

**NINE MILE 2 UPRATE PROJECT
ENGINEERING, PROCUREMENT &
CONSTRUCTION SERVICES
AGREEMENT**

BETWEEN

**NIAGARA MOHAWK POWER
CORPORATION**

AND

**NINE MILE POINT
NUCLEAR STATION, LLC**

ENGINEERING, PROCUREMENT and CONSTRUCTION SERVICES AGREEMENT

THIS ENGINEERING PROCUREMENT and CONSTRUCTION SERVICES AGREEMENT is made and entered by and between Nine Mile Point Nuclear Station, LLC ("NINE MILE"); a corporation organized and existing under the laws of the State/Commonwealth of Delaware, and Niagara Mohawk Power Corporation d/b/a National Grid (the "COMPANY"), a corporation organized and existing under the laws of the State of New York. NINE MILE or COMPANY shall be referred to either individually as a "Party" or collectively as the "Parties".

WITNESSETH

WHEREAS, NINE MILE is upgrading its existing Unit 2 nuclear generation facility; and

WHEREAS, the upgrade will require certain upgrades at Scriba Substation located in Oswego County, NY; and

WHEREAS, COMPANY and NINE MILE are negotiating an Interconnection Agreement between themselves, New York State Electric & Gas Company, and the New York Independent System Operator, Inc.; and

WHEREAS, COMPANY has conducted and provided to NINE MILE a Facilities Study describing the Work necessary to support the upgrade; and

WHEREAS, COMPANY will provide under this Agreement, at NINE MILE's sole cost and expense, design, engineering, procurement, and project management for the Project until such time as the Interconnection Agreement goes into effect.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, the Parties agree as follows:

1.0 Definitions

Wherever used in the Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

"Affiliate" shall mean, with respect to a person or entity, any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust or unincorporated organization, directly or indirectly controlling, controlled by, or under common control with, such person or entity. The term "control" shall mean the possession, directly or indirectly, of the power to direct the management or policies of a person or an entity. A voting interest of ten percent or more shall create a rebuttable presumption of control.

"Agreement" means this signed Engineering, Procurement and Construction Services Agreement including all annexes, appendices, and any subsequent amendments, supplements or modifications thereto, as mutually agreed upon by the Parties.

"Contract Price" means the total amount paid by NINE MILE to the COMPANY as set forth in Article 6.0 of the Agreement.

"DAFs" means Developer Attachment Facilities as set forth in the Facilities Study.

"Day" means a calendar day, except that if an obligation of the Agreement falls due on a Saturday, Sunday or legal holiday, it shall be due the next day worked.

"Dollars" and "\$" mean United States of America dollars.

"Drawings" means those drawings listed in the Specification for the Project. Said Drawings are incorporated by reference as if fully set forth in this Agreement.

"Facilities Study" means the Class Year 2008 Draft Facilities Study Report – Part 1 for the Nine Mile Point 2 Uprate Project (Queue #216), Revision 4, October 14, 2009.

"Final Acceptance" for the Project means the earlier of that date when the COMPANY notifies the NINE MILE Project Manager in writing that the Work for the Project has been completed or submits its final invoice to NINE MILE.

"Force Majeure Event" means fire, flood, windstorm, adverse weather conditions, emergencies, explosion, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving license and permit requests necessary to the Project, or order by any federal or state regulatory agency, or other similar causes beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("Resources") due to diversion of such Resources for other utility-related duties in connection with an emergency, including, without limitation, storms or other adverse weather condition.

"Good Utility Practice" means 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 of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a 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 in which the Project is located. Good Utility Practice shall include, but not be limited to, NERC (defined below) criteria, rules, guidelines and standards, NPCC (defined below) criteria, rules, guidelines and standards, NYSRC (defined below) criteria, rules, guidelines and standards, and NYISO (defined below) criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time including the rules, guidelines and criteria of any successor organization to the foregoing entities. When applied to NINE MILE, the term Good Utility Practice shall also include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.

"Interconnection Agreement" means a Standard Large Generator Interconnection Agreement in the form found in Appendix 6 of the NYISO OATT for the electrical connection of the Project to the NYISO transmission system.

"NPCC" shall mean the Northeast Power Coordinating Council (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

"NERC" shall mean the North American Electric Reliability Corporation or any successor organization.

"NYISO" shall mean the New York Independent System Operator, Inc.

"NYSEG" shall mean the New York State Electric & Gas Company.

"NYSRC" shall mean the New York State Reliability Council or any successor organization.

"OATT" shall mean the FERC-approved Open Access Transmission Tariff for the NYISO and/or the FERC-approved Service Tariff for the NYISO, as applicable, and as it may be amended from time to time.

