

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

**ENERGY PROFILER ONLINE
LICENSE AGREEMENT
(Applicable to all Customers)**

THIS AGREEMENT is made effective on the date of electronic acceptance by the Customer (the "Effective Date") between the Customer 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, whose principal place of business is at 300 Erie Boulevard West, Syracuse, New York 13202; each referred to herein individually and collectively as the "Party" or the "Parties."

WHEREAS, the Company is responsible for providing, installing and maintaining the interval recording meters used to measure and record the Customer's electric energy consumption and/or generation data, which may include translating and distributing electric interval pulse data used for the purpose of invoicing;

WHEREAS, interval pulse data is used by the Company for calculation of delivery and energy charges and is provided to market participants in accordance with Public Service Commission approved tariffs and this Agreement; and

WHEREAS, the Customer desires to have access to Energy Profile Online which provides the Customer with the ability to obtain its electric energy consumption and/or generation data at specific time intervals coupled with access to day-ahead energy supply prices.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

- 1. The Scope of Work.** The Company agrees to provide and the Customer agrees to accept, subject to the terms and conditions contained herein, receipt, translation and delivery of unedited daily (00:00:01 – 24:00:00 hrs.) electric fifteen minute interval pulse data pertaining to the Customer's electric energy consumption and/or generation (the "Data") as follows:
 - a. The Data will be available on the Company's web site for the Customer's internet access by the next business day, Monday through Friday, excepting certain federal holidays, during the term of this Agreement. For example, the Data for Friday, Saturday and Sunday will be available on the following Monday provided that Monday is not an observed Company holiday. If such a holiday falls on Monday, the Data for Friday, