the Articles of Incorporation of Licensee and will not violate any law, rule or regulation applicable to Licensee. No consents need to be obtained from any government agency, regulatory agency, or financial entity not disclosed to Niagara Mohawk to allow Licensee to execute, deliver and perform this Agreement.

18. LIMITATION OF WARRANTIES

18.1 Niagara Mohawk makes no specific covenant, warranty or representation as to the suitability, fitness for a particular purpose, permissible uses, or title to the Property and/or Rights-of-Way, which are to become subject to this Agreement. Niagara Mohawk will make available to Licensee for its review agreements and other documents in Niagara Mohawk's possession relating to permissible uses and title to such Property or Rights-of-Way. Any such documents provided or made available to Licensee shall be considered confidential information. Niagara Mohawk shall, following execution of this Agreement and during the term of the Agreement, provide such cooperation and assistance as Licensee may reasonably request in respect of issues or problems regarding the use of the Property or Rights-of-Way for the purposes contemplated under this Agreement. Niagara Mohawk shall be compensated for its Actual Costs in connection with any such assistance and effort to resolve problems regarding the use of the Property or Rights of Way.

18.2 Niagara Mohawk PROVIDES NO EXPRESS OR IMPLIED GUARANTEES OR WARRANTIES WHATSOEVER, INCLUDING ANY IMPLIED WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS MAY BE EXPLICITLY PROVIDED HEREIN.

18.3 Niagara Mohawk DOES NOT WARRANT TITLE, DESCRIPTION, VALUE, QUALITY, CONDITIONS, WORKS AND ABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ENGINEERING, WORKMANSHIP OR RIGHTS-OF-WAY SUBJECT TO THIS AGREEMENT, EXCEPT AS IS EXPLICITLY STATED OTHERWISE IN THIS AGREEMENT.

19. TERM AND TERMINATION

19.1 Period. This Agreement shall become effective upon its execution by both parties. Thereafter, the term of this Agreement shall extend for a period of thirty (30) years unless terminated early or extended by mutual agreement of Licensee and Niagara Mohawk.

19.2 Mutual Election to Extend. No less than one (1) year prior to the expiration of this contract, the parties shall indicate by written notice their interest in extending this contract. At the end of the Term of this Agreement, if Licensee and Niagara Mohawk mutually elect to extend this Agreement in writing upon terms and conditions and at rates that are mutually agreeable, this Agreement shall be extended for such other period of time as agreed by Niagara Mohawk and Licensee.

19.3 Election Not to Extend. At the end of the Term of this Agreement, if Niagara Mohawk and Licensee, or either of them in its sole discretion, elects not to extend this Agreement, the Agreement shall expire on the Ending Date.

19.4 Early Termination of Agreement. This Agreement may be terminated prior to the Ending Date upon any one of the following events:

- (i) by either party pursuant to Section 30 or 31; or
- (ii) by Niagara Mohawk upon 30 days prior notice following an Event of Abandonment by Licensee;

19.5 Termination of Route Segment. Any Route Segment may be terminated:

- (i) by Niagara Mohawk upon reasonable notice if it is required to do so in order to provide or continue to provide a safe and reliable electric transmission system; or to maintain Niagara Mohawk's property rights and licenses, permits or similar rights associated with Niagara Mohawk's Electric Transmission Poles providing such service despite Niagara Mohawk's reasonable efforts to maintain both its property rights or permits and the Route Segments,
- (ii) by Niagara Mohawk at any time if it cannot obtain the regulatory approvals needed by it to perform its obligations under this Agreement with respect to such Route Segment or can obtain them but only on terms that are unacceptable or unreasonably burdensome on Niagara Mohawk.

- (iii) by Licensee at any time provided Licensee gives thirty (30) days prior notice to Niagara Mohawk and removes the Licensee System along the Route and restores the Property in accordance with section 10.

19.6 Upon termination of this Agreement or any Route segment, Licensee will remove all of its facilities (Licensee System) which are located on the Property within one hundred and twenty (120) days from the date of termination, surrender the rights and privileges hereby granted and quit the Property. In the event that Licensee fails to vacate the Property or fails to remove all of the Licensee System within one hundred and twenty (120) days from the date of termination, Niagara Mohawk shall have the right, after giving at least ten (10) days prior notice to Licensee, to remove the remaining Licensee facilities and restore the Property, in which event such Licensee facilities shall be considered abandoned in place and may be retained by Niagara Mohawk as its property without accounting to Licensee therefor, and the expense of such removal and restorations, if any, shall be charged to and paid by Licensee without credit for the value, if any, of such Licensee facilities.

20. FEES

20.1 Licensee acknowledges that the Occupancy Fee established for attachment to Electric Transmission Poles has been negotiated with the Niagara Mohawk and is a reasonable fee for the use provided.

20.2 In addition to any other fee "Right-of-Way Fees" payable by Licensee for use of public and private property or the Right-of-Way, an Occupancy Fee shall be paid to Niagara Mohawk by Licensee commencing on the Cable installation date or sixty (60) days after the Electric Transmission Poles have been released by Niagara Mohawk for Licensee attachment, whichever occurs first. Occupancy Fees shall continue to be assessed until such time as Licensee has fully complied with Section 19.6 above. Niagara Mohawk may recalculate and revise the Occupancy Fee not more than once per twelve (12) month period. Unless otherwise authorized by a public authority or by lawful order or decree of a regulatory agency or court having jurisdiction, Niagara Mohawk will not increase the Occupancy Fee shown below by more than 4% per year. The revised rate will become effective upon thirty (30) days notice of such change to the Licensee.

OCCUPANCY FEE as of 1/1/2002 :

\$31.35 per pole

20.3 Occupancy Fee shall be due and payable annually in advance on the 31st day of the calendar year. First year payments shall be prorated for the remainder of the calendar year. Niagara Mohawk shall receive full payment within thirty (30) days of issuance of an invoice. Late fees of 1 1/2 percent per month will be imposed on all outstanding balances (i.e.: Occupancy Fees, Make-Ready Work, etc.) in excess of thirty (30) days from date of Niagara Mohawk's invoice.