"Project" means the approximately 168 MW nameplate capacity increase to the NINE MILE Unit 2 nuclear generation facility (Queue #216).

"Project Manager" means the respective representative for each of NINE MILE and the COMPANY who is responsible for his or her Party's administration of this Agreement and general oversight of the Project.

"Services" means all the equipment, materials, labor, supervision and Subcontractor services provided by COMPANY to NINE MILE which are necessary to complete the Work.

"Site" means the COMPANY's Scriba Substation.

"Specification" means the technical requirements and procedures for a Project including any accompanying appendices contained in the Agreement and incorporated by reference as if fully set forth therein.

"Subcontractor" means any organization, firm or individual, regardless of tier, which the COMPANY retains during the term of the Agreement to provide labor, materials, Services, and/or equipment in connection with the Agreement.

"Supplemental Conditions" means those terms and conditions, if included in the Agreement by mutual written agreement of the Parties, which add to or modify the Agreement and are incorporated by reference as if fully set forth in the Agreement. In the case of a conflict between the Supplemental Conditions and the Agreement, the Supplemental Conditions shall prevail.

"Work" means all duties, responsibilities, and obligations to be performed by the COMPANY more fully described in Article 3.0 of the Agreement (Scope of Work).

2.0 Term

- 2.1 The Agreement shall become effective when executed by both Parties and shall remain in full force and effect, unless earlier terminated in accordance with its terms, until the earlier of the effective date of the Parties' Interconnection Agreement with NYISO and NYSEG or final payment is received by the COMPANY as set forth herein.
- 2.2 If this Agreement is terminated because the Interconnection Agreement becomes effective by the Parties' execution of an Interconnection Agreement or as otherwise accepted by the Federal Energy Regulatory Commission, then, except for any case already filed in a court of competent jurisdiction, and except as otherwise provided in this Agreement, any and all rights, obligations and remedies the Parties have under this Agreement shall terminate on the effective date of such Interconnection Agreement, and the terms and conditions of such Interconnection Agreement shall govern the Parties' rights, obligations, and remedies relating to performance in connection with the subjects addressed hereunder after the date of the termination of this Agreement.

3.0 Scope of Work

- 3.1 The COMPANY shall perform the modifications to Line #23 Revenue Metering Equipment for the Project, as described in Attachment 1, including, but not limited to, the following:
 - 3.1.1 Engineering, design, procurement, construction services and testing associated with the modifications, including all required drawings, specifications, and any other information reasonably required.
 - 3.1.2 Modification documentation will be reviewed by NINE MILE in accordance with Section V.B of the NMPNS, LLC-National Grid Substation Operating Guidelines (Rev. 2).
 - 3.1.3 Coordination as needed with NINE MILE, NYSEG and the NYISO to complete the Project, to include holding and attending required Project meetings.
 - 3.1.4 Provision of any other reasonable Services necessary to complete the Project.

4.0 Changes in the Work

- 4.1 Prior to commencing Work, each Party shall inform the other Party in writing of the name and contact information for its respective Project Manager per Article 28.1 of this Agreement.
- 4.2 Any requests for changes to the scope of the Work as set forth in this Agreement shall be put in writing, submitted to the Project Managers of the Parties and agreed to in writing signed by the Parties. All changed Work shall be performed in accordance with the terms and conditions of this Agreement, unless otherwise agreed to in a writing signed by the Project Managers of the COMPANY and NINE MILE.
- 4.3 If the Parties agree to a change in the scope of Work, the schedule and Contract Price shall be adjusted accordingly, as mutually agreed by the Parties.

5.0 Performance and Schedule

- 5.1 The COMPANY shall use Good Utility Practice to complete performance of the Work in accordance with the Project Milestone Schedule set forth in Article 5.4 of the Agreement.
- 5.2 The COMPANY shall attempt to reasonably limit Work performed by its direct employees and Subcontractors to normal working hours. Extended hours shall be subject to additional compensation to the COMPANY.
- 5.3 If the Parties fail to reach an agreement to adjust and/or extend the Project Milestone Schedule provided in Article 5.4 to accommodate changes in the scope of the Work agreed to under Article 4, then the COMPANY shall continue to perform the Work in a manner consistent with Good Utility Practice, but shall have no liability or obligation to complete the Work as of the dates specified in Article 5.4. If NINE MILE requests, and COMPANY agrees, to have the COMPANY's direct employees and Subcontractors work outside normal working hours due to delays in the Project schedule resulting from either (i) the occurrence of an event of Force Majeure or (ii) the actions or inactions of NINE MILE or any of its employees, agents, contractors, or subcontractors, then COMPANY shall be entitled to an adjustment and extension of time, if appropriate in the opinion of both Parties, to cover such delay beyond the dates fixed in Article 5.4.

