

**AMENDED AND RESTATED SPECIAL PROTECTION SYSTEM ENGINEERING,  
CONSTRUCTION AND IMPLEMENTATION AGREEMENT**

between

**Niagara Mohawk Power Corporation d/b/a National Grid**

And

**New Athens Generating Company, LLC**

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**AMENDED AND RESTATED SPECIAL PROTECTION SYSTEM ENGINEERING,  
CONSTRUCTION AND IMPLEMENTATION AGREEMENT**

**THIS AMENDED AND RESTATED SPECIAL PROTECTION ENGINEERING, CONSTRUCTION AND IMPLEMENTATION AGREEMENT** (the "Agreement") is made and entered into as of the Effective Date between Niagara Mohawk Power Corporation d/b/a National Grid ("NGrid") and New Athens Generating Company, LLC ("Athens"). NGrid or Athens each may be referred to as a "Party" or collectively as the "Parties."

**RECITALS**

**WHEREAS**, Athens owns and operates an approximately 1,080 MW electric generation facility located in Athens, New York (the "Athens Plant") that is interconnected to the transmission system owned by NGrid; and

**WHEREAS**, the Parties have an existing Interconnection Agreement governing the interconnection dated May 15, 2001 ("Interconnection Agreement"); and an existing Special Protection System Engineering, Construction, and Implementation Agreement effective December 14, 2006 between NGrid and Athens (the "December 14, 2006 Agreement"); and

**WHEREAS**, pursuant to the December 14, 2006 Agreement, a Special Protection System, (as defined in the December 14, 2006 Agreement) was installed and has been operating since January 2008 and has produced improved deliverability for the Athens Plant; and

**WHEREAS**, Athens continues to have an interest in maintaining the improved deliverability of the Athens Plant; and

**WHEREAS**, although certain types of permanent physical reinforcements or upgrades of the transmission system ("PPR") would increase the deliverability of energy from the Athens Plant when the Athens Plant is operating and remove the need for the SPS, any such PPR has yet to be developed and will not reasonably be implemented for several years; and

**WHEREAS**, as an additional interim step to maintain the improved Athens Plant deliverability and further the reliability of the SPS, the Parties agreed to design and install redundant capability to the SPS in accordance with the terms set forth in this Agreement; and further have agreed that nothing in this Agreement is intended to modify any provisions of the Interconnection Agreement;

**NOW, THEREFORE**, in consideration of and subject to the mutual covenants contained herein, it is agreed:

## **ARTICLE 1. DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the following meanings:

1.1 "Athens" has the meaning set forth in the preamble of this Agreement, including its permitted successors or assignees.

1.2 "Athens Financing" means (a) one or more loans and/or debt issues, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Athens Plant, any alteration, expansion or improvement to the Athens Plant, the purchase and sale of the Athens Plant or the operations at the Athens Plant or (b) a power purchase agreement pursuant to which Athens' obligations are secured by a mortgage or other lien on the Athens Plant.

1.3 "Athens Finance Holder" means (a) any holder, trustee or agent for holders, of any component of the Athens Financing or (b) any purchaser of power from the Athens Plant to which Athens has granted a mortgage or other lien as security for some or all of Athens' obligations under the corresponding power purchase agreement.

1.4 "Athens Plant" has the meaning set forth in the recitals to this Agreement.

1.5 "Affiliate" means, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

1.6 "Agreement" has the meaning set forth in the preamble of this Agreement, including all appendices, attachments and any amendments hereto.

1.7 "Applicable Laws and Regulations" means all applicable federal, state and local laws, ordinances, rules and regulations, and all duly promulgated orders and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties and/or their respective facilities.

1.8 "Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks in New York are authorized or required by law to be closed.

1.9 "Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such action.

1.10 "DPS" means the New York State Department of Public Service

- 1.11 "Effective Date" means March 31, 2013.
- 1.12 "Estimated Cost Amount" has the meaning set forth in Section 3.1(a) of this Agreement.
- 1.13 "Event" has the meaning set forth in Section 8.1(a) of this Agreement.
- 1.14 "Event of Default" has the meaning set forth in Article 6 of this Agreement.
- 1.15 "Facility Study" means study performed pursuant to the December 14, 2006 Agreement consistent with the requirements of Section 19.4 of the NYISO open access transmission tariff on file with and accepted by the.
- 1.16 "December 14, 2006 Agreement" has the meaning set forth in the recitals to this Agreement.
- 1.17 "FERC" means the Federal Energy Regulatory Commission, or any successor thereto.
- 1.18 "Force Majeure" means any act of God, labor disturbance, act of public enemy, war, insurrection, riot, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other act or cause beyond a Party's reasonable control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.19 "Good Utility Practice(s)" 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. Good Utility Practice shall include, but not be limited to compliance with Applicable Laws and Regulations, the criteria, rules, and standards promulgated by NERC, the National Electric Safety Code, NPCC, NYSRC, NYISO and the National Electrical Code, as they may be amended from time to time, including the criteria, rules and standards of any successor organizations.
- 1.20 "Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal .

- 1.21 "Indemnitee" has the meaning set forth in Section 8.1(b) of this Agreement.
- 1.22 "Indemnitor" has the meaning set forth in Section 8.1(b) of this Agreement.
- 1.23 "Interconnection Agreement" has the meaning set forth in the recitals to this Agreement.
- 1.24 "Operational Period" has the meaning set forth in Section 3.4 of this Agreement.
- 1.25 "Party" has the meaning set forth in the preamble of this Agreement, including its permitted successors or assignees.
- 1.26 "Physical Removal Notice" shall have the meaning set forth in Section 2.3 of this Agreement.
- 1.27 "PPR" has the meaning set forth in the recitals to this Agreement.
- 1.28 "Project Scope" has the meaning set forth in Section 3.1 of this Agreement.
- 1.29 "NERC" means the North American Electric Reliability Corporation, including any successor thereto or any regional reliability council thereof.
- 1.30 "NPCC" means the Northeast Power Coordinating Council, Inc., including any successor thereto.
- 1.31 "NYISO" means the New York Independent System Operator, Inc., including any successor thereto.
- 1.32 "NYSRC" means the New York State Reliability Council, including any successor thereto.
- 1.33 "Redundant SPS Configuration" has the meaning set forth in Section 3.1(a) of this Agreement.
- 1.34 "Redundant SPS Configuration Study" has the meaning set forth in Section 3.1(a) of this Agreement.
- 1.35 "Second Operational Period" has the meaning set forth in Section 3.4 of this Agreement.
- 1.36 "SPS" means a special protection system intended to increase the deliverability of energy from the Athens Plant when the Athens Plant is operating by permitting post-contingency loading of either of lines 91 or 92 on the Transmission System up to its short term emergency rating, as established by the NYISO, following the contingent loss of either line 91 or line 92 and that will automatically cause a reduction in generation output at the Athens Plant within two (2) minutes to a level that reduces the loading of the remaining line to below its long term emergency

rating as established by the NYISO and includes the systems installed pursuant to the December 14, 2006 Agreement and this Agreement, including, without limitation, the Redundant SPS Configuration.

1.37 "TCCs" means Transmission Congestion Contracts as that term is defined in the NYISO's open access transmission tariff on file with and accepted by FERC.

1.38 "Transmission System" means the transmission facilities owned by NGrid.

## **ARTICLE 2. TERM AND TERMINATION OF AGREEMENT**

### 2.1 Term

This Agreement shall become effective as of the Effective Date, and shall continue in full force and effect until one of the following occurs: (i) the Parties agree to mutually terminate this Agreement; (ii) Athens terminates the Agreement by providing NGrid written notice at least five (5) Business Days before the termination date contained in such notice; (iii) NGrid terminates this Agreement by providing Athens written notice (x) at least five (5) Business Days before the termination date contained in such notice or (y) following permanent physical removal of the SPS equipment by NGrid in accordance with the terms of this Agreement, or (iv) the Agreement terminates as otherwise permitted or provided for under this Agreement. Nothing in this Agreement is intended to suggest that any termination or removal of the SPS necessarily would be inconsistent with Good Utility Practice.

### 2.2 Effect of Termination of Agreement on Liabilities and Obligations

Except as otherwise provided for in this Agreement, expiration or termination of this Agreement shall not relieve the Parties of any liabilities or obligations arising hereunder prior to the date that termination becomes effective. The applicable provisions of this Agreement will continue in effect after termination to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

### 2.3 Approvals

Each Party shall use Commercially Reasonable Efforts to obtain in a timely manner applicable federal, state, NYISO or other consents, approvals, certifications, filings or orders, if any, that may be required for it to perform under, or that otherwise is required in connection with, this Agreement. Furthermore, following the Effective Date, each Party shall use Commercially Reasonable Efforts to implement the Redundant SPS Configuration consistent with Section 3.2.

Without limiting the foregoing, NGrid may permanently physically remove the SPS equipment if its own reliability reviews undertaken in accordance with Section 3.4 identify a reliability risk, whether imminent or not, to the Transmission System attributable to the SPS. If



NGrid intends to permanently physically remove the SPS equipment from the transmission system based on its own reliability review, NGrid shall provide Athens, the NYISO, the DPS, and the NYSRC with prior written notice (“Physical Removal Notice”) before implementing such permanent physical removal of the SPS equipment. NGrid shall provide the Physical Removal Notice not less than ninety (90) days prior to the implementation date for such physical removal of the SPS equipment, provided, however, that, NGrid may provide less than such ninety (90) days’ notice if earlier physical removal of the SPS equipment is required to remain in compliance with (i) Applicable Laws and Regulations, (ii) any applicable reliability or other rules, codes or standards promulgated by NERC, the NYISO, the NPCC, the NYSRC, or any of their respective successors, or (iii) any applicable requirements of the National Electrical Code or the National Electric Safety Code, in which case NGrid shall provide the Physical Removal Notice as soon as practicable under the circumstances. Only one Physical Removal Notice is required from NGrid to the extent the implementation date as described above is delayed for any reason past the ninety (90) day period. The foregoing notwithstanding, NGrid may permanently physically remove the SPS equipment at any time after the end of the Operational Period or, if applicable, the Second Operational Period (as such terms are defined in Section 3.4 of this Agreement.)

