

NIAGARA MOHAWK POWER CORPORATION¹

and

Licensee

Dated as of _____

WIRELESS FACILITIES

RIGHT-OF-OCCUPANCY AGREEMENT

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.

WIRELESS FACILITIES RIGHT-OF-OCCUPANCY AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of this ____ day of _____, 200_ (the "Execution Date"), between Niagara Mohawk Power Corporation², a corporation organized and existing under the laws of the State of New York, having its principal office at 300 Erie Boulevard West, Syracuse, NY 13202 (hereinafter called "NGrid"), and Licensee _____, a _____ corporation, having an office at _____, (hereinafter called "Licensee"). For good and valuable consideration, the parties hereto agree as follows:

RECITALS

NGrid is the owner of certain facilities identified herein that may be suitable for the attachment of antennas and related equipment for wireless communications, and/or for the installation of towers or poles on which such antennas and related equipment could be installed; and

NGrid wishes to permit such use of its facilities in return for the fees and other consideration specified herein; and

Licensee wishes to obtain from NGrid certain rights specified herein, including the right to install or manage the installation of such wireless communications equipment on and at certain NGrid facilities, and the right to sub-license third party communications companies to use such installed equipment.

In consideration of the foregoing recitals and the covenants set forth below, NGrid and Licensee hereby agree as follows:

1. CERTAIN DEFINITIONS

1.0 **Actual Cost** shall mean expenses incurred by NGrid, to be paid by Licensee, in connection with Licensee's request, installation and ongoing use of the Property, which shall include but are not limited to NGrid's fully allocated costs and expenses including appropriate overhead costs.

1.1 **Affiliates** of a party shall mean any entity controlling, controlled by or under common control with such party.

1.2 **Bona Fide Objection** shall mean any condition that is likely to cause interference with NGrid's operations, pose a hazard to NGrid's personnel, customers, properties or facilities, constitute a material violation of law, regulation, code and/or NGrid's construction standards and policies, unreasonably limit the use of the Right-of-Way, or cause a devaluation of NGrid's right, title or interest in the Right-of-Way.

1.3 **Competent Person** shall mean one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and

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.

who has the authorization to take prompt corrective measures to eliminate them (i.e., as defined in 29 C.F.R. Part 1926.32(g) of the OSHA Regulations).

1.4 **Environmental Laws** shall mean 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.

1.5 **Estimated Cost** shall mean a reasonable, good faith estimate of the Actual Cost.

1.6 **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 NGrid. Good Utility Practice shall include conformance to the policies, criteria, practices, guidelines and requirements of the National Electric Reliability Council, the Northeast Power Coordination Council and the New England or New York Independent System Operators, or their successor organizations.

1.7 **Hazardous Substance** shall mean any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; any and all material or substance defined as hazardous pursuant to any federal, state or local laws, regulations or orders; and any substance which is or becomes regulated by any federal, state or local governmental authority.

1.8 **Installation** shall mean to install or construct, including associated removal activities.

1.9 **Land** shall mean the parcel of land identified in a Supplemental Agreement.

1.10 **Maintenance** or **Maintain** shall mean maintenance, inspection or repairs.

1.11 **Modify** or **Modification** shall mean alter, improve, revise, upgrade, relocate, replace or reinstall.

1.12 **Occupancy Fee** shall mean the fee Licensee shall pay to NGrid under this Agreement for the right to occupy, improve and utilize the Property as authorized herein.

1.13 **Payment Commencement Date** for each Supplemental Agreement shall mean the date when (a) Licensee notifies NGrid that Licensee has obtained all of the approvals required for the Installation of its Wireless Facilities or the Wireless Facilities of the first Sub-licensee at the Property covered by such

Supplemental Agreement or (b) Licensee or Sub-licensee begins Installation of said Wireless Facilities, whichever occurs first.

1.14 **Property** shall mean the Land and the Structure thereon, collectively.

1.15 **Right-of-Occupancy** shall mean the right granted by NGrid to Licensee in a Supplemental Agreement to install, or have installed, consistent with this Agreement, Wireless Facilities upon the Property identified therein and for the Installation, operation, use, Maintenance and Modification of such Wireless Facilities.

1.16 **Right-of-Way** shall mean any parcel of real property controlled by NGrid, whether in fee or by easement, lease, license, permit, franchise or otherwise, identified by the parties as specified in Section 3.

1.17 **Structure** shall mean NGrid's communications towers, electrical transmission towers and/or other structures, buildings, stacks or facilities, as identified in each Supplemental Agreement.

1.18 **Sub-licensee** shall mean a Third Party to whom Licensee sub-licenses the right to operate some or all of the Wireless Facilities located at a particular Property.

1.19 **Supplemental Agreement** is any supplement to this Agreement extending the Right-of-Occupancy to identified Property.

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

1.21 **Wireless Facilities** shall mean the necessary facilities, including temporary facilities, and all related equipment, including antennas, cable and telephone lines, accessories and the equipment cabinet shelters or cabinets, electrical lines, batteries, solar arrays, backup power generators and fuel tanks associated with the wireless communications systems of the Sub-licensees that are installed on a Property in compliance with this Agreement. Licensee owned and installed microwave dishes used in conjunction with Licensee's wireless communications services shall also be included within the definition of "Wireless Facilities" but shall be subject to a separate Occupancy Fee Schedule.

2. SCOPE OF AGREEMENT / RIGHT OF OCCUPANCY

2.0 Subject to the provisions of this Right of Occupancy Agreement and the rights of any Third Party fee owners of the Land, upon the execution of a Supplemental Agreement by Licensee and NGrid, which shall be in the form attached hereto as EXHIBIT A, Licensee shall acquire a non-exclusive Right-of-Occupancy of the NGrid Property identified therein, for the Installation, operation, use, Maintenance and Modification of Wireless Facilities for the period of time as defined herein at Section 6.0. Provided however, that with regard to any existing wireless attachments of NGrid licensees (i.e., wireless attachments existing or under construction as of the Execution Date), Licensee shall not be granted a Right or Occupancy, or the ability to sub-license, to such existing NGrid licensees for said existing wireless attachments. The Right-of-Occupancy shall be terminable only in accordance with the terms and provisions of this Agreement.

2.1 The rights granted to Licensee by this Agreement and each Supplemental Agreement shall constitute a Right-of-Occupancy burdening the subject Right-of-Way to the extent that such Right-of-Occupancy is permitted pursuant to the terms of the applicable contracts, deeds, agreements, easements, leases, licenses, permits or franchises conveying to NGrid its individual legal rights in such Right-of-Way subject to

this Agreement. The Right-of-Occupancy does not provide Licensee with any ownership interests in NGrid's facilities, real property or personal property.

2.2 It is understood that NGrid's rights in the Right-of-Way may not be sufficiently broad under law to permit Licensee to use the Property for the purpose set forth in Section 5.0. In any instance where it is determined that the NGrid Right-of-Way may not be sufficiently broad under law to permit Licensee to use the Property, Licensee may (a) obtain the required land use rights directly from the necessary Third Parties or (b) request NGrid to obtain, in NGrid's name, the required land use rights (including rights in land which is not part of the Property) or to obtain, with or without the active participation of Licensee, at Licensee's election, such required land use rights in the name of Licensee. In either event, all costs and expenses arising out of, in connection with or as a consequence of obtaining such required land use rights (including, but not limited to, settlements made with fee owners to purchase land use rights) shall be paid by Licensee, unless otherwise determined by NGrid in its sole and absolute discretion, either as reimbursement to NGrid or as direct payments to the fee owners, whichever is applicable. Prior to obtaining such land use rights, NGrid will provide Licensee with an Estimated Cost. Within thirty (30) days of receipt of such estimate, Licensee, at its option, may elect not to proceed with that particular Right-of-Way and may terminate the relevant Supplemental Agreement.

2.3 NGrid will, upon written request by Licensee, subject to confidentiality provisions, provide available information and copies of any documents in its files pertinent to the nature of the rights NGrid possesses over its Rights-of-Way. All costs, fees and expenses (including labor) of providing such information and reproducing documents shall be paid by Licensee.

2.4 Nothing contained herein shall be construed to compel NGrid to construct, reconstruct, retain, extend, repair, place, replace or maintain any Right-of-Way or NGrid facilities not needed for NGrid's own service requirements; provided, however, that NGrid shall attempt to give Licensee not less than one (1) year's prior notice of its intent to abandon any Right-of-Way which is the subject of a Supplemental Agreement (except in the case of an emergency). If it is reasonable to do so, NGrid will leave Licensee's Wireless Facilities in place. If it is not reasonable to do so, Licensee may select an alternative site in another Right-of-Way and terminate the Supplemental Agreement relating to the abandoned Right-of-Way.

2.5 NGrid reserves to itself, its successors and assigns the right to relocate, operate and maintain NGrid's facilities or Rights-of-Way in such a manner as will best enable it to fulfill its own service requirements; provided, however, that NGrid shall attempt to give Licensee not less than one (1) year's prior notice of its intent to relocate any of its facilities or Rights-of-Way which is the subject of a Supplemental Agreement (except in the case of an emergency). If it is reasonable to do so, NGrid will leave Licensee's Wireless Facilities in place. If it is not reasonable to do so, Licensee may select an alternative site and terminate the Supplemental Agreement relating to the relocated facilities or Right-of-Way.

2.6 Nothing herein contained shall be construed as a grant by NGrid of any exclusive Right-of-Occupancy, right or privilege to Licensee. Furthermore, NGrid reserves the right and privilege of granting other rights-of-occupancy and rights of use on any part of the Property to any Third Party for any purpose, subject, however, to Section 8.1.

3. SUPPLEMENTAL AGREEMENTS

3.0 Each specific Right-of-Way that will be subject to the Right-of-Occupancy and the specific Structure or Structures thereon, shall be defined in a Supplemental Agreement, each of which will be duly executed and deemed attached hereto and made a part hereof, and will be subject to the same terms and conditions contained in this Agreement.

