

CLEC DISTRIBUTION POLE ATTACHMENT AGREEMENT

THIS AGREEMENT, made this day of _____, 20__, between Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"), 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, hereinafter called Licensors, and _____, a corporation organized and existing under the Laws of the State of New York, having its principal office at _____, hereinafter called Licensee.

W I T N E S S E T H:

WHEREAS, Licensee for its own use desires to place and maintain aerial communications cables, equipment, and facilities on wood electric distribution poles of Licensors; and

WHEREAS, Licensors is willing to permit, to the extent it may lawfully do so, the placement of said cables, equipment, and facilities on its poles.

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

ARTICLE I DEFINITIONS

As used in this Agreement:

Licensors' "poles" mean wood electric distribution poles solely owned by Licensors and wood electric distribution poles jointly owned with others for which Licensors has the right to permit licensees to attach. Use of National Grid sole and joint owned transmission poles and structures are not authorized under this agreement.

"Joint User" means any other public utility, which shall now or hereafter have the right to use any of Licensors' poles. The term "Joint User" shall not include licensees.

"Cost" means the full cost and expense for inspections, surveys, estimating, re-arrangements, transfers, removals, engineering, reviews, analysis, project management, processing, and recording, of Licensee's facilities from Licensors' poles or fees paid or incurred by Licensors on account of Licensee's request or attachments, and any other work performed for Licensee. The Cost shall include the costs of all materials, supplies, engineering, labor (including overtime and board and lodging where necessary to meet the Licensee's requirements), supervision, transportation, applicable taxes, general overhead (including A&G), including appropriate loadings for such things as relief and pension accruals, social security, taxes, vacations, holidays, sickness, workman's compensation, and any other items associated with the work which are chargeable to the Licensors' accounts under the Uniform System of Accounts applicable to the Licensors as prescribed by the New York State Public Service Commission. With respect to the replacement of any pole, the cost shall include the cost of the new pole, removal of the old pole, transfer of the Licensors' and any Joint User's attachments from the old to the new pole, and such other costs necessitated by the Licensee's requirements, all as defined above.

"Make-Ready Survey" means that portion of work which includes, but is not limited to the performance of a field survey by the Licensors or Licensors's designee of all poles requested for attachment by the Licensee, and all associated estimating, pole loading analysis, review, recording and design work by the Licensors required to issue the necessary disposition for each pole to accept the requested attachment. The Licensors reserves the right to assign this work to the Licensee to hire an accepted National Grid Distribution Engineering Contractor.

"Physical Make-Ready Work" means that portion of work which includes the performance of all direct and

indirect work associated with the completion of that work assigned by the disposition of the Make-Ready Survey to make the requested pole suitable for the acceptance of the requested attachment. This shall include all Cost incurred by the Licensors during the performance of this work. The Licensors reserves the right to assign this work to the Licensee to hire an accepted National Grid Overhead Line Contractor for Physical Make-Ready Work and Additional Make-Ready Work.

“Additional Make-Ready Work” means similar Make-Ready Survey and Physical Make-Ready Work required after initial attachment to a pole, solely because of the existence of Licensee’s attachments.

“Exhibit 5 Document” means the internal form used by the Licensors to document the listing of requested pole attachments and their associated Physical Make-Ready Work dispositions as a result of the Make-Ready Survey.

ARTICLE II

SCOPE OF AGREEMENT

(a) Subject to the provisions of this Agreement, the Licensors will issue to Licensee for any lawful communications purpose revocable, non-exclusive licenses authorizing the attachment of Licensee's cables, equipment, and facilities to Licensors's poles in the geographic areas described as follows or on Attachment #1.

(b) Additions or deletions to the geographic areas shall be made by a separately executed amendment to this article which shall become a part of and be governed by the terms and conditions of this Agreement.

(c) Licensee shall have no right to attach to any pole of Licensors until: (i) Licensee shall have made application for and received a revocable, non-exclusive license therefore in the form of Exhibit #5 annexed; (ii) Licensors has completed a Make-Ready Survey; (iii) Licensors or Licensors’s designee has completed all necessary Physical Make-Ready Work in conjunction with the Joint User and existing licensees; and (iv) such pole(s) have been released in writing by the Licensors.

(d) No use, however extended, of Licensors's poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in said poles. Nothing herein contained shall be construed to compel Licensors to construct, retain, extend, place, or maintain any facilities not needed for its own service requirements.

(e) The Licensee recognizes that the Licensors has heretofore entered into or may in the future enter into agreements and arrangements with others not parties to this Agreement regarding the facilities covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction, or prohibition against Licensors with respect to such other agreements and arrangements. The rights of the Licensee shall at all times be subject to any present or future joint-use arrangement between Licensors and any Joint User utilizing the facilities covered herein.

(f) Licensors reserves to itself, its successors, and assigns, the right to maintain its poles and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements.

ARTICLE III

ANNUAL FEES

(a) The annual pole attachment rental rate will be calculated in accordance with the rulings of the New York State Public Service Commission. The current annual Telecommunications Carrier rate is \$16.75, per attachment. Attachment fees to jointly owned poles are adjusted in accordance with National Grid ownership interest in the pole. An attachment for billing purposes is defined as follows:

1. A single messenger span wire utilizing one foot or less of usable pole space on poles suitable for electric distribution. Each messenger will be counted as a separate attachment. The sag of the Licensee’s facility

will be included in determining the pole space utilized. Note: Any pole attachment made via common bolt or extension shall be subject to the terms and conditions under Licensor's "License Amendment and Addendum Distribution Pole Attachment Agreement to Sub-License Attachments."

