

PARTICIPATION AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into effective the ____ day of _____, 2004, by and between Niagara Mohawk Power Corporation (“Niagara Mohawk” or “Company”), a corporation organized and existing under the laws of the State of New York with its principal place of business at 300 Erie Blvd. West, Syracuse, New York, 13202; and _____ (“ an ESCo”), a _____ organized and existing under the laws of the State of _____ with its principal place of business at _____.

WHEREAS, ESCo is a participant in the Market Match / Market Expo program being facilitated by Niagara Mohawk. Such program is intended to provide opportunities for ESCos and certain of Niagara Mohawk’s business customers to exchange energy usage information (“Confidential Information”) in connection with Customer's service from Niagara Mohawk.

WHEREAS, ESCo acknowledges that such Confidential Information is confidential and proprietary.

NOW, THEREFORE, in consideration of the covenants hereinafter contained and intending to be mutually bound hereby, the parties agree as follows:

- 1. Confidential Information.** ESCo, its directors, officers, and employees shall not, without the express prior written consent of Niagara Mohawk, directly or indirectly disclose Confidential Information, in any manner whatsoever, in whole or in part, except to the Customer and to those of its directors, officers, and employees who (a) need to know Confidential Information for the limited purpose of participating in the Market Match/Market Expo Program ("Program"), (b) are informed of the confidential nature of the Confidential Information, and (c) agree to be bound by the terms of this Agreement. Subject to the provisions of this Agreement, ESCo may use Confidential Information solely for the purpose of participating in the Program.
- 2. No Copying.** Any Confidential Information shall not be copied, reproduced, excerpted, or disclosed, in whole or in part, without the prior express written permission of Niagara Mohawk, except in connection with the uses authorized in Paragraph (1) above.
- 3. Remedies.** ESCo expressly acknowledges and stipulates that Niagara Mohawk will experience irreparable injury, and damages that are difficult to quantify, as a result of disclosure of Confidential Information in violation of this Agreement. ESCo agrees that, in addition to any other remedies it may have in law or in equity to enforce the provisions of this Agreement, in the event that ESCo or any of its representatives discloses any Confidential Information in violation of this Agreement, Niagara Mohawk shall also have the right to require ESCo to reimburse Niagara Mohawk for costs incurred in enforcing the terms of this Agreement (including legal fees, legal costs, and the cost of an appraisal).

4. Exceptions. The obligations of non-disclosure regarding Confidential Information shall not be binding on ESCo where such Information (a) is known or in the possession of ESCo at the time of disclosure to ESCo by Niagara Mohawk; (b) is in the public domain; (c) becomes public knowledge through no fault of ESCo; or (d) is required to be disclosed by court order or other governmental requirement, provided that ESCo shall (i) immediately notify Niagara Mohawk of the existence, terms and circumstances surrounding the order or requirement; (ii) claim the Confidential Information as confidential trade secret information exempt from disclosure; (iii) consult with Niagara Mohawk on the advisability of taking legally available steps to resist or narrow the order or requirement; and (iv) fully cooperate with Niagara Mohawk and use best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed.

5. Disclaimer. The Confidential Information is not an offer or promise regarding future pricing or usage patterns. Niagara Mohawk makes no warranty, representation or guarantee regarding the accuracy, completeness, usefulness, or suitability of the Confidential Information or of the savings, if any, under Niagara Mohawk's Tariff, P.S.C. No. 207 – Electricity . Niagara Mohawk, its directors, officers, employees, and agents shall have no liability for any losses or claims resulting from the use of the Confidential Information.

6. Term. The obligations of non-disclosure hereunder shall be in effect for three (3) years from the effective date of this Agreement.

7. Choice of Law. This Agreement shall be construed and interpreted in accordance with and under the laws of the State of New York, exclusive of those laws determined by application of New York's choice of law principles. Venue in any action or proceeding shall be in the State of New York. ESCo agrees to submit to the personal jurisdiction of courts in the State of New York.

8. Entire Agreement. The parties agree that there are no understandings, agreements, or representations, expressed or implied, related to the subject matter hereof, except as stated in this Agreement. This Agreement supersedes and merges all prior discussions and understandings, and constitutes the entire agreement among the parties. This Agreement, or any provision hereof, cannot be modified, waived, or amended except in a writing signed by all parties.

IN WITNESS WHEREOF, the parties have caused their duly authorized

representatives to execute this Agreement effective the date first shown above.

NIAGARA MOHAWK POWER CORPORATION

By: _____

Title: _____

Date: _____

[NAME OF ESCO]

By: _____

Title: _____

Date: _____