3.1 Nothing in this Agreement shall be construed to obligate NGrid or Licensee to enter into a minimum number of Supplemental Agreements or to obligate NGrid to grant Rights-of-Occupancy. NGrid reserves the right to reject a request for a Right-of-Occupancy at any location at NGrid's sole discretion.

4. SITE ACCESS

4.0 Licensee will provide advance notification to NGrid of all entries by Licensee's employees, agents or contractors onto any Right-of-Way.

4.1 Subject to the rights of the fee owners of the Land and NGrid's right to maintain, operate and repair its Property, NGrid will provide Licensee unlimited, unescorted access to its Wireless Facilities at each Structure base, except to those Licensee Wireless Facilities located within an electrical substation or to other locations requiring escorted access. Locations requiring escorted access shall be identified in the Supplemental Agreement. NGrid will permit Licensee to install its own lock(s) on the gate(s) to the Property, which lock(s) will interlock with NGrid's lock(s), thus permitting both parties access to the Property. Licensee will not allow any Third Party other than its employees, agents, and contractors to enter the Property without the prior written approval of NGrid, which approval shall not be unreasonably withheld, conditioned or delayed. At no time may Licensee's vehicles or equipment block the access roads. Additionally, Licensee agrees that it will keep the gate(s) locked at all times, unless otherwise directed by NGrid's employees who may be on the Property. At no time will Licensee, its employees or contractors be permitted access onto any Structure which is an electrical transmission tower. Access onto any such Structure will be limited to NGrid, NGrid employees or NGrid approved contractors, at Licensee's sole cost and expense. Access to the Property will be over roads/drives as designated by NGrid, and are subject to change at NGrid's sole discretion.

5. USE

5.0 The Property will be used by Licensee and its Sub-licensees solely for the Installation, operation, Maintenance and Modification of Wireless Facilities.

5.1 Licensee acknowledges that certain activities, including, but not limited to, Installation, Maintenance and Modification of Wireless Facilities, to be performed in connection with this Agreement may pose great hazards to human beings and personal property. Licensee agrees to warn all of its employees, agents and contractors accessing the Rights-of-Way of these hazards as well as the potential consequences associated with exposure to these hazards. If the Supplemental Agreement includes property in New York State, all employees, agents and contractors of Licensee accessing the Rights-of-Way will be given a copy of New York State's High Voltage Proximity Act and advised of required clearances to electric conductors. Furthermore, subject to the terms of Article 17, Licensee shall be responsible for any and all injury and damages to persons or property resulting from these hazards or any failure by Licensee to advise its

employees, agents or contractors accessing the Rights-of-Way of these hazards as required herein or, to the extent applicable, any failure by Licensee, its employees, agents or contractors to comply with New York State's High Voltage Proximity Act.

5.2 Unless otherwise agreed to, Licensee shall be prohibited from installing any Wireless Facilities on the Property without the prior written approval of NGrid, which approval shall not be unreasonably withheld, conditioned or delayed. Licensee shall provide written notice of all proposed contractors to NGrid for its review and acceptance, together with a summary of work to be completed, at least ten (10) business days prior to commencement of any Installation, Maintenance or Modification of Wireless Facilities. No work shall commence until NGrid gives its approval of such contractors and summary of work, which approval shall not be unreasonably withheld, conditioned or delayed. During the process of designing and installing the permanent Wireless Facilities on the Property, and during any period of repair of the permanent Wireless Facilities, Licensee or its Sub-licensee may locate and operate on the Property portable Wireless Facilities on a temporary basis, provided that NGrid has given its approval of such portable Wireless Facilities, which approval shall not be unreasonably withheld, conditioned or delayed, subject to the rights of underlying property owners, if any, and provided that such usage otherwise complies with the requirements of this Agreement.

5.3 Licensee shall provide NGrid with copies of the proposed installation plans and specifications for such Wireless Facilities for review and approval. Following each submission, but no later than ten (10) business days after its receipt thereof, NGrid shall approve such plans and specifications in whole or in part, or raise bona fide objections thereto or reject the same, in writing, in which case NGrid shall describe in reasonable detail the basis for such objections or rejection and any modifications to such plans and specifications that can be made in order to obtain its acceptance.

5.4 Upon receipt of any such objections, Licensee shall either (a) modify the plans and specifications by making appropriate changes thereto and resubmitting them to NGrid for its approval, or (b) dispute such objections by referring the matter in question to NGrid for determination in the first instance, and without thereby waiving any rights in respect to the matter in controversy. Any disputes will be governed by the provisions contained in Section 34.

5.5 Notwithstanding anything herein to the contrary, the parties agree to work co-operatively, consistent with NGrid's public service responsibilities, to assure that all Licensee plans and specifications are reviewed and accepted by NGrid in support of Licensee's construction schedule. After acceptance, such plans and specifications will be considered incorporated in the relevant Supplemental Agreement.

5.6 All plans and specifications shall remain the property of Licensee and shall be treated as confidential trade secret materials of Licensee. NGrid shall receive, at no cost or expense, two (2) copies of all as-built drawings, maps, site plans and geographic and environmental surveys. NGrid shall not knowingly permit or suffer any person to copy or utilize the plans for any purpose other than the exercise of a right on behalf of NGrid or Licensee as authorized in this Agreement.

5.7 Upon Licensee's receipt of all required approvals (to include, but not be limited to, approved plans and specifications), Installation of the Wireless Facilities in accordance with this Agreement shall be permitted.

5.8 Licensee shall obtain or cause its Sub-licensees to obtain, at its own cost and expense, all necessary franchises, licenses, permits or rights which relate to any use of the Wireless Facilities and/or the Property

by them, and Licensee shall provide or cause its Sub-licensees to provide a copy of such documents to NGrid upon request at Licensee's sole cost and expense.

5.9 In the event a Property ceases to be owned by or to be under the control of NGrid, Licensee will be required to obtain all property rights, permits, licenses or consents which may be required by law to accomplish or continue the purposes set forth herein, at Licensee's sole cost and expense. NGrid shall attempt to provide Licensee with at least 90 days prior notice of any event covered by this Section 5.9. Any limitations on NGrid's interest in the Property reasonably known to NGrid shall be made known to Licensee and shall be set forth in the relevant Supplemental Agreement.

5.10 NGrid agrees to cooperate with Licensee and/or any Sub-licensee in its obtaining, at Licensee's or Sub-licensee's cost and expense and at no cost and expense to NGrid, any licenses, permits and other governmental approvals required for Licensee's or such Sub-licensee's use of the Property. NGrid shall execute the required documents, which it has the legal right to execute in furtherance of Licensee's use of the Property pursuant to this Agreement.

5.11 Licensee is solely responsible for all utility services used by Licensee and the Sub-licensees on the Property, including any backup emergency power system that is required. Licensee shall obtain, at its' sole cost and expense, all rights necessary, including, but not limited to, obtaining permission of the fee owners of the Land, for Licensee to bring such utility lines and backup systems onto the Property. If such rights cannot be obtained in a reasonable time or under reasonable conditions, or if installation is technically or economically infeasible, Licensee, at its option, may elect not to proceed with that particular Property and may terminate the relevant Supplemental Agreement. All costs associated with NGrid providing electric service to Licensee at the site are established by applicable tariffs.

5.12 In the event Licensee damages or disturbs the Property or any access roads, Licensee, at its sole cost and expense, will promptly restore such Property or access roads to NGrid's reasonable satisfaction, normal wear and tear and damage from the elements and condemnation excepted. If Licensee fails to effect such restoration within thirty (30) days or such faster time frame as reasonably demanded in writing by NGrid or a governmental or regulatory agency having appropriate jurisdiction, NGrid shall have the right to proceed with restoration work, at Licensee's sole cost and expense.

5.13 Any material alterations, additions, improvements and upgrades to or replacements of the Wireless Facilities shall be reviewed and accepted by NGrid. NGrid will not unreasonably withhold, delay or condition its approval so long as such alterations, additions, improvements, upgrades or replacements (a) are within the allowable loading of the Structure, (b) do not cause measurable interference with the equipment of NGrid or any other users of the Structure and (c) do not materially interfere with NGrid's present or planned use and enjoyment of the Property. In the event that such proposed alterations, additions, improvements, upgrades or replacements of the Wireless Facilities exceed the allowable loading of the Structure, Licensee shall have the option to strengthen the Structure, at its expense, so as to permit the Structure to safely accommodate such alterations, additions, improvements, upgrades or replacements.

5.14 If applicable, NGrid shall determine at the time of the initial site occupancy request, the need and conditions to remove the electric transmission circuit(s) from service (i.e., to "de-energize" the line) in support of the then proposed installation of Licensee's or a Sub-licensee's Wireless Facilities. If NGrid, in its sole discretion, determines that it is appropriate to remove a transmission line(s) from service in order to Install, Maintain, Modify and/or remove any Wireless Facilities, NGrid will, prior to the removal of a

transmission line from service, provide Licensee with an Estimated Cost including revenue losses expected to be incurred, if any. Within thirty (30) days of receipt of the Estimated Cost, Licensee, at its option, may elect not to proceed with the proposed installation and may terminate the Supplemental Agreement for that Property in accordance with Section 10.2.2 hereof. Should Licensee decide to proceed to construct on the Property, Licensee shall reimburse NGrid for all associated costs, including any financial loss NGrid incurs resulting from the scheduled circuit interruption (which includes, but is not limited to, the cost of replacement power), unless another cost sharing arrangement is agreed to by the parties.

5.15 Annual "climbing" inspections of each electric transmission Structure may be requested by Licensee and shall be performed by NGrid or NGrid approved contractors, if NGrid elects, in its sole and absolute discretion, to utilize a contractor. Licensee shall provide a minimum of thirty (30) days notice in advance of the requested inspection date. Licensee shall prepare an inspection checklist identifying attributes to be inspected. The costs of such inspections are to be paid by Licensee.

5.16 Licensee shall post a notice at each site providing a twenty-four (24) hour contact number and, as applicable, radio frequency emission hazards. Licensee shall cause the total radio frequency emissions of all Wireless Facilities at each site to comply with applicable FCC regulations.