2. A span wire installed in such a manner as to utilize the support messenger of a Joint Owner or another third party.
3. Equipment mounted in the usable space, which precludes that space from being utilized by a single messenger span wire.
4. Equipment mounted in the non-usable space which prevents that space from being utilized by the Licensor, a Joint Owner or another third party.

(b) For the purpose of computing the total attachment fees due hereunder, the total fee shall be based upon the number of pole licenses, whether or not attachments are actually made, on the fifteenth day of June and the fifteenth day of December of each year. The first advance payment of the annual charge for licenses granted under this Agreement shall be prorated from the date of license to the first regular payment date at the rate of 1/12 the annual attachment fee per month of fraction thereof.

(c) Attachment fees shall be due and payable semi-annually in advance on the 31st day of January for the first half of the calendar year and on the 31st day of July for the last half of the calendar year. Payment of attachment fees shall be received within 30 days. Late fees of 1 1/2 percent per month will be applied to all outstanding balances in excess of 30 days. Failure to pay such fees within 30 days after presentment of the bill therefore or on the specified payment date, whichever is later, shall constitute a default under this Agreement.

(d) Upon termination of a license granted hereunder, the applicable attachment fee shall be prorated at the rate of 1/12 the annual attachment fee per pole per month or fraction of a month remaining in the period for which rental has been paid.

(e) The attachment fee will be calculated annually and applicable to the fee payable and due in January and July of the following calendar year. The attachment fee will be filed with the New York State Public Service Commission.

ARTICLE IV SPECIFICATIONS

(a) Licensee's cables, equipment and facilities whether on Licensor's poles, Licensee's poles, or poles of others shall be placed and maintained in accordance with the latest revision of the National Electrical Safety Code; applicable National Grid Electric Distribution Standards; Bell System Manual of Construction Practices; appropriate Federal, State, County or Municipal Codes and any practices required by the Licensor or Joint User.

(b) Changes or additions to the National Grid Electric Distribution Standards and Bell System Manual of Construction Practices and any practices required by Licensor or Joint User may be made without notice. Licensee shall be responsible for placing its cables, equipment, and facilities in accordance with current standards and practices.

ARTICLE V LEGAL AUTHORITY

(a) Before applying for a license to attach to Licensor's poles, the Licensee shall obtain, and submit to Licensor if requested, evidence of Licensee's lawful authority to place, maintain, and operate its facilities within public streets, highways, and other thoroughfares and shall secure all necessary permits and consents from Federal, State, County, and Municipal authorities and from the owners of property to construct, maintain, and operate

facilities at the locations of Licensor's poles including permission to trim trees in order to keep Licensee's cable free from interference.

(b) The parties hereto shall at all times observe and comply with, and the provisions of this Agreement are subject to, all laws, ordinances, and regulations which in any manner affect the right and obligations of the parties hereto under this Agreement.

(c) Licensee shall be responsible for obtaining from private and/or public authority any necessary easement, right-of-way, license, permit permission certification or franchise to construct, operate and/or maintain its facilities on private and public property at the location of the utility pole and/or anchor to which Licensee attaches its facilities. Where Licensor has an easement over a public or private right-of-way sufficiently broad under New York State law to permit Licensee's attachment, Licensee shall not be required to obtain independent permission of the property owner to attach. The Licensor does not warrant the validity or apportion ability of any rights it may hold to place facilities on private property. The Licensor will upon written request of the Licensee, provide copies of all relevant recorded easements. The cost of providing such information and reproducing documents shall be borne by the Licensee. Should Licensor voluntarily assist Licensee in obtaining any necessary permission from a property owner for Licensee's attachments, the fully allocable Cost of such efforts shall be paid by the Licensee along with the Make-Ready Survey and Physical Make-Ready Cost, if any.

(d) In the event a dispute arises between Licensee and any property owner or other party mentioned in this Article V in any way related to the exercise of the license granted, it shall be the responsibility of the Licensee to take such corrective measures as may be necessary to settle such dispute, and in default thereof, Licensor, at its sole option, should the circumstances warrant, may take whatever action it deems necessary to settle such dispute and in that event, Licensee covenants that Licensor shall have a Confession of Judgment against Licensee for any and all costs incurred by the Licensor to affect such settlement, including, but not limited to, any payments made by Licensor to settle such dispute, any "Cost" as defined in Article I hereof related to the settlement of such dispute, and attorney's fees, if any, incurred. Nothing contained in this paragraph (d) shall obligate Licensor to settle such disputes, which obligation shall at all times remain that of the Licensee.

