

NIAGARA MOHAWK POWER CORPORATION¹
CONDUIT OCCUPANCY AGREEMENT

THIS AGREEMENT, made as of the _____ day of _____ (“Execution Date”), 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 13202 (hereinafter called “Licensor”) and _____ of New York, Inc., a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (hereinafter called “Licensee”).

WITNESSETH:

WHEREAS, Licensee for its own use desires to place and maintain its Facilities in the Conduit System of Licensor; and

WHEREAS, Licensor desires to control access to its Conduit System so as to further the best interests of its core business, and so as to accommodate Licensor’s present and future requirements for space in its Conduit System and the needs and requirements dictated by Licensor’s principal business as a gas and electric utility; and

WHEREAS, consistent with the foregoing, LICENSOR will review requests for use of portions of its Conduit System from interested persons who seek installation of fiber optic telecommunications facilities, to the extent it may lawfully do so and to the extent Conduit space is available.

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

ARTICLE I
SCOPE OF AGREEMENT

Consistent with the above and subject to the following provisions of this Agreement, Licensor will issue to Licensee for its own use, a License, revocable in accordance with the terms and provisions of this Agreement, authorizing the installation of Licensee’s Facilities in Licensor’s Conduit System. The authorization granted by the License for use of the Conduit System shall also be known as a Right-of-Occupancy.

ARTICLE II
DEFINITIONS

1. Agreement

The Conduit Occupancy Agreement entered into herein between Licensor and Licensee.

2. Building Entrance Links (BEL’s)

The entrance conduit that runs from manhole or handholes of the Conduit System on a public or private right-of-way across the property line to and into any structure, typically a building.

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.

3. Capacity

Telecommunications service provided to or available to customers by installing electronics, lighting fiber pairs, and provisioning circuits on the lit fiber.

4. Conduit

An individual pipe, tube or duct forming an enclosed raceway for cable and/or conductors (Note: often interchanged with the word "duct").

5. Conduit Bank

An arrangement of Conduits in close formation, usually but not necessarily encased in concrete.

6. Conduit Run

The portion of a Conduit installation, usually in a Conduit Bank formation, between adjacent manholes, handholes, vaults and/or other dividing points.

7. Conduit System

The combination of Licensor-owned Conduit, Innerduct, manholes, handholes and/or vaults joined to form an integrated complete installation system.

8. Dark Fiber Pairs

Sets of two (2) fiber optic strands that are not terminated with electronic equipment capable of sending light down the strands. Dark Fiber Pairs cannot carry Capacity until such time as they are lit with electronic equipment at their ends.

9. Environmental Laws

All federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Clean Air Act, 42 U.S.C. §§ 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. §§ 2701, et seq., and New York State laws or any other comparable federal, state or local laws or ordinances pertaining to the environment or natural resources and all regulations pertaining thereto.

10. Good Utility Practice

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

11. Innerduct

An individual small-diameter polymer duct or pipe, or other Licensor approved device, that is installed inside the Conduit System as protective raceway for communications cables (Note: occasionally referred to as sub-conduit or sub-duct).

12. License

The written instrument (Exhibit B), executed by the Licensor and the Licensee, which authorizes the Licensee to install Facilities in the Licensor's Conduit System. Such authorization is also called Right-to-Use, Right-of-Occupancy, or Conduit Occupancy.

13. Licensee

The person, corporation or other legal entity and its successors and assigns, which applies for and is granted permission by Licensor under this Agreement to place its Facilities in Licensor's Conduit System and which is responsible for compliance with Licensor's regulations regarding such accommodations.

14. Licensee's Facilities, Customer Facilities, or Facilities

The fiber optic cable and splice closures installed in Licensor's Conduit System for the use and benefit of Licensee, and including all personal property or facilities owned or under the possession or control of Licensee.

15. Licensor

Niagara Mohawk Power Corporation.

16. Make-Ready Work or Make-Ready

All work performed to accommodate the installation of Licensee's Facilities in a Conduit or manhole including but not limited to the rearrangement of existing facilities, replacement of cable, rodding of duct, installation of Innerduct, and all other work necessary.

17. Manhole/Handhole

An underground enclosure where Conduits are terminated and which provides ready access to Conduit System.

18. Pre-Construction Survey

The work operations performed by Licensor or its designated contractor in order to process an application for a Conduit occupancy to the point just prior to performing any necessary Make-Ready Work. Three (3) elements of a Pre-Construction Survey are:

- a. engineering (planning) property records search to preliminarily determine if Conduit may be available,
- b. field inspection of the existing facilities to verify available space and determine Make-Ready Work, and
- c. administrative effort required to process the application and prepare Make-Ready Work.

19. Property

The infrastructure owned by Licensor including but not limited to Conduit, Innerduct, cabling, manholes, handholes, and vaults.

20. Right-of-Occupancy, or Right-to-Use

Authorization granted by the Licensor to the Licensee through the instrument called the License.

21. Splice Closure

An apparatus containing ends of two fiber optic cables joined together.

**ARTICLE III
GENERAL CONDITIONS**

1. Compliance with Applicable Laws

Licensor and Licensee shall at all times observe and comply with the provisions of this Agreement, and such provisions are subject to all laws, ordinances, contracts and regulations which in any manner affect the rights and obligations of the parties herein.

2. Rights in Licensor's Conduit System

No use, however extended, of a Conduit System or payment of any fee or charge required hereunder shall create or vest in Licensee any ownership or property right in such Conduit System.

3. Requirement to Construct and Maintain a Conduit System

Nothing contained herein shall be construed to compel the Licensor to construct, reconstruct, retain, extend, repair, place, replace or maintain any underground facility or Conduit System not needed for Licensor's own service requirements provided, however, the foregoing provisions shall be subject to Licensee's rights under this Agreement.

4. Other Agreements

Nothing contained herein shall be construed as a limitation, restriction, or prohibition against Licensor with respect to any agreement(s) and arrangement(s) which the Licensor has entered into, or may in the future enter into, with others not covered by this Agreement, except that authorizations for occupancies existing at the time of such future agreements or arrangements shall not be diminished. The rights of Licensee shall at all times be subject to such existing and future agreement(s) or arrangement(s). The Licensor, in negotiating and entering into any such future agreement(s) and/or arrangement(s), shall give due and reasonable regard to Licensee's continued accommodation in the Conduit System.

5. Assignment, Subletting and Other Transfers

a. Licensee shall not assign, sub-License, sublet or transfer any authorization granted herein, and such authorization shall not inure to the benefit of Licensee's successors or assigns without the prior written consent of the Licensor, and may be subject to the Public Service Commission and other regulatory bodies' review and approval. In the event such consents are granted by the Licensor, the provisions of the Agreement shall apply to and bind the Licensee's successors and assigns. Provided, however, that either party may, without the consent of the other party, assign, sub-License, sublet or transfer any authorization granted herein to any parent or subsidiary corporation or to any corporation or other entity that controls, is controlled by or is under common control with such party, where "control" includes, but is not limited to, the direct or indirect ownership or voting control of more than fifty percent (50%) of the stock or other equity interest entitled to vote for the election of directors or equivalent governing body. In addition, either party may, without the consent of the other party, assign this

Agreement and/or any of its rights hereunder pursuant to any merger, consolidation, or sale or exchange of substantially all of the assets or equity of that party.

- b. Notwithstanding the foregoing, Licensee has authority to sublease, sublicense or use its dark fiber for any purpose otherwise in compliance with this Agreement and applicable laws.

6. Permits and Consents

- a. Licensee shall be responsible for obtaining from private entities and/or public agencies any and all necessary easements, rights of way, licenses, permits, permissions, certifications or franchises to construct, operate and/or maintain its Facilities within Licensor's Conduit System. Licensor agrees that it shall provide reasonable cooperation to Licensee in connection with Licensee's efforts to obtain such necessary permits and consents. The Licensor does not warrant the validity of apportionability of any rights it may hold to place Facilities on private property.

If Licensor's permission or consent in writing is required by a governmental or regulatory agency in conjunction with the processing or application by Licensee for such permits and consents, Licensor shall have the right to review and approve the terms and conditions, if any, that may be required or requested of Licensor by said governmental or regulatory agency. The Licensor will, upon written request by Licensee, provide available information and copies of any documents in its files pertinent to the nature of the rights Licensor possesses over private property. The cost of providing such information and reproducing documents shall be borne by Licensee.

- b. Where Licensor has an easement over a public or private right of way sufficiently broad under New York State law to permit Licensee's occupancy, Licensee shall not be required to obtain an independent easement from the property owner to place its Facilities. In any case where the Licensor seeks to obtain any necessary permission from a property owner for Licensee's Facilities, the fully allocable costs of such efforts shall be paid by the Licensee along with Make-Ready costs, if any.

Nothing herein shall be deemed, however to require Licensor to obtain permission or defend or establish Licensee's License and/or permission for Licensee's Facilities as provided for herein.

7. Notices

- a. Any notice to be given to Licensor under this Agreement shall be sent by certified mail delivery:

(One copy to:)

- (1) National Grid
300 Erie Boulevard West
Syracuse, New York 13202
Attn: Law Department

- b. Any notice given to Licensee under this Agreement shall be sent by certified mail or overnight express delivery:

(One copy each to:)

and

- c. Notice to such other parties as may be designated in writing to the other party.
- d. Unless otherwise herein set forth, notices shall be sent, postage prepaid, either by registered or certified U.S. Mail, Return Receipt Requested, or delivery service, and shall be deemed served or given when received by the addressee, as evidenced by the date of the Return Receipt or the receipt provided by the delivery service.
- e. Emergency Access Notification. In case of an emergency demanding immediate examination or repairs of the facilities, notice shall be given by either party to the other in person or by telephone to the emergency response center designated in writing by each party. Each party giving such notice shall follow up with written notice within three (3) business days.

- to Licensor, National Grid Central Regional Control (315) 460-2421

- to Licensee - _____ - _____

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;
- 3. Name of contact person reporting problem;
- 4. Telephone number to call back with progress report;
- 5. Description of the problem in as much detail as possible;
- 6. Time and date the problem occurred or began; and
- 7. If appropriate, a statement that "**This is an emergency**" and that a problem presents a jeopardy situation to persons or the physical plant, as the case may be.

ARTICLE IV PROCEDURES

1. Application for Authorization

- a. Following signing of this Agreement and prior to installation of Licensee's Facilities in any Conduit System, Licensee shall submit a written application to occupy Licensor's Conduit System as specified in Exhibit A. As an attachment to Exhibit A, Licensee shall provide a single-line drawing identifying the proposed fiber route including street addresses for the starting points and end points of each Conduit section of interest.
- b. If Licensee files multiple applications for Conduit Occupancy, it shall designate the desired priority of processing.
- c. Licensor shall accept and process applications for Licenses from Licensee and others on a first come first served basis.
- d. Where multiple applications are filed and pending with the Licensor, from more than one applicant for the same portion of Licensor's Conduit System, and where such multiple use is appropriate, Licensor

shall endeavor to prorate, to the extent that it is practical, between the Licensee and the other applicant(s), the costs of Pre-Construction Surveys and Make-Ready Work. If any such applicant withdraws its application(s), Make-Ready costs will be borne by the remaining applicants. Licensee shall be bound by Licensor's determination as to any such portion of expenses.

- e. All costs of whatsoever nature related to the determination of the application as set forth under Article IV and for charges specified under Article IX shall be borne by the Licensee.

2. Specifications

- a. Licensee's Facilities shall be placed, maintained, relocated or removed, subject to Licensor approval and in accordance with the requirements and specifications of the current editions of Niagara Mohawk's Underground Standards for Construction, the National Electric Code (NEC), the National Electrical Safety Code (NESC), Rules and Regulations of the Occupational Safety and Health Act (OSHA) and any governing authority having jurisdiction. Where a difference in specification may exist, the more stringent shall apply. Licensee's Facilities shall not physically, electronically or inductively interfere with Licensor's Conduit System or other facilities.
- b. While many of the standards and technical requirements for Licensee's equipment and Facilities are set forth in (a) above, Licensor reserves the right to specify the construction standards required in situations not otherwise covered. In such cases, Licensor will furnish to Licensee written material which will specify and explain the required construction. Licensee shall have the right to select the type of fiber optic cable to be installed in Licensor's Conduit System, subject to Licensor's review and approval, which shall not be unduly withheld or delayed.
- c. Innerduct shall be installed in accordance with Licensor's standards and Licensor shall specify the individual Conduit in which Innerducts are installed. Innerduct occupied by the Licensee shall be tagged, identifying, at a minimum, Licensee name, cable identification, and the date of installation. Title to said Innerduct shall vest in Licensor upon installation.

3. Pre-Construction Survey, Make-Ready Work

- a. After receipt of an application (Exhibit A) by the Licensor from the Licensee, the following Pre-Construction Survey activities shall be performed for each Conduit section for which an authorization is requested.
 - 1. Property Records Survey. Licensor shall perform a property records survey, at Licensee's sole expense, of the Conduit sections to determine if Conduit exists in the sections and if there is likely to be a duct available.
 - 2. Notification of Property Records Survey Results. Licensor shall notify Licensee, in writing, of the property records survey results.
 - 3. Authorization of Field Survey. If the property records survey indicates that conduit may be available, the Licensee shall notify the Licensor in writing, providing authorization to proceed with a field survey of the Conduit sections.
 - 4. Field Survey. By means of a field survey, the Licensor shall determine whether the Conduit space is available to accommodate Licensee's Facilities. In determining the availability of space in Licensor's Conduit System, Licensor will also consider its present and foreseeable electric service and maintenance needs for Conduit space (Exhibit C).
 - 5. Authorization to Occupy. If Licensor determines Conduit space is available, a License to occupy (Exhibit B) the specific section of the Conduit System will be granted to Licensee. Licensor does not warrant the condition of such Conduit System.
- b. The Licensor shall provide pre construction survey results to the Licensee as well as a non-binding estimate for any Make-Ready and Innerduct installation work to be performed by the Licensor. Such estimate shall be supported by estimated linear footage and projected start and completion dates for

Licensor's work activities. Licensor shall specify the Conduit System to be occupied by Licensee's Facilities and the location and manner in which Licensee's Facilities will enter and exit Licensor's manholes, pull boxes and handholes.

- c. Upon receipt of the survey results and the non-binding estimate from the Licensor, Licensee shall, within thirty (30) days, provide written authorization to Licensor to proceed with said Make-Ready and Innerduct installation work. In providing such authorization, Licensee agrees to pay Licensor, on a time-and-material basis, for Make-Ready and Innerduct installation work in support of the Licensee's request in accordance with Article IX.
- d. The Licensee may purchase from the Licensor, copies of the relevant Conduit System maps. The cost for such maps shall be consistent with the current non-discriminatory practices and prices established by the Licensor. Prior to receiving copies of the Conduit System maps, Licensee shall sign a License Agreement to Utilize Niagara Mohawk Power Corporation Underground Conduit Maps (Exhibit F).
- e. Licensee shall supply all Innerduct and Innerduct identification tags for installation within the Conduit System. Title to said Innerduct shall vest in Licensor upon installation. All Make-Ready Work on or within Licensor's Conduit System will be performed by Licensor, Licensor's designated contractor, Licensee, or Licensee's designated contractor at Licensee's sole cost and expense and at Licensor's sole discretion and direction.
- f. All required work will be scheduled by Licensor following receipt of written authorization to proceed from the Licensee. The Licensor will provide a project schedule to the Licensee prior to beginning fieldwork. Within 10 days of receipt of the project schedule, the Licensee may revoke authorization for Make-Ready and installation work if the project schedule is insufficient to support the Licensee's business plan.
- g. Following completion of all Make-Ready Work on the Conduit System, Licensor agrees that, under normal conditions, such Conduit System will be and will remain in reasonable satisfactory condition during the term of the License Agreement.