5.17 Licensee's occupancy of existing NGrid communication towers may include, if available, floor space within the existing NGrid equipment shelter. Should the existing NGrid equipment shelter not have available floor space, Licensee shall be responsible for the cost and construction of any required equipment enclosures.

6. INITIAL TERM; RENEWAL TERMS

6.0 The initial term of each Supplemental Agreement (the "Initial Term") is five (5) years commencing on the Payment Commencement Date of each Supplemental Agreement and terminating at 11:59 p.m. on the day preceding the fifth (5th) anniversary of the Payment Commencement Date. Licensee shall have the option to renew each Supplemental Agreement for up to four (4) additional terms of five (5) years each ("Renewal Terms"), provided that Licensee is not then in default under this Agreement beyond any applicable grace or cure period and that Licensee gives a notice to renew to NGrid not less than six (6) months prior to the expiration of the Initial Term or Renewal Term, as the case may be. NGrid reserves the right to reasonably renegotiate some or all the terms and conditions of Section 28 in connection with any such renewal.

6.1 This Agreement shall terminate on the later to occur of (i) twenty-five (25) years after the Execution Date or (ii) the expiration or termination of the last remaining Supplemental Agreement.

7. FEES

7.0 A schedule of the Occupancy Fees for the Wireless Facilities is set forth on EXHIBIT B attached hereto. The Occupancy Fee for each Right-of-Occupancy shall become due and payable beginning on the Payment Commencement Date under the relevant Supplemental Agreement. The Occupancy Fee shall be invoiced at the beginning of each month. Payment shall be received within thirty (30) days of invoicing. Late fees of 1.5% per month shall be applied to all outstanding balances.

7.1 Effective as of the fifth (5th) anniversary of the Execution Date, and as of every fifth (5th) anniversary thereafter, the Occupancy Fee rates listed on EXHIBIT B shall be adjusted by adding to each listed Occupancy Fee for the previous five (5) year term an amount obtained by multiplying the relevant Occupancy Fee for the previous five (5) year term by the percentage of increase (if any) of the Consumer Price Index (the "CPI") for All Urban Consumers as reported by the Bureau of Labor Statistics for the previous five (5) year period. If the CPI is no longer being published, the most comparable successor shall be substituted therefore. If the CPI for the previous five (5) year period remained the same or decreased, the Occupancy Fee rates shall remain unchanged from the previous five (5) year period. The CPI published the month preceding the Execution Date shall be considered the base.

7.2 Occupancy Fees for use and installation of microwave dishes on any NGrid structure shall be at fair market value for such use, and shall be negotiated at the time of proposed use and established within the Supplemental Agreements.

8. INTERFERENCE

8.0 Licensee will contractually obligate its Sub-licensees to use and operate their Wireless Facilities in a manner that will not cause interference (including, but not limited to, blocking of access to the Property, radio frequency (RF) interference, mechanical interference or any interference with underground utilities) in NGrid's and other users' use of the Property, provided that such other users' installation predates the installation of such Wireless Facilities. NGrid agrees to supply Licensee with a list of NGrid licensees on any Structure, which is to be the subject of a Supplemental Agreement, together with the respective transmission frequencies thereof. In the event any such interference occurs, Licensee will cause its Sub-licensees to (i) remedy such interference within thirty-six (36) hours after receipt of written notice from NGrid, conditioned on NGrid's ability to support corrective actions, if required, or (ii) cease operation of its Wireless Facilities until such interference can be eliminated with NGrid's support, if required, and if such interference is not eliminated within said thirty-six (36) hour period, NGrid will have the right, in addition to any other rights that it may have at law or in equity, to take all necessary and reasonable steps, at Licensee's sole cost and expense, to eliminate such interference (after giving reasonable prior notice to Licensee of its intent to do so), and should it be unable to so eliminate such interference, NGrid shall have the right to terminate the Supplemental Agreement related to the Wireless Facilities causing such interference by giving at least ten (10) days notice to Licensee, in which case any and all future obligations NGrid may have hereunder (except for the indemnities and hold harmless provisions contained elsewhere in this Agreement) will cease with respect to such terminated Supplemental Agreement.

8.1 NGrid agrees to obtain an agreement with future licensees of the Property to cease using any equipment, which causes interference to Licensee's or its Sub-licensees' then existing Wireless Facilities. Subsequent to the Installation of Licensee's or its Sub-licensees' Wireless Facilities, NGrid will not knowingly permit or suffer the Installation or Modification by third parties of any other improvement (including, without limitation, transmission or reception antennas or other devices) on the Property if such improvement could cause or is likely to cause interference (including, but not limited to, blocking of access to the Property, radio frequency interference, mechanical interference or any interference with underground utilities) with Licensee's or its Sub-licensees' then existing Wireless Facilities. In the event any such interference occurs, NGrid shall direct such third party to remedy such interference within thirty-six (36) hours after receipt of notice or cease operation of such improvement until such interference can be eliminated, and if such interference is not eliminated within said thirty-six (36) hour period, NGrid shall take

reasonable steps eliminate such interference, including, but not limited to, terminating the occupancy agreement of such third party.

8.2 Licensee agrees to provide site-specific radio frequency (RF) emission data and required worker clearances from operational Licensee or Sub-licensee Wireless Facilities.

8.3 Should NGrid, Licensee, its Sub-licensee or other authorized users require access to the Structure and such access is restrained as a result of NGrid's or Licensee's or its Sub-licensee's operational equipment, Licensee and NGrid shall work cooperatively to develop and support access requirements. Work shall be performed in accordance with NGrid safety standards, which may require temporarily ceasing wireless operations to comply with such standards. In the event de-powering, sectionalizing or ceasing of wireless operations is required, prior advance notification shall be provided and a mutually acceptable work schedule developed between the parties.

9. IMPROVEMENTS; UTILITIES

9.0 Subject to NGrid's prior written approval, Licensee or its approved contractors shall have the right to Install, operate, use, Maintain and Modify, for itself and /or its Sub-licensees, Wireless Facilities on the Property (subject to the terms of this Agreement). In connection therewith, and consistent with the rights of the fee owners of the Land, Licensee shall have the right, subject to NGrid's prior written approval, to do all work necessary to prepare and alter the Land at or below ground line for Licensee's business operations. Anything herein to the contrary notwithstanding, neither Licensee nor its employees or contractors shall have access above ground level to any Structure which is an electric transmission tower for Installation, Maintenance, Modification or any other type of activities. All such activities shall be performed exclusively by NGrid employees or contractors approved by NGrid, if NGrid elects, in its sole and absolute discretion, to utilize contractors, at Licensee's sole cost and expense.

9.1 Licensee shall design, fabricate and supply all antenna support systems, cables and all associated hardware for installation by NGrid or an approved contractor. Design of Licensee's Wireless Facilities, their attachment and any modification to the Structure shall comply with all applicable laws, regulations, codes and NGrid's design procedures & policies. NGrid requires Wireless Facilities installed on its electric transmission towers to be grounded in accordance with Good Utility Practice. All antenna support systems shall be designed and approved by a professional engineer licensed by the state where such facility is located, all of which shall be subject to NGrid's review and acceptance, which acceptance shall not be unreasonably withheld, conditioned or delayed.

9.2 All of Licensee's work will be performed at Licensee's sole cost and expense and in a good and workmanlike manner, verifiable by NGrid.

9.3 Unless otherwise agreed to in advance, in writing, all work to be performed on a Structure which is an electric transmission tower and all work above 20 feet on NGrid owned electric distribution poles shall be done by NGrid or a NGrid approved contractor, if NGrid elects, in its sole and absolute discretion, to utilize a contractor, in accordance with Good Utility Practice and the approved plans and at Licensee's sole cost and expense.

9.4 Installation and maintenance of Licensee Wireless Facilities by NGrid shall be performed under the terms and conditions of NGrid's standard Services Agreement, the terms and conditions of which may be revised from time to time (EXHIBIT E).

9.5 Licensee's contractors shall possess the minimum qualifications or certification required by OSHA (including, but not limited to, the requirements of 29 C.F.R. Parts 1910.268 and 1910.269 of the OSHA Regulations, as applicable), the National Electrical Safety Code, NGrid, and other appropriate standards reasonably required by law, statute or regulatory order. Further, when performing work on or associated with NGrid's Electric Transmission Structures, Licensee or its contractor or subcontractor shall provide at all times an onsite qualified Competent Person to identify existing and predictable hazards in the surroundings or working conditions and take prompt corrective measures to eliminate them. At no time shall Licensee's employees, agents, or contractors climb any of NGrid's Electric Transmission Structures or be elevated above the ground by equipment or other means on NGrid's Property or easement without NGrid's written authorization and, to the extent deemed necessary by NGrid, without an authorized NGrid representative present.

9.6 When requested by Licensee, NGrid will perform maintenance on the antennas on the Structure or other facilities, the antenna supporting structure, and the cables connecting the antennas to Licensee's equipment, at Licensee's sole cost and expense. NGrid will arrive "on-site" to start maintenance efforts on the specific Structure identified by Licensee based upon a mutually agreed upon schedule. Notification may be made at any time, however, unless otherwise agreed to NGrid will perform maintenance during daylight hours and in accordance with NGrid's collective bargaining agreement. Daylight hours shall be determined by the sunrise and sunset hours as printed in The New York Times. NGrid will use its Good Utility Practice to perform maintenance during Licensee's off-peak hours and to conclude such maintenance as soon as practicable.

9.7 Licensee shall have the right to remove all Wireless Facilities at its sole cost and expense on or before the expiration or earlier termination of the Initial Term or any Renewal Term, as the case may be, subject to all the terms and conditions in Section 10 and provided that Licensee promptly repairs any damage to the Property caused by such removal, normal wear and tear and damage from the elements and condemnation excepted, and provided, further, that only NGrid may remove any portion of the Wireless Facilities from a Structure which is an electrical transmission tower and any Wireless Facilities above 20 feet on NGrid owned electric distribution poles, in each case at Licensee's sole cost and expense, in accordance with Section 28.