20.4 Additional Amounts. In addition to the Occupancy Fee due and payable pursuant to the foregoing, at any time during the term of this Agreement, Niagara Mohawk shall have the right to require Licensee to pay any additional fees, rates or charges required in any valid final order of any court, regulatory agency or government body with jurisdiction over Niagara Mohawk and/or this Agreement.

21. FORCE MAJEURE

Any failure of either Party to perform its obligations under this Agreement shall not be a breach of this Agreement if such failure results from uncontrollable forces beyond the control of the party affected, such as, but not limited to, an act of war or terrorism, failure of facilities, flood, earthquake, storm, lightning, fire, governmental or court action that did not result from the wrongdoing by the party involved in such governmental action, restraint by court or public authority, or labor strikes that could not reasonably be avoided by the party subject to such labor strike. The party rendered unable to fulfill its obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

22. PROPRIETARY INFORMATION

22.1 **Obligation to Maintain as Confidential.** Each party acknowledges that in the course of the performance of this Agreement it may have access to privileged and proprietary information claimed to be unique, secret, commercially sensitive and confidential, and which constitutes the exclusive property or trade secret of the other ("Proprietary Information"). This information may be presented in documents marked with a restrictive notice or otherwise tangibly designated as proprietary or during oral discussions, at which time representatives of the disclosing party will specify that the information is proprietary. Each party agrees to maintain the confidentiality of the Proprietary Information and to use the same degree of care as it uses with regard to its own proprietary information to prevent the disclosure, publication or unauthorized use of the Proprietary Information. Neither party may duplicate, copy or use Proprietary Information of the other party other than to the extent necessary to perform this Agreement. Either party shall be excused from these nondisclosure provisions if the Proprietary Information is (a) received from the other party has been or is subsequently made public by the other party, (b) independently developed by such party, (c) disclosed pursuant to order by a court or government agency of competent jurisdiction, or (d) disclosed following express, prior written consent given by the other party.

22.2 Neither party shall have the right to obtain any information or documents from the other which are not material to the provisions or implementation of this Agreement.

23. ACCESS AND SECURITY

23.1 Subject to Niagara Mohawk's right of review and prior notification, Niagara Mohawk agrees to allow Licensee direct ingress and egress to Niagara Mohawk Electric Transmission Poles, easements and Rights of Way, and to permit Licensee to be on Niagara Mohawk's premises at a date and time mutually acceptable, for Licensee to perform approved installation, maintenance and repair of Licensee System. Licensee shall provide notice to Niagara Mohawk at least two (2) working days in advance of any required access for approved installation or scheduled maintenance upon any Route Segment. In the event of an unscheduled interruption of Licensee's System, where such notice is not practicable, Licensee will first notify Niagara Mohawk's Regional Control Center and obtain clearance to proceed, prior to performing any unscheduled maintenance or inspection. Niagara Mohawk shall consult with Licensee and its qualified designees and agents regarding proper access approaches, procedures and requirements. Niagara Mohawk may require that a Niagara Mohawk

representative accompany any representatives of Licensee having such access. Employees and agents of Licensee shall, while on the premises of Niagara Mohawk, comply with all rules and regulations, including without limitation, security, environmental and safety requirements and, where required by government regulations, receipt of satisfactory governmental clearances. Licensee shall provide to Niagara Mohawk, if requested, a list of Licensee's authorized designee's employees who are performing work on, or who have access to, Licensee assets. Licensee employees, agents, or designees shall carry proper identification and present such identification to Niagara Mohawk upon request.

23.2 Licensee's Work. Licensee and its agents shall at all times perform its work in accordance with the applicable provisions of OSHA, the National Electrical Safety Code and Niagara Mohawk policies and standards for work upon and around, repair and maintenance of Electric Transmission Poles and Cables attached and thereto. Niagara Mohawk shall have the authority to suspend Licensee's work operations in and around Niagara Mohawk's Property if at any time hazardous conditions arise or any unsafe practices are being followed by Licensee's employees, agents, and contractors. Licensee agrees to pay Niagara Mohawk for having Niagara Mohawk's employee or agent present when Licensee's work is being done in and around Niagara Mohawk's property. Such charges shall be at Niagara Mohawk's Actual Cost. The presence of Niagara Mohawk's authorized employee or agent(s) shall not relieve Licensee of its responsibility to conduct all of its work operations in and around Niagara Mohawk's Property in a safe and workmanlike manner, and in accordance with the terms and conditions of this Agreement.

23.3 Third Party Access. Third party access to the Licensee's Cable or Cable Accessories including the Right-of-Way and Electric Transmission Poles, is not intended under this Agreement. Should Third Party access be required to the Cable or Cable Accessories, all access is subject to Niagara Mohawk authorization and shall be subject to the control of either Licensee or Niagara Mohawk.

24. SEVERABILITY

24.1 If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement; provided, however, that if any such ineffectiveness or enforcement of any provision of this Agreement, in the good faith judgment of either party, renders the benefits to such party of this Agreement as a whole uneconomical in light of the obligations of such party under this Agreement as a whole, then the other party shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of this Agreement to such party.

25. CONSENTS AND WAIVERS

25.1 Whenever any party hereto is asked to consent or waive any action or matter provided herein or whenever any party has the right to do or refuse to do any act in its sole judgment or discretion provided herein, said party agrees to act reasonably and in good faith in making or refusing to consent in waiving or refusing to waive, or in making any such judgments.

26. TAXES AND GOVERNMENTAL CHARGES

26.1 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 Niagara Mohawk and based upon the Right-of-Occupancy granted by this Agreement or on account of its existence and shall indemnify, defend and hold harmless Niagara Mohawk against the payment thereof. Niagara Mohawk 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 Right-of-Occupancy. Niagara Mohawk shall bill for the payment of such taxes attributable to the Right-of-Occupancy and Licensee will pay in accordance with Niagara Mohawk real estate tax policies and procedures. In the event Niagara Mohawk wishes to challenge any assessments on Property which is subject to the Right-of-Occupancy, Niagara Mohawk 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 Right-of Occupancy, Licensee shall request Niagara Mohawk to conduct such challenge and Niagara Mohawk agrees to provide reasonable cooperation in conducting such challenges. Licensee shall pay all expenses incurred by Niagara Mohawk 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 Right-of-Occupancy are levied and assessed directly to Licensee, Licensee shall be responsible for any filings, timely payment of and any challenges to such taxes and Niagara Mohawk agrees to provide reasonable cooperation in relation to same.

27. INSURANCE

27.1 Licensee and its contractors and subcontractors must, prior to any access to the Property, including surveying and the initial installation, and during the term of this Agreement, provide and maintain insurance in the kinds and amounts listed below:

27.2 Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation or Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of \$500,000. 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.

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

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

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

27.3 Niagara Mohawk 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).

27.4 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

27.5 Property Insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon the Licensee Network. Niagara Mohawk 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 of 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.

27.6 Neither Licensee nor any contractor or subcontractor shall commence any work under this Agreement until Niagara Mohawk has been furnished with a completed Certificate(s) of Insurance showing that Licensee and, if applicable, such contractor or subcontractor has complied with this Article 14, and that the policies shall not be materially changed, diminished or canceled until at least thirty (30) days prior written notice of such change, diminishment or cancellation has been given to Niagara Mohawk. Such certificate of insurance, and any renewals or extensions thereof, shall outline the coverages required and limits on each, which shall be for the account of Licensee, and shall be sent to the following address:

Niagara Mohawk Power Corporation
Attn.: Risk Management, Bldg. B-3
300 Erie Boulevard West
Syracuse, NY 13202

27.7 Licensee represents that it has full policy limits available and shall notify Niagara Mohawk's Risk Management Department in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both. If any insurance coverage is not secured, maintained or is canceled before final payment by Licensee to Niagara Mohawk and Licensee fails immediately to procure other insurance as specified, Niagara Mohawk reserves the right to procure such insurance and to add the cost thereof to any sum due Niagara Mohawk under this Agreement.

27.8 Licensee shall promptly furnish Niagara Mohawk's Risk Management Department with copies of any accident or incident report(s) sent to Licensee insurance carriers covering accidents/incidents occurring in connection with and/or as a result of the performance of the work under this Agreement.

27.9 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 Licensee's obligation to indemnify, defend and save harmless Niagara Mohawk as set forth in Section 28.

27.10 Licensee shall furnish a bond or other satisfactory evidence of financial security in such form satisfactory to Licenser in an initial amount of \$15,000, 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 Agreement, including the removal of Licensee's Attachments upon termination of this Agreement or upon termination of any License issued hereunder. Licensor reserves the right to require an increase in the value of the bond or other satisfactory evidence of financial security, above the initial amount, not to exceed \$5,000 per 100 Poles licensed under this Agreement. The bond or other satisfactory evidence of financial security shall remain in full force and effect until all Attachments have been removed and all sums due to Licensor have been fully paid. Such bond or financial security shall contain a provision that it may not be cancelled without ninety (90) days prior notice to the Licensor.

27.11 It is the intent of both parties that the insurance placed in accordance with the provisions of this Section shall be primary insurance and shall protect both Licensee and Niagara Mohawk from losses arising from the performance of this Agreement.

28. INDEMNIFICATION

28.1 Licensee agrees to protect, indemnify, defend and hold harmless Niagara Mohawk, its directors, officers, employees, agents, successors, assigns and independent contractors from and against any and all losses, damages, liabilities, costs, suits, charges, causes of action, claims (including reasonable claims of third party land owners) and expenses (including reasonable attorneys' fees) arising out of any damages to Niagara Mohawk's Property (including environmental damage), or injury to or death of any person, caused by or attributable to any negligent act or omission of Licensee, its partners, officers, employees, agents, successors, assigns or independent contractors, or the willful misconduct of any thereof, in the performance or breach of this Agreement, except to the extent attributable solely to the negligent or intentional act or omission of Niagara Mohawk, its directors, officers, employees, agents, successors, assigns or independent contractors. This indemnification shall also apply to 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 by Licensee, its partners, directors, employees, agents, successors, assigns or independent contractors of any laws, rules or regulations of such authorities or agencies, except to the extent attributable solely to the negligent or intentional act or omission of Niagara Mohawk, its directors, officers, employees, agents, successors, assigns or independent contractors.

28.2 In the event the claims, damages, loses, judgements or settlements are the result of the negligence of both parties, each party shall be liable to the extent or degree of its negligence, as determined by mutual agreement of both parties or, in the absence thereof, as determined by adjudication of comparative negligence.

28.3 Licensee shall take prompt action to defend and indemnify Niagara Mohawk against claims, actual or threatened, but in no event later than the time to answer the service of a summons, complaint, petition or Niagara Mohawk alleging any damage, personal injury, liability, or expenses attributed in any way to the work, acts, fault, negligence, equipment, facilities, personnel, or property, of Niagara Mohawk, its agents and employees. 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, and may be required to testify, either in court or at a hearing or disposition in connection with the matters covered by this Agreement. Furthermore, Licensee understands and agrees it is responsible for any all costs and expenses, including reasonable attorneys' fees, incurred by Niagara Mohawk to enforce this indemnification provision, if and to the

extent Licensee, which should have indemnified Niagara Mohawk, failed to do so. The obligations set forth herein shall survive completion of the work and termination of this Agreement for any reason.

29. WAIVER OF CERTAIN DAMAGES

29.1 Regardless of any other provision of this Agreement, and with the exception of any third party bodily injury or property damage obligations, under no circumstances will either party be liable, whether in contract, tort (including negligence and strict liability), warranty, or any other legal theory, to the other party 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 either party's customers. Furthermore, Niagara Mohawk will not be held liable for the accuracy or integrity of the transmission signal and/or the accuracy of any data or message communicated over Licensee's Network.

29.2 In addition, Licensee expressly acknowledges that Licensee's Network are exposed to many risks beyond the control of Niagara Mohawk, including, but not limited to, wind, rain, sleet, ice, floods, riots and any other act of God. Except as expressly provided in this Agreement, Licensee shall assume all risk of loss that may arise in connection with these hazards.

30. BREACH

30.1 Definition. If Niagara Mohawk or Licensee shall fail to perform (whether any such failure shall arise as the result of the voluntary or involuntary action or inaction of such party), in any material respect, any of its obligations set forth in this Agreement, including without limitation any violation of law (which is material and which adversely affects either party's obligations under the Agreement), then such failure shall constitute a Breach.

30.2 Consequences. In the event of a Breach and upon and from the expiration of any applicable cure period, the non-breaching party may, in its sole discretion, terminate this Agreement and have no further obligations or liability hereunder; except only that Licensee shall pay Niagara Mohawk any amounts due, owing and unpaid by Licensee. The non-breaching party shall also have the right to pursue any and all rights it may have against the breaching party now or hereafter under the law, subject to the limitations of waiver of certain damages hereof; including without limitation, the right to seek (i) injunctive relief to prevent the breaching party from continuing to Breach its obligations under this Agreement, (ii) injunctive relief to require the breaching party to mitigate any and all damages to the non-breaching party, and (iii) reasonable attorney and other expert and third party fees of the non-breaching party. In addition, the non-breaching party shall also have the right to demand full recovery of any direct damages incurred as a result of such breach.

31. DEFAULT

31.1 A party shall be considered in default of this Agreement should one or more of the following events occur and not be cured within 30 days of notice from the other party regarding the existence of such default:

- (a) failure of that party to pay amounts due when they are due under this Agreement;

- (b) failure to provide necessary documentation relating to that party's work; and
- (c) attempt by Licensee to assign its rights or obligations under this Agreement without the express prior written approval of Niagara Mohawk, as set forth in Section 34; or

31.2 A party shall be considered in default of this Agreement should one or more of the following events occur:

- (a) failure of that party to maintain bonds and insurance that may be required under this Agreement throughout the term of this Agreement; and
- (b) admission in writing of the party's inability to pay its debts in connection with this Agreement when due; making a general assignment for the benefit of creditors; the institution of any proceeding, whether voluntary or involuntary, seeking to adjudicate that party bankrupt or insolvent; seeking reorganization, arrangement, adjustment, or composition of it or its debt under any law relating to bankruptcy, insolvency or reorganization or relief of debtors; seeking appointment of a receiver trustee, or other similar official for it or for any substantial part of its property; or taking any action to authorize any of the actions set forth above; and

31.3 If either party shall be in default under any provision of this Agreement, the party so notifying the other party may upon and from the expiration of any applicable cure period, at its option, terminate this Agreement provided it gives written notice of termination to the other party. The non-defaulting party may permit, in its reasonable discretion, additional time to cure the default, so long as the defaulting party proceeds with reasonable diligence to cure the default and so long as the additional time does not have a significant financial impact upon the non-defaulting party. The defaulting party shall exercise diligence in mitigating any further costs to be owed to the non-defaulting party.

32. ASSIGNMENT and TRANSFER

32.1 Niagara Mohawk shall have the right to assign its entire interest under this Agreement to an entity owned or controlled by Niagara Mohawk, or to any successor to Niagara Mohawk by purchase, merger, consolidation or reorganization, or to an affiliate that has the power to direct or cause the direction of management and policies of Niagara Mohawk, or to an affiliate entity with which Niagara Mohawk, or the controlling owners of Niagara Mohawk, have the power to direct or cause the direction of management and policies of such affiliate (hereafter collectively referred to as a "Niagara Mohawk Permitted Transfer") without the consent of Licensee; provided that Niagara Mohawk shall give Licensee written notice not later than sixty (60) days following the effective date of a Niagara Mohawk Permitted Transfer. From and after the date of a Niagara Mohawk Permitted Transfer, Niagara Mohawk shall be relieved of all future performance, liabilities and obligations under this Agreement.

32.2 Licensee shall have the right to assign its entire interest under this Agreement to an entity owned or controlled by Licensee, or to any successor to Licensee by purchase, merger, consolidation or reorganization, or to an affiliate that has the power to direct or cause the direction of management and policies of Licensee, or to an affiliate entity with which Licensee, or the controlling owners of

Licensee, have the power to direct or cause the direction of management and policies of such affiliate (hereafter collectively referred to as a "Licensee Permitted Transfer") without the consent of Niagara Mohawk; provided that (a) Licensee is not then in default under this Agreement; (b) if such proposed assignee is a successor to Licensee by purchase, said proposed assignee shall acquire all or substantially all of Licensee's stock or assets or, if such proposed assignee is a successor to Licensee by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Licensee; (c) such proposed assignee maintains at the time of assignment, as demonstrated by current financial statements provided to Niagara Mohawk, a financial position reasonably demonstrating the ability of such assignee to meet and perform the obligations of Licensee under this Agreement; and (d) such assignee assumes all of Licensee's obligations hereunder. Licensee shall give Niagara Mohawk written notice not later than sixty (60) days following the effective date of a Licensee Permitted Transfer. As used herein, the term "owned or controlled" shall mean ownership of more than fifty percent (50%) of the equity interest or more than fifty percent (50%) of the voting rights of the applicable entity. Any assignment or transfer by Licensee of its rights or obligations under this Agreement, other than a Licensee Permitted Transfer, shall be void without Niagara Mohawk's prior written consent.

33. NOTICES

33.1 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 therefor, or if mailed, certified mail, return receipt requested, to the parties at the following addresses:

If to Niagara Mohawk:

National Grid
300 Erie Boulevard West
Syracuse, NY 13202
Attn: Manager – Telecommunication Opportunities
(315) 428-6747/(315) 460-9115 fax

with a copy to:

National Grid
300 Erie Boulevard West
Syracuse, NY 13202
Attn: Law Dept.

If to Licensee:

With a copy to:

33.2 How Sent. Each notice, demand, request, report, approval or communication which shall be mailed in the manner described above, or delivered by hand or an insured overnight courier, shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee, with the return receipt or the delivery receipt being deemed conclusive evidence of such delivery, or at such time as delivery is refused by the addressee upon presentation.

33.3 Emergency or Damage Notification. In the event damage to either Parties facilities is discovered or an emergency situation exists, the party discovering such damage or requiring such access shall notify the other party by telephone at:

for Niagara Mohawk (315) 460-2421 (National Grid Central Regional Control)

for Licensee _____

33.4 Access Notification. In all instances, prior to Licensee accessing Niagara Mohawk's Electric Transmission Poles or Rights-of-Way, the Licensee shall notify Niagara Mohawk by telephone at:

(315) 460-2421 (National Grid Central Regional Control)

33.5 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 information:

1. Name of company making report;
2. Location reporting problem or area Licensee seeks access;
3. Name of contact person reporting problem or making the access request;
4. Telephone number to call back with progress report;
5. Description of the problem or planned work activity, in as much detail as possible;
6. Time and date the problem occurred or began (or schedule for planned work); and

7. If appropriate, a statement that "**This is an emergency**" and that a problem presents a jeopardy situation to the physical plant of Niagara Mohawk, Licensee, or others as the case may be.

34. PROTECTION AGAINST LIENS ON PROPERTY

- 34.1 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 Niagara Mohawk 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.

35. CONDEMNATION

- 35.1 Provided that Niagara Mohawk's award is not reduced by reason thereof, Licensee may claim and recover from the condemning authority an award for the Licensee Network, its moving expenses, business dislocation damages, personal property and fixtures and the unamortized costs of improvements paid for by Licensee.

36. DISPUTE RESOLUTION

- 36.1 It is the intent of the parties that disputes, which may arise between them, or between employees of each, be resolved as quickly as possible and may, in certain instances, involve decisions made on the spot. When such resolution is not possible, and depending upon the nature of the dispute, the parties agree to seek to resolve such disputes in the manner set forth in this Section.
- 36.2 Any dispute between the parties shall be referred initially to a Niagara Mohawk designee for review, which shall be rendered in writing within a reasonable time period.
- 36.3 The parties agree that neither shall proceed against the other by litigation or otherwise before the offending party has had notice of and reasonable time and opportunity to respond to and/or cure the dispute.
- 36.4 In the event of a dispute arising out of or related to this Agreement, the parties shall, prior to initiating litigation, first submit the dispute to non-binding mediation under the commercial mediation rules of the American Arbitration Association. The parties hereby acknowledge and agree that such mediation shall be deemed to be in the nature of settlement discussions and that neither the fact that such discussions took place, nor any statement or conduct of any participant in such discussions shall be admissible into evidence in any subsequent litigation or in any arbitration or other dispute resolution proceeding involving the parties. It is further understood and agreed that any disclosure in any form, including oral, by any person participating in such mediation shall not operate as a waiver of any privilege, including work product or attorney-client privilege, applicable to the subject matter thereof.

37. EXERCISE OF RIGHT

37.1 No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder and no course of dealing between the parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

38. ADDITIONAL ACTIONS AND DOCUMENTS

38.1 Each of the parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its best effort to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

39. SURVIVAL

39.1 It is the express intention and agreement of the parties hereto that all covenants, agreements, statements, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement.

40. ENVIRONMENTAL MATTERS

40.1 The Property will not be used by Niagara Mohawk, its employees, agents or contractors to release, store, dispose of, treat or use any Hazardous Substances, except in compliance with applicable Environmental Laws.

40.2 The Property will not be used by Licensee or their employees, agents or contractors to release, store, dispose of, treat or use any Hazardous Substances, except in compliance with applicable Environmental Laws. Licensee shall indemnify, defend and hold harmless Niagara Mohawk and its employees, agents and contractors from and against any and all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, sustained or incurred by Niagara Mohawk or its employees, agents or contractors arising out of, in connection with, or as a consequence of Hazardous Substances being released, stored, disposed of, treated or used, or claimed to have been released, stored, disposed of, treated or used, by Licensee or anyone acting under or on behalf of Licensee in, upon or beneath the Property.

40.3 Neither party shall place any material on the Property that is recognized by appropriate governmental authority as hazardous or toxic material or waste, except in compliance with applicable Environmental Laws.

40.4 In the event Licensee discovers, or has knowledge of hazardous or toxic waste areas, whether or not designated as such by the Environmental Protection Agency or any other similar federal, state or local authority, it shall immediately stop work if discovered during installation and notify the designated representative at Niagara Mohawk and any appropriate governmental agency if required by applicable Environmental Laws.

40.5 In the event any such hazardous or toxic waste areas or any other regulated environmental resources (including, but not limited to, regulated wetlands, protected streams, navigable waters, rare, threatened, endangered or protected species or species habitats, sensitive archaeological sites, etc.) are identified with respect to any particular Property, their location shall be included on the as-built drawings, maps or surveys furnished to Niagara Mohawk in accordance with this Agreement.

41. MISCELLANEOUS

41.1 Licensee may, upon notice to Niagara Mohawk, grant a security interest in the Licensee Network, and may assign the security interest in the Licensee Network to holders of security interests, including their successors or assigns (collectively "Holders"), provided Holders agree to be bound by the terms and provisions of this Agreement. Niagara Mohawk further agrees to permit the Holders, subject to advance notification and written consent of Niagara Mohawk, to inspect or remove from the Property any of the collateral in which Holders have been granted a security interest by Licensee in accordance with any security documents granted in favor of Holders provided, that such inspection and removal is in accordance with the terms of this Agreement.

41.2 Licensee shall comply with all laws, rules and regulations of local, state and federal agencies which are now or may in the future become applicable to Licensee, and their officers, employees, agents or independent contractors while engaged in the uses covered by this Agreement or arising out of the performance of such uses.

41.3 Niagara Mohawk's activities in accepting or supporting the engineering, design, planning, installation, maintenance and modification efforts of Licensee and any periodic and post-construction inspections, shall not relieve Licensee of any responsibility, obligation or liability arising out of the engineering, design, planning, installation, maintenance or modification efforts performed in connection with this Agreement.

41.4 This Agreement and the exhibits thereto shall constitute the entire agreement between the parties and shall supersede all offers, negotiations and other agreements and shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. There are no representations or understandings of any kind not set forth herein or therein. Any amendments or modifications to this Agreement must be in writing and executed by both parties.

41.5 The article and section headings in this Agreement and the Table of Contents hereof are for convenience of reference only and shall neither be deemed to be a part of this Agreement nor modify, define, expand or limit any of the terms or provisions hereof. All references to numbered Articles or Sections, unless otherwise indicated, are to Articles or Sections of this Agreement. Words and definitions in the singular shall be read and construed as though in the plural and vice versa, and words in the masculine, neuter or feminine gender shall also be read and construed as though in either of the other genders.

41.6 Any waiver by either party at any time of any of its rights as to anything contained herein shall not be deemed to be a waiver of the same or similar right at a subsequent time. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of any original violation. No course of dealing

between parties or any delay on the part of a party to exercise any right it may have under this Agreement will operate as a waiver of any of the rights provided hereunder or by law or equity, nor will any waiver of any prior default operate as a waiver of any subsequent default, and no express waiver shall affect any term or condition other than the one specified in such waiver, and the express waiver shall apply only for the time and manner specifically stated.

- 41.7 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to sue on any or all other remedies. Said rights and remedies are given in addition to any other rights such party may have by law, statute, ordinance, or otherwise, except as such rights and remedies are expressly limited in this Agreement.
- 41.8 Any provision of this Agreement which is invalid, illegal or unenforceable in any manner in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such invalidity, illegality or unenforceability without in any way affecting the validity, legality or enforceability of the remaining provisions hereof, and any such invalidity, illegality or unenforceability in any one jurisdiction shall not invalidate or in any way affect the validity, legality or enforceability of such provision in any other jurisdiction.
- 41.9 There shall be no merger of this Agreement or any Right-of-Occupancy hereby granted with the fee estate in a right-of-way by reason of the fact that this Agreement, and the Right-of-Occupancy created by this Agreement, or any interest in this Agreement or in any such Right-of-Occupancy, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in a right-of-way or any interest in such fee estate, and no such merger shall occur unless and until all persons having an interest in this Agreement, and the Right-of-Occupancy created by this Agreement, shall join in a written instrument effecting such merger and shall duly record the same.
- 41.10 The employees, agents and contractors of both parties shall be fit for duty at all times during their performance of any activities pursuant to this Agreement, and shall not be under the influence of alcohol or drugs. Such employees, agents and contractors shall not bring, use, distribute, sell or possess alcoholic beverages or illegal drugs during the performance of any activities on Niagara Mohawk property. Neither party shall assign any individual who is in violation of this policy to perform any activities pursuant to this Agreement. If Licensee discovers any individual is in violation of these requirements, it shall immediately remove any such person from the performance of activities on Niagara Mohawk Property. Violation of these requirements by such employees, agents or contractors shall result in denial of access of that individual(s) to Niagara Mohawk Property, facilities and equipment and, in the case of possession, use or sale of illegal drugs, shall be reported to Niagara Mohawk's Security Department immediately.
- 41.11 Niagara Mohawk, at its sole discretion, shall have the right to remove any employee, agent or contractor of Licensee or its Affiliates for cause and with notification provided to Licensee or its Affiliates upon such removal.
- 41.12 By entering into this agreement, the parties do not intend to create any express or implied third party beneficiaries.

42. INCORPORATION OF EXHIBITS

42.1 The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written at length herein.

43. COUNTERPARTS

43.1 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 appear on each counterpart; but it shall be sufficient that the signature of or on behalf of each party appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in any proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures of or on behalf of all of the parties.

44. APPLICABLE LAW

44.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York, and questions as to its validity and interpretation, including any questions regarding performance or default hereunder, shall be construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. Any action at law, suit in equity or judicial proceeding initiated by either party arising out of this Agreement shall be instituted only in the courts of the State of New York.

45. PRIOR AGREEMENTS

45.1 This Agreement supersedes all prior or contemporaneous proposals, communications and negotiations, either oral or written, relating to the rights, obligations, or performance of this Agreement by the parties hereto, and, as such, constitutes the complete and entire agreement of the parties. No modification or amendment of this Agreement shall be valid unless agreed upon in writing between the parties.

46. NO JOINT VENTURE OR AGENCY

46.1 This Agreement is not representative of a joint venture between Niagara Mohawk and Licensee, Licensee is not an agent of Niagara Mohawk and Niagara Mohawk is not an agent of Licensee for the purposes of this Agreement.

47. NEW YORK PUBLIC SERVICE COMMISSION APPROVAL

47.1 The Parties acknowledge that this Agreement and any amendments thereto may be filed with and may require the approval of the New York Public Service Commission ("PSC") pursuant to the provisions of Public Service Law Sections 70 and/or 119-a, or that Niagara Mohawk 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 Agreement 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 Agreement, in the terms of performance or the rights or obligations of either party, then either party may (i)

proceed with the Agreement so changed, (ii) seek to renegotiate the affected terms of the Agreement by providing written notice to the other party of its desire to do so or (iii) terminate the Agreement 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 Agreement to be duly executed as of the day and year first above written.

**NIAGARA MOHAWK POWER CORP.
(Licensor)**

By: _____

Title: _____

Date: _____

(Licensee)

By: _____

Title: _____

Date: _____

EXHIBIT 1

NIAGARA MOHAWK POWER CORPORATION² TERMS AND CONDITIONS FOR THE SUPPLY OF MATERIALS AND CONSTRUCTION SERVICES

1. DEFINITIONS.

"Buyer" means the person or entity purchasing Services and related Materials under this Contract.

"Contract" means these Terms and Conditions, NMPC's Proposal, the Buyer's Purchase Order or other similar document, and any amendments to the Contract. In the event of any conflict among Contract documents, these Terms and Conditions shall govern.

"Materials" means the equipment, materials, machinery, components, or other personal property, whether temporary or permanent, purchased by Buyer under this Contract. "NMPC" means Niagara Mohawk Power Corporation.