4. Facilities Installation

- a. All entry to Licensor's Conduit System requires prior notification to Licensor and under no conditions shall entry be made by the Licensee or Licensee's contractor without the presence of Licensor's representative.
- b. Facilities installation and splicing work will be performed by Licensor, Licensor's designated contractor, Licensee, or Licensee's designated contractor, at Licensor's sole discretion and direction, following completion of Make-Ready Work and delivery of Facilities by Licensee to Licensor. In the event that Facilities installation is performed by a contractor or sub-contractor of the Licensor, the Licensee shall have the right to approve such contractor or sub-contractor. Licensee shall have the right to conduct testing of its Facilities in accordance with mutually agreed-upon standards. Licensor shall have the right to approve any Licensee contractor performing work on or within the Conduit System.
- c. Licensor reserves the right to prohibit Licensee Facilities and equipment, other than fiber optic cable from its manholes, pull boxes and handholes. Splices in Licensee's fiber optic cables shall be located only in manholes, pull boxes or handholes.
- d. Where a section of Licensee's duct physically connects with Licensor's manhole, Licensor shall designate the point of entrance. The section of Licensee duct which connects with the manhole shall be installed, at Licensee's expense.
- e. During the course of performing Make-Ready Work, the designated Conduit may be found plugged with dirt or collapsed, making rodding impossible. If in this situation, no other Conduit is available,

such plugged Conduits may be repaired at Licensor's option and at Licensee's expense. Ownership of all repaired or replaced Conduit is retained by Licensor.

- f. In the event that either party performs work in or on the Conduit System in support of a Conduit occupancy, said party shall notify the other party in writing within seven (7) working days of the date of completion of construction.
- g. Within sixty (60) days of substantial completion of Facilities installation, Licensee shall provide to Licensor, as-built drawings of the completed installation. As-built drawings shall identify, as a minimum, cable routing, footage, Splice Closures, slack cable coils (loops), cable identification information as noted on Innerduct tags, all manhole numbers and Conduit and Innerduct occupied. In the event Licensee paid for and obtained Conduit System maps from Licensor, upon receipt of as-built drawings, Licensor shall refund, to the Licensee, fifty percent (50%) of the fee paid for Licensor's Conduit System maps in accordance with Article IV, Section 3d.

5. Conduit System Modifications

- a. In an emergency, Licensor may, in accordance with Good Utility Practice, rearrange or if necessary for the protection of the health and safety of workers or the public, or protection of the safety or reliability of Licensor's facilities, remove Licensee's Facilities occupying a Conduit or manhole. Licensee may have an inspector present during such emergency repairs; provided however, that said inspector shall have no supervisory authority to control, direct or interfere with Licensor's work force. Licensor shall not be required to defer emergency action if said inspector is not present. Licensor shall take all reasonable actions to provide prior notification to Licensee of any required rearrangement.
- b. Should Licensor, for its own service requirements, need to install additional Conduit or other facilities or modify such Conduit facilities in any Conduit System which Licensee occupies, and if such service needs could be fulfilled except for Licensee's occupancy, Licensee shall be notified and pay costs thereof for the rearrangement of Licensee's Facilities and/or the installation cost of additional Conduit.
- c. Licensee must notify Licensor in writing of its request for additional Facilities or for relocating, replacing, or otherwise modifying its existing Facilities in a Conduit System. Licensor shall then process such requests for an additional or relocated Licenses in the same manner as provided for herein subject to the same conditions and provisions set forth in this Agreement, and advise Licensee of Licensor's acceptance, rejection or modification of said request. Licensee shall reimburse Licensor for all costs involved for such modifications, upon submission of invoices.

6. Inspections of Licensee's Facilities

- a. In the event that Licensor or Licensor's contractor performs work on Licensee's Facilities, Licensee shall have the right to have its inspector(s) present.
- b. Under no circumstances shall the Licensee or Licensee's contractor perform work in or on the Conduit System in the absence of Licensor's representative. Licensor's representative shall have the right to stop work in or on the Conduit System if work does not comply with any safety regulation or procedure, any standards per Article IV, Section 2, or any specification of the construction drawings. Licensee shall reimburse Licensor for the cost of Licensor's representative and any inspections of Licensee's Facilities as specified in Article IX.
- c. The making of post-construction, subsequent and periodic inspections or the failure to do so shall not operate to relieve Licensee of any responsibility, obligation or liability specified in this Agreement.

7. Maintenance of Licensee's Facilities

Maintenance of Licensee's Facilities shall be performed by Licensor, its designated contractor, or Licensee. Licensor will, upon notification from Licensee, use Good Utility Practice to respond to reported interruptions of Licensee's cable facilities. Restoration of failed facilities will be dictated by investigated findings. At the Licensor's option, Licensor will perform work necessary for restoration for those facilities located in its Conduit System. Licensee shall pay all associated maintenance costs, including costs to access the Conduit System. Notwithstanding the foregoing provision, Licensor agrees if Licensor retains responsibility for maintenance of Licensee Facilities, Licensor will sub-contract maintenance work required to repair and restore service of Licensee's cable facilities to a qualified telecommunications maintenance company, to be selected by Licensee, subject to Licensor's approval. The maintenance company shall be granted access to the Conduit System and Licensee's facilities for the purpose of restoring service within such fixed period of time as may be agreed upon between Licensee and the selected sub-contractor. Licensor agrees to have supervisory personnel available within such fixed period of time in order to supervise the maintenance work required to repair and restore service, whose time and expenses will be billable to the Licensee.

8. Unauthorized Occupancies

- a. If any Facilities of Licensee or any other third party are found occupying a Conduit System for which authorization has not been granted by Licensor, the Licensor without prejudice to its other rights or remedies under this Agreement, including termination or otherwise, may impose a charge and require Licensee to submit in writing, within ten (10) days after receipt of written notification from Licensor of the unauthorized occupancy, a Conduit Occupancy application (Exhibit A) and as-built drawings per Article IV, Section 4-g. If such application and as-built drawings are not received by Licensor within the specified time period, Licensor may remove Licensee's Facilities without liability, and the cost of such removal shall be borne by Licensee.
- b. For the purpose of determining the applicable charge, the unauthorized Conduit Occupancy shall be treated as having existed for a period of five (5) years prior to its discovery; or for the period beginning with the date of the initial Agreement, whichever period shall be shorter, and the charges, as specified in Article VIII, shall be due and payable forthwith whether or not Licensee is permitted to continue the occupancy of the Conduit System.
- c. No act or failure to act by Licensor with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy and, if any Occupancy should be subsequently authorized said authorization shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement, or otherwise, provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized occupancy from its inception.
- d. Notwithstanding any provisions of this Article IV, Section 8 to the contrary, the foregoing provisions shall not apply to any Facilities of Licensee occupying a Conduit System for which written authorization and approval has been received by Licensee from Licensor.

**ARTICLE V
INSURANCE**

Licensee and, if applicable, its contractors and subcontractors must, during the term of this Agreement, procure and maintain insurance in the kinds and amounts listed below:

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.

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

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

Each party shall be named as an additional insured on the other party's liability insurance policy(ies) as respects the activities governed by this Agreement, and, if applicable, each contractor's and subcontractor's policy(ies), and the policy endorsed with a cross liability endorsement. Neither party shall be required to name subcontractors as additional insureds on any insurance policy.