Each Party shall support the Agreement before any regulatory agency having jurisdiction, and shall not protest or contest the Agreement or any part of it before any such agency, except as might otherwise be provided for in this Agreement. The terms and conditions of this Agreement are expressly contingent upon approval(s) of any regulatory agency having jurisdiction without material modification or condition, unless such modification(s) or condition(s) are agreed to by the Parties in writing.

### **ARTICLE 3. PROJECT DESCRIPTION**

#### 3.1 Project Scope

The scope of implementation is as follows (“Project Scope”):

(a) Redundant SPS Configuration Study: NGrid shall perform pursuant to this Agreement a detailed engineering and cost analysis (the “Redundant SPS Configuration Study”) that describes the redundant SPS equipment, controls, communications and other configuration elements (the “Redundant SPS Configuration”) and that specifies a non-binding estimate of the actual cost of the Redundant SPS Configuration, including, without limitation, the estimated actual cost of designing, engineering, procuring equipment for, constructing, installing, testing and commissioning the Redundant SPS Configuration (the “Estimated Cost Amount”). The Parties agree to operate the SPS in accordance with the operational criteria established in the Facility Study and the Redundant SPS Configuration Study.

(b) SPS Design and Procurement: NGrid, following receipt of written permission from Athens to proceed to final design, shall perform the final design and procure the necessary equipment for the Redundant SPS Configuration.

(c) SPS Installation, Testing and Start-up: NGrid, with Athens' assistance at its communication interfaces, will install, calibrate and test the Redundant SPS Configuration.

(d) Acceptance and Commissioning: Upon acceptance and commissioning by both Parties, the SPS in the Redundant SPS Configuration will be considered fully operational.

### 3.2 Tentative Project Milestone Schedule

The Parties shall use Commercially Reasonable Efforts to install the Redundant SPS Configuration in accordance with Section 3.1 and the following schedule:

Six (6) months after approval of this Agreement by FERC – NGrid provides the Redundant SPS Configuration Study for review and approval by Athens (the approval of Athens shall not be unreasonably withheld, conditioned or delayed).

Two (2) months after Athens' receipt of the Redundant SPS Configuration Study – The Redundant SPS Configuration Study is accepted by Athens, and final design and equipment/materials procurement can begin.

Six (6) months after Athens' acceptance of the Redundant SPS Configuration Study – NGrid completes final design of the Redundant SPS Configuration.

Six (6) months after the completion of the final design of the Redundant SPS Configuration – SPS in the Redundant SPS Configuration is energized and commissioned.

Parties shall not be responsible for any delays in the above schedule caused by the actions or inactions of the other Party or of any third parties.

### 3.3 Implementation of the SPS

(a) Subject to the terms of this Agreement NGrid's obligation to use Commercially Reasonable Efforts and any NGrid rights specified in this Agreement to remove the SPS from operational service or to permanently physically remove the SPS equipment, NGrid shall design, install, own, operate, and maintain the SPS in compliance with Good Utility Practice and applicable NYISO requirements. The configuration of the SPS shall be as set forth in the (1) "System Impact Study for the Special Protection System for the Athens Power Plant" report dated October 16, 2006 as submitted to the Transmission Planning Advisory Subcommittee, attached hereto as Exhibit A, and (2) the "Conceptual Report –Redundant SPS" attached hereto as Exhibit B, as supplemented by the Redundant SPS Configuration Study.

(b) If requested by Athens, NGrid shall inform Athens at such times as Athens reasonably requests, e.g., monthly, of the status of the design, construction and installation of the SPS, including, but not limited to, the following information: progress to date; a description of scheduled activities for the next period; the delivery status of all equipment ordered; and the identification of any event which NGrid reasonably expects may delay construction or commissioning, or increase the cost, of the Redundant SPS Configuration.

(c) If the Parties agree to a change to the Project Scope subsequent to the approval of the Redundant SPS Configuration Study, any such change shall be in writing and signed by authorized representatives of the Parties and shall contain such schedule adjustments and/or extensions and cost adjustments as may be mutually agreed upon by the Parties ("Change Agreement"). All additional work contemplated by any such change to the Project Scope shall be performed in accordance with this Agreement and the related Change Agreement.

(d) Any system upgrade facility costs incurred in connection with the electric delivery systems of NGrid or others due to the construction and/or implementation of the SPS, including, without limitation, the Redundant SPS Configuration, shall be the responsibility of Athens.

### 3.4 Permanent Physical Reinforcement (PPR)

(a) The SPS shall continue to be operational for ten (10) years from the date that the Redundant SPS Configuration is commissioned in accordance with Section 3.1(d), or until a PPR is installed and operational, whichever period is shorter (the "Operational Period"). During this Operational Period, Athens shall cooperate in the identification of, and in conducting discussions with, third parties that may reasonably be expected to fund a PPR.

(b) During the Operational Period, NGrid will conduct periodic reliability reviews of the Redundant SPS Configuration at Athens' expense, provided, that, Athens' obligation to pay such expenses shall not exceed \$100,000 per reliability review. The first such reliability review will be completed following the end of the first year of the Operational Period; additional reliability reviews will be conducted every two years thereafter during the Operational Period. A copy of each reliability review will be provided to Athens. If any reliability review identifies a reliability risk, whether imminent or not, to the Transmission System attributable to the SPS,

NGrid shall have the right to remove the SPS from operational service. NGrid shall have the right to permanently physically remove the SPS equipment at the end of the Operational Period without prior notice.