"Services" means all construction labor, services, and submittals purchased by Buyer under this Contract.

2. DELIVERY, TITLE AND RISK OF LOSS. Delivery of Materials shall be as specified in the Contract. Title and risk of loss to Materials shall pass to Buyer upon delivery, except that NMPC shall bear risk of loss for Materials under the exclusive control of NMPC in performing Services under this Contract. Title and risk of loss to Services shall pass to Buyer as the Services are completed. For Services performed on Buyer's equipment, facilities, or structures, NMPC shall bear risk of loss for such equipment, facilities, or structures but only while such equipment, facilities, or structures are under the exclusive control of NMPC in performing the Services. Except for the time that the equipment, facilities, and/or structures are under the exclusive control of NMPC, Buyer waives any and all rights of subrogation against NMPC and will indemnify and hold harmless NMPC against any and all subrogation claims arising therefrom.

3. CONTRACT PRICE, TAXES, AND PAYMENT. The price for the Materials and Services shall be as set forth in the Contract ("Contract Price"), and shall include all applicable taxes. Unless otherwise agreed to in the Contract, payment of the Contract Price shall be due in full within thirty (30) days of NMPC's submittal of an invoice. Payment shall be transmitted as specified in the invoice. A continuing late payment charge of 1.5% per month will be applied on any late payments. In addition, NMPC will have available to it all rights and remedies set forth in its applicable tariff in the event of late payment or nonpayment.

4. SCHEDULE, DELAYS, AND FORCE MAJEURE. NMPC shall provide Materials and Services in accordance with the schedule set forth in the Contract ("Contract Schedule"). If NMPC's performance of the Contract is delayed by Buyer, an equitable adjustment shall be made for any increase in the cost and/or time of performance caused by the delay. Any delays in or failure of performance by Buyer or NMPC, other than payment of monies, shall not constitute default and shall be excused hereunder, if and to the extent such delays or failures of performance are both (1) caused by occurrences beyond the reasonable control of Buyer or NMPC, including, but not limited to, acts of God, compliance with any order or request of any governmental or judicial authority, compliance with NMPC's public service obligations, storms, fires, inclement weather (as provided in NMPC's internal policies or procedures), floods, riots or strikes or other concerted acts of workers, and accidents; and (2) events which, by the exercise of reasonable diligence, Buyer or NMPC are unable to prevent.

5. WORK SCOPE REQUIREMENTS. Buyer shall provide full information regarding requirements for the Materials and Services, including constraints, space requirements and relationships, special equipment, systems, site requirements,

² 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.

underground or hidden facilities and structures, and all applicable drawings and specifications. Buyer shall also provide NMPC with reasonable access to the work site, including any plowing of access roadways and staging areas, and, where feasible, shall provide areas near the work site for any NMPC vehicles and work force parking. Unless the Contract provides otherwise, all temporary facilities and utilities necessary to accomplish the Services shall be provided by Buyer. Buyer shall provide transportation, handling, removal and disposal of any chemicals, materials or waste that may be considered hazardous materials requiring special handling or disposal. Other Buyer responsibilities shall be as specified in the Contract. NMPC assumes that all information provided by Buyer is accurate and complete and is relying on such information. To the extent NMPC obtains actual knowledge of facts or conditions regarding the Materials or Services that are additional to or different from those indicated in Buyer-supplied information, or that are previously unknown to Buyer, NMPC shall notify Buyer. If, as a result, any changes in the Materials or Services are required that will result in an increase or decrease in the cost or time of performance under the Contract, the Contract Price and Contract Schedule and other affected provisions of the Contract shall be equitably adjusted.

6. **CHANGES AND EXTRAS.** Buyer may request changes in the Materials or Services in writing. If any such changes will result in an increase or decrease in the cost or time of performance under the Contract, the Contract Price and Contract Schedule and other affected provisions of the Contract shall be equitably adjusted. NMPC may make changes in the Materials or Services with the prior written approval of Buyer, at no change in the Contract Price or Contract Schedule, except as provided in (5) and (7).
7. **GOVERNMENTAL REQUIREMENTS.** Changes in the Materials or Services may be necessary in order to meet the requirements of governmental authorities, laws and codes. After Buyer's approval, NMPC will make changes in the Materials or Services as are necessary to conform to such requirements. If any such changes will result in an increase or decrease in the cost or time of performance under the Contract, the Contract Price and Contract Schedule and other affected provisions of the Contract shall be equitably adjusted.
8. **PATENTS.** NMPC makes no warranty that the manufacture, sale, or use of the Materials does not infringe any patent or other proprietary right of any entity. In the event that the manufacture, sale, or use of any Materials is held or alleged to constitute an infringement of any patent or other proprietary right of any entity, NMPC agrees, as its sole obligation, to assign to Buyer any rights NMPC may have against NMPC's supplier with respect to such infringement or alleged infringement.
9. **CONFIDENTIALITY.** Any drawings, specifications, and other documents prepared or used by NMPC in connection with this Contract are the proprietary property of NMPC, and, if required in the Contract, are provided to Buyer solely for its internal use. If information supplied by either party to the other is confidential or proprietary to the transmitting party, the receiving party shall hold such information in confidence; use it only for its intended purpose and solely in connection with Materials and/or Services supplied under this Contract; and shall not otherwise disclose or use it. These restrictions will not apply to information in the public domain at the time of receipt, or independently developed by the recipient, or required by a governmental or judicial authority to be disclosed, in which event the recipient shall give the other party advance notice of the disclosure and shall attempt to secure confidential treatment of the information by the subject authority.
10. **GUARANTEES.** The Materials shall be sold and purchased "as is". **NMPC MAKES NO WARRANTIES WHATSOEVER, WHETHER STATUTORY, WRITTEN, ORAL, OR IMPLIED (INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE MATERIALS.** NMPC hereby assigns to Buyer any NMPC rights under any supplier warranties with respect to the Materials. Buyer hereby releases NMPC from any liability related to the Materials, except for damages to the Materials directly caused by Services in nonconformance with the Services warranty, as provided hereafter. In connection with Services only, NMPC warrants that such work will be performed in conformance with generally accepted professional standards prevailing at the time of NMPC's performance in the applicable industry. If the Services do not conform to this warranty, NMPC will, at its cost and at a time mutually convenient to NMPC and Buyer, reperform such nonconforming Services, and repair or replace any defects in the Materials solely caused by the nonconforming Services. NMPC's obligation under this Services warranty will expire one (1) year after the Services which give rise to the claim are completed. This warranty will not apply where the failure to meet the warranty is the result of acts or omissions of persons other than NMPC, or of accidents not caused by NMPC. **THIS EXPRESS WARRANTY IS EXCLUSIVE, AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, OR IMPLIED (INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE), SHALL APPLY TO THE SERVICES. THESE PROVISIONS SHALL GOVERN OVER ANY CONTRARY VERBAL STATEMENTS OR LANGUAGE APPEARING IN ANY NMPC OR CONTRACT DOCUMENTS.**
11. **INSURANCE.** From the commencement of the Contract through completion, NMPC shall provide and maintain, at its own expense, insurance policies issued by reputable insurance companies that meet or exceed the following requirements:

Workers' Compensation and Employers Liability Insurance, as required by the State of New York. Coverage will include the U.S. Longshoremen's and Harbor Workers Compensation Act and the Jones Act

Public Liability, including Contractual Liability and Products/Completed operations coverage, covering all operations to be performed under this Contract, with minimum limits of:

Bodily Injury - \$1,000,000 per occurrence
Property Damage - \$1,000,000 per occurrence

Automobile Liability. NMPC is a qualified self-insurer by the State of New York

If requested, NMPC will provide evidence for these specified coverages. Such evidence will include that at least thirty (30) days prior written notice shall be given to Buyer in the event of any cancellation or diminution of coverage. If NMPC uses subcontractors in connection with the Contract, NMPC shall require them to provide the same Workers' Compensation and Employers Liability and Public Liability coverages set forth above. In lieu of automobile self-insurance, subcontractors shall be required to maintain automobile liability insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, with a combined single limit of at least \$500,0000.

12. **INDEMNIFICATION.** NMPC shall defend, indemnify, and hold harmless Buyer, its agents and employees, from and against any loss, damage, liability, cost, suit, charge, cause of action, claim, and expense, arising out of any damage to property (including environmental damage) or injury to or death of any person directly caused by the negligence of NMPC while performing Services. In the event that the injury or damage is caused by the joint or concurrent negligence of NMPC and Buyer, the loss shall be borne by NMPC and Buyer proportionately to their degree of negligence. NMPC's obligations hereunder shall in no event apply when such damage or injury results from a defect in Materials not caused by NMPC's Services.
13. **LIMITATION OF LIABILITY.** NMPC's total cumulative liability to Buyer for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from this Contract or the items provided hereunder, shall in no case exceed the Contract Price. Except as this Contract may expressly provide, in no event, whether as a result of breach of contract, tort (including negligence and strict liability), or otherwise shall NMPC be liable to Buyer for any and all special, indirect, incidental, penal, punitive or consequential damages of any nature, including delays, lost profits, business interruptions, and claims of suppliers and customers. The provisions of this Section shall apply notwithstanding any other provisions of the Contract, and shall survive, termination, cancellation, or completion of the Contract.
14. **TERMINATION.** This Contract may be terminated by either party upon not less than ten (10) days written notice to the other party. Such termination shall be effective on the date set forth in the notice. In such event, neither party shall be entitled to incidental or consequential damages for termination, including loss of prospective profits. No amount shall be paid by either party for termination costs, including demobilization and other direct and indirect costs. Within thirty (30) days of termination, NMPC will return any sums paid, less expenses incurred and amounts due and owing for that portion of the Contract work scope performed to the date of termination. In the event these withheld sums are insufficient to cover the expenses and amounts, or no payments have yet been made under this Contract, Buyer shall remit the balance due within thirty (30) days after receipt of written notice by NMPC.
15. **ASSIGNMENT.** This Contract shall not be assigned or subcontracted by either party without the other party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, NMPC has the right to assign this Contract to OPINEC Energy Corporation, or any subsidiary thereof, including Niagara Mohawk Energy, or any subsidiary's subsidiary.
16. **THIRD-PARTY BENEFICIARY.** The parties have no intent, and do not create, any third-party rights or interest in this Contract, or in the Materials or Services.
17. **AMENDMENT.** This Contract shall not be superseded or modified, except in a writing signed by the parties.
18. **NOTICES.** Each party shall designate in the Contract the name and address of that party's representative. Any legal or contractual notices required to be sent to either party shall be deemed duly sent when mailed to the intended party's designated representative.
19. **WAIVER.** No term of this Contract may be waived except in a writing signed by the parties.

- 20. **APPROVALS.** It is understood that NMPC may be required to obtain corporate, regulatory, and other third-party approvals and releases in connection with the provision of the Materials and/or Services. If so, this Contract shall be effective subject to any such approvals and releases.
- 21. **LAWS.** This Contract shall be interpreted and enforced according to the laws of the State of New York, and not those laws determined by application of New York's choice of law principles. Venue in any action shall be in the State of New York. Buyer agrees to submit to the personal jurisdiction of courts in the State of New York.
- 22. **SEVERABILITY.** To the extent that any provision of this Contract shall be held to be invalid, illegal or unenforceable, it shall be severed from this Contract without affecting the validity, legality or enforceability of the remaining provisions of the Contract.
- 23. **INTEGRATION AND MERGER.** Buyer and NMPC agree that there are no understandings, agreements, or representations, expressed or implied, other than those expressed herein. This Contract supersedes and merges all prior discussions and understandings, and constitutes the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions of this Contract, and agree to be bound by the same, and represent that their signatories have complete authority to sign and accept this Contract.

(BUYER)

By: _____
 Title: _____
 Date: _____

**NIAGARA MOHAWK POWER CORPORATION
 (NMPC)**

By: _____
 Title: _____
 Date: _____