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

Property Insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon the Facilities. Licensor and Licensee hereby mutually release each other (and their respective successors or assigns) from liability and waive all right of recovery against the other for any loss or damage 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.

Neither Licensee nor any contractor or subcontractor shall commence any work under this Agreement until Licensor 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, 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 Licensor. 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:

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

Licensee represents that it has full policy limits available and shall notify Licensor'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 Licensor and Licensee fails immediately to procure other insurance as specified, Licensor reserves the right to procure such insurance and to add the cost thereof to any sum due Licensor under this Agreement.

Licensee shall promptly furnish Licensor'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.

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 Conduit System or limiting, diminishing or waiving either party's obligation to indemnify, defend and save harmless the other as set forth in Article VI.

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

ARTICLE VI HOLD HARMLESS

Licensor agrees to release, hold harmless, defend and indemnify Licensee and its partners, employees, agents and assigns from any and all suits, claims, demands, liabilities (including bodily injury and death), damages, costs and reasonable expenses (including legal fees) arising from any negligent act or omission of Licensor or its employees, agents or independent contractors, or the willful misconduct of any thereof, or the breach of this Agreement, except to the extent attributable solely to the negligent or intentional act or omission of Licensee, its agents or independent contractors and except that Licensor shall have no liability for damages arising out of interruption to Licensee' operations or for lost revenue.

Licensee accepts the Conduit System in its present condition, "as is, where is." Licensee agrees to indemnify and save harmless Licensor, its officers, employees, agents and assigns from and against any loss, damage, liability, cost, suit, charge, cause of action, claim and expense, arising out of any damage to the Conduit System or injury to or death of any person as well as from any and all fines, levies, penalties, citations, assessments and fees from any local, state or federal agency, board, court or other governmental authority as a result of any alleged or actual violation of any laws, rules or regulations of such authorities or agencies arising out of, in connection with, or as a consequence of the activities of its agents, servants, employees, contractors or subcontractors, including but not limited to, the use (including ingress and egress) of the Conduit System, the Right-of-Occupancy and the transmission, installation, operation, use and maintenance of Licensee Facilities and the Conduit System, except to the extent attributable solely to the negligent or intentional act or omission of Licensor, its agents or independent contractors.

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

Each party shall take prompt action to defend and indemnify the other party against claims, actual or threatened, but in no event later than the time to answer the service of a summons, complaint, petition or other party alleging any damage, personal injury, liability, or expenses attributed in any way to the work, acts, fault, negligence, equipment, facilities, personnel, or property, of the party, its agents and employees. Each party 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, each party understands and agrees it is responsible for any all costs and expenses, including attorneys' fees, incurred by the other party to enforce this indemnification provision, if and to the extent such party, which should have indemnified the other, failed to do so.

The obligations set forth herein shall survive completion of the work and termination of this Agreement for any reason.

ARTICLE VII WAIVER OF CERTAIN DAMAGES

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,

Licensor 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 Facilities.

In addition, Licensee expressly acknowledges that its Facilities are exposed to many risks beyond the control of Licensor, including, but not limited to, fire, 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 to its Facilities that may arise in connection with these hazards.

ARTICLE VIII TERMINATIONS OF AUTHORIZATIONS

1. In addition to rights of termination provided to Licensor under other provisions of this Agreement, Licensor shall, subject to the stated opportunity for Licensee to cure, if any, have the right to terminate conduit occupancy, manhole occupancy and/or entrance authorizations and rights granted under provisions of this Agreement where:
 - a. the Licensee's Facilities are maintained or used in violation of any law or in aid of any unlawful act or undertaking subject to five (5) days to cure;
 - b. the Licensee ceases to have authority to construct and operate its Facilities on public or private property at the location of the particular Conduit System covered by the authorization subject to thirty (30) days to cure;
 - c. except as otherwise stated herein, the Licensee fails to comply with any of the terms and conditions of this Agreement or defaults in any of its material obligations thereunder subject to thirty (30) days to cure;
 - d. the Licensee's Facilities occupy Licensor's Conduit System without having first been issued an authorization therefore;
 - e. Licensee should permanently cease to provide its services;
 - f. Licensee's Facilities are used by others not a party to this Agreement without the prior written consent of Licensor, provided that such use shall not be construed as including use by Licensee's customers as provided for in Article III.
 - g. Licensee sublets or apports part of a Conduit Occupancy to an entity not a party to this Agreement without the prior written consent of Licensor, except as provided in Article III (5) of this Agreement;
 - h. Whenever a governmental agency and/or regulating authority requires the same, in which case Licensor will return Licensee's Facilities to Licensee and remove same at Licensee's expense.
 - i. Licensee's insurance carrier shall at any time notify Licensor that the policy or policies of insurance as required in Article V will be or have been canceled or amended so those requirements will no longer be satisfied;
 - j. Licensee shall fail to pay any sum due or to deposit any sum required under this Agreement, within thirty (30) days following Licensee's receipt of written notice requiring such payment or deposit from Licensor;
 - k. Any authorization which may be required by any governmental or private authority for the construction, operation and maintenance of Licensee's Facilities in the Conduit System is denied, revoked or canceled, provided however that Licensee's rights shall not terminate hereunder and Licensee shall not be required to remove its attachments so long as Licensee is diligently pursuing its best efforts to contest such denial or revocation in appropriate judicial and/or administrative proceedings, provided

that Licensee further agrees to protect, indemnify and hold harmless Licensor from any and all claims, fines, assessments, liability, demands or causes of action, suits or proceedings resulting from the presence of Licensee's attachments on Licensor's facilities during such period, including reasonable attorneys' fees and disbursements; or

- I. the Public Service Commission of the State of New York makes a determination that Licensee's Occupancy would make Licensor a telephone corporation for purposes of Commission regulation under the Public Service Law.
2. Licensee may at any time request removal of its facilities from a Conduit System by giving the Licensor ninety (90) days written notice of Licensee's intention to so remove its facilities (Exhibit E) at cost to Licensee. Following such notice, in the event Licensee does not remove its facilities within ninety (90) days, Licensor may, at its sole discretion, (a) remove such facilities at Licensee's sole cost and expense, or (b) consider such facilities abandoned in place.
3. In the event of termination of any of the Licensee's authorizations hereunder, the Licensor may remove or leave in place, at Licensor's option and sole discretion, Licensee's Facilities from the Conduit System within ninety (90) days of the effective date of the termination; provided, however, that Licensee shall be liable for and pay all fees and charges pursuant to provisions of this Agreement to the Licensor until Licensee's Facilities are actually removed from the Conduit System, and provided further that each party shall be required to perform any and all obligations under this Agreement until the date of actual removal. The Licensor shall have the right to remove such Facilities at the Licensee's expense and without any liability on the part of the Licensor for damage or injury to such Facilities or interruption of Licensee's services except for liability for damage or injury to such Facilities caused by the negligence of Licensor or its agents or employees.
4. When Licensee's Facilities are removed from Licensor's Conduit System, no further occupancy in the same Conduit System shall be permitted until the Licensee has first complied with all the provisions of this Agreement as though no such Conduit System occupancy had been previously made and all outstanding charges due to the Licensor for Conduit System occupancy have been paid in full.

ARTICLE IX RATES AND CHARGES

Licensee is responsible for payment of all actual rates, charges and costs as specified elsewhere in this Agreement and as set forth below. Licensee shall be responsible for payment of all charges relating to the Pre-Construction Survey, Make-Ready Work, and for all other work performed or expenses incurred by Licensor in support of Licensee's Conduit occupancy request, regardless of whether Licensee subsequently withdraws its application for occupancy of the Conduit System as to which such work is performed. When Licensor employs an outside contractor rather than its own workforce in support of Licensee's needs, the Licensee shall pay an amount equal to the contractor fee plus a ten percent (10%) administrative fee. Licensor shall make available upon request, copies of all written contracts, agreements and work orders pertinent to the work performed by such contractors.