5.4 Project Milestone Schedule:

| | | | |
|----|---|---------|-------------------|
| 1. | Issue written authorization to proceed with engineering, design and procurement | 03/2011 | NINE MILE |
| 2. | Submit Initial Prepayment | 03/2011 | NINE MILE |
| 3. | Start engineering and procurement of Attachment Facilities | 03/2011 | COMPANY |
| 4. | ID and review drawings impacted (e.g., revision comparison) | 04/2011 | NINE MILE/COMPANY |
| 5. | Complete engineering and procurement of Expansion Project Attachment Facilities | 09/2011 | COMPANY |

The dates above represent the Parties' preliminary schedule, which is subject to change in accordance with the terms of this Agreement.

6.0 Contract Price

- 6.1 The Contract Price shall be the actual cost of the Services.
- 6.2 For the Scope of Work set forth in Article 3 of this Agreement, the estimated Contract Price is \$980,000, as shown in Section VII of the Facilities Study.
- 6.3 If applicable, upon execution of this Agreement, NINE MILE shall provide COMPANY with a certificate of its New York State sales tax exempt status and COMPANY shall exclude applicable sales taxes from labor costs on its invoices.
- 6.4 The estimated Contract Price will be adjusted for any changes in the Scope of Work requested by NINE MILE under Article 4.0 of the this Agreement or reasonable increases of in-scope costs.

7.0 Invoicing

- 7.1 Prior to the COMPANY's commencement of any Services under this Agreement, and within thirty Days of the effective date of this Agreement, the COMPANY shall invoice NINE MILE for an initial prepayment of \$200,000 ("Initial Prepayment"), and NINE MILE shall provide the COMPANY with the Initial Prepayment. If during the performance of the Services, COMPANY determines that additional funding is required to complete the Services, COMPANY will request additional funding from NINE MILE in writing ("Additional Prepayments"). If additional funding is not received from NINE MILE on or before the date specified in such request, or if no date is specified, within 30 days of receipt of the written request, COMPANY will cease work upon the depletion of the Initial Prepayment. Upon COMPANY's receipt of Additional Prepayments from NINE MILE, COMPANY will continue to perform the Services.
- 7.2 The COMPANY shall invoice NINE MILE for all sums owed under this Agreement, including the Initial Prepayment, to the following individual or such other individual as NINE MILE may designate upon written notice to the COMPANY :

Name: Mr. David J. Dellario
Title: EPU Project Director, Extended Power Uprate Project
Address: Nine Mile Point Nuclear Station, LLC
PO Box 63, Lake Road
Lycoming, NY 13903

With a copy to:

Constellation Energy Nuclear Group LLC
Attn: Accounts Payable
PO Box 1689
Lusby, MD 20657

-OR-

CGGAP@Constellation.com

- 7.3 The Initial Prepayment invoice and any Additional Prepayment invoice shall describe the services and equipment planned. COMPANY shall provide support documentation if requested by NINE MILE. NINE MILE shall notify COMPANY in writing of any disputed items or need for additional documentation as soon as practicable, but, in no case later than the date such invoice becomes due and payable. The Parties shall cooperate to promptly resolve any dispute or documentation issue.

- 7.4 Within sixty (60) Days of the completion of the Work, the COMPANY shall perform an overall reconciliation of the actual COMPANY's costs to the costs previously invoiced to NINE MILE, and the COMPANY shall provide a final invoice for an amount due to the COMPANY or credit owed to NINE MILE, as the case may be. The COMPANY's final invoice shall be marked "FINAL INVOICE," in any cover letter, forwarding email, and on each page of the final invoice, and an additional copy of this Final Invoice shall be submitted to NINE MILE's Project Manager. Any credit owed by the COMPANY to NINE MILE shall be due and payable upon final reconciliation but no later than thirty (30) Days after the date of such reconciliation. If such credit is not received by NINE MILE within five (5) Days of such due date, a monthly charge calculated in accordance to Article 8.1 shall be added to the credit amount.
- 7.5 To the extent the Parties' Interconnection Agreement with NYISO and NYSEG becomes effective before the Initial Prepayment or any Additional Prepayment has been fully used to offset invoices for Services performed by the COMPANY under this Agreement, the COMPANY shall be authorized to apply the remaining balance of the Initial Prepayment or any Additional Prepayment to invoices charged to NINE MILE under the Interconnection Agreement. The COMPANY shall adjust the security to be provided under the Interconnection Agreement to reflect the Initial Prepayment and any Additional Prepayments received by the COMPANY under this Agreement. Notwithstanding Article 2.2 or any other provision of this Agreement, this Article 7.5 shall survive the termination of this Agreement if the Agreement is terminated as a result of the effectiveness of the Interconnection Agreement.