(c) Within six (6) months prior to the completion of the initial Operational Period, Athens has the option to request in writing to extend operation of the SPS for an additional operational period ending (a) ten (10) years from the termination date of the initial Operational Period, or (b) on the date a PPR is installed and operational, whichever period is shorter (the "Second Operational Period"), subject to the terms contained in paragraph (b) above. During the Second Operational Period, Athens shall cooperate in the identification of, and in conducting discussions with, third parties that may reasonably be expected to fund a PPR.

(d) The foregoing notwithstanding, (i) NGrid shall have the unilateral right to operate or not operate the SPS at any time if, in its reasonable judgment, NGrid determines that operation of the SPS creates an immediate or near term risk to Transmission System reliability, (ii) NGrid shall have the right to permanently physically remove the SPS equipment pursuant to Section 2.3 of this Agreement and (iii) NGrid shall have the right to permanently physically remove the SPS equipment at any time after the end of the Operational Period (or after the end of the Second Operational Period, if applicable).

#### **ARTICLE 4. SPS COSTS AND BILLING**

##### **4.1 SPS Construction Completion and Cost**

(a) In accordance with the terms of this Agreement, Athens shall pay to NGrid all of the actual costs NGrid incurs in connection with performing the Project Scope and any other work, procurement or services contemplated by this Agreement.

(b) Athens shall have the right to receive, and NGrid shall provide upon Athens' request, such cost and other information as is reasonably necessary to verify the cost of the Redundant SPS Configuration or any other cost that Athens pays NGrid hereunder. Athens shall have the right, during normal business hours, at its sole expense and upon prior reasonable notice, to audit NGrid's accounts and records pertaining to this Agreement at the offices where such accounts and records are maintained.

(c) NGrid shall render to Athens invoices pursuant to the payment schedule as follows for the estimated costs of the Redundant SPS Configuration.

(1) Agreement Execution: \$ 100,000 ("Initial Invoice").

(2) Acceptance of Redundant SPS Configuration Study: Any study or design related costs set forth in the Redundant SPS Configuration Study to the extent not already paid pursuant to Section 4.1(c)(1).

(3) Completion of Final Design: the Estimated Cost Amount, to the extent not already paid pursuant to Section 4.1(c)(2).

(4) Subject to Section 4.1(a), within sixty (60) days after the date that the SPS is energized and commissioned, NGrid shall provide to Athens an invoice for the final remaining unpaid actual costs of the Redundant SPS Configuration and the amount due from Athens net of all amounts paid pursuant to Section 4.1(c) ("Post-IO Invoice").

(d) Athens shall make payments of such invoices in accordance with Section 4.2 below. To the extent that the estimated costs already paid by Athens to NGrid exceed the final, actual cost of the SPS specified in the Post-IO Invoice, NGrid shall refund to Athens an amount equal to such excess amount within thirty (30) days of the issuance of the Post-IO Invoice. If such refund is overdue, such overdue amount shall accrue interest in accordance with Section 4.2(a) below from the due date of such unpaid amount until the date paid.

#### 4.2 Invoices and Payments

(a) The Initial Invoice shall be payable on the Effective Date. Subject to Section 4.2(b) below, Athens shall make payment of the amount shown under all other invoices rendered pursuant to Section 4.1(d) above to be due to NGrid by wire transfer to an account specified by NGrid not later than the thirty-fifth (35th) day after issuance of the invoice, unless such day is not a Business Day, in which case Athens shall make payment on the next Business Day after the thirty-fifth (35) day after issuance of such invoice. All such payments shall be deemed to be made when said wire transfer is received by NGrid. Overdue payments by either Party hereunder shall accrue interest daily at the then current prime interest rate (the base corporate loan interest rate) published in the Money and Investing section of the Wall Street Journal, or, if no longer so published, in any mutually agreeable publication, plus 2% per annum, from the due date of such unpaid amount until the date paid.

(b) In the event Athens fails, to make payment of any undisputed amount to NGrid on or before the due date as described above, and such failure of payment is not corrected within forty-five (45) calendar days of the applicable original due date, an Event of Default by Athens shall be deemed to exist. In the event that Athens disputes a portion of any invoiced amount in good faith, and provides written notice of such dispute together with a reasonable description of the reason therefor (all prior to the applicable due date), NGrid will continue to perform its responsibilities under this Agreement during the pendency of such dispute, provided, that, Athens continues to pay all amounts not in dispute when such amounts are due. A dispute with respect to a subset or portion of an invoice or invoiced amount shall not excuse payment on the original due date of any undisputed portion or subset of the invoice or invoiced amount.

(c) In the event adjustments or corrections to an invoice are required as a result of errors in computation or billing, NGrid shall promptly re-compute amounts due hereunder and correct any errors in such invoice. If the total amount, as recomputed, due from Athens is less than the total amount due as previously computed, and payment of the previously computed

amount has been made, the difference shall be paid to Athens within thirty (30) days after correction of the erroneous invoice(s), together with interest calculated in accordance with the methodology specified in Section 4.2(a); if the total amount, as recomputed, due from Athens is more than the total amount due as previously computed, and payment of the previously computed amount has been made, the difference shall be invoiced to Athens according the methodology specified in Section 4.2(a); provided, however, that no adjustment for any invoice or payment will be made unless objection to the accuracy thereof was made prior to the lapse of ninety (90) days from the receipt thereof; and provided further that this Article 4 will survive any termination of the Agreement for a period of one (1) year from the date of such termination for the purpose of resolving such invoice and payment issues.