9.8 Licensee shall have the right, at its sole cost and expense, subject to NGrid's review and prior written approval and consistent with the rights of the fee owners of the Land, to improve the present utilities on the Property and to install new utilities for Licensee's exclusive use at a location on the Property acceptable to both parties. Licensee shall also have the right to bring utilities across the Land, at its sole cost and expense and subject to NGrid's prior review and written approval, and subject to the rights of the fee owners of the Land. All utilities brought onto the Property must be via an underground conduit system consistent with applicable laws, codes, rules and regulations of local, state and federal agencies as well as all NGrid standards and procedures, if any. Licensee shall provide notification of the proposed Licensee improvements and construction to all Third Parties having prior rights granted by NGrid to occupy such Land with other facilities. Licensee shall seek review and acceptance of Licensee's proposed construction plans, and shall be solely responsible to address concerns of the existing easement holders. Licensee shall take all necessary actions obtain easement holder acceptance of Licensee's proposed construction

plans and to comply with requirements of existing easement holders, provided that such requirements are established in accordance with rights granted to such easement holders under duly recorded easements and constitute lawful use.

9.9 Title to the Wireless Facilities will remain in Licensee, except as set forth in Section 10.4. Subject to Section 10.4, NGrid covenants and agrees that no part of the Wireless Facilities Installed or Modified by Licensee on the Property will be or become, or be considered as being, affixed to or part of NGrid's real property.

10.0 TERMINATION

10.0 In addition to the termination provisions contained throughout this Agreement, (a) NGrid shall have the right to terminate this Agreement or any Supplemental Agreement or part(s) thereof upon the occurrence of an event described in Section 29.1; (b) NGrid shall have the right to terminate this Agreement if Licensee fails to submit an application for occupancy and execute a completed Supplemental Agreement in the form of Exhibit A within twenty-four (24) months of the effective date of this Agreement; or (c) Licensee and NGrid shall each have the right to terminate this Agreement or any Supplemental Agreement or part(s) thereof at any time by mutual agreement of both parties.

10.1 NGrid shall have the right to terminate any Supplemental Agreement, if:

A. Licensee's Wireless Facilities are Installed, operated, used, Maintained and/or Modified (except for Wireless Facilities on the Structures which are Maintained by NGrid) in violation of any law or in aid of any unlawful act or undertaking. NGrid agrees not to terminate any Supplemental Agreement under this provision for a period of 30 days, provided that Licensee ceases operations at the Property and is making diligent efforts to correct the violation(s). Licensee shall provide NGrid with prompt written notice of any such action under which operation or use of the Wireless Facilities is denied, revoked or canceled or reinstated.

B. Any authorization which may be required by any federal and/or state governmental and/or regulatory authority with respect to the Installation, operation, use, Maintenance and/or Modification of the Wireless Facilities is denied, revoked or canceled. NGrid agrees not to terminate any Supplemental Agreement under this provision for a period of 180 days after receipt of notice by the appropriate party, provided that Licensee continues to pay the Occupancy Fee and Licensee and/or any Sub-licensee ceases operations at the Property and is making diligent efforts to obtain or reinstate such authorization. Licensee shall provide NGrid with prompt written notice of any such action under which operation or use of the Wireless Facilities is denied, revoked or canceled or reinstated.

C. Licensee has not given the notice that Licensee has obtained all required approvals or begun Installation of its Wireless Facilities within six (6) months after the execution date of the Supplemental Agreement, NGrid may terminate such Supplemental Agreement at any time thereafter by giving not less than thirty (30) days' prior written notice to Licensee, in which event such Supplemental Agreement shall terminate on the date specified in such notice unless prior to the specified termination date, Licensee notifies NGrid that Licensee's obligation to pay the Occupancy Fee has commenced.

10.2 Licensee shall have the right to terminate any Supplemental Agreement if:

10.2.1 Any application, authorization or approval which may be required by any governmental or regulatory authority with respect to the Installation of the Wireless Facilities is not granted within six (6) months after the Payment Commencement Date.

10.2.2 Licensee shall have the right to terminate any Supplemental Agreement within twelve (12) months after the Payment Commencement Date upon sixty (60) days written notice to NGrid should the Property become unacceptable in Licensee's sole discretion due to Licensee's or a Sub-licensee's design, network or other engineering or technical specifications for the Wireless Facilities covered by such Supplemental Agreement. In the event Licensee exercises its right to terminate a Supplemental Agreement in accordance with this provision, it shall not incur Occupancy Fees for the terminated Supplemental Agreement beyond the Occupancy Fee due from the Payment Commencement Date until Licensee has completed its obligations under Section 10.4.

10.2.3 Licensee shall have the right to terminate any Supplemental Agreement if any authorization or approval which may be required by any governmental or regulatory authority with respect to the Installation, operation, use, Maintenance or Modification of the Wireless Facilities is denied, revoked or canceled.

10.2.4 Licensee shall have the right to terminate any Supplemental Agreement upon thirty (30) days written notice to NGrid if NGrid defaults under that Supplemental Agreement and fails to cure such default within such thirty (30) day period, or such longer period as may be reasonably required to diligently complete a cure commenced within such thirty (30) day period.

10.2.5 Licensee shall have the right to terminate any Supplemental Agreement upon thirty (30) days written notice to NGrid if Licensee has terminated the occupancy of its Sub-licensee[s] at such Property. In the event Licensee exercises its right to terminate a Supplemental Agreement in accordance with this provision, it shall continue to incur and shall pay all Occupancy Fees for the terminated Supplemental Agreement due from the Payment Commencement Date until Licensee has completed its obligations under Section 10.4.

10.3 Except as otherwise expressly stated herein, upon termination of any Supplemental Agreement, neither party will owe any further obligations to the other under such Supplemental Agreement, except for the indemnities and hold harmless provisions contained throughout this Agreement, Licensee's obligation to reimburse NGrid for all costs, expenses and losses properly incurred by NGrid pursuant to such Supplemental Agreement and both parties' obligations under Section 10.4.

10.4 Upon termination of this Agreement or any Supplemental Agreement, Licensee will remove all of its Wireless Facilities, except for any of its Wireless Facilities which are located on a Structure which is an electric transmission tower, and direct NGrid to remove any of its Wireless Facilities which are located on any Structure which is an electric transmission tower, in each case within one hundred and twenty (120) days from the date of termination, surrender the rights and privileges hereby granted and quit the Property. In the event that Licensee fails to vacate the Property or fails to remove all of its Wireless Facilities, except for any of its Wireless Facilities which are located on a Structure which is an electric transmission tower, within one hundred and twenty (120) days from the date of termination, (i) NGrid shall have the right, after giving at least ten (10) days prior written notice to Licensee, to abandon in place or remove the remaining

Wireless Facilities, in which event Licensee agrees to release any ownership interest in such Wireless Facilities to NGrid and agrees that such Wireless Facilities may be retained by NGrid as its property without accounting to Licensee therefore, and the expense of such removal and repairs shall be charged to and paid by Licensee without credit for the value, if any, of such Wireless Facilities; or (ii) NGrid in its sole discretion shall have the right to permit Licensee to abandon its Wireless Facilities in place, in which event Licensee agrees to release any ownership interest in such Wireless Facilities to NGrid and agrees that such Wireless Facilities may be retained by and NGrid as its property without accounting to Licensee therefore.

11.0 DEFAULT

11.0 Subject to the provisions of Section 8.0, if Licensee fails to comply with any material provision of this Agreement or any Supplemental Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from NGrid, NGrid may, at its sole option and/or discretion, (a) cure such default, at Licensee's sole cost and expense, or (b) terminate this Agreement, (if such default relates to all or substantially all Supplemental Agreements) or any applicable Supplemental Agreement (if such default relates only to such applicable Supplemental Agreement) or part(s) thereof without affecting its right to demand, sue for and collect all Occupancy Fee(s), costs and expenses and any other damages to which NGrid may be entitled, subject to Section 12. If any non-monetary default cannot reasonably be cured within such thirty (30) day period, Licensee will not be deemed to be in default under this Agreement if Licensee commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion. If NGrid seeks enforcement of its rights through an attorney or other legal procedure, NGrid shall be entitled to collect and Licensee agrees to pay, in addition to any other amounts owed, all costs and expenses (including reasonable attorneys' fees) thereby incurred.

11.1 Subject to the provisions of Section 8.1, if NGrid fails to comply with any material provision of this Agreement and such failure is not cured within thirty (30) days after receipt of notice thereof from Licensee, Licensee may, at its option, terminate this Agreement or any affected Supplemental Agreement or part(s) thereof. If any non-monetary default cannot reasonably be cured within such thirty (30) day period, NGrid will not be deemed to be in default under this Agreement if NGrid commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion.

11.2 Anything contained in this Section 11 to the contrary notwithstanding, should Licensee be in violation of any provision of this Agreement as a result of the action or inaction of NGrid, Licensee shall not be deemed to be in default of this Section 11, or any other provision of this Agreement, unless and until NGrid takes such action as may be necessary to permit Licensee to perform its obligations hereunder.

12.0 WAIVER OF CERTAIN DAMAGES

12.0 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, NGrid 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 Wireless Facilities.

12.1 Licensee expressly acknowledges that its Wireless Facilities are exposed to many risks beyond the control of NGrid, including, but not limited to, wind, rain, sleet, ice, floods, riots and any other act of God. Licensee shall assume all risk of loss to its Wireless Facilities that may arise in connection with these hazards.

13. TAXES & CHARGES

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

14. INSURANCE

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

14.0 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.

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

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

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

B. NGrid shall be named as an additional insured on Licensee's liability insurance policy(ies) as respects the activities governed by this Agreement, and, if applicable, each contractor's and subcontractor's policy(ies), and the policy endorsed with a cross liability endorsement. Licensee shall not be required to name subcontractors as additional insureds on any insurance policy.