Licensee shall make full payment for all fees within thirty (30) days from the date of billing. Licensee agrees that, in the event Licensee fails to pay an amount due and owing within the period of time set forth for payment in this Agreement, late charges or interest shall accrue on the unpaid balance thereof at the rate of 1-1/2% per month for each month from the expiration of such period until payment is received by Licensor.

Survey, Construction and Maintenance Costs

Unless otherwise agreed upon in writing between the parties, Pre-Construction Survey costs, Make-Ready Work costs, Licensee Facilities installation, maintenance and removal charges shall be based on a time and

materials basis in compliance with the Licensor's rate at the time the work is performed and calculated per Niagara Mohawk Electric System Bulletin #120A.

Occupancy Fee:

Licensee shall pay the designated occupancy charges, as specified in Exhibit D, or schedule currently filed with the Public Service Commission of the State of New York. The occupancy rate may be changed upon the filing of thirty (30) days notice of such change with the Public Service Commission of New York. Notice of any such filing will be given Licensee as covered in Article III, Section 7.

The payment initiation date for occupancy fees shall be the date the Make-Ready Work is completed and the Conduit System is ready for cable installation or the start date of fiber optic cable installation, whichever is first.

ARTICLE X TAXES

1. Licensee shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any memoranda or short form of this Agreement describing the Right-of-Occupancy granted to Licensee hereby.
2. Licensee further agrees that if it is determined by any state or local governmental authority that the sale, acquisition, license, grant, transfer or disposition of any part or portion of the Rights-of-Occupancy requires the payment of any taxes, including, but not limited to, sales, use, or tax on the furnishing of utility services, under any statute, regulation or rule, Licensee shall pay the same, to the extent such taxes are attributable to Licensee's use of the Conduit System, plus any penalty or interest thereon, directly to said taxing authority, and shall defend and hold Licensor harmless therefrom; provided, however, Licensee's obligation to hold Licensor harmless shall not apply to any penalty or interest due in respect of the delinquent payment of any such tax where the delinquency is due to Licensor's failure to promptly notify Licensee of any known assessment and/or levy of such tax and/or to send Licensee any invoice or bill in respect thereof.
3. Licensee shall pay all annual or periodic real property, personal property, gross receipts, franchise tax or other taxes levied or assessed upon the Right-of-Occupancy or on account of its existence, including, but not limited to, any taxes resulting from the increase of the assessed valuation of the Conduit System, and shall indemnify, defend and hold harmless Licensor against the payment thereof. Licensee shall pay all expenses incurred by Licensor in protesting any assessment of the Conduit System which is increased as a result of the Right-of-Occupancy. Said expenses shall include, but not be limited to, reasonable attorney's fees, and disbursements. Licensee shall be responsible for the filing of any and all returns or other filings in respect of such personal property taxes.
4. Licensor shall indemnify, defend and hold harmless Licensee from and against any annual or periodic taxes levied or assessed in respect of the Conduit System, exclusive of the Right-of-Occupancy, including net income taxes, and increases in such taxes. To the extent that Licensor is required to make any kind of submission or filing with any governmental or regulatory authority which could effect the amount of any tax that Licensee must pay pursuant to this Agreement, Licensor shall coordinate such submission or filing, and the information contained therein, with Licensee. The decision to make such a filing will be in the sole discretion of Licensor. Further, Licensor agrees that it shall provide Licensee prompt notice of the receipt of any notice of assessment in respect of the Conduit System, or any portion thereof, which may include as an increment of the amount of such assessment a sum which is attributable to this Agreement.
5. Licensee shall have the right to protest any such levy or assessment, subject to the provisions of paragraph 3 of this Article in respect of any such tax or other fee or charge which Licensee is obligated to pay in accordance with this Agreement, or to make claim for refund, rebate, reduction or abatement of any of said taxes, except where a separate property tax identification number has been assigned to the Right of Occupancy. Licensor shall have the right to protest any assessment of which it has been given notice pursuant to this Article. Each party shall cooperate, where appropriate, with the other party, at the cost and expense of the party requesting

such cooperation, including reasonable attorneys' fees, in the prosecution of any protest regarding the assessment and/or levy or any claim for refund, rebate, reduction or abatement of said taxes.

ARTICLE XI INTERFERENCE WORK AND RELOCATION COSTS

Licensors reserves to itself, its successors and assigns, the right to relocate and maintain its Conduit System and to use and operate its Conduit System in such a manner as will best enable it to fulfill its own service requirements.

If Licensors is required by any municipal or public authority to relocate its Conduit System which contains Licensee's Facilities, Licensee shall pay its proportionate share of total relocation costs. Such proportion shall be determined by multiplying such total costs by a fraction, the numerator of which shall be the number of Conduits used by Licensee in the Conduit System and the denominator of which shall be the number of Conduits used by Licensee, Licensors and any other persons or licenses in such System. The cost shall include all relocation costs and tie up costs reasonably incurred under the circumstances at the usual rates recoverable by Licensors in relocation projects.

ARTICLE XII EQUAL EMPLOYMENT OPPORTUNITIES

1. The provisions of the following laws, Executive Orders, and any rules and regulations issued thereunder, are incorporated herein by reference as part of the Agreement:
 - a. Paragraphs one (1) through seven (7) of Section 202 of Executive Order 11246, as amended, relating to equal opportunity in employment under government contracts and subcontracts;
 - b. Section 2012 of Title 38 of the United States Code and Executive Order 11701, as amended, relating to affirmative action obligations of government contractors and subcontractors for disabled veterans and veterans of the Vietnam era;
 - c. Section 503 of the Rehabilitation Act of 1973, and Executive Order 11758, as amended, relating to affirmative action obligations of government contractors and subcontractors for handicapped workers; and
 - d. The Human Rights Law of the State of New York (Article 15 of the Executive Law).
2. The parties agree to fully comply with such provisions, and any amendments thereof. In addition, all subcontractors and agreement that the parties enter into to accomplish the work under the terms of this Agreement shall obligate such subcontractors to comply with such provisions.
3. Federal Subcontracting Requirements
 - a. The provisions of the following laws, Executive Orders, and any rules and regulations issued thereunder, are incorporated herein by reference as part of this Agreement.
 - b. Executive Order 11625, as amended, relating to utilization of minority business enterprises in the performance of government contracts and subcontracts;
 - c. Executive Order 12138, as amended, relating to utilization of women-owned businesses in the performance of government contracts and subcontracts; and
 - d. Section 211 of Public Law 95-507, as amended, relating to utilization of small business concerns and small disadvantaged business concerns in the performance of government contracts and subcontracts.

4. The parties agree to fully comply with such provisions and any amendments thereof. In addition, all subcontracts and agreements the parties enter into to accomplish the work under the terms of this Agreement shall obligate such subcontractors comply with such provisions.

ARTICLE XIII ENVIRONMENTAL MATTERS

1. Licensor represents and warrants that it has in the past and agrees that it will in the future conduct its activities in full compliance with all applicable Environmental Laws.
2. The Conduit System will not be used by Licensor, its employees, agents or contractors to release, store, dispose of, treat or use any Hazardous Substances, except in compliance with applicable Environmental Laws. Licensor agrees to indemnify, defend and hold harmless Licensee 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 Licensee 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 Licensor or anyone acting under or on behalf of Licensor within the Conduit System.
3. Licensor agrees to promptly inform Licensee of any other uniquely sensitive and protected environmental resources within the Conduit System which are known to Licensor.
4. The Conduit System will not be used by Licensee, its employees, agents or contractors to release, store, dispose of, treat or use any Hazardous Substances, except in compliance with applicable Environmental Laws. Licensee agrees to indemnify, defend and hold harmless Licensor 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 Licensor 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 within the Conduit System.
5. Licensee shall not place any material within the Conduit System that is recognized by appropriate governmental authority as hazardous or toxic material or waste, except in compliance with applicable Environmental Laws.
6. 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 Licensor and any appropriate governmental agency if required by applicable Environmental Laws.
7. 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 portion of the Conduit System, the location shall be included on the "As-Built Drawings" furnished to Licensor in accordance with this Agreement.