(d) Payment of invoices by any Party will not constitute a waiver of any right or claims such Party may have under this Agreement or under law.

#### **ARTICLE 5. TCCs**

To the extent that TCCs or other rights or benefits are created by or attributable to the SPS, such TCCs or other rights or benefits will be the property of and allocated to the entity(ies) that fund the SPS in proportion to the amount funded by such entity(ies). If TCCs attributable to the SPS are created, and if Athens is unable to meet its generation obligations, then Athens will be responsible financially for any resulting congestion rent shortfall cost directly chargeable to TCC holders under the NYISO open access transmission tariff.

#### **ARTICLE 6. DEFAULTS AND REMEDIES**

It shall be an "Event of Default" in respect of a Party under this Agreement, if such Party shall (a) fail to make payment of any amount hereunder when due, or (b) fail in any material respect to comply with, observe or perform, or default in the performance of, any other material covenant or obligation under this Agreement, or if any representation or warranty made herein by such Party shall fail to be true and correct in all material respects, and after receipt of written notice, such failure shall continue for a period of thirty (30) days, provided, however, if such failure is not a failure to pay amounts when due and is not capable of cure within thirty (30) days, the Party in default shall commence such cure within thirty (30) days after notice and continuously and diligently complete such cure within ninety (90) days of receipt of such notice. Each Athens Finance Holder will have the right, but not the obligation, to cure any default by Athens. If an Event of Default shall occur and continue for more than ninety (90) days from the date the notice of default is received, the non-defaulting Party may terminate this Agreement. In addition to the rights and remedies described in this Agreement and subject to the limitations set forth in this Agreement, the non-defaulting Party may exercise, at its election, any right or remedy it may have at law or in equity, including but not limited to compensation for monetary damages, injunctive relief and specific performance.

**ARTICLE 7.  
NOTICES AND REPRESENTATIVES OF THE PARTIES**

7.1 Notices

Any notice, demand or request required or authorized by this Agreement to be given by one Party to the other Party shall be in writing. It shall either be personally delivered, transmitted by electronic mail, telecopy or facsimile equipment (with receipt verbally and electronically confirmed), sent by overnight courier or mailed, postage prepaid, to the other Party at the address designated pursuant to this Article 7. Any such notice, demand or request so delivered or mailed shall be deemed to be given when so delivered or three (3) days after mailed.

7.2 Addresses of the Parties

(a) Notices and other communications by Athens to NGrid shall be addressed to:

Niagara Mohawk Power Corporation  
Attn: Director, Transmission Commercial Services  
300 Erie Boulevard West  
Syracuse, New York 13202  
Phone: 781-907-2422  
Facsimile: 781-907-5707

(b) Notices and other communications by NGrid to Athens shall be addressed to:

New Athens Generating Company, LLC  
Attn. Plant Manager  
9300 U.S. Highway 9W  
P.O. Box 349  
Athens, New York 12015  
Phone: 518-945-3844  
Facsimile: 518-945-3751

With an additional copy to:

Competitive Power Ventures, Inc  
Attn. Plant Asset Manager  
35 Braintree Hill Office Park  
Suite 400  
Braintree, MA 02184  
Phone: 781-848-5387  
Facsimile: 781-848-5804

(c) Either Party may change its address by written notice to the other in accordance with this Article 7.

## ARTICLE 8.

### INSURANCE, INDEMNIFICATION AND LIMITATION OF LIABILITY

#### 8.1 Indemnification

(a) Athens hereby agrees to indemnify and hold harmless NGrid, its affiliates, and its and its affiliates' directors, officers, agents, representatives, and employees from and against any and all claims, demands, civil penalties, causes of action, losses, liabilities (including without limitation, reasonable attorneys' fees) and damages (collectively, "Damages") to the extent that such Damages are caused by (i) Athens' performance or non-performance of its obligations under this Agreement or (ii) during the period in which the SPS is in operation, the operational failure of the SPS or the failure of Athens to sufficiently reduce the output of the Athens Plant within fifteen (15) minutes following an opening of either Lines 91 or 92 of the Transmission System (each, an "Event"); provided however, the provisions of this Section 8.1(a) shall not apply to the extent that such claims, demands, penalties, causes of action, losses or liabilities are attributable to the gross negligence or intentional misconduct of NGrid or any of its affiliates, and, further provided, that Athens' liability with respect to item (ii) above shall not exceed \$5 million per Event.

(b) When making a claim for indemnification under Section 8.1(a), NGrid (the "Indemnitee"), shall notify Athens (the "Indemnitor") of the claim in writing promptly after receiving notice of any action, lawsuit, proceeding, investigation or other claim against it (if by a third party), describing the claim, the amount thereof (if known and quantifiable) and the basis thereof. The Indemnitor shall be entitled to participate in the defense of such action, lawsuit, proceeding, investigation or other claim giving rise to an Indemnitee's claim for indemnification at such Indemnitor's expense, and at its option shall be entitled to assume the defense thereof by appointing a reputable counsel reasonably acceptable to the Indemnitee to be the lead counsel in connection with such defense; provided that the Indemnitor shall continue to be entitled to assert any limitation on any claims contained herein; provided further the Indemnitee shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose; provided however, that the fees and expenses of such separate counsel shall be borne by the Indemnitee. If the Indemnitor shall control the defense of any such claim then the Indemnitor shall be entitled to settle such claim; provided, that, the Indemnitor shall obtain the prior written consent of the Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of a claim or ceasing to defend such claim if, pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief will be imposed against the Indemnitee or if such settlement does not expressly and unconditionally release the Indemnitee from all liabilities and obligations with respect to such claim.



## 8.2 Limitation of Liability: Disclaimer of Warranty

Except to the extent required by Section 8.1(a) of this Agreement, in no event shall either Party, with respect to any claim arising out of this Agreement, whether based on contract, tort (including the negligence of such Party, whether sole or joint and concurrent with the negligence of such other Party or some third-party's gross negligence, willful misconduct, or strict liability) or otherwise, be liable for any indirect, special, incidental, punitive, exemplary, or consequential damages, including, but not limited to, delays, lost profits, business interruptions, and claims of suppliers and customers, whether or not (i) such damages were reasonably foreseeable or (ii) such Party was advised or aware that such damages might be incurred.

NGrid's total cumulative liability 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 Agreement, shall not exceed the aggregate amount of all payments made to NGrid by Athens pursuant to Section 4.1(a) of this Agreement and/or that were paid pursuant to the December 14, 2006 Agreement.

THE WARRANTIES AND REPRESENTATIONS SET FORTH IN ARTICLE 12 ARE EXCLUSIVE AND NEITHER PARTY MAKES ANY OTHER WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; ALL SUCH WARRANTIES, REPRESENTATIONS, AND GUARANTEES ARE EXPRESSLY DISCLAIMED. THIS DISCLAIMER SHALL SURVIVE ANY CANCELLATION, COMPLETION, TERMINATION OR EXPIRATION OF THIS AGREEMENT. ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS', LICENSORS', OR PROVIDERS' OF MATERIAL, EQUIPMENT, OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THIS AGREEMENT ("THIRD PARTY WARRANTIES") ARE NOT TO BE CONSIDERED WARRANTIES OF EITHER PARTY AND NO PARTY MAKES ANY REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.

## **ARTICLE 9. FORCE MAJEURE**

Except for the obligation to make any payments under this Agreement, each Party shall be excused from performing its respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that it is unable to so perform or is prevented from performing by a Force Majeure, provided that (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than fourteen (14) days thereafter, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is

reasonably required by the Force Majeure; (iii) the non-performing Party uses all Commercially Reasonable Efforts to remedy its inability to perform; and (iv) neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such dispute.

## **ARTICLE 10. COMPLIANCE WITH LAW; PERMITS; APPROVALS**

### 10.1 Applicable Laws and Regulations

This Agreement and all rights, obligations, and performances of the Parties hereunder are subject to Applicable Laws and Regulations and the Parties shall discharge their obligations under this Agreement in accordance with Good Utility Practice and all Applicable Laws and Regulations.

### 10.2 Approvals, Permits, Etc.

Each Party shall give all required notices, and, subject to the above terms, shall use Commercially Reasonable Efforts to procure and maintain all necessary governmental approvals, permits, licenses and inspections necessary for its performance of this Agreement, and shall pay all charges and fees in connection therewith.

## **ARTICLE 11. DISPUTE RESOLUTION**

### 11.1 Internal Dispute Resolution Procedures

Each Party shall appoint a representative who shall be responsible for administering this Agreement on behalf of such Party and for representing the Party's interests in disagreements. Any dispute that is not resolved between the Parties' representatives within ten (10) Business Days of when the disagreement is first raised by written notice by either Party to the other Party shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within ten (10) Business Days (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute only through the other dispute resolution provisions set forth in this Article 11 of this Agreement. All negotiations pursuant to this Section 11.1 for the resolution of disputes will be confidential, and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any State Rules of Evidence.

### 11.2 Continued Performance

The Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute including a dispute regarding the effectiveness or the purported termination of this Agreement.

### 11.3 Arbitration

(a) If any claim or dispute arising hereunder is not resolved within sixty (60) days after notice thereof to the other Party, the Parties may agree in writing to the submission of the dispute to binding arbitration in New York City, New York or other mutually agreed upon location and shall be heard by one mutually agreed-to neutral arbitrator under the American Arbitration Association's Commercial Arbitration Rules ("Arbitration Rules"); provided, however, that, in the event of a conflict between the Arbitration Rules and the terms and provisions of this Article 11, the terms and provisions of this Article 11 shall govern. If the Parties fail to agree upon a single arbitrator within five (5) Business Days, each Party shall have an additional three (3) Business Days to choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall, within ten (10) Business Days after their selection, select a third arbitrator to chair the arbitration panel. Each Party shall be responsible for its own costs incurred during the arbitration process and for one half the costs of the single arbitrator jointly chosen by the Parties, or in the alternative the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen.