ARTICLE VI

POLE REPLACEMENTS AND REARRANGEMENTS

(a) Upon receipt of an application for a pole license, Licensor or Licensor's designee will make appropriate Make-Ready Survey of the poles listed therein in consultation with any Joint Users and, if the Licensee shall so desire, with the Licensee's representatives. The Licensor and Joint User shall determine, among other things, whether, in order to accommodate the attachments of the Licensee, any rearrangements or changes are necessary in the facilities, including guying and anchoring, of the Licensor or of other Joint Users or of others with attachment rights, and whether any poles require replacement by taller or stronger poles, all such work and other work required in connection therewith being sometimes hereinafter referred to as "Physical Make-Ready Work." The Licensor shall notify the Licensee as to which poles are available without Physical Make-Ready Work; those poles upon which Physical Make-Ready Work is required together with a description of the Physical Make-Ready Work and cost thereof; the exact location on the poles where Licensee's attachment shall be made; the cost of making the Make-Ready Survey and determining the cost of the Physical Make-Ready Work; all items being listed on the form of the licensee Exhibit #5 annexed. In the event a Make-Ready Survey indicates a pole loading analysis is required due to the Licensee's request for attachment, the Licensor will provide the Licensee with a proposal for such analysis for the Licensee's review and acceptance. Upon acceptance and receipt of advance payment from the Licensee, the Licensor will perform the pole loading analysis. Upon acceptance of the items shown on the form of the license and the disposition from any required pole loading analysis, the Licensor will bill the Licensee for the required Physical Make-Ready Work items, and said payment shall be made within thirty days from the date on the bill. However, the Licensor reserves the right to assign the pole loading analysis to its engineering contractor or to the Licensee to hire and accepted National Grid engineering contractor to perform the pole loading analysis in accordance with

Attachment 4 of the National Grid Distribution Pole Aerial Third Party Attachment Requirements. National Grid shall review and accept all pole loading analyses performed by an engineering contractor hired either by National Grid or the Licensee. The Licensee will be responsible for the Cost of the pole loading analysis review in advance of National Grid performing such review. The Licensor and Joint User at their sole option may require full payment in advance before Physical Make-Ready Work is scheduled and started. After completion of the Physical Make-Ready Work, the form of license executed by the Licensor and Licensee will be the license for Licensee's attachment to the poles listed thereon.

(b) In the event the Licensee withdraws any or all of the application referred to in Article II, Section (c) after completion of the Make-Ready Survey and/or Physical Make-Ready Work, the Licensee shall pay to the Licensor and Joint User the Cost for making the survey, determining Costs referred to in this Article, and all Physical Make-Ready Work performed. The Licensee shall make payment within 30 days of the date of the bill for such charges.

(c) Proposal costs for any Make-Ready Survey or Physical Make-Ready Work shall remain in effect for a period of sixty (60) days after the date on the proposal submitted to the Licensee. Any change in the scope by the Licensee to a pole attachment request following the proposal acceptance and prepayment of such request, shall be presented to the Licensor in writing by the Licensee. Such change in scope will be reviewed by the Licensor and at its sole discretion may be deemed as a new or separate pole attachment request. This may result in the re-scheduling of the initial Make-Ready Survey or the scheduling of additional Make-Ready Survey(s), based on the nature of the change in scope. All additional Costs shall be paid to the Licensor by the Licensee prior to the continuation of any additional and affected work. The rates used to determine such Costs are subject to change in order to reflect just and reasonable costs incurred by the Licensor.

(d) The Licensor reserves the right to require a "re-survey" of any pole attachment request, whereby an initial or subsequent Make-Ready Survey has occurred sixty (60) days prior to the Licensee's approval of the proposal and pre-payment of the associated Physical Make-Ready Work. Items for Physical Make-Ready Work not receiving the Licensee's approval of the proposal and pre-payment within sixty (60) days from the date of the proposal, may require a re-survey and/or re-estimate, in which case the re-estimated cost for the Physical Make-Ready Work will apply. The Licensee shall pay the Licensor in advance for all associated Costs to perform any required re-survey or re-estimating work to be performed by the Licensor. The Licensor shall perform the Physical Make-Ready Work at the costs itemized on the application for license, as approved and paid for in advance by the Licensee. At its sole option, the Licensor may contract the Physical Make-Ready Work to an independent contractor, in which case the Cost to the Licensee for the Physical Make-Ready Work shall be all of the contractor's requisite and incremental cost plus all costs for labor, materials, equipment, supplies, supervision, project management, (including overhead, profit and applicable taxes), and all internal Cost incurred by the Licensor, as defined in Article I. The rates used to determine such Costs are subject to change in order to reflect just and reasonable costs incurred by the Licensor.

(e) Additional make-ready necessitated by changes in the service needs of Licensor or a Joint User will not be billable to Licensee unless such changes are necessitated or caused by the Licensee's pole attachment. Additional make-ready cost stemming from the activities or requirements of an attacher other than the Licensee shall not be the responsibility of Licensee and are to be borne by such other attacher. When additional make-ready or related work is required as a result of circumstances beyond anyone's control, including but not limited to storms, vehicular accidents, or public work projects, Licensee is responsible for the timely repairing, relocating or replacing of its own facilities.

(f) If, in the Licensor's judgment, after the granting of any license to the Licensee, any hazardous conditions require the moving of the Licensee's facilities or any modification in the Licensee's plant, the Licensee agrees to make such changes at its own expense within five (5) days after the Licensor sends a notice to such effect or within such shorter period as is feasible. If, in the Licensor's judgment, the service needs of the Licensor or of any Joint User require modifications in the Licensor's plant or in the plant of a Joint User, including, without limiting

the generality of the foregoing, the replacement of a pole or poles, and if such modifications would not be necessary except for the Licensee's occupancy of space on the poles, the Licensee agrees that such modifications shall be additional Physical Make-Ready Work under this Agreement and that the Licensee shall pay the costs for such additional Physical Make-Ready Work in accordance with the provisions of this Article VI. In the event that the Joint Users and other attachers also have equipment attached to the pole or poles, the cost of such additional Physical Make-Ready Work, including conditions of non-compliance with the Specifications stated in Article IV, shall be assigned to the Licensee and any other responsible attacher in proportions as determined by the Licensor. In the event of the Licensee's failure to comply with any request made by the Licensor under this Section, the Licensor shall have the option to cancel the Licensee's license with respect to any pole affected by the Licensee's failure or to perform the Physical Make-Ready Work and charge Licensee in accordance with the provision of this Article VI. Similar work required after initial attachment to a pole solely because of the existence of Licensee attachments shall be referred to as "Additional Make-Ready Work."