ARTICLE XIV CONFIDENTIALITY

1. Licensor and Licensee agree to respect the confidentiality of this Agreement and materials used or prepared in connection herewith, and shall restrict the distribution of this Agreement and all maps, material, documents and information identified in this Agreement as confidential, only to those persons designated to implement the provisions hereof and their respective counsels, consultants and advisers; provided, however that any such disclosure to persons who are not employees and counsel(s) of the parties shall be made only after such persons have executed written agreement and/or been given notice of and agree to be bound by the terms of this Section and to not further disclose confidential information to additional persons absent written agreement

from the parties hereto. In the event information furnished to a party by the other party under the terms of this Agreement is considered to be confidential, proprietary information of the providing party, such information shall be so designated and any reproduction shall have a clearly visible stamp or label containing such proprietary information notice. The parties further agree that they shall not disclose or furnish to any third parties copies of this Agreement or any materials referred to herein, without the prior written consent of the other party hereto, except as shall be necessary in order to implement the provisions hereof, including the construction of the System, securing the necessary approvals therefore, and the financing of the System, and except as required by Court order or as otherwise required by law, the New York State Public Service Commission or any other governmental entity or in any legal proceedings relating to this Agreement.

2. Notwithstanding to the contrary, either party shall notify the other, as soon as practicable, in the event that any disclosure request as contemplated in Article XIV, Section 1 would require disclosure of confidential material provided by any one party to the other hereunder and the party so notified shall have the right to formally dispute any such disclosure or such confidential material where such disclosure would unreasonably harm, prejudice, or destroy such party's proprietary interest, the information requested is not rationally related to the purpose for which such information is sought, or such party could submit other non-confidential information that could satisfy the request. Any such party may petition for exemption from Freedom of Information Act or other similar disclosure requirements, for "in camera" inspection of such confidential information, or for other limitations on the disclosure of confidential information.
3. 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.
4. The parties recognize that this agreement and the materials and documents referred to herein, may contain information which a reasonably informed person would recognize as confidential, insider information which should be handled accordingly.
5. The parties agree that in distributing copies or portions of these materials to any person necessary to implement the same, such copies shall be clearly marked or indicated as "confidential" and prohibiting further distribution, copy or reproduction of the same.
6. In the event of an actual or threatened disclosure of such information by either party, its agents, employees, or contractors, which might cause irreparable harm to the other party, it is agreed that the monetary remedies available at all may be inadequate and, therefore, the aggrieved or threatened party shall be entitled to receive injunctive relief as an equitable remedy.
7. Notwithstanding the foregoing, confidential information shall not include information that (i) has become public knowledge through legal means without fault by the receiving party, (ii) is already public knowledge prior to the disclosing party's disclosure of the same to the receiving party, or (iii) is known to the receiving party prior to the disclosure of the same pursuant to this Agreement.
8. The obligations of the parties under Article XIV shall survive the expiration date for a period of two (2) years.

ARTICLE XV PROTECTION AGAINST LIENS ON PROPERTY

Licensee shall 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 Licensor harmless from all claims, demands, costs and liabilities, including attorney's fees and costs, in connection with or arising out of any such lien or claim of lien. Licensee shall cause any such lien imposed on the Property to be released of record by payment or posting of a proper bond within thirty (30) days after written request by Licensor.

**ARTICLE XVI
WARRANTIES**

1. Licensor makes no specific covenant, warranty or representation as to the ownership of complete title and fee simple easement or otherwise for the Property and/or right-of-way subject to this Agreement, but Licensor will make available to Licensee for its review all agreements and other documents in Licensor's possession in respect to the right, title and interest in and to the Property and/or right-of-way to be made subject to this Agreement. Licensor shall at all times 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 rights-of-way for the purposes contemplated under this Agreement.
2. LICENSOR PROVIDES NO GUARANTEES OR WARRANTIES WHATSOEVER EXCEPT AS MAY BE EXPLICITLY PROVIDED HEREIN and Licensor's liability for any warranty obligation whatsoever shall be limited to no more than the sum(s) paid by Licensee to Licensor for the involved location or equipment that is subject to any claim which may arise hereunder for the calendar year during which cause for any such claim arose.
3. Licensor DOES NOT WARRANT TITLE, DESCRIPTION, VALUE, QUALITY, CONDITIONS, WORKS AND ABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE ENGINEERING, WORKMANSHIP OR RIGHTS-OF-WAYS SUBJECT OT THIS AGREEMENT EXCEPT AS IS EXPLICITLY STATED OTHERWISE IN THIS AGREEMENT.

**ARTICLE XVII
MISCELLANEOUS**

1. Licensor, at its sole discretion, shall have the right to remove any Licensee employee, agent or contractor for cause and with notification provided to Licensee upon such removal from the Property.
2. Licensee, its partners, agents, servants, employees, contractors and subcontractors agree to 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, its partners, agents, servants, employees, contractors or subcontractors while engaged in the uses covered by this Agreement or arising out of the performance of such uses.
3. Licensor's activities in approving and/or supporting Licensee's engineering, design, planning, construction, installation and maintenance efforts and any periodic and post-construction inspections, shall not relieve Licensee of any responsibility, obligation or liability specified in this Agreement; and Licensee shall indemnify and hold harmless Licensor from and against any and all claims, suits actions, causes of actions, assessments, losses, penalties, costs, damages, and expenses, including without limitations, attorney's fees sustained or incurred by Licensor arising out of or in connection with the performance of said activities.
4. This Agreement and Exhibits thereto, constitute the entire agreement between the parties, and supersedes all offers, negotiations and other agreements relating to the Licensee's use of Licensor's Conduit System and shall be binding upon and inure to the benefit of the parties, their successors and assigns. There are no representations or understandings of any kind not set forth herein. Any amendments or modifications to this Agreement must be in writing and executed by duly authorized officers or agents of both parties.
5. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, and questions of its validity and interpretation, including any questions regarding performance or default hereunder, shall be construed in accordance with the Law of the State of New York, without regard to 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.
6. Construction of Agreement. The 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, unless otherwise indicated, are to Articles 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.

7. Remedies. 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 remedies are expressly limited in this Agreement.
8. Severability. 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 ways affecting the validity, legality or enforceability of the remaining provisions hereof, and any such invalidity, illegality or unenforceability in any jurisdiction shall not invalidate or in any way affect the validity, legality or enforceability of such provision in any other jurisdiction.
9. No Merger. There shall be no merger of this Agreement or the Rights-of-Occupancy hereby granted with the fee estate in a right-of-way by reason of the fact that this Agreement, and the Rights-of-Occupancy created by this Agreement, or any interest in this Agreement or in any such Rights-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 estates, and no such merger shall occur unless and until all persons having an interest in this Agreement, and the Rights-of-Occupancy created by this Agreement, shall join in a written instrument effecting such merger and shall duly record the same.
10. Acts in Furtherance of Agreement. Licensee and Licensor each agree to do such other and further acts and things, and to execute and deliver such additional instruments and documents, not creating any obligations, or imposing any expenses, additional to those otherwise created or imposed by this Agreement, as either party may reasonably request from time to time whether at or after the execution of this Agreement, in furtherance of the express provisions of this Agreement.
11. Drug and Alcohol Abuse Policy. Licensee personnel, its agents and contractors 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. Licensee' personnel, agents and contractors shall not bring, use, distribute, sell or possess alcoholic beverages or illegal drugs during the performance of any activities on Licensor Property. Licensee shall not assign any individual who is in violation of this policy to perform any activities pursuant to this Agreement, and if Licensee discovers any individual is in violation of these requirements, it shall immediately remove any such person from the performance of activities and/or Licensor Property. Violation of these requirements by Licensee personnel, agents and contractors shall result in denial of access of that individual(s) to Licensor Property, facilities and equipment and, in the case of possession, use or sale of illegal drugs, shall be reported to Licensor's Security Department immediately.