14.2 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

14.3 Property Insurance, including coverage for fire, extended coverage, vandalism and malicious mischief, upon the Wireless Facilities. NGrid 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.

14.4 Neither Licensee nor any contractor or subcontractor shall commence any work under this Agreement until NGrid has been furnished with a completed Certificate(s) of Insurance showing that Licensee and, if applicable, such contractor or subcontractor has complied with this Section 14, and that the policies shall not be materially changed, diminished or canceled until at least thirty (30) days prior written notice of such change, diminishment or cancellation has been given to NGrid. 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
25 Research Drive
Westborough, MA 01582
Attn.: Risk Management Dept.

Licensee represents that it has full policy limits available and shall notify NGrid's Risk Management Department in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.

14.5 If any insurance coverage is not secured, maintained or is canceled before final payment by Licensee to NGrid and Licensee fails immediately to procure other insurance as specified, NGrid reserves the right to procure such insurance and to add the cost thereof to any sum due NGrid under this Agreement.

14.6 Licensee shall promptly furnish NGrid'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.

14.7 Nothing contained in these insurance requirements is to be construed as limiting the extent of either party's responsibility for payment of damages resulting from either party's use of the Property or limiting, diminishing or waiving either party's obligation to indemnify, defend and save harmless the other as set forth in Section 17.

14.8 It is the intent of both parties that the insurance placed in accordance with the provisions of this Section 14 shall be primary insurance and shall protect both Licensee and NGrid from losses arising from the performance of this Agreement.

14.9 Licensee shall furnish security to NGrid, in the amount of \$150,000, securing the performance of the obligations of Licensee to NGrid, as defined in this Agreement. Such security shall consist of either a performance bond, irrevocable bank letter of credit or cash deposit lien, as chosen by Licensee. Such Payment Bond shall contain a provision that it may not be canceled without at least thirty (30) days prior notice to NGrid. A letter of credit shall be valid for a term of at least one year, and shall be replaced with a substitute letter of credit at least thirty (30) days prior to expiration. Any original payment bond or letter of credit used by Licensee to comply with this section shall be sent to the address identified in Section 14.4 above. A cash deposit lien arrangement shall be effected by Licensee's depositing in a bank, savings & loan or licensed securities brokerage account the sum of one hundred fifty thousand dollars (\$150,000) and executing and delivering to NGrid documentation satisfactory to NGrid's counsel that establishes in NGrid a first lien on such account in the amount of one hundred fifty thousand dollars (\$150,000) and prohibits Licensee from making withdrawals or taking any other actions that would reduce the account balance below said amount. Interest earned on said account shall be for the benefit of Licensee and may be withdrawn from time to time, provided the account balance does not decline below the lien amount. Licensee and NGrid shall cooperate to effect an arrangement under which the security provided by Licensee shall satisfy the requirements of NGrid.

15. DAMAGE OR DESTRUCTION

15.0 If a Structure or the Wireless Facilities thereon are damaged or destroyed through no fault or omission of Licensee, its employees, agents or contractors, Licensee may elect to terminate the relevant Supplemental Agreement by giving written notice to NGrid no more than thirty (30) days following the date of any such damage or destruction, in which case all obligations of Licensee with respect to the payment of Occupancy Fees will cease as of the date Licensee has fulfilled all of its obligations under Section 10.4.

15.1 In the event of damage or destruction to the Property or the Wireless Facilities, Licensee shall have the right to install and maintain temporary facilities, subject to NGrid's prior written consent.

16. CONDEMNATION

16.0 If a condemning authority takes all of the Property or a portion thereof sufficient to render the Property unsuitable for Licensee's use, Licensee may terminate this Agreement or the relevant Supplemental Agreement as of the date the title vests in the condemning authority, without further liability of Licensee or NGrid hereunder, except for the obligations and responsibilities set forth in Section 10.4. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of such power will be deemed a taking by condemnation.

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

17. HOLD HARMLESS

17.0 NGrid agrees to protect, indemnify, defend and hold harmless Licensee, its partners, officers, employees, agents, successors, assigns and independent contractors from and against any and all losses, damages, liabilities, costs, suits, charges, causes of action, claims (including reasonable claims of third party land owners) and expenses (including reasonable attorneys' fees) arising out of any damages to the Wireless Facilities (including environmental damage), or injury to or death of any person, caused by or attributable to any negligent act or omission of NGrid, its directors, officers, employees, agents, successors, assigns or independent contractors, or the willful misconduct of any thereof, in the performance or breach of this Agreement, except to the extent attributable solely to the negligent or intentional act or omission of Licensee, any Sub-licensee, or their partners, officers, employees, agents, successors, assigns or independent contractors. This indemnification shall also apply to any and all fines, levies, penalties, citations, assessments and fees from any local, state or federal agency, board, court or other governmental authority as a result of any alleged or actual violation by NGrid, its directors, officers, employees, agents, successors, assigns or independent contractors of any laws, rules or regulations of such authorities or agencies, except to the extent attributable solely to the negligent or intentional act or omission of Licensee, any Sub-Licensee, or their partners, officers, employees, agents, successors, assigns or independent contractors. The indemnification requirements contained herein shall be subject to the provisions of Section 14.3 and subject to the waiver of certain damages contained in Section 12.

17.1 Licensee agrees to protect, indemnify, defend and hold harmless NGrid, its directors, officers, employees, agents, successors, assigns and independent contractors from and against any and all losses, damages, liabilities, costs, suits, charges, causes of action, claims (including reasonable claims of third party land owners) and expenses (including reasonable attorneys' fees) arising out of any damages to NGrid's Property (including environmental damage), or injury to or death of any person, caused by or attributable to any negligent act or omission of Licensee, any Sub-licensee, their partners, officers, employees, Affiliates, agents, successors, assigns or independent contractors, or the willful misconduct of any thereof, in the performance or breach of this Agreement, except to the extent attributable solely to the negligent or intentional act or omission of NGrid, its directors, officers, employees, agents, successors, assigns or independent contractors. This indemnification shall also apply to any and all fines, levies, penalties, citations, assessments and fees from any local, state or federal agency, board, court or other governmental authority as a result of any alleged or actual violation by Licensee, any Sub-licensee, their partners, directors, employees, agents, successors, assigns or independent contractors of any laws, rules or regulations of such authorities or agencies, except to the extent attributable solely to the negligent or intentional act or omission of NGrid, its directors, officers, employees, agents, successors, assigns or independent contractors. The indemnification requirements contained herein shall be subject to the provisions of Section 14.3 and subject to the waiver of certain damages contained in Section 12.

17.2 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 its negligence, as determined by mutual

agreement of both parties or, in the absence thereof, as determined by adjudication of comparative negligence.

17.3 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 reasonable 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.

18. NOTICES

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

If to NGrid:

For all business issues related to this Agreement (except routine maintenance), including expanded use of NGrid facilities as identified in Supplemental Agreements:

National Grid
300 Erie Blvd. West
Syracuse, NY 13202
Attn: T&D Technical Services
(315) 428-6688

with a copy to:

National Grid USA
25 Research Drive
Westborough, MA 01582
Attn: Legal Dept.

For routine maintenance (including notification for access to the Property):

As specified in the Supplement Agreement.

If to Licensee:

18.1 Damage or Emergency Access Notification. In the event that emergency access is required for any reason, the party requiring such access shall notify the other party by telephone at:

For NGrid(315) 460-2421

For Licensee () _____

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

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

19. CONFIDENTIALITY

19.0 Each Party acknowledges that in the course of the performance of this Agreement it may have access to Proprietary Information of the other Party. All Propriety Information shall be marked as proprietary with an appropriate legend, marking, stamp or other obvious written identification prior to disclosure. All Proprietary Information in tangible form of expression which has been delivered (or thereafter created by copy or reproduction pursuant to this Agreement) shall be and remain the property of the person which is disclosing such Proprietary Information (the "Disclosing Party").

19.1 Upon receiving Proprietary Information such Party (the "Receiving Party") shall keep in strict confidence and not disclose to any person (with the exception of employees, officers, directors, representatives, and affiliates of the Receiving Party, to the extent each such person or entity has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any Breach of this Section 19 to the extent caused by its or its affiliates' employees, officers, or directors.

19.2 In the event either Party discloses its Proprietary Information to the other Party unmarked or in oral or visual form, the Disclosing Party shall notify the Receiving Party in writing that such Information is deemed proprietary within 48 hours of its disclosure. Such Proprietary Information shall be treated in the manner set forth above from the date such written notice is received.

19.3 The Receiving Party shall not be precluded from, nor liable for, disclosure or use of any Proprietary Information if:

- (a) the Proprietary Information is in or enters the public domain, other than by a Breach of this Agreement;
- (b) the Proprietary Information is known to the Receiving Party at the time of first receipt, or thereafter becomes known to the Receiving Party prior to or subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records;
- (c) the Proprietary Information is developed by the Receiving Party independently of any disclosure under this Agreement as evidenced by written records;
- (d) the Proprietary Information is disclosed more than 5 years after the date of first receipt of the disclosed Proprietary Information;
- (e) disclosure of the Proprietary Information is compelled by a government authority, including, but not limited to any court or regulatory body, whether or not a protective order is sought or granted;
- (f) the Disclosing Party consents to the disclosure or use of the Proprietary Information; or
- (g) the Receiving Party has a reasonable belief that disclosure of the Proprietary Information is necessary for public safety reasons and has attempted to provide as much advance notice of the disclosure as is practicable.

19.4 The disclosure of Proprietary Information hereunder shall not be construed as granting any right of ownership to the Receiving Party in said Proprietary Information.

19.5 In the event of any actual or threatened disclosure of such information by either party, its employees, agents or contractors, which might cause irreparable harm to the other party, it is agreed that the monetary

remedies available may be inadequate and, therefore, the aggrieved or threatened party shall be entitled to receive injunctive relief as an equitable remedy.

19.6 The parties acknowledge and agree that, in accordance with Section 36.0 hereof, this Agreement will be filed with, and is subject to the approval of, the New York Public Service Commission ("PSC") and, as a consequence, all the terms and provisions hereof, including pricing provision, will be freely available from the PSC.