(b) Unless otherwise agreed, the arbitration process shall be expeditiously concluded no later than three (3) months after the date that it is initiated and the award of the arbitrator shall be accompanied by a reasoned opinion if requested by either Party. The arbitrator(s) shall have no authority to award punitive or other damages inconsistent with the terms of this Agreement. The arbitrator(s) shall have the authority only to interpret and apply the terms and conditions of this Agreement and shall have no power to modify or change any such term or condition. The arbitrator(s) shall be required to follow all Applicable Laws and Regulations. The arbitration shall be conducted as a common law arbitration and the decision of the arbitrator(s) rendered in such a proceeding shall be final; provided, however, that such decision may be challenged solely on grounds that the conduct of the arbitrator(s) or the decision itself violates the standards set forth in the Federal Arbitration Act. Judgment may be entered upon it in any court having jurisdiction.

### 11.4 Procedures

(a) The procedures for the resolution of disputes set forth in this Agreement shall be the sole and exclusive procedures for the resolution of disputes; provided, however, that a Party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo. All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the procedures specified herein are pending. The Parties will take such action, if any, required to effectuate such tolling. Each Party is required to continue to perform its undisputed obligations under this Agreement pending final resolution of a dispute.

(b) Notwithstanding any other provision in this Agreement, either Party may file a petition or complaint with the FERC with respect to any claim or dispute over which the FERC has jurisdiction and nothing in this Agreement shall constitute a waiver of any such right.

### 11.5 Confidentiality

The existence, contents, or results of any arbitration proceeding conducted under this Article 11 may not be disclosed without the prior written consent of both Parties; provided, however, that either Party may (a) make such disclosures as may be necessary to (1) satisfy regulatory obligations to any regulatory authority having jurisdiction, or (2) seek or obtain from a court of competent jurisdiction judgment on, confirmation, or vacation of an arbitration award; (b) inform its lenders, affiliates, auditors, and insurers, as necessary, under pledge of confidentiality; and (c) consult with experts as required in connection with the arbitration proceeding under pledge of confidentiality. If either Party seeks a preliminary injunctive relief from any court to preserve the status quo or avoid irreparable harm pending arbitration, the Parties agree to use Commercially Reasonable Efforts to keep the court proceedings confidential, to the maximum extent permitted by law.

## **ARTICLE 12. REPRESENTATIONS AND WARRANTIES**

### 12.1 Athens' Representations and Warranties

Athens makes the following representations and warranties:

- (a) Athens is duly formed, validity existing and in good standing under the laws of its state of formation, and is in good standing under the laws of the state of its formation.
- (b) Athens has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder and this Agreement is a legal, valid and binding obligation of Athens enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.
- (c) The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of Athens, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon Athens or any of its assets.
- (d) Athens has sought or obtained, or, in accordance with, and subject to, the terms of this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

### 12.2 NGrid's Representations and Warranties

NGrid makes the following representations and warranties:

(a) NGrid is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the state of its organization.

(b) NGrid has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder and this Agreement is a legal, valid and binding obligation of NGrid enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

(c) The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of NGrid, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon NGrid or any of its assets.

(d) NGrid has sought or obtained, or, in accordance with, and subject to, the terms of this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

### **ARTICLE 13. MISCELLANEOUS PROVISIONS**

#### 13.1 Severability

If any provision or provisions of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions, or the application of such provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall in no way be affected or impaired thereby.

#### 13.2 Modifications

No waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by the Party against which enforcement is sought. This Agreement may be amended by and only by a written instrument duly executed by each of the Parties hereto.

#### 13.3 Prior Agreements Superseded

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and shall supersede the December 14, 2006 Agreement and all other previous agreements, discussions, communications and correspondence with respect to such subject matter, provided, that, this Agreement shall replace and supersede the December 14, 2006 Agreement only with effect from and after the Effective Date. In the event of any inconsistency

between this Agreement and the Exhibits attached hereto and made a part hereof, this Agreement shall control.

#### 13.4 Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

#### 13.5 Relationship of Parties/No Third-Party Beneficiaries

(a) Nothing in this Agreement shall be construed as creating any relationship between the Parties, including any partnership or joint venture, other than that of independent contractors.

(b) This Agreement is not intended to, and does not, confer upon any Person other than the Parties hereto and their respective successors and permitted assigns, any rights, benefits, or remedies hereunder.