(g) The Licensor shall perform Physical Make-Ready Work or arrange to have it performed according to a schedule of poles per month appended hereto as Appendix A. Where the Physical Make-Ready Work capability of Licensor is exceeded in aggregate by applications received from two (2) or more Licensees, Physical Make-Ready Work forces shall be assigned among the applicants according to a procedure set forth in Appendix A.

(h) Licensee agrees to reimburse the owner or owners of other facilities attached to Licensor's poles for any expense incurred by it or them in transferring or rearranging said facilities to accommodate Licensee's attachments. Licensee agrees to work in harmony with the terms and conditions of the Licensor's pole attachment agreements and that of the Joint User. The Licensee also agrees to ensure that its workforce performs its work in harmony with all trades, crafts, and other personnel while on the property of the Licensor and/or Joint User. Licensee shall not be entitled to reimbursement of any amounts paid to Licensor for pole replacements or for the rearrangement or transfer of facilities on Licensor's poles by reason of the use of any of the pole space so acquired by Licensor or other authorized user.

(i) When multiple applications, including application of Licensee and Licensee's competitors or others, are received by the Licensor with respect to any pole which must be replaced or rearranged to provide additional space prior to commencement of the Physical Make-Ready Work on the pole, Licensor will endeavor to prorate to the extent that it is practical between Licensee and to other applicants for pole space, the common expenses of engineering, rearrangement, and replacement, if any, which result from the processing of multiple applications. Licensee shall be bound by Licensor's determination as to any such portion of expenses.

ARTICLE VII

CONSTRUCTION AND MAINTENANCE OF FACILITIES

(a) Licensee shall notify the Licensor on a daily basis the location where attachments are being made. Licensor retains the right to make inspections of the Licensee's attachments while work is in progress. All anchors and guys shall be in place and all attachments shall be made in accordance with the specifications before Licensee's attachments can render service.

(b) Licensee shall, at its own expense, make and maintain its pole attachments in a safe condition and in thorough repair and in a manner acceptable to Licensor and so as not to conflict with these of said poles by Licensor or by other authorized users of said poles or to interfere with other facilities thereon or which may from time to time be placed thereon. All tree trimming required on account of the facilities of the Licensee shall be done by the

Licensee at its sole cost and expense in a manner satisfactory to the Licensor and the owner of the trees.

(c) The Licensee shall inspect its attachments at reasonable intervals and shall maintain the same in good order and repair. The Licensee shall label its facilities and maintain such labels (wires or pole attachment devices) at intervals not exceeding 1,000 ft. and at all intersections. Identification shall include, as a minimum, the name and telephone number of the Licensee and be fully visible from ground level.

(d) Licensee shall register with and use the state-wide transfer notification system (New York currently uses the National Joint Utilities Notifications System (NJUNS)). Attachment requests will not be processed unless the Licensee is a registered user and updates the transfer notification system. Licensee shall, at its expense, upon fifteen (15) days' notice from Licensor relocate or replace its facilities placed on Licensor's poles or transfer them to substituted poles or perform any other work in connection with said facilities that may be required by Licensor or Joint Users provided, however, that in cases of emergency, Licensor or Joint Users may arrange to relocate or replace the attachments placed on said poles by Licensee, transfer them to substituted poles, or perform any work in connection with said facilities that may be required in the maintenance, replacement, removal, or relocation of said poles or of the facilities thereon or which may be placed thereon, or for the service needs of Licensor or Joint Users, and Licensee shall reimburse Licensor and Joint Users for the cost thereby incurred. Licensee shall not make any additions to, or changes in, the locations of its attachments on the poles covered by the agreement without the written consent or instruction of the Licensor. Attachments of Licensee to poles of Licensor as mentioned herein shall be understood to include attachments of Licensee in space reserved for Licensor or space which Licensor has the right to use on poles of other companies with which Licensor now has or may hereafter have agreements for joint use and occupancy; and the use of such space by Licensee shall be subject to the terms and conditions of the agreements between Licensor and said other companies. The Licensor retains the right to recover any Licensor reserve space that has been occupied by the Licensee. All Costs associated with the relocation of the Licensee to a new point of attachment, and all Cost associated with the Licensor establishing a new point of attachment shall be the total responsibility of the Licensee.

(e) Additional Physical Make-Ready Work Cost stemming from the activities of third parties other than Joint Users is not the responsibility of Licensee but is to be borne by such third party. When additional Physical Make-Ready Work is required as a result of circumstances beyond anyone's control, including but not limited to storms, vehicular accidents, or public work projects, Licensee is responsible for the timely repairing, relocating or replacing of its own facilities.

(f) Licensor 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 Licensor as unsafe, Licensee shall confirm said condition with Licensor and refrain from ascending the pole. Should the Licensee objectively 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.

(g) Licensee shall exercise special precautions to avoid damaging the cables, equipment, and facilities of Licensor, of Joint Users, and of others occupying Licensor's poles; and Licensee hereby assumes all responsibility for any and all loss for such damage. Licensee shall make an immediate report to Licensor of the occurrence of any such damage and hereby agrees to reimburse the respective owners for the expense incurred in making repairs or replacements.