8.0 Payment

- 8.1 Except as otherwise expressly provided for in the Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice, provided that, until the Initial Prepayment and any Additional Prepayments made under this Agreement have been fully used to offset invoices for Services performed by the COMPANY under this Agreement, the COMPANY is authorized to, and shall, apply the remaining funds from the Initial Prepayment and any Additional Prepayments to any charges or invoice when due and payable under this Agreement. If any NINE MILE payment due under this Agreement is not received within five (5) Days of invoice due date, a monthly charge equivalent to 1/12 of the per annum United States Prime Rate prevailing during that particular billing period as listed in the most recent Eastern print edition of the Wall Street Journal®, or any other equivalent published rate agreed to by the COMPANY and NINE MILE, plus two (2) percent shall be added to the amount overdue and shall be payable by NINE MILE to the COMPANY; such charge shall be calculated on the unpaid balance, beginning on the invoice due date until payment of the overdue amount is received.
- 8.2 Payments to the COMPANY shall be made by wire transfer to:
- HSBC Bank
ABA: 021001088
Title of Account Niagara Mohawk Power Corporation
Acct. No.: 204891787
- 8.3 In the event of a billing dispute between COMPANY and NINE MILE, COMPANY shall continue to perform under this Agreement and shall continue to apply the Initial Prepayment and any Additional Prepayments made under this Agreement to offset invoices for Services performed by the COMPANY under this Agreement. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accordance with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii).
- 8.4 Final payment shall be made within thirty (30) Days after Final Invoice date.

9.0 Meetings

- 9.1 The COMPANY's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

10.0 Disclaimers

- 10.1 COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THE AGREEMENT, ANY PROJECT, OR ANY WORK OR SERVICES PERFORMED IN CONNECTION THEREWITH, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE AGREEMENT. NINE MILE ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE WORK, INCLUDING ITEMS INCORPORATED IN THE WORK ("THIRD PARTY WARRANTIES"), ARE NOT TO BE CONSIDERED WARRANTIES OF THE COMPANY AND THE COMPANY MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

11.0 Liability and Indemnification

- 11.1 To the fullest extent permitted by law, each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party, its Affiliates, and their agents, directors, employees, members, officers, representatives, servants, and thirty party contractors, (the "Indemnified Parties"), and at the other Party's option, defend the Indemnified Parties from and against any and all claims against and/or liability of the Indemnified Parties, including expenses, legal or otherwise, for damage to property or injury or death of any person, or any other liability to the extent caused by (i) any breach of this Agreement by the Indemnifying Party, its Affiliates, and their agents, directors, employees, members, officers, representatives, servants, and third party contractors, and (ii) the negligence or intentional misconduct of the Indemnifying Party, its Affiliates, and their agents, directors, employees, members, officers, representatives, servants and third party contractors, arising out of or connected with the Agreement, the Project, or any associated Work except to the extent such breach is directly caused by the negligence, intentional or unlawful act of the Indemnified Parties.
- 11.2 Neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including attorney's fees or litigation costs associated with such damages) in connection with or related to the Agreement, including without limitation damage claims based on causes of action for breach of contract, tort (including negligence) or any other theory of recovery, whether or not such Party was, or should have been, aware that such damages might be incurred.
- 11.3 Except to the extent that an element of profit is included in the Contract Price for Work as determined under the Agreement and such amounts are past due and owing to the COMPANY, neither Party shall be liable to the other Party for claims of lost profits, whether such claims of lost profits are categorized under the Agreement as direct or consequential damages, or whatever the theory of recovery.
- 11.4 Notwithstanding any other provisions of this Agreement, this Article 11.0 shall survive the termination or expiration of the Agreement.