#### 13.6 Confidentiality of Information

(a) All information disclosed by a Party in connection herewith and considered by such Party to be confidential, proprietary or of a competitive value shall be kept confidential by the other Party so long as such information is marked "confidential" or "proprietary" at the time of disclosure, or if disclosed orally, the receiving Party confirms promptly in writing that such information is to be treated as confidential for purposes of this Agreement ("Confidential Information"). All information which concerns the cost, design or operation of the Athens Plant, whether exchanged orally or in written or electronic form, and all information that is metered or telemetered with respect to the Athens Plant shall be deemed to be Confidential Information of Athens without any requirement for marking. All information which concerns the cost, design or operation of the NGrid Transmission System, whether exchanged orally or in written or electronic form, and all information that is metered or telemetered with respect to such Transmission System shall be deemed to be Confidential Information of NGrid without any requirement for marking. Each Party shall only be permitted to disclose Confidential Information of the other Party to its Affiliates and its and its Affiliates' officers, directors, employees, agents, consultants, and contractors who need to know such Confidential Information for the purpose of implementing, enforcing, or interpreting this Agreement (but only so long as the disclosure of such information to such persons and the use of such Confidential Information thereby complies with the requirement of applicable FERC standards or codes of conduct). Each Party agrees to notify such persons of the confidential nature of such Confidential Information and to be responsible for any unauthorized disclosure of such Confidential Information by such persons in violation of the terms of this Agreement. Confidential Information shall not be deemed to subject to the restriction contained in this Section 13.6 if it (i) was in the public domain prior to the date hereof, (ii) becomes publicly available after the date hereof other than as a result of the unauthorized disclosure thereof by a Party or by an officer, director, employee, agent or Affiliate of a Party in violation of the terms of this Agreement, or (iii) becomes available

to a Party, its Affiliates, or its or its Affiliates' officers, directors, employees, agents, consultants, or contractors on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against transmitting the Confidential Information. Anything in this Agreement to the contrary notwithstanding, each Party, its Affiliates, or its or its Affiliates' officers, directors, employees, agents, consultants, or contractors may disclose Confidential Information to the extent it is required to do so by law, by a court or by other governmental or regulatory authorities. Notwithstanding anything contained in this Agreement, Confidential Information may be disclosed to the NYISO, NERC and any governmental, judicial or regulatory authority, requiring such Confidential Information, provided that, prior to disclosure, the disclosing Party shall promptly inform the other party of the substance of any inquiries so that the other Party may take whatever action it deems appropriate including intervention in any proceeding and the seeking of an injunction to prohibit such disclosure. The restrictions with respect to Confidential Information contained in this Section 13.6 shall expire three (3) years from the date on which such Confidential Information was originally disclosed hereunder.

(b) Each Party may utilize Confidential Information of the disclosing Party in any proceeding or dispute under Article 11 or in an administrative agency or court of competent jurisdiction addressing any dispute arising under this Agreement, subject to a confidentiality agreement with all participants (including, if applicable, any arbitrator) or a protective order.

### 13.7 Interpretation; Applicable Law

The words "include" or "including" shall mean including without limitation based on the item or items listed. Except as otherwise stated, reference to Articles, Sections, Schedules, Appendices and Exhibits mean the Articles, Sections, and Exhibits of this Agreement. The Appendices are hereby incorporated by reference into and shall be deemed a part of this Agreement. All indices, titles, subject headings, section titles and similar items in this Agreement are provided for the purpose of reference and convenience only and are not intended to be inclusive or definitive or otherwise to convey or affect the meaning of the contents, scope, or any provision of this Agreement.

This Agreement 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 conflicts of law principles.

### 13.8 Successors, Assigns and Assignments

(a) This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.

(b) Notwithstanding anything herein to the contrary, neither Party shall assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without

the prior written consent of the other Party, in the following cases, provided, however, no such assignment or transfer shall relieve the assigning or transferring Party of its obligations under this Agreement:

- (i) any such assignment or transfer is to an Affiliate of the Party;
- (ii) to any entity that purchases or otherwise acquires, directly or indirectly, all or substantially all of the assets of the assigning or transferring Party; or
- (iii) to any Athens Finance Holder as security for amounts payable under any Athens Financing.

(c) Except as specifically provided for in Section 13.8(b), any assignment or transfer of this Agreement or any rights, duties or interests hereunder by any Party without the written consent of the other Party, such consent not to be unreasonably withheld, shall be void and of no force or effect.

(d) Lender Security

NGrid agrees, if requested by Athens, to enter into an agreement (in form and substance reasonably acceptable to NGrid) with any Athens Finance Holder(s) (a "Collateral Assignment Consent"), pursuant to which NGrid will acknowledge the creation of security over Athens' rights under this Agreement and agree that, upon breach of this Agreement or any loan documents by Athens, such Athens Finance Holder shall:

- (i) have the right within a reasonable period of time as specified therein to cure any breach of this Agreement complained of, provided the Athens Finance Holder agrees to perform Athens' obligations under the Agreement during the cure period; and
- (ii) have the right, upon payment of all outstanding amounts due and payable to NGrid, to assume (or cause its designee to assume) all the rights and obligations of Athens under this Agreement.

The foregoing notwithstanding, NGrid shall not be obligated to enter into any Collateral Assignment Consent that amends or purports to amend any term or condition of this Agreement, or that imposes or seek to impose any obligations or responsibilities on NGrid, other than as specifically set forth in (i) and (ii), above

### 13.9 Waivers

The failure of either Party to insist in any one or more instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment



of any such right, but the same shall continue and remain in full force and effect, except with respect to the particular instance or instances.

(Signatures Follow on Next Page)

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties hereto.

NIAGARA MOHAWK POWER CORPORATION,  
d/b/a NATIONAL GRID

By: William L Malee  
Name: William L Malee  
Title: Director, Transmission Commercial Services

NEW ATHENS GENERATING COMPANY, LLC

By: Gaizy N. Hubbard  
Name: Gaizy N. Hubbard  
Title: CEO