(h) The Licensee shall commence the installation of all distribution pole attachments within thirty (30) days of the date that said distribution pole(s) are released to the Licensee by the Licensor, unless otherwise approved by the Licensor. After such time, the Licensor reserves its right to reallocate such pole space.

ARTICLE VIII

TERMINATION OF LICENSES

(a) Upon notice from Licensor to Licensee that the use of any pole is not authorized by Federal, State, County, or Municipal authorities or private property owners, the license covering the use of such pole shall immediately terminate; and Licensee, at its expense, shall remove its cables, equipment and facilities at once from the affected pole or poles. If, within ten (10) days, the Licensee fails to do so, the Licensor, in addition to its other rights and remedies, may remove Licensee's cable, equipment, and facilities at Licensee's expense and without incurring any liability for damage thereof or destruction thereto. The Cost for such work shall be borne by the Licensee.

(b) Licensee may at any time remove its cables, equipment, and facilities from any pole of Licensor but shall immediately give Licensor written notice of such removal in the form of Exhibit #5, annexed; and the license for that pole shall terminate. If, after such notification, Licensee fails to remove its cable, equipment or facilities from Licensor's poles, Licensor shall have the right to remove Licensee's facilities at Licensee's expense and without any liability on the part of Licensor for damage thereto or destruction thereof. The Cost for such work shall be borne by the Licensee. In the event that Licensee's cables, equipment, and facilities shall be removed from any pole as provided by this Article, no attachment shall again be made to such pole unless Licensee shall have first complied with all of the provisions of this Agreement as though no such attachment had previously been made. Removal of its cable, equipment, and facilities by Licensee shall not relieve Licensee of its obligation to pay attachment fees due Licensor.

ARTICLE IX

INSPECTIONS OF LICENSEE'S INSTALLATIONS

(a) The costs of inspections made during construction and the initial post-construction survey (if any) shall be borne by the Licensee as part of make-ready charges. The costs of periodic inspections are to be paid by the Licensee to the Licensor. The Licensor will endeavor to prorate inspection costs among all Licensees attached to inspected facilities. The cost of special inspections - found necessary due to the existence of substandard or unauthorized attachments - shall be recovered as Additional Make-Ready Work according to the National Grid Service Work Rate Summary Sheet costs.

(b) If any cable, equipment, or facility of Licensee shall be found on a pole for which no license is outstanding, Licensor shall notify Licensee of the unauthorized attachment, including pole number and location, and give Licensee an opportunity to submit a plan of correction acceptable to Licensor within 60 calendar days of receipt of notification.

(c) If any cable, equipment, or facility of Licensee shall be found on a pole for which no license is outstanding, Licensor, 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, equipment, and facilities forthwith or require Licensee to make application for attachments in accordance with Article II. For the purpose of determining the fee, absent evidence satisfactory to Licensor to the contrary, the unlicensed 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 attachment rate for each year or portion thereof in such period, which fee shall immediately become due and payable. Any such fee imposed by Licensor 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 Licensor with regard to said fee or said unlicensed use shall be deemed as a ratification or the licensing of the unlicensed use; and any license subsequently issued shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise.

(d) If Licensee fails to submit a plan of correction acceptable to Licensor relative to an unauthorized attachment, Licensor, in its sole discretion, without prejudice to its other rights or remedies under this Agreement or otherwise, may charge a penalty of \$100 per pole which penalty shall immediately become due and payable. Any such penalty imposed by Licensor 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 Licensor with regard to said penalty or said unlicensed use shall be deemed as a ratification or the licensing of the unlicensed use; and any license subsequently issued shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise.

(e) If unlicensed attachments are found on a pole which causes inadequate pole loading, or the pole to be inadequately guyed or anchored, and if Licensee does not install the necessary guys or anchors or do such other work, including the making of all necessary Physical Make-Ready Work provisions to meet specifications within five (5) days of notification by the Licensor, the Licensor will install the necessary guys and anchors or do such other Physical Make-Ready Work to meet specifications and the cost thereof including Costs referred to in Article V (d), if applicable, shall be borne by the Licensee.

ARTICLE X

BOND, LIABILITY, DAMAGES, AND INSURANCE

(a) 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 Licensor or Joint User be liable, whether in contract, tort (including negligence and strict liability), warranty, or any other legal theory, to the Licensee or other party for any incidental, indirect, special, punitive 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 even if either party has been advised of the possibility of such damages. Neither Licensor nor Joint Users shall be liable to Licensee or to anyone else for any interruption to service of Licensee or for interference with the operation of the cables, equipment, and facilities of Licensee arising in any manner and for any other damage suffered by the Licensee or anyone else whether or not such interruption, interference, or damage is caused by the negligence or misconduct of the Licensor; Joint Users; other licensees; or of agents, contractors, or employees of Licensor; Joint Users or other licensees. The Licensee specifically waives any claim for any incidental and/or consequential loss of damages.

(b) The Licensee expressly acknowledges that the Licensee's facilities are exposed to many risks beyond the reasonable control of the Licensor, including acts of God or the public enemy, such as but not limited to, wind rain, sleet, ice, floods, fire, riots, sabotage, expropriation or confiscation of facilities. Except as expressly provided in this Agreement, the Licensee shall assume all risk of loss to Licensee facilities that may arise in connection with these hazards.