ARTICLE XVIII WAIVER OF TERMS AND CONDITIONS

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 the 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.

**ARTICLE XIX
TERM OF AGREEMENT**

If not terminated in accordance with Article VIII, this Agreement shall continue in effect for a term of ten (10) years from its Execution Date. Licensee shall have the right to renew this Agreement for two (2) successive ten (10) year terms upon sixty (60) days prior written notice to Licensor. Thereafter, either party may terminate this Agreement upon One Hundred and Eighty (180) days prior written notice to the other party.

**ARTICLE XX
FORCE MAJEURE**

Neither Licensee nor Licensor shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly from Acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes, labor or transportation or any cause beyond the reasonable control of the affected party. The affected party upon giving written notice of the force majeure condition to the other party shall be excused from the performance to the extent necessitated; provided however, that the Licensee shall use its best efforts to correct such conditions as soon as possible, and the Licensor shall use Good Utility Practice to correct such condition as soon as possible.

**ARTICLE XXI
EXTENT OF LICENSE**

Nothing herein contained shall be construed as a grant by Licensor of any right or privilege to Licensee unless otherwise provided. Licensor shall have the right to grant, renew and extend rights, licenses, and privileges to others not parties to this Agreement, by contract or otherwise, to use any Conduit System covered by this Agreement.

**ARTICLE XXII
AMENDMENTS**

1. Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement.
2. Neither this Agreement nor any term or provision hereof can be amended, waived, modified, supplemented, discharged or terminated, except by an instrument in writing signed by the party against which enforcement thereof is sought.
3. This Agreement and any amendment, modification, waiver or supplement hereto may be executed by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

**ARTICLE XXIII
PUBLIC SERVICE COMMISSION APPROVAL**

This Agreement may be subject to approval by the New York Public Service Commission and/or other State and Federal Regulatory agencies. In the event that such regulatory approvals are required and cannot be obtained, either party shall have the option of terminating this Agreement.

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

NIAGARA MOHAWK POWER CORP. (Licensor)

By: _____

Title: _____

Date: _____

_____ (Licensee)

By: _____

Title: _____

Date: _____



EXHIBIT A

Attachment 1

National Grid² Conduit Occupancy Attachment License Application

Request for Occupancy to National Grid Distribution Underground Facilities

Submit this form to initiate a conduit occupancy request to electric underground system.

Project Contact:	<input type="text"/>
Title:	<input type="text"/>
Company:	<input type="text"/>
Street Address:	<input type="text"/>
City:	<input type="text"/>
State:	<input type="text"/>
Zip Code:	<input type="text"/>
E-mail Address:	<input type="text"/>
Business Phone:	<input type="text"/>
Fax Number:	<input type="text"/>
Type of Business: (Private, Municipality, Government Agency)	<input type="text"/>
Municipality where occupancy will be located: (City, Town, Village of)	<input type="text"/>
Length of conduit occupancy feet	<input type="text"/>
Date that licenses are needed:	<input type="text"/>
Construction/Maintenance contact:	<input type="text"/>
24 hr. Emergency contact number:	<input type="text"/>

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.



CONDUIT OCCUPANCY LICENSE APPLICATION

TO: Name of Conduit Owner: Niagara Mohawk Power Corporation (“Niagara Mohawk” or “Licensor”)

Address of Conduit Owner: Niagara Mohawk Power Corporation
300 Erie Blvd. West
Syracuse, NY 13202

I accordance with the terms and conditions of the Standard Form Conduit System Right-of-Occupancy Agreement (“Agreement”) between the Licensor and Licensee, dated as of _____, _____, application is hereby made for a license to occupy conduit in the Licensor underground conduit system which is indicated on the attached “Application Occupancy Sheet,” Exhibit #B. Each application has been limited to a **maximum of 50 manhole sections** with complete descriptions of all facilities, including quantities, sizes, and types of cable and equipment to be installed enclosed. Applications containing multiple tax districts (municipalities) shall be submitted on separate Exhibit B sheets. This application has been prioritized to reflect the order in which the application should be worked. This application has been prioritized to reflect the order in which the application should be worked.

Upon notice from Niagara Mohawk of work assignments and the associated cost, the Licensee shall as applicable, promptly submit payment for Niagara Mohawk costs to conduct the Pre-construction Survey, Make-Ready Work and/or Post Construction Inspection. Niagara Mohawk costs and fees shall be assigned in accordance with the Agreement and established fee schedules or cost methodologies. Licensee acknowledges that delayed payment by the Licensee will result in Licensor delays in processing the Licensee’s conduit occupancy application and License. It will be required that a pre-construction survey be performed for each conduit occupancy listed on the Application. The Licensor will inspect all Licensee installation work. The Licensee agrees that in the event Niagara Mohawk elects to conduct a post-construction survey, this cost will be billed separately and is not included in the above.

In accordance with the Agreement, each occupant will be subject to a Monthly Conduit Occupancy Rental Rate. Fees and rates are subject to change. Conduit Occupancy applications shall be made under separate application to National Grid.

LICENSEE:
(Name of Party to be Licensed)

APPLICANT
(Party Submitting Application for Licensee)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Niagara Mohawk Power Corporation



CONDUIT OCCUPANCY LICENSE APPLICATION Application Checklist³

Applicant shall complete and submit this checklist. The National Grid Telecommunications Attachments Group (TAG) will review the application and notify the Applicant of any deficiencies or supplemental information required. Failure to submit the full amount of the Application Fee and/or complete Attachment #1 and Exhibit B will render the application incomplete and delay processing.

- | | <u>Attached</u> |
|--|--------------------------|
| 1. Attachment # 1 - (includes the following) | <input type="checkbox"/> |
| - Request for Conduit Occupancy to NMPC Facilities (page 1 of 3) | <input type="checkbox"/> |
| - Standard Conduit Occupancy License Application (page 2 of 3) | <input type="checkbox"/> |
| - Application Checklist (page 3 of 3) | <input type="checkbox"/> |
| 2. Exhibit # B – Route Map | <input type="checkbox"/> |
| 3. Conduit Occupancy technical information (to be provided for each occupancy) | <input type="checkbox"/> |
| Fiber diameter _____(in.) | |
| Fiber weight _____(lbs./ft.) | |
| Innerduct diameter _____(in.) | |
| Innerduct weight _____(lbs./ft.) | |
| 4. Submittals: | |
| A. <u>One electronic file copy via email</u> of the Application (Attachment 1 & Exhibit B) to TAG. <u>Two (2) hard copies</u> of the complete Application including catalog cuts for types of fiber and innerduct to be used, and Route Maps shall be issued to TAG via U.S. Mail. | <input type="checkbox"/> |
| B. Application Fee: This Fee will be invoiced by National Grid to the Applicant, payable by check (to: <i>National Grid</i>) for the Pre-Paid Application Fee of <u>\$128.00 per Application</u> . This payment is to be <u>mailed to the National Grid address shown on the invoice.</u> Payment of the Application Fee is required for the application process to proceed. | <input type="checkbox"/> |
| 5. Other project information submitted / comments: | |

Please send Application to TAG:

National Grid USA Service Company, Inc.
Telecommunications Attachments Group
636 Quaker Rd.
Glens Falls, NY 12801-3266
nmnytele@us.ngrid.com
 Fax: 518.471.7718
 For assistance call: 518.761.5850 or 315.428.6688

³ Before an application can be submitted the Licensee must be signatory to the Niagara Mohawk Power Corporation Standard Form Conduit System Right-of-Occupancy Agreement.

