

TRADING PARTNER AGREEMENT

This Agreement made this ____ day of _____, 20 __, between Niagara Mohawk Power Corporation with a principal place of business at 300 Erie Blvd W. Syracuse, New York 13202 (referred to in this Agreement as “Company”), and _____, a _____ corporation with a principal place of business at _____ (“Supplier”).

This form of Agreement has been developed for use between Company and competitive Suppliers, and may not be waived, altered, amended, or modified.

On July 23,2001, the New York Public Service Commission issued Opinion 01-03, approving policies and data standards for the implementation of Electronic Data Interchange (EDI) in New York. Opinion 01-03 follows Opinion 00-05 (issued April 12,2000), which directed all Utility and Energy Service Companies (ESCO/Marketers) to Develop and implement EDI procedures and transactions to support customer retail access.

I. Conditions Precedent

The following requirements shall be conditions precedent to Company’s obligations hereunder:

A. Electric and Gas Suppliers shall provide all information requested in Exhibit A attached hereto.

B. Electric Suppliers shall register and obtain the necessary licensing from the New York State ISO (Independent Service Operator).

C. Prior to Customer enrollment, Electric and Gas Suppliers shall successfully complete testing as described in the NY PSC Order approving Electronic Data Interchange (EDI) Test Plans and Data Standards, issued and effective November 8, 2001 in Case 98-M-0667-In the Matter of Electronic Data Interchange. Rules used in establishing this contract are documented and ordered in:

- NY Uniform Business Practices (UBP) issued and effective April 15, 1999 in Case

98-M-1343-In the Matter of Retail Access Business Rules

- **NY Uniform Business Practices (UBP), as modified in Opinion 01-03 in Case 98-M-0667 issued and effective July 23, 2001 (as displayed in the Interim Document published 11/16/01). All rules and regulations will be followed as prescribed by the various Business Process Documents and Implementation Guides for each type of EDI transaction. Any questions should be directed to the Company Representative posted on the Company's web site.**

II. Nondisclosure

Neither party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such party, without the express prior written consent of the other party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the parties, Customers of either or both parties, Suppliers for either party, personnel of either party; any trade secrets; and other information of a similar nature; whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either party prior to obtaining the same from the other party, information in the public domain, or information obtained by a party from a third party who did not, directly or indirectly, receive the same from the other party to this Agreement or from a party who was under an obligation of confidentiality to the other party to this Agreement, or information developed by either party independent of any Confidential Information. The receiving party shall use the higher of the standard of care that the receiving party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving party shall, upon termination of this Agreement or at any time upon the request of the disclosing party, promptly return or destroy all Confidential Information of the disclosing party then in its possession.

Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for

confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

III. Representations

Each party represents that it is and shall remain in compliance with all applicable laws, tariffs, regulations and New York State Public Service Commission Case 98-M-0667 requirements during the term of this Agreement.

IV. Supplier Responsibilities

Supplier shall update information requested in Exhibit A five (5) business days prior to any change in information contained in Exhibit A. The parties acknowledge the benefit to both Company and Supplier in minimizing the transaction costs in selecting the GISB Internet Data Transport Mechanism as mandated by the Public Service Commission in Opinion 01-02, Case 98-M-0667, Supplement E, issued July 20, 2002. Both parties are required to comply with the Technical Standards for Data Transport and Security protocols mandated in Opinion 01-02, Case 98-M-0667. Supplier acknowledges that Company has selected a GISB compliant Data Transport Mechanism and may from time to time change the Data Transport Mechanism (DTM) used for electronic transmission of EDI transactions. When changes to the DTM are required by either party, either party shall have the right to request connectivity testing in order to ensure that systems are functioning properly.

During the term of this Agreement, as to any EDI Standards implemented subsequent to the initial testing period referenced in Section II. D above, Supplier shall be required to successfully complete testing of said standards in accordance with the EDI Standards. Supplier shall also comply with any changes to Commission orders governing these transaction sets.

V Termination

Notwithstanding anything to the contrary elsewhere in this Agreement, any party, by written notice to the other party (“Breaching Party”), may terminate this Agreement in whole or in part with respect to such Breaching Party or suspend further performance without terminating this Agreement upon the occurrence of any of the following: (a) the Breaching Party terminates or suspends doing business; (b) the Breaching Party becomes subject to any bankruptcy or insolvency proceeding under federal or state law (unless removed or dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to direct control of a transferee, receiver or similar authority, or makes an assignment for the benefit of creditors; or (c) the Breaching Party commits a material breach of any of its obligations under this Agreement or the Terms and Conditions and has not cured such breach within fifteen (15) days after receipt of a written notice from the other party specifying the nature of such breach.

No delay by either party in enforcing any of its rights hereunder shall be deemed a waiver of such rights, nor shall a waiver of one default be deemed a waiver of any other or subsequent default. The enumeration of the foregoing remedies shall not be deemed a waiver of any other remedies to which either party is legally entitled.

VI Liability and Indemnification

Supplier agrees to protect, indemnify, defend and hold harmless Company, its directors, officers, employees, agents, successors, assigns and independent contractors from and against any and all losses, damages, liabilities, costs, suits, charges, causes of action, claims (including reasonable claims of third party land

owners) and expenses (including reasonable attorneys' fees) arising out of any damage property, or injury to or death of any person, caused by or attributable to any negligent act or omission of Supplier, its directors, officers, employees, agents, successors, assigns or independent contractors, or the willful misconduct of any thereof, in the performance or breach of this Agreement, except to the extent attributable solely to the negligent or intentional act or omission of Company, its directors, officers, employees, agents, successors, assigns or independent contractors.

Notwithstanding anything in this Agreement or the Terms and Conditions to the contrary, in no event shall either party hereto be liable to any other party hereto for indirect, consequential, punitive, special, or or exemplary damages or damages arising from or as a result of any delay, omission, or error in the sending or receipt of any information pursuant to this Agreement, under any theory of law that is now or may in the future be in effect, including without limitation: contract, tort, strict liability, or negligence. Further, information provided by Company is provided without warranty as to the accuracy or content of such information, and Company makes no warranty with respect thereto. Supplier assumes all risk of use of such information, and Company assumes no responsibility or liability for any loss or delay resulting from such use.

The provisions of this Section shall survive the termination of this Agreement.

VII Governing Law

This Agreement is governed by the laws of the State of New York without regard to the conflict of laws in effect therein.

VIII Assignment

Either party to this Agreement may assign any of its rights or obligations under this Agreement; provided however, that no assignment by Supplier shall take effect until the assignee has met the requirements of Section IV hereunder. No assignment of

this Agreement shall relieve the assigning party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. Any assignment in violation of the terms of this Section shall be void.

In witness whereof, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date above.

SUPPLIER

By

Title

Niagara Mohawk Power Corporation

By

Title

Date

Exhibit A

COMPETITIVE SUPPLIER INFORMATION

Supplier must fill this form out completely and return it to Company prior to entering into a contract for services with Company. Failure to fill out this form completely will render Company unable to provide services for Supplier.

General Information (all suppliers)

1. Legal name of the supplier

2. d.b.a. name, if applicable

3. Supplier Address

4. Type of Business Entity

5. Supplier Customer Service phone number

6. Supplier Tax Identification number

7. Supplier Dun & Bradstreet number

8. Name of the Supplier's general contact

9. Supplier's general contact phone number

10. Supplier's general contact facsimile number

11. Supplier's general contact e-mail address

12. Name of Supplier's technical contact

13. Supplier's technical contact phone number

14. Supplier's technical contact facsimile number

15. Supplier's technical contact e-mail address