12.0 Passage of Title and Risk of Loss

- 12.1 Unless otherwise expressly stated herein or agreed to by both Parties in writing, title to all equipment or goods, or portions thereof, which are specified by the Agreement as deliverables to the COMPANY, if applicable, shall pass to the COMPANY upon its delivery to the carrier FOB or to the COMPANY, whichever occurs first. The COMPANY makes no warranty, guaranty, or representation with respect to ownership of, or title to, goods, products, or equipment, in whole or in part, and the COMPANY does not purport to grant any license to NINE MILE or its Affiliates, with respect to any third party trademark, patent, or other intellectual property right in connection with the goods, products, or equipment, whether or not such third party property is contained in or comprises such goods, products, or equipment, in whole or in part.
- 12.2 COMPANY shall bear no risk of loss or damage of any kind or nature whatsoever with respect to the cost of all packaging and shipment of equipment and material provided by NINE MILE to the Site, of all unloading, storage, protection and installation of said equipment and material at the Site, and of any insurance on the equipment and material prior to the Final Acceptance of the Project, regardless of whether title has passed to the COMPANY

13.0 Insurance Requirements

- 13.1 Prior to commencing Work on the Project and during the term of the Agreement, each Party, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Schedule 1 to the Agreement, or shall, at the Party's sole and absolute discretion, elect to self-insure provided that the Party electing to self-insure provides written notice to the other Party prior to commencing any Work under this Agreement. In the event that either Party uses subcontractors in connection with this Agreement, said Party shall require all subcontractors to provide the same insurance coverages set forth in Schedule 1.
- 13.2 Prior to commencing the Work, each Party, provided that such Party does not elect to self insure, shall have its insurer furnish the other Party certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article 13.0.
- 13.3 Each Party shall be solely responsible for the claims of its respective employees and shall release, defend, and indemnify the other Party and its Affiliates from and against such claims.

14.0 Assignment and Subcontracting

- 14.1 This Agreement may be assigned by a Party only with the written consent of the other Party; provided that a Party may assign this Agreement without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; provided further that a Party may assign this Agreement without the consent of the other Party in connection with the sale, merger, restructuring, or transfer of a substantial portion or all of its assets, so long as the assignee in such a transaction directly assumes in writing all rights, duties and obligations arising under this Agreement; and provided further that NINE MILE shall have the right to assign this Agreement, without the consent of the COMPANY, for collateral security purposes to aid in providing financing for the Project, provided that NINE MILE will promptly notify the COMPANY of any such assignment. Any financing arrangement entered into by NINE MILE pursuant to this Article 14.1 will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the COMPANY of the date and particulars of any such exercise of assignment right(s) and will provide the COMPANY with proof that it meets the

requirements of Article 13. Any attempted assignment that violates this Article 13.1 is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

15.0 Independent Contractor

15.1 The COMPANY is, and shall at all times remain, an independent contractor.

16.0 Examination, Inspection and Witnessing

16.1 The COMPANY shall inspect all Work and make or cause to be made all tests required by the Agreement or Good Utility Practice at NINE MILE's sole cost and expense.

16.2 At times and places mutually agreed to by the Parties after reasonable notice, NINE MILE or its designated representative shall be entitled to: (1) witness any test performed by the COMPANY; (2) conduct its own inspections and perform its own tests at NINE MILE's sole cost and expense.

17.0 Safety

17.1 Each Party shall be responsible for the safety and supervision of its respective employees involved with the Work or on the Site. In connection with each Project, both Parties shall, and shall require their respective representatives, contractors, and employees to, comply with all applicable Federal, state and local safety requirements, rules, regulations, laws and ordinances, including without limitation, compliance with the safety regulations adopted under the Occupational Safety and Health Act of 1970 (OSHA), as amended from time to time.

18.0 Approvals, Permits and Easements

18.1 The actual cost of obtaining all permits, licenses, permissions, or consents obtained by COMPANY necessary for the Project and the Work shall be paid for by NINE MILE.

19.0 Environmental Protection; Hazardous Materials or Conditions.

19.1 In no event shall either Party (as the "Indemnified Party") be liable to the other Party (the "Indemnifying Party"), its Affiliates, or their agents, directors, employees, members, officers, representatives, servants, or third-party contractors or any third party with respect to, or in connection with, the presence of any hazardous wastes, conditions, or substances which may be present at or on any Indemnifying Party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third party property) or which the Indemnified Party may discover, release, or generate at or on such properties or facilities through no negligent or unlawful act of the Indemnified Party. The Indemnifying Party agrees to hold harmless, defend, and indemnify the Indemnified Party, its Affiliates, and their agents, directors, employees, members, officers, representatives, servants, and third party contractors from and against any and all claims and/or liability in connection with, relating, to or arising out of (i) said presence, discovery, release or generation, or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., except to the extent such breach is directly and solely caused by the negligent or unlawful act of the Indemnified Party, its Affiliates, or their agents, directors,

employees, members, officers, representatives, or servants. The obligations under this Article 19.1 shall not be limited in any way by any limitation on the Indemnifying Party's insurance. The provisions of this Article 19 shall survive the expiration or earlier termination of this Agreement.