(c) For the duration of this Agreement, the Licensee shall provide and maintain at its own expense, insurance policies, issued by reputable insurance companies acceptable to Licensor, which meet or exceed the requirements listed herein:

- (1) A public liability policy insuring the Licensee against liability for injuries to persons (including death at any time resulting therefrom) and damage to property, resulting or arising from or connected with Licensee's operations under this Agreement with the following minimum limits of liability per occurrence:

Bodily Injury - \$1,000,000/1,000,000

Property Damage - \$1,000,000/1,000,000

OR

Combined Single Limit - \$1,000,000

OR

BI & PD per Occurrence - \$1,000,000
 General Aggregate &
 Product Aggregate - \$2,000,000 each

This policy shall include Contractual Liability and include Licensors as an Additional Insured.

- (2) In addition, **Umbrella Liability** coverage shall be furnished by the Licensee, with a **minimum** limit of \$1,000,000.
- (3) Licensee shall furnish a surety bond (**Pole Attachment Bond**) to the Licensors with a minimum penalty amount of \$2,000 for each 100 poles licensed under this Agreement and guaranteeing the performance of the conditions of this Agreement. Such surety bond shall contain a provision that it may not be canceled without 90 days' prior notice to Licensors.
- (4) Licensee shall promptly provide Licensors with the original **Pole Attachment Bond** along with a **Certificate of Insurance** for all coverages required herein at the following address:

National Grid
 Attn: Risk Management, Bldg. B-4
 300 Erie Boulevard West
 Syracuse, NY 13202

Such certificates, and any renewals or extensions thereof, shall provide that at least 30 days prior written notice shall be given to National Grid in the event of any cancellation or diminution of coverage.

(d) Licensee shall promptly advise the Licensors' Claim Department of all claims relating to damage to property or injury to or death of persons arising or alleged to have arisen in any manner by or directly or indirectly associated with the erection, maintenance, presence, use or removal of the Licensee's equipment. Copies of all accident reports and statements made to Licensee's insurer by the Licensee or others shall be furnished promptly to the Licensors.

ARTICLE XI INDEMNIFICATION

(a) The Licensee shall take prompt action to indemnify, protect, and save harmless Licensors and Joint Users from any and all claims and demands of whatever kind, nature, or description which arise directly or indirectly from the operation of Licensee's facilities including but not limited to taxes, special charges by others, claims and demands for damages or loss for infringement or copyright, for libel, and for slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of Licensee's equipment whether arising from the use of Licensee's equipment in combination with Licensors' poles or otherwise.

(b) The Licensee accepts the Property in its present condition, as is, where is. Licensee agrees, to the fullest extent allowed by law, to defend, protect, indemnify, and hold harmless the Licensors and Joint User, their directors, officers, employees agents, successors, assigns and independent contractors from and against any and all losses and injuries (including personal injuries and injuries to a person resulting in death), damages, liabilities, costs, suits, charges, causes of action, demands, claims (including reasonable claims of third party land owners) and expenses (including reasonable attorneys' fees) arising out of any damages to Licensors' or Joint User's property (including environmental damages), or damage to any person or property, including injuries to Licensee's employees or damage to their property, including injuries to the employees or damage to the property of Licensors and Joint User arising out of, resulting from, or in any manner caused by the presence, use or maintenance of said attachments or

equipment on said poles, or by the acts or omissions of Licensee's agents or employees while engaged in any and all work associated with the placing, adjusting, altering, maintaining, or renewing said attachments, equipment or appurtenances on said poles, or of removing them therefrom; and such loss shall include all costs, charges, expenses, and attorney's fees reasonably incurred in connection with such injury or damage and, also, any payments made by Licensor and Joint User to its injured employees or to their relatives or representatives in conformity with the provisions of any worker's compensation act or any act creating a liability in the employer to pay compensation for personal injury to any employee by accident in the course of employment, whether based on negligence on the part of the employee or not, and, also any payments made by Licensor and Joint User to its injured employees by virtue of any collective bargaining agreement or employee's benefit plan.

(c) Furthermore, the Licensee understands and agrees that it is responsible for any and all costs and expenses incurred by the Licensor to enforce this indemnification provision.

(d) The obligations set forth in this article shall survive completion of the work, and the termination or expiration of this Agreement.

ARTICLE XII

TERMINATION OF AGREEMENT

(a) If Licensee shall fail to comply with any of the terms or conditions of this Agreement or default in any of its obligations under this Agreement and shall fail within 30 days after written notice from Licensor to correct such default or non-compliance, Licensor may, at its option, forthwith terminate this Agreement and all licenses granted hereunder, or at Licensor's option, it may terminate the licenses covering the poles as to which such default or non-compliance shall have occurred.

(b) If the insurance carrier shall at any time notify Licensor that the policy or policies of insurance, as provided under Article X hereof, will be canceled or changed so that the requirements of Article X will no longer be satisfied, then this Agreement shall cease and terminate upon the effective date of such notification.

(c) Unless otherwise provided, any termination shall be effective immediately upon the Licensor's mailing the notice of termination.

(d) Termination of this Agreement shall not release the Licensee from any liability or obligation under the agreement including, without limiting the generality of the foregoing, the obligation to continue to pay attachment fees at the rates provided in Article III of this Agreement for such times as the Licensee's attachments remain on the Licensor's poles and the obligation to pay any costs of removal.

(e) Upon termination of this Agreement or cancellation of any licenses, the Licensee shall remove its attachments from any poles affected within 30 days after the effective date of the termination.

ARTICLE XIII

WAIVER OR TERMS AND CONDITIONS

(a) 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.