19.7 This Section 19 shall survive any termination or expiration of this Agreement in accordance with this Section's terms.

20. ASSIGNMENT

20.0 NGrid shall have the right to freely assign its entire interest under this Agreement without the consent of Licensee. NGrid shall give Licensee written notice not later than sixty (60) days following the effective date of any such assignment. From and after the effective date of any such assignment, NGrid shall be relieved of all future performance liabilities and obligations under this Agreement.

20.1 Licensee shall have the right to assign its entire interest under this Agreement to an entity owned or controlled by Licensee, or to any successor to Licensee by purchase, merger, consolidation or reorganization, or to an Affiliate (hereafter collectively referred to as a "Licensee Permitted Transfer") without the consent of NGrid; provided that (a) Licensee is not then in default under this Agreement; (b) if such proposed assignee is a successor to Licensee by purchase, said proposed assignee shall acquire all or substantially all of Licensee's stock or assets or, if such proposed assignee is a successor to Licensee by merger, consolidation or reorganization, the continuing or surviving corporation shall own all or substantially all of the assets of Licensee; (c) such proposed assignee maintains at the time of assignment, as demonstrated by current financial statements provided to NGrid, a financial position reasonably demonstrating the ability of such assignee to meet and perform the obligations of Licensee under this Agreement; and (d) such assignee assumes all of Licensee's obligations hereunder. Licensee shall give NGrid written notice not later than thirty (30) days following the effective date of a Licensee Permitted Transfer. As used herein, the term "owned or controlled" shall mean ownership of more than fifty percent (50%) of the equity interest or more than fifty percent (50%) of the voting rights of the applicable entity.

20.2 Notwithstanding any provision herein to the contrary, Licensee shall have the right to sub-license Licensee's Right of Occupancy under this agreement to Sub-licensees. In the event of such sub-license, all proposed Sub-licensee use and occupancy of NGrid Property shall be subject to NGrid review and acceptance, which NGrid shall not unreasonably withhold, delay or condition. Sub-licensees shall be subject to the terms and conditions of this Agreement and all agreements between Licensee and Sub-licensee pertaining to the Right of Occupancy shall bind the Sub-licensee to the terms contained herein. Licensee shall provide NGrid with a copy of the any such agreement when executed.

20.3 In all other instances, any assignment or transfer of Licensee's rights and obligations under this Agreement shall be void without the written consent of NGrid.

21. PROTECTION AGAINST LIENS ON PROPERTY

21.0 Licensee will keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Licensee and shall indemnify, defend and hold harmless

NGrid from all claims, demands, costs and liabilities, including reasonable attorney's fees and costs, in connection with or arising out of any such lien or claim of lien. Licensee will cause any such lien imposed on the Property to be released of record by payment or posting of a proper bond within forty-five (45) days after receipt by Licensee of notice of the filing of such lien.

22. STRUCTURE MARKING AND LIGHTING REQUIREMENTS

22.0 NGrid shall comply with all Structure or building marking and lighting requirements of the Federal Aviation Administration ("FAA") and/or the FCC; provided that all costs and/or expenses incurred by NGrid to comply with municipal, FAA or FCC requirements which are directly attributable to the installation and/or operation of the Wireless Facilities on the Property shall be reimbursed by Licensee.

23. ENVIRONMENTAL MATTERS

23.0 NGrid represents that it will conduct its activities at each Property which is the subject of a Supplemental Agreement in full compliance with all applicable Environmental Laws.

23.1 The Property will not be used by NGrid, its employees, agents or contractors to release, store, dispose of, treat or use any Hazardous Substances, except in compliance with applicable Environmental Laws. NGrid 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 by 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 NGrid or anyone acting under or on behalf of NGrid in, upon or beneath the Land and/or the Structure thereon.

23.2 Licensee shall be responsible for identifying any sensitive and/or regulated environmental resources that may be impacted by the project and, should impacts be identified, documenting such impacts. Resources to be investigated include, but are not limited to:

- Buildings, sites, or districts listed on the State or National Registers of Historic Places
- Sites listed on the Register of National Landmarks
- Species of plant or animal life identified as threatened or endangered by state or federal agencies
- Scenic views important to the community
- State or federally regulated or protected streams
- State or federally regulated lakes, ponds or wetlands
- Agricultural Districts certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304
- Critical Environmental Areas designated pursuant to Article 8 of the ECL
- 100 year flood plains

To the extent that any such documented impact requires obtaining environmental permits from any local, state, or federal agency, Licensee agrees that it will provide a list of such permits to NGrid, prepare draft permit applications for NGrid's review and approval, obtain such permits, and furnish copies of such permits to NGrid before commencing construction of the proposed project.

To the extent that NGrid is aware of any relevant environmental information that may aid Licensee in completing the environmental review described above, NGrid agrees to promptly inform Licensee in writing of such information.

23.3 The Property will not be used by Licensee, and Sub-licensees, their 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 NGrid 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 NGrid 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, any Sub-licensee or anyone acting under or on behalf of them in, upon or beneath the Land and/or the Structure thereon.

23.4 Licensee and any Sub-licensee shall not place any material on the Land and/or the Structure thereon that is recognized by appropriate governmental authority as hazardous or toxic material or waste, except in compliance with applicable Environmental Laws.

23.5 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 NGrid and any appropriate governmental agency if required by applicable Environmental Laws.

23.6 In the event any such hazardous or toxic waste areas or any other regulated environmental resources (including, but not limited to, regulated wetlands, protected streams, navigable waters, rare, threatened, endangered or protected species or species habitats, sensitive archaeological sites, etc.) are identified with respect to any particular Property, their location shall be reported to NGrid and shall be included on the "As-Built Drawings" furnished to NGrid in accordance with this Agreement.

24. COMPLIANCE

24.0 NGrid agrees that all operations conducted by NGrid in connection with the Property will be in full compliance with all applicable federal, state, county and local codes and regulations.

24.1 Licensee will comply with all applicable federal, state and local laws, codes, ordinances, statutes and regulations with respect to the Installation, operation, use, Maintenance and Modification of the Wireless Facilities and the Property as well as all NGrid corporate, operations, and safety policies and procedures and requirements as supplied to Licensee.

25. EXAMINATIONS

25.0 Prior to execution of any Supplemental Agreement, Licensee may examine the Property to determine whether it is suitable for its Wireless Facilities and intended use. Licensee may obtain title reports, site plans and/or maps of instrument surveys and perform such soils tests and other engineering procedures on, under and over the Property and on the Structure as may be necessary to determine that

Licensee's use thereof will be compatible with Licensee's engineering specifications, system design, operations and government approvals. All on-site activities performed prior to execution of the Supplemental Agreement, such as feasibility testing and site suitability assurance, may occur only with the prior written approval of NGrid, which approval will not be unreasonably withheld, conditioned or delayed.

25.1 NGrid shall permit Licensee to examine, at NGrid's principal office, during normal business hours and upon reasonable advance notice, documents and information in NGrid's files of a nonproprietary nature pertaining to the Property, including (where available) underlying leases, memos of leases, deeds, easements, title reports/policies, site plans, instrument surveys, environmental audits, zoning audits, soil and other subsurface tests, municipal approvals, building permits, certificates of occupancy, construction plans and specifications, as-built drawings, structural analyses, intermodulation studies and FCC, FAA and PSC licenses, consents or approvals, but NGrid makes no representation to Licensee that it has in its possession all documents and information pertaining to any particular Property, and Licensee shall not be given access to proprietary information about any Property. NGrid shall furnish Licensee with a photocopy of such nonproprietary documents and information about Structure locations and capacities as Licensee requests, and Licensee shall promptly reimburse NGrid for NGrid support provided to the review and all duplicating costs.

26. FENCES

26.0 Subject to NGrid's prior written approval which shall not be unreasonably withheld, conditioned or delayed and the rights of the fee owners of the Land, Licensee may, if it has constructed or installed a shelter or cabinet to house a portion of its Wireless Facilities, fence in that portion of the Property as Licensee determines is reasonable for the proper and efficient operation and protection of its Wireless Facilities contained in such shelter or cabinet. Such shelter or cabinet shall be locked in such a manner as to interlock with NGrid's lock, so that either party may gain access to its own property, as necessary.

27. MEMORANDUM OF SUPPLEMENTAL AGREEMENT

27.0 If required by Licensee, Licensee shall prepare and submit to NGrid for review and approval a Memorandum of Supplemental Agreement, substantially in the form of EXHIBIT C, attached hereto. Licensee, at its sole cost and expense, may record the Memorandum of Supplemental Agreement in the land records of the county in which the Property is located.

28. NGRID'S COSTS AND EXPENSES

28.0 NGrid costs and expenses shall include, but not be limited to, personnel time, material and equipment, and will consist of, but not be limited to, direct hourly rates, fringe benefits and applicable payroll taxes, and general administrative and overhead costs.

28.1 NGrid work activities shall comply with NGrid's collective bargaining agreement, as well as NGrid policies, rules and procedures.

28.2 Licensee shall make an initial payment (deposit) of \$2,000.00 per site, at the time Licensee submits a signed Supplemental Agreement for NGrid acceptance. This deposit is an advance partial

payment of reimbursable costs, and shall be applied as a credit to the costs incurred by NGrid in support of Licensee's planned use.

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

28.4 Invoices shall be issued in accordance with NGrid's standard billing practices and will itemize labor, material, equipment and taxes. NGrid will provide reasonable supporting back-up for all charges, if requested.