- 19.2 Each Party shall promptly inform the other Party, in writing, of any hazardous materials or substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in the Party's owned, occupied, used, or operated facilities or property (including, without limitation, easements, rights-of-way, or other third party property) to be used or accessed in connection with the Work or Project. Prior to commencement of the Work, each Party shall be obligated to use its best efforts (including, without limitation, the use of DIGSAFE or other similar services) to adequately investigate the presence and nature of any such hazardous materials or substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, and to promptly, fully, and in writing, communicate the results thereof to the other Party. A Party's provision to the other Party of the information contemplated in this Article 19.2 shall in no event give rise to any liability or obligation on the part of the providing Party, nor shall the Indemnifying Party's obligations under Article 19.1, above, or under law, be decreased or diminished thereby.

20.0 NINE MILE's Right to Terminate

- 20.1 NINE MILE may terminate this Agreement without cause, by giving the COMPANY written notice of termination ("Notice of Termination") at least ninety (90) Days in advance of such termination. After receiving such a Notice of Termination and except as otherwise agreed to by NINE MILE and the COMPANY, the COMPANY shall:
- 20.1.1 Stop the Work on the date and to the extent specified in the termination notice;
 - 20.1.2 Place no further orders or subcontracts;
 - 20.1.3 Terminate all orders and subcontracts to the extent that they relate to the portions of the Work terminated; and
 - 20.1.4 Take such action as may be necessary or as NINE MILE may direct to protect and preserve the property related to the Work that is in COMPANY's possession and in which NINE MILE has or may acquire an interest.
- 20.2 In the event that the Agreement is terminated pursuant to Article 20.1, the COMPANY shall submit a final invoice to NINE MILE for Services provided up to the date work is discontinued, pursuant to Article 7.2 of this Agreement. The COMPANY may also include in its final invoice its reasonable costs, if any, incurred to terminate the Agreement early, including cancellation costs of third-party contracts. Payment of such invoice shall be without prejudice to either Party's rights with respect to the reasons for such termination

21.0 Right to Terminate Agreement for Cause

- 21.1 Notwithstanding any other provision of the Agreement, if either Party: (1) fails to comply with any of the material terms or conditions of the Agreement; (2) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (3) makes a general assignment for the benefit of its creditors; then the other Party shall have the right, without prejudice to any other right or remedy of either Party, and after giving five (5) Days' written notice and a reasonable opportunity for cure, to terminate the Agreement, in whole or part, and thereupon the COMPANY shall immediately discontinue its Work to the extent feasible.

- 21.2 In the event that the Agreement is terminated pursuant to Article 21.1, the COMPANY shall submit a final invoice to NINE MILE for Services provided up to the date work is discontinued, pursuant to Article 7.4 of this Agreement. Except in the case of NINE MILE's termination of this Agreement if the COMPANY fails to comply with any of the material terms or conditions of the Agreement pursuant to Article 21.1(1), the COMPANY may also include in its final invoice its reasonable costs, if any, incurred to terminate the Agreement, including cancellation costs of third-party contracts. Payment of such invoice shall be without prejudice to either Party's rights with respect to the reasons for such termination.

22.0 Termination Costs

Except in the case of NINE MILE's termination of this Agreement if the COMPANY fails to comply with any of the material terms or conditions of the Agreement pursuant to Article 21.1(1):

- 22.1 If NINE MILE terminates this Agreement, it shall be responsible for all costs incurred in association with NINE MILE's interconnection, including costs to restore the existing interconnection and any cancellation costs relating to orders or contracts for which the COMPANY has incurred expenses and has not been reimbursed by NINE MILE.
- 22.2 The COMPANY may, at its option, retain any portion of such materials, equipment, or facilities that NINE MILE chooses not to accept delivery of, in which case the COMPANY shall be responsible for all costs associated with procuring such materials, equipment, or facilities.
- 22.3 With respect to any portion of facilities already installed or constructed pursuant to the terms of this Agreement, NINE MILE shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

23.0 Force Majeure

- 23.1 If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their respective, obligations hereunder, then each affected Party should promptly notify the other Party in writing of the nature and extent to which its performance is affected by such Force Majeure Event, and its estimated duration. The affected Party's performance of any obligation under this Agreement, with the exception of payment obligations, shall be suspended for so long as it is affected by such Force Majeure Event. At the conclusion of a Force Majeure Event, the Contract Price and Project Milestone Schedule under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement, in whole or in part, with no further obligation or liability; provided, however, that, notwithstanding any such terminations, NINE MILE shall pay the COMPANY all of the COMPANY's costs and expenses incurred, and fees earned, up to the effective date of such termination.
- 23.2 Within thirty Days after the termination of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

24.0 Extensions of Time

- 24.1 NINE MILE may request a reasonable extension to the Project Milestone schedule for changes in the Project, as provided in Article 4.0, and for events of Force Majeure, as provided in Article 23.0.