(b) Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement or the licenses granted hereunder terminated shall not constitute a waiver or relinquishment of any such terms, condition, or act; but the same shall be and remain at all times in full force and effect.

ARTICLE XIV

WARRANTIES

(a) National Grid 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 affected by this Agreement.

NATIONAL GRID 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.

NATIONAL GRID 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.

ARTICLE XV

TERM OF AGREEMENT

(a) If not terminated in accordance with its terms, this Agreement shall continue in effect for a term of ten (10) years from the date hereof and thereafter until three (3) months after written notice of termination is given by either party. Such notice of termination may be given to take effect at the end of the original ten (10) year period.

ARTICLE XVI

GENERAL PROVISIONS

(a) The Licensee shall not in any way assign, transfer, sublet, or encumber this Agreement or any of the rights or privileges hereby granted to it without the prior written consent of the Licensor. Any assignment, transfer, or subletting of this Agreement or any licenses by the Licensee shall be null and void unless written approval or consent has been granted by Licensor. Subject to the foregoing, however, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

(b) This Agreement supersedes all previous agreements between the parties for maintenance and placement of aerial cables, equipment, and facilities by the Licensee and constitutes the entire agreement between the parties. It may not be modified or amended nor may any obligation of either party be changed or discharged except in writing signed by the duly authorized officer or agent of the party to be charged. Currently effective licenses, if any, issued pursuant to previous agreements shall remain in effect as if issued pursuant to this Agreement.

(c) The Licensor and the Licensee each hereby waives any right to a trial by jury in any litigation arising out of this Agreement or out of the Licensee's use of space on the Licensor's poles.

(d) If the presence of the Licensee on Licensor's poles cause Licensor to pay any new or additional tax which Licensor would not otherwise pay, Licensee shall reimburse Licensor to the full extent of such new or additional tax, as additional rent, within 30 days of receiving a bill therefore from Licensor.

(e) This Agreement shall be governed by, and interpreted according to the Laws of the State of New

York. Only the courts in the State of New York shall have jurisdiction over the Agreement and any controversies arising out of or relating to the Agreement and/or provisions thereunder. The Licensee waives personal service by manual delivery and agrees that service of process on Licensee in any action arising out of the Agreement may be made by registered or certified mail, return receipt requested and directed to the Licensee as described under this Article.

(f) Notices. The parties hereby designate the following as their duly authorized representatives for the receipt of any legal or contractual notice required to be sent to either party. Such notices shall be deemed duly given when written and delivered personally or when sent by first class mail, postage prepaid, or via commercial overnight courier, to the intended party's representative at the addresses set forth below, or at such changed addresses as may from time to time be designated in a notice similarly delivered or mailed:

Licensor: Manager -Telecommunications Attachments Dept.
 National Grid
 300 Erie Blvd. West, B-2
 Syracuse, NY 13202

Licensee: _____

(g) The provisions of the following laws, Executive Orders, or rules and regulations validly promulgated by the responsible governmental body shall be incorporated herein by reference as part of this Agreement:

- (1) Paragraphs 1 through 7 of Section 202 of Executive Order 112446, as amended, relating to equal opportunity in employment under government contracts;
- (2) Section 2012 of Title 38 of the United States Code and Executive Order 11701, as amended, relating to the Veterans' employment emphasis under federal contracts;
- (3) Section 503 of the Rehabilitation Act of 1973 and Executive Order 11758, as amended, relating to the obligations of government contractors to take affirmative action to employ, and advance in employment, qualified handicapped individuals;
- (4) The provisions of the Human Rights Law of the State of New York (Article 15 of the Executive Law).
- (5) *Proceeding on Motion of the Commission Concerning Pole Attachment Issues*, Case 03-M-0432, Order Adopting Policy Statement on Pole Attachments (issued and effective August 6, 2004), and any subsequent orders clarifying or reconsidering such Order.

(h) The Licensee agrees to fully comply with the provisions and amendments thereof incorporate into this Agreement in paragraph (g) above. In addition, all subcontracts and agreements that the Licensee enters into to accomplish the work under the terms of this Agreement shall obligate such subcontractor to comply with the provisions set forth in paragraph (g) above. The Licensee and all subcontractors shall submit compliance reports satisfactory to the Licensor that the Licensee and each of its subcontractors have complied with this section.

(i) Licensee and all contractors who perform any work under this Agreement will fully comply with the provisions of the Federal Occupational Safety and Health Act of 1970 and to any rules and regulations pursuant to the Act.

(j) Relocation or Rearrangement of Licensee Attachments – The Licensee shall participate in the facility and equipment transfer notification system utilized by Pole Owners and Other Attachers (Licensees), or as required by a regulator of competent jurisdiction. Upon notification, the Licensee shall relocate or rearrange its attachments to accommodate use of the pole by National Grid or Other Attachers. The Licensee shall promptly update its actions within the facility and equipment transfer notification system

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first above written.