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

29. UNCONTROLLABLE FORCES

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

29.1 Notwithstanding the last sentence of Section 29.0, in the event of the occurrence of governmental action or an order of a court or public authority which restricts or prohibits NGrid from performing or continuing to perform its obligations under this Agreement or any Supplemental Agreement, NGrid may immediately terminate this Agreement, or any applicable Supplemental Agreement. NGrid will provide Licensee prompt written notice of such action

30. MISCELLANEOUS

30.0 Licensee agrees that this Agreement and any and all modifications, amendments, renewals and extensions thereof is, shall be and shall at all times remain unconditionally subject and subordinate to any underlying lease with respect to the Property (an "Underlying Lease") and to any and all modifications, amendments, renewals and extensions thereof and to any mortgage covering the Property or the leasehold estate created by such underlying lease (a "Mortgage"), the lien thereof, all advances made and to be made thereunder and any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof. NGrid agrees, at Licensee's request and cost, to make reasonable efforts to obtain from the NGrid lessor under any Underlying Lease a nondisturbance agreement in form and substance reasonably satisfactory to Licensee and to obtain from the holder of any Mortgage a subordination, nondisturbance and attornment agreement in form and substance reasonably satisfactory to Licensee. Provided that the Sub-licensee complies with all of the requirements of this Agreement, NGrid agrees, at Licensee's request and sole cost and expense, to make reasonable efforts to obtain from the

NGrid lessor under any Underlying Lease a nondisturbance agreement in form and substance reasonably satisfactory to respective counsel for NGrid, Sub-licensee and Licensee.

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

30.2 Licensee agrees 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, officers, employees, agents or independent contractors while engaged in the uses covered by this Agreement or arising out of the performance of such uses. Licensee further agrees to comply with its FCC license for wireless communications services at the Property, a copy of which will be submitted to NGrid prior to commencement of Licensee's operations.

30.3 NGrid's activities in approving and/or supporting Licensee's engineering, design, planning, Installation, Maintenance and Modification efforts and any periodic and post-construction inspections, shall not relieve Licensee of any responsibility, obligation or liability specified in this Agreement.

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

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

30.6 Any waiver by either party at any time of any of its rights as to anything contained herein shall not be deemed to be a waiver of the same or similar right at a subsequent time. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of any original violation. No course of dealing between parties or any delay on the part of a party to exercise any right it may have under this Agreement will operate as a waiver of any of the rights provided hereunder or by law or equity, nor will any waiver of any prior default operate as 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.

30.7 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to sue on any or all other remedies. Said rights and remedies are given in addition to any other rights such party may have by law, statute, ordinance or otherwise, except as such remedies are expressly limited in this Agreement.

30.8 Any provision of this Agreement which is invalid, illegal or unenforceable in any manner in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such invalidity, illegality or unenforceability without in any way affecting the validity, legality or enforceability of the remaining provisions hereof, and any such invalidity, illegality or unenforceability in any one jurisdiction shall not invalidate or in any way affect the validity, legality or enforceability of such provision in any other jurisdiction.

30.9 There shall be no merger of this Agreement or any Right-of-Occupancy hereby granted with the fee estate in a Right-of-Way by reason of the fact that this Agreement, and the Right-of-Occupancy created by this Agreement, or any interest in this Agreement or in any such Right-of-Occupancy, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in a Right-of-Way or any interest in such fee estate, and no such merger shall occur unless and until all persons having an interest in this Agreement, and the Right-of-Occupancy created by this Agreement, shall join in a written instrument effecting such merger and shall duly record the same.

30.10 Licensee and NGrid 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 Date, in furtherance of the express provisions of this Agreement.

30.11 Licensee's employees, 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's employees, agents and contractors shall not bring, use, distribute, sell or possess alcoholic beverages or illegal drugs during the performance of any activities on NGrid 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 on NGrid property. Violation of these requirements by Licensee's employees, agents or contractors shall result in denial of access of that individual(s) to NGrid property, facilities and equipment and, in the case of possession, use or sale of illegal drugs, shall be reported to NGrid's Security Department immediately.

30.12 NGrid, 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.

30.13 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

30.15 By entering into this Agreement, the parties do not intend to create any express or implied Third Party beneficiaries.

31. LIMITATION OF WARRANTIES

31.0 NGrid makes no specific covenant, warranty or representation as to the title to the Property and/or Rights-of-Way which are to become subject to this Agreement, but will make available to Licensee for its review all agreements and other documents in NGrid's possession relating to title to such Property and/or Rights-of-Way. NGrid 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 the Property and/or Rights-of-Way for the purposes contemplated under this Agreement.

31.1 NGRID 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 OR IN THE SUPPLEMENTAL AGREEMENTS. NGrid's liability for any warranty obligation whatsoever shall be limited to no more than the sum(s) paid by Licensee to NGrid for the involved location or equipment that is subject to claim which may arise hereunder for the calendar year during which cause for any claim arose.

31.2 NGRID 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 OR IN THE SUPPLEMENTAL AGREEMENTS.

32. SURVIVAL

32.0 The provisions of this Agreement shall survive granting of the Rights-of-Occupancy provided for herein and delivery of the Supplemental Agreements for recording, if such recording is necessary to effectuate the rights granted herein.

32.1 This Agreement and the relevant Supplemental Agreement shall survive any sale, transfer, assignment or other conveyance by NGrid of a Right-of-Way which is the subject of a Supplemental Agreement, and any such Right-of-Way shall be sold, transferred, assigned or otherwise conveyed by NGrid subject to the terms of this Agreement and the relevant Supplemental Agreement. After notifying Licensee of the completion of any such sale, transfer, assignment or other conveyance, including the name and address of the purchaser or assignee, NGrid shall be released from the performance of any and all of its obligations to Licensee with respect to such Right-of-Way, and Licensee shall thereafter pay the Occupancy Fee for such Right-of-Way to such purchaser or assignee.

33. END-OF-TERM

33.0 At the expiration or termination of the Initial Term or the Renewal Term, as the case may be, Licensee shall remove all of its Wireless Facilities from the Property and/or Rights-of-Way within one hundred and twenty (120) days of the date of such expiration or termination and restore the Property to NGrid's reasonable satisfaction, normal wear and tear and damage from the elements and condemnation excepted.

34. DISPUTE

34.0 It is the intent of the parties that disputes, which may arise between them, or between employees of each, be resolved as quickly as possible and may, in certain instances, involve decisions made on the spot. When such resolution is not possible, the parties agree to seek to resolve such disputes in the manner set forth in this Section.

34.1 Any dispute between the parties shall be referred initially to a NGrid designee for decision, which shall be rendered in writing within a reasonable time period.

34.2 The parties agree that neither shall proceed against the other by initiating arbitration or otherwise before the offending party has had notice of and reasonable time and opportunity to respond to and/or cure the dispute.

34.3 In the event of a dispute, controversy or claim arising out of or related to this Agreement, or the breach, termination or validity thereof, the parties shall submit the dispute to **binding arbitration** in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted before a panel of three arbitrators, one selected by each party, and the third selected by the two previously selected arbitrators. Judgment upon the award rendered by the three arbitrators may be entered by any court having jurisdiction thereof. The place of the arbitration shall be Onondaga County, New York.

35. AUTHORITY

35.0 NGrid represents and warrants that (a) it has full right, power and authority, including any requisite corporate approvals, to enter into and perform its obligations under this Agreement and the Supplemental Agreements, (b) the execution and performance of this Agreement and the Supplemental Agreements by NGrid will not violate or conflict with its Certificate of Incorporation or By-Laws or any laws or regulations to which NGrid or the Property may be subject or by which NGrid may be bound and (c) other than proceedings necessary to obtain any required regulatory approvals of this Agreement, no litigation or governmental proceeding is pending or, to the best of NGrid's knowledge, threatened which might adversely effect this Agreement or the Supplemental Agreements, the transactions contemplated by this Agreement or the Supplemental Agreements or the rights of either party hereunder or thereunder.

35.1 Licensee represents and warrants that (a) it has full right, power and authority, including any requisite partnership approvals, to enter into and perform its obligations under this Agreement and the Supplemental Agreements, (b) the execution and performance of this Agreement and the Supplemental Agreements by Licensee will not violate or conflict with its partnership agreement or any laws or regulations to which Licensee or the Wireless Facilities may be subject or by which Licensee may be bound and (c) no litigation or governmental proceeding is pending or, to, the best of Licensee's knowledge, threatened which might adversely affect this Agreement or the Supplemental Agreements, the transactions contemplated by this Agreement or the Supplemental Agreement or the rights of either party hereunder or thereunder.

36. PUBLIC UTILITY COMMISSION APPROVAL

36.0 The Parties acknowledge that this Agreement and any amendments thereto will be filed with and will require the approval of the PSC pursuant to the provisions of New York State Public Service Law and

NGrid's Rate Plan filed with the PSC prior to its becoming effective. If the PSC issues any rule, order or determination that directly or indirectly prohibits or prevents performance under this Agreement or otherwise makes such performance illegal or impossible, or takes any action or issues any rule, order or determination that directly or indirectly effects a material adverse change in any substantive provision of this Agreement, in the terms of performance or the rights or obligations of either party, then either party may (i) proceed with the Agreement so changed, (ii) seek to renegotiate the affected terms of the Agreement by providing written notice to the other party of its desire to do so or (iii) terminate the Agreement by providing sixty (60) days' prior written notice; provided that, if such action or determination is rescinded prior to the effectiveness of such termination notice, the termination notice will be ineffective.

37. PRIOR AGREEMENTS

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

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

NIAGARA MOHAWK POWER CORPORATION

By: _____

Title: _____

Date: _____

_____ (LICENSEE)

By: _____

Title: _____

Date: _____

EXHIBIT A	Form of Supplemental Agreement
EXHIBIT B	Occupancy Fee Schedule
EXHIBIT C	Form of Memorandum of Supplemental Agreement
EXHIBIT D	[Intentionally Omitted]
EXHIBIT E	Niagara Mohawk T & C's for the Supply of Materials and Construction Services

SA NO. _____
STRUCTURE NO. _____
EXHIBIT A

Form of Supplemental Agreement

To the Master Right-of-Occupancy Agreement between Niagara Mohawk Power Corporation³, and Licensee, dated as of _____, the terms and conditions of which are incorporated by reference herein, agree as follows:

1. Site No./Name: _____

2. Name of _____ Affiliate: _____

3. Site Latitude and Longitude: _____

4. Payment Commencement date: _____
5. Annual Fee: _____
6. Term: _____ yrs. _____ Expiring on: _____ (m/d/y)
7. Property Owned by Niagara Mohawk: [] or Lessor-Leased easement: []
If Leased, term of underlying Lease Site Niagara Mohawk Fee Owner: _____

Other existing easement holders yes [] no [] If so, list all other property rights holders
8. Access Requirements: _____
9. Niagara Mohawk Contact for Emergency Access: _____

10. Licensee contact for Emergency: _____

11. Licensee address for Notice Purposes: _____

12. Special provisions/site limitation/changes in ownership): _____

³ 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.