25.0 Proprietary and Confidential Information

- 25.1 Each Party acknowledges that in the course of the performance of this Agreement it may have access to Proprietary Information, as hereinafter defined, of the other Party. Proprietary Information shall include (i) all, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party (as such term is defined below), or its Affiliates (or its or its Affiliates' agents, servants, contractors, or employees) to the Receiving Party or its Representatives (as such terms are defined below) in connection with the Project and which, if in tangible form, is marked with the words "Confidential" or "Proprietary" or markings of similar import, or, if disclosed orally, is identified as confidential at the time of disclosure and in a written memorandum provided to Receiving Party by the Disclosing Party promptly following its disclosure; and (ii) memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from the information described herein. In order to be entitled to protection under this Article 25, all Proprietary Information shall be marked as proprietary with an appropriate legend, marking, stamp or other obvious written identification prior to disclosure ("Proprietary Information"). 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").
- 25.2 General Restrictions. Upon receiving Proprietary Information, such Party (the "Receiving Party") or its Representative shall keep in strict confidence and not disclose to any person, any of the Disclosing Party's Proprietary Information except to its Affiliates, and its and its Affiliates' agents, directors, employees, members, officers, representatives, servants and third-party contractors (its "Representatives"), and only to the extent each such Representative has a need to know in connection herewith, and 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 Article to the extent caused by its Representative(s).
- 25.3 Additional Marking Requirements. 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. Such Proprietary Information shall be treated in the manner set forth above from the date such written notice is received.
- 25.4 Exceptions. The Receiving Party shall not be precluded from, nor liable for, disclosure or use of any Proprietary Information if:
- 25.4.1 the Proprietary Information is in or enters the public domain, other than by a breach of this Article; or
- 25.4.2 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; or
- 25.4.3 the Proprietary Information is developed by the Receiving Party independently of any disclosure under this Agreement as evidenced by written records; or
- 25.4.4 disclosure of the Proprietary Information is compelled or required by a government authority, including, but not limited to any court or regulatory body, whether or not a protective order is sought or granted; or

25.4.5 the Disclosing Party consents to the disclosure or use of the Proprietary Information; or

25.4.6 the Receiving Party has a reasonable belief that disclosure of the Proprietary Information is necessary for public safety reasons and has attempted to provide the Disclosing Party as much advance notice of the disclosure as is practicable.

26.0 Rights of Various Interests

26.1 The Parties shall be responsible for promptly notifying each other in the event that it should become necessary to coordinate Work between the Parties and others.

27.0 Governing Law

27.1 The Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York.

27.2 The COMPANY and NINE MILE agree to submit to the personal jurisdiction of the New York State courts, or Federal District courts, as permitted by law, with respect to any matter or dispute arising out of the Agreement. All lawsuits filed to enforce any provisions of the Agreement or to litigate any claims arising in connection with the Agreement shall be filed in either Onondaga County or the Northern District of New York, if applicable.

28.0 Miscellaneous

28.1 **Project Managers.** Each Party shall designate a Project Manager. Whenever either Party is entitled to approve a matter, the Project Manager for the Party responsible for the matter shall notify the Project Manager of the other Party of the nature of such matter. The Project Managers shall discuss such matter, and each Project Manager shall confer on such matter on behalf of his/her company. The foregoing notwithstanding, in no event shall Project Managers be authorized to amend the provisions of this Agreement.

28.2 **Form and Address.** All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered, (ii) upon acknowledgment of receipt if sent by facsimile, (iii) upon the expiration of the third business Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one business Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier company, addressed to the other Party. Each Party may change its addresses by giving the other Party notice thereof in conformity with this Article. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

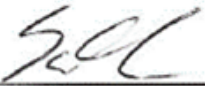
28.3 **Exercise of Right.** No failure or delay on the part of either Party in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

28.4 **Additional Actions and Documents.** Each of the Parties hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed, such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

- 28.5 **Headings.** The descriptive headings of the several articles and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.
- 28.6 **Incorporation of Schedules and Exhibits.** The schedules and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency exists between the provisions of this Agreement and any schedules or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules or exhibits.
- 28.7 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument. This Agreement may also be executed via counterpart facsimiles upon (a) the telecopy by each Party of a signed signature page thereof to the other Party, with return receipt by telecopy requested and received and (b) the Parties' agreement that they will each concurrently post, by overnight courier, a fully executed original counterpart of the Agreement to the other Party.
- 28.8 **Prior Agreements; Modifications.** This Agreement and the schedules and exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments or representations concerning the subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized officer of the Party against whom the amendment, modification or waiver is sought to be enforced.
- 28.9 **Severability.** Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail; provided, however, that in such event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.
- 28.10 **Nouns and Pronouns.** Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.
- 28.11 **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.
- 28.12 **Validity.** Each Party hereby represents that (a) the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms, and (b) such Party holds all necessary approvals, authorizations, permits, licenses, consents, and other permissions, whether state, municipal, corporate, regulatory, or otherwise required to perform all obligations of such Party hereunder.


IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized representatives on the date written below.

**NINE MILE POINT NUCLEAR STATION,
LLC**

By: 
Name: Samuel Belcher
Title: Vice President

Date: 3/8/11

**NIAGARA MOHAWK POWER
CORPORATION D/B/A NATIONAL GRID**

By: 
Name: Mary Ellen Paravalos
Title: Vice President

Date: MAR 07 2011

ATTACHMENT 1

New NINE MILE Attachment Facilities for Expansion Project

- The Balteau TGX362 Current Transformers at breaker R230 will be reclassified, and the secondary wiring unparallelled and interfaced with COMPANY's Schneider ION 8600 revenue meters; and
- The Trench SAS-362 Current Transformers at breaker R925 secondary wiring will be unparallelled and interfaced with COMPANY's Schneider ION 8600 revenue meters.

All engineering and procurement will be completed by COMPANY. Construction, installation, testing and commissioning will be completed by COMPANY with partial oversight and assistance by NINE MILE. Orchestration of the construction will be completed as part of the final engineering process.

New COMPANY Attachment Facilities for Expansion Project

- The read capability of the RFL equipment will be increased by reprogramming at both the station and NYISO ends;
- Two (2) sets of three (3) 345 kV Ritz OTEFEM Potential Transformers (1 set on each of the 345 kV "A" and "B" buses); and
- Four (4) Schneider ION 8600 revenue meters as follows:
 - Two (2) meters will be wired to the R230 Current Transformers and interfaced to the new Potential Transformers on "A" bus; and
 - Two (2) meters will be wired to the R925 Current Transformers and interfaced to the new Potential Transformers on the "B" bus.

All engineering and procurement will be completed by COMPANY. Construction, installation, testing and commissioning will be completed by COMPANY with partial oversight and assistance by NINE MILE. Orchestration of the construction will be completed as part of the final engineering process. COMPANY will own the new COMPANY Attachment Facilities for the Expansion Project.

Schedule 1
INSURANCE REQUIREMENTS

- Workers Compensation and Employers Liability Insurance as required by the State of New York. If required coverage shall include the U.S. Longshoremen's, and Harbor Workers Compensation Act & the Jones Act.
 - Public Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with following minimum limits:
 - (A) Bodily Injury - \$1,000,000/\$1,000,000
Property Damage - \$1,000,000/\$1,000,000
OR
 - (B) Combined Single Limit - \$1,000,000
OR
 - (C) Bodily Injury and Property Damage per Occurrence - \$1,000,000
General Aggregate & Product Aggregate - \$2,000,000 each
 - Umbrella or Excess Liability, coverage with a minimum limit of \$ 4,000,000.
1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. NINE MILE shall provide such certificates or evidence of insurance to National Grid at the following address:
- To: National Grid c/o Niagara Mohawk Power Corporation
Attention: Risk Management,
300 Erie Boulevard West
Syracuse, NY 13202
- National Grid shall provide such certificates or evidence of insurance to NINE MILE at the following address:
- To: Nine Mile Point Nuclear Station, LLC
Attention: Insurance Loss and Control
100 Constellation Way
Suite 600C
Baltimore, MD 21202
2. Such certificates, and any renewals or extensions thereof, shall provide that at least thirty (30) Days prior written notice shall be given to either party in the event of any cancellation or diminution of coverage and shall outline the amount of deductibles or self-insured retention's which shall be for the account of the insured party.
3. If a Party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting Party under this Agreement.
4. To the extent requested, both Parties shall furnish to each other with copies of any accidents report(s) sent to the a Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work for the Project under this Agreement.
5. Each Party shall comply with any governmental and/or site specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other that it will have full policy limits available and shall notify each other in writing when coverage's required herein have been reduced as a result of claim payments, expenses, or both.
7. NINE MILE shall name the COMPANY as an additional insured for all coverage's except Workers Compensation and Employers Liability Insurance in order to provide the COMPANY with protection from liability arising out of activities of NINE MILE relating to the Project and associated Work.