EXHIBIT B



Niagara Mohawk Power Corporation d.b.a. National Grid

**Application – Conduit Occupancy Sheet for
Fiber Optics**

Licensee Contact Information

Tel No.:

Cell No.:

Fax. No.:

Email:

Licensee Attachee Code:

NM Work Request No:

Type of Licensee: CATV___ CLEC___ OTHER___

Elec. tax dist No. :

Sheet 1 of ___

EL div/dist:

Municipality:
(T/C/V)*

Item	Street / Road name	From Manhole	To Manhole	Footage	Submittals			Remarks
					Route Map	Catalog Cut - Fiber	Catalog Cut - Innerduct	
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								

Licensee's Representative (Signature) _____ Date _____

Licensee's Representative (Signature) _____ Date _____

Effective Date of License _____

EXHIBIT B



Niagara Mohawk Power Corporation d.b.a. National Grid

Licensee Contact Information	
Tel No.:	
Cell No.:	
Fax. No.:	
Email:	

Licensee Attachee Code:	
NM Work Request No:	
Type of Licensee: CATV___ CLEC___ OTHER___	

EL div/dist:	
Municipality: (T/C/V)*	

**Application – Conduit Occupancy Sheet
for Fiber Optics**

Elec. tax dist No. :	
Sheet <u>2</u> of ___	

Item	Street / Road name	From Manhole	To Manhole	Footage	Submittals			Remarks
					Route Map	Catalog Cut - Fiber	Catalog Cut - Innerduct	
26								
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44								
45								
46								
47								
48								
49								
50								

Licensee's Representative (Signature) _____	Date _____	Effective Date of License _____
Licensee's Representative (Signature) _____	Date _____	

EXHIBIT C

Niagara Mohawk⁴ (Licensor) PROCEDURE FOR REVIEW OF CONDUIT SYSTEMS TO ACCOMMODATE REQUESTED RIGHTS-OF-OCCUPANCIES

When an application is submitted for license by Licensee to place its cable, facilities and/or equipment in Licensor's Conduit System, Licensor will advise Licensee whether there is available Conduit space. In determining the availability of space in Licensor's Conduit System, Licensor will consider its present and future system and maintenance needs. If it is determined that Conduit space is available, a License to occupy the Conduit System will be granted to Licensee. Licensor does not warrant the condition of such conduit.

RECORDS

Licensor's Conduit records will be reviewed to determine if Conduits may be available.

LONG RANGE PLANS

Long range plans, projected load growth and existing electrical network studies, will be reviewed to determine core business requirements. Conduit availability for Licensee use shall be determined on the following basis:

- a. When future Conduit requirements indicate that Licensor will have sufficient conduits available to meet its service needs for the next five years, and any municipal obligations.
- b. Conduit(s) shall be retained for emergency maintenance.

FIELD SURVEY

As part of a pre-construction survey, Licensor will conduct a field review along the proposed route to confirm Conduit availability.

OTHER CONSIDERATIONS

Licensor may deny a License for safety, reliability or generally applicable engineering purposes.

⁴ 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.

EXHIBIT D

SCHEDULE FOR RATES FOR NIAGARA MOHAWK POWER CORPORATION⁵ RIGHT-OF-OCCUPANCY

This Exhibit C is made an integral part of the Conduit Occupancy Agreement between Niagara Mohawk Power Corporation and the Licensee and contains the fees and charges governing the use of Licensor's Conduit System to accommodate Licensee's Facilities (as such term is defined in the Agreement) in the State of New York.

- 1.. Occupancy Fee effective March 1, 2001
\$.19 per month/Innerduct foot occupied
\$16.00 per month/Splice Closure
\$16.00 per month/fiber optic cable slack coil/loop

2. Computation:

Fee shall be computed from the issuance date of the License to the date of termination thereof. For the purpose of computing the total Conduit Occupancy Fee due hereunder, the length of the Conduit or Innerduct shall be measured from the center of the manholes, or from the center of the manhole to the end of the Licensor's Conduit System occupied by Licensee's Facilities.

⁵ 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.

EXHIBIT E

**NOTIFICATION TO REMOVE LICENSEE
FACILITIES FROM CONDUIT SYSTEM**

_____ N.Y. _____ 19____

TO: NIAGARA MOHAWK POWER CORPORATION

, New York

In accordance with the terms and conditions of the Conduit Occupancy Agreement between us dated as of _____ 19____, kindly remove from your Conduit System the following Licensee Facilities covered by the Licenses indicated.

License No. _____ Dated _____, 19____

Location _____

<u>From</u> <u>Manhole at</u>	<u>To</u> <u>Manhole at</u>	<u>Municipality</u>	<u>Rental</u> <u>Length</u>
----------------------------------	--------------------------------	---------------------	--------------------------------

Licensee

By _____

Title _____

Ship Facility Removed To

Notification shall be submitted in duplicate.

EXHIBIT F

LICENSE AGREEMENT
To UTILIZE
NIAGARA MOHAWK POWER CORPORATION⁶
UNDERGROUND CONDUIT MAPS (DRAWINGS)

THIS AGREEMENT, made this _____ day of _____, 200___, by and between **NIAGARA MOHAWK POWER CORPORATION** (hereinafter called Niagara Mohawk), a New York corporation having its principal offices located at 300 Erie Boulevard West, Syracuse, New York 13202, and _____, a _____ corporation having its principal offices located at _____ (hereinafter called Licensee, collectively referred to as the Parties), for a license to utilize selected Niagara Mohawk underground conduit maps (drawings) for use by the Licensee in the conduct of their business in Niagara Mohawk’s service territory.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Niagara Mohawk will license to the Licensee, on a non-exclusive basis, for a fee of two hundred and fifty dollars (\$250) per map or drawing, the use of the maps and drawings attached as Exhibit “A” to this Agreement.
2. Licensee hereby agrees to utilize the information on the maps and drawings solely for the purposes of its primary business of providing communication services to the public, and will return the underground conduit maps and drawings upon the expiration or termination of this License.
3. Niagara Mohawk does not provide any warranty, express or implied, regarding the accuracy or the value of the maps and drawings to the Licensee or any third party, and Licensee accepts receipt of these under such condition.

⁶ 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.

4. Licensee agrees to keep confidential the information provided to it under this License, and not to share it or the maps and drawings with any third parties whatsoever without the advance written approval of Niagara Mohawk. Licensee further agrees that these maps and drawings have commercial value and Niagara Mohawk is under no obligation to provide approval to Licensee to permit Licensee to share this information with any third party. In the event Licensee violates this requirement, it agrees to pay Niagara Mohawk liquidated damages in the amount of Five Thousand Dollars (\$5,000.00) per map or drawing provided to a third party in addition to any other rights Niagara Mohawk may have at law.

5. The term of this License shall be indefinite from the date first above written, subject to either party's right to terminate the License upon ten (10) days written notice to the other, or, if there shall be any violation of the conditions contained herein, the License shall end on five (5) days written notice from Niagara Mohawk to Licensee to that effect. If such License shall be terminated by Niagara Mohawk for reasons other than a violation by Licensee of the conditions herein within two (2) years of the commencement of the License, Niagara Mohawk shall refund one half of the fee paid under this Agreement. Otherwise, there will be no refund.

6. Payment of the fee shall be due within thirty (30) days from the date of invoice.

The Parties hereby signify their agreement to these License terms and conditions by executing this Agreement by duly authorized representatives of each.

NIAGARA MOHAWK POWER CORPORATION

_____ LICENSEE

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

1.1 Exhibit "A"

The following maps and drawings are attached to this contract and subject to the terms and conditions therein:

Niagara Mohawk Region: _____

NMPC Map #'s _____ date: _____

Municipality(s)	NMPC Map #	Revision (date)