ACCEPTED: **NIAGARA MOHAWK POWER CORPORATION d/b/a NATIONAL GRID
(Licensor)**

By: _____
(signature)

Name: _____

Title: _____

Date: _____

ACCEPTED: _____ **(Licensee)**

By: _____
(signature)

Name: _____

Title: _____

Date: _____

SCHEDULE OF WORK (Appendix A)

1. Upon initial request for application for attachment to any National Grid distribution poles, the Applicant shall become signatory to the Licensor's Pole Attachment Agreement (Agreement).
2. The Licensor will issue two copies of the Agreement to the Applicant. The Applicant is to review and sign both original copies of the Agreement and return both signed original copies with the Insurance Certificate to:

National Grid Telecommunications Attachments Group
300 Erie Blvd. West, B-2
Syracuse, NY 13202-4201

3. An executed copy of the Agreement will be sent to the Applicant by the Licensor. The Applicant shall submit a surety bond to National Grid within sixty (60) days from the date of the executed Agreement or prior to making any physical pole attachment, whichever comes first.
4. An executed Agreement shall be in place prior to the acceptance of any distribution pole application by the Licensor.
5. Schedules for Make-Ready Surveys will be planned jointly with Licensor or Licensor's designee, Joint User, and Licensee to meet the needs of all parties. It should be recognized that service needs of the Licensor and Joint User, weather conditions, service interruptions and the amount of Make-Ready Survey Work and Physical Make-Ready Work required per pole will materially affect any proposed schedule. This schedule of Physical Make-Ready Work is applicable to each Operating Area of the Licensor. The Licensor reserves the right to assign Make-Ready Survey Work or Physical Make-Ready Work to the Licensee to hire a National Grid accepted contractor to perform such work.
6. The following schedule contains the series of steps the Applicant must take in effort to achieve an executed pole attachment license and meet all the requirements in the said agreements relating to franchise approvals, insurance, and surety to the satisfaction of the Licensor.
 - A.) Licensee shall submit a strand map and a written application listing the poles and the associated location for those electric distribution poles that are being requested for licensing to the applicable National Grid Telecommunications Attachments Group. National Grid will then issue correspondence assigning the survey, pole loading, and design work to either National Grid, National Grid's Design Contractor or to the Licensee to hire a National Grid accepted Design Contractor. *Note: Each Pole Attachment Application Request Shall Not Exceed 125 Pole Attachments.*
 - a.) For large requests, the Applicant may assume 28 poles per mile.
 - b.) The rates and terms of the Service Work Rate Summary Sheet for Survey and Estimating Services shall apply for survey work assigned to National Grid Distribution Design.

NOTE: Any request for attachment to National Grid transmission poles or structures shall be identified in a separate application to National Grid's Telecommunications Attachment Group and are not covered under this standard Agreement for electric distribution poles. A separate pole attachment agreement is required for transmission pole attachments.

7. For work assigned to National Grid Distribution Design: The Applicant should review and approve the National Grid proposal form and return it to the National Grid Telecommunications Attachments Group (see

address below) with a check for the estimated amount, payable to the order of: *National Grid*. Upon Receipt of a complete pole attachment application and the advance payment for survey and estimating services, National Grid will then provide the Applicant with its available dates for conducting the pre-construction survey.

8. Any required Physical Make-Ready Work will be assigned by the Licensors and issued to the Applicant by the National Grid Telecommunications Attachments Group. The Applicant will be provided with the estimate and proposal for any required Physical Make-Ready Work to be performed by the Licensors or Licensors's Contractor. The Applicant should then review these documents and approve the proposal form and return it to the National Grid Telecommunications Attachments Group with a check for the estimated value, payable to the order of: *National Grid*. Any required Physical Make-Ready Work will not be scheduled by the Licensors until such time that the Applicant's acceptance of the Licensors's proposal form for the make-ready costs and advance payment for the Physical Make-Ready Work have been received by the Licensors. The Licensors reserves the right to assign Physical Make-Ready Work to the Licensee to hire a National Grid accepted overhead line contractor to perform such work
9. Survey Estimating Services are to be submitted within fourteen days from the completion of the application pre-construction survey and any required Physical Make-Ready Work will normally proceed to be completed within 45 days from the date that advance payment is received by the Licensors.

NOTE: Advance payment by the Applicant to the Licensors is required prior to the start of any Survey and Estimating Services, Pole Loading Analysis, Pole Loading Analysis Review, or any required Physical Make-Ready Work to be performed by the Licensors.

10. If a loading analysis of a pole is required due to the Licensee's request for attachment and is assigned to be performed by the Licensors or Licensors's Contractor, the Licensors will provide the Licensee with a proposal for such analysis for the Licensee's review and acceptance. Upon written approval of the pole loading analysis proposal and receipt of advance payment from the Licensee, the Licensors or its Contractor will perform the pole loading analysis. When the Licensors's Contractor performs such analysis, the Licensee will also be responsible to pay (in advance) for the review of such analysis by the Licensors's engineer. Upon acceptance of the items shown on the form of the license and the disposition from any required pole loading analysis, the Licensors will bill the Licensee for the required Physical Make-Ready Work items, and said payment shall be made within fourteen days from the date on the bill.
 - a) The rates and terms of the Service Work Rate Summary Sheet for Pole Loading Analysis shall apply
11. The Licensors will accept applications on a first-come, first-served basis and shall attempt to satisfy the designated priority of completions. The Licensee shall commence with the installation of all requested distribution pole attachments within thirty (30) days of the date that said distribution pole(s) are released to the Licensee by the Licensors, unless the otherwise approved by the Licensors. After such time, the Licensors reserves its right to reallocate such pole space.
12. National Grid will commence invoicing the Applicant for licensed pole attachment fees, upon the release of the requested poles by National Grid.

Notice: Licensee shall commence installation of all requested distribution pole attachments within thirty (30) days of the date that said distribution pole(s) are released to the Licensee by the Licensors, unless approved otherwise by the Licensors. After such time, the Licensors reserves its right to reallocate such pole space.