NIAGARA MOHAWK POWER CORPORATION

By: _____

By: _____

LICENSEE

By: _____

Title: _____

Date: _____

Addendum/Attachments:

- Schedule 1: Description of Antennas/Dishes Location(s)
- Schedule 2: Description of Equipment Shelter/ Room/Cabinet Location(s)
- Schedule 3: Plans and Specifications
- Schedule 4: Current Communications Users of Site (including frequencies)

EXHIBIT B

Monthly Occupancy Fees LICENSEE. Right-of-Occupancy Agreement

(i) General

Pricing in Section "A" below applies to the use of Niagara Mohawk Power Corporation⁴ ("NGrid") transmission and communication towers/poles/structures by Licensee or Licensee's Sub-licensee.

Section A

Monthly Occupancy Fee pricing is based upon the following:

- (1) Occupancy Fees apply for each of Licensee's or Sub-licensee's attachments on an individual tower/pole/structure ("Licensed Attachment") (e.g., there may be multiple Licensed Attachments, each Licensed Attachment on the tower having been authorized via a separate Supplemental Agreement, and thus, multiple Occupancy Fees due for said tower);
- (2) Occupancy Fees for Licensed Attachments in the ranges shown below shall not be affected by the total number of Licensed Attachments (e.g., the Occupancy Fee for the first ten (10) Licensed Attachments shall remain at the base level, with no discount, regardless of the total number of Licensed Attachments);
- (3) Volume discounts shall be applied to each Licensed Attachment in a given range (e.g., Licensed Attachment numbers 1-10 have \$0 discount, while Licensed Attachment numbers 11-25 have a \$160 discount/tower/month);
- (4) Volume discounts shall be applied for Licensed Attachments that meet or exceed the thresholds shown below (i.e., Attachment number 11, in the range 11-25);
- (5) Volume discounts shall be applicable prospectively, for Licensed Attachments that meet or exceed the minimum thresholds shown below, beginning the month immediately following the total number of Licensed Attachments meeting or exceeding said thresholds, and continuing so long as said threshold is met or exceeded;
- (6) A Licensed Attachment as applied in this Exhibit shall mean an attachment pursuant to a Supplemental Agreement for which the Monthly Occupancy Fee has commenced; and
- (7) The Monthly Occupancy Fee table below shall be adjusted in accordance with Section 7.1.

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 B (con't)

Monthly Occupancy Fees
Right-of-Occupancy Agreement

Section A

Occupancy Fee	
Supplemental Agreement # (Licensed Attachment)	Monthly Occupancy Fee (applicable to each Licensed Attachment)
1 – 10	\$1,600
11 – 25	\$1,440
26 – 50	\$1,200
51- 75	\$1,000
76 – 100	\$850
101 and above	\$750

EXHIBIT C

Form of Memorandum of Supplemental Agreement for New York State Facilities

MADE as of the _____ day of _____, ____

BY AND BETWEEN

NIAGARA MOHAWK POWER CORPORATION⁵, 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 ("NGrid"), and Licensee, a corporation organized and existing under the laws of _____, with a place of business at _____, have entered into a Master Right of Occupancy Agreement dated as of __ day of _____, 200_, the terms and conditions of which are incorporated by reference herein, agree as follows:

WITNESSETH:

WHEREAS, as of the date hereof, NGrid and Licensee entered into a certain Supplemental Agreement (the "Agreement") relating to certain real property known as _____; and

WHEREAS, NGrid and Licensee are desirous of entering into this Memorandum of Agreement pursuant to the provisions of the Section 291-c of the New York Real Property Law;

NOW, THEREFORE, intending to be legally bound, NGrid and Licensee hereby set forth the following information with respect to the Agreement:

1. The name of the property owner is Niagara Mohawk Power Corporation, a _____ corporation.
2. The name of the occupant is Licensee, a _____ Corporation _____.
3. The addresses set forth in the Agreement as addresses of the parties are as set forth in the preamble to this Memorandum of Agreement.
4. The Agreement is dated as of the date hereof.
5. The description of the demised premises as set forth in the Agreement is as set forth in **SCHEDULE A** attached hereto.
6. The date of the commencement of the term of the Agreement is _____.
7. The term of the Agreement is _____ years.

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.

8. Licensee has the right to renew the Agreement for four (4) successive renewal terms of five (5) years each.
9. All property brought onto the demised premises by _____ shall remain _____' personal property and shall be removed no later than 120 days after the Agreement has terminated.

Memorandum of Agreement

SCHEDULE A

Metes and Bounds Description of Demised Premises

EXHIBIT D

[INTENTIONALLY OMITTED]

**Niagara Mohawk Power Corporation
TERMS AND CONDITIONS FOR THE SUPPLY
OF MATERIALS AND CONSTRUCTION SERVICES**

1. DEFINITIONS.

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

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

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

"NGrid" means National Grid USA.

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

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

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

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

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

performance under the Contract, the Contract Price and Contract Schedule and other affected provisions of the Contract shall be equitably adjusted.

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

Workers' Compensation and Employers Liability Insurance, as required by the state in which the work is performed. Coverage will include the U.S. Longshoremen's and Harbor Workers Compensation Act and the Jones Act

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

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

Automobile Liability. NGrid is a qualified self-insurer

If requested, NGrid will provide evidence for these specified coverages. Such evidence will include that at least thirty (30) days prior written notice shall be given to Buyer in the event of any cancellation or diminution of coverage. If NGrid uses subcontractors in connection with the Contract, NGrid shall require them to provide the same Workers' Compensation and Employers Liability and Public Liability coverages set forth above. In lieu of automobile self-insurance, subcontractors shall be required to maintain automobile liability insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, with a combined single limit of at least \$500,000.

12. **INDEMNIFICATION.** NGrid shall defend, indemnify, and hold harmless Buyer, its agents and employees, from and against any loss, damage, liability, cost, suit, charge, cause of action, claim, and expense, arising out of any damage to property (including environmental damage) or injury to or death of any person directly caused by the negligence of NGrid while performing Services. In the event that the injury or damage is caused by the joint or concurrent negligence of NGrid and Buyer, the loss shall be borne by NGrid and Buyer proportionately to their degree of negligence. NGrid's obligations hereunder shall in no event apply when such damage or injury results from a defect in Materials not caused by NGrid's Services.
13. **LIMITATION OF LIABILITY.** NGrid's total cumulative liability to Buyer for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from this Contract or the items provided hereunder, shall in no case exceed the Contract Price. Except as this Contract may expressly provide, in no event, whether as a result of breach of contract, tort (including negligence and strict liability), or otherwise shall NGrid be liable to Buyer for any and all special, indirect, incidental, penal, punitive or consequential damages of any nature, including delays, lost profits, business interruptions, and claims of suppliers and customers. The provisions of this Section shall apply notwithstanding any other provisions of the Contract, and shall survive, termination, cancellation, or completion of the Contract.
14. **TERMINATION.** This Contract may be terminated by either party upon not less than ten (10) days written notice to the other party. Such termination shall be effective on the date set forth in the notice. In such event, neither party shall be entitled to incidental or consequential damages for termination, including loss of prospective profits. No amount shall be paid by either party for termination costs, including demobilization and other direct and indirect costs. Within thirty (30) days of termination, NGrid will return any sums paid, less expenses incurred and amounts due and owing for that portion of the Contract work scope performed to the date of termination. In the event these withheld sums are insufficient to cover the expenses and amounts, or no payments have yet been made under this Contract, Buyer shall remit the balance due within thirty (30) days after receipt of written notice by NGrid.
15. **ASSIGNMENT.** This Contract shall not be assigned or subcontracted by either party without the other party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, NGrid has the right to assign its rights and obligations under this Contract to any affiliate of NGrid that is controlled by, controlling or under common control with NGrid.
16. **THIRD-PARTY BENEFICIARY.** The parties have no intent, and do not create, any third-party rights or interest in this Contract, or in the Materials or Services.
17. **AMENDMENT.** This Contract shall not be superseded or modified, except in a writing signed by the parties.
18. **NOTICES.** Each party shall designate in the Contract the name and address of that party's representative. Any legal or contractual notices required to be sent to either party shall be deemed duly sent when mailed to the intended party's designated representative.
19. **WAIVER.** No term of this Contract may be waived except in a writing signed by the parties.
20. **APPROVALS.** It is understood that NGrid may be required to obtain corporate, regulatory, and other third-party approvals and releases in connection with the provision of the Materials and/or Services. If so, this Contract shall be effective subject to any such approvals and releases.
21. **LAWS.** This Contract shall be interpreted and enforced according to the laws of the State of New York, and not those laws determined by application of New York's choice of law principles. Venue in any action shall be in the State of New York. Buyer agrees to submit to the personal jurisdiction of courts in the State of New York.
22. **SEVERABILITY.** To the extent that any provision of this Contract shall be held to be invalid, illegal or unenforceable, it shall be severed from this Contract without affecting the validity, legality or enforceability of the remaining provisions of the Contract.
23. **INTEGRATION AND MERGER.** Buyer and NGrid agree that there are no understandings, agreements, or representations, expressed or implied, other than those expressed herein. This Contract supersedes and merges all prior discussions and understandings, and constitutes the entire agreement between the parties.

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

BUYER

By: _____

Title: _____

Date: _____

Niagara Mohawk Power Corporation

By: _____

Title: _____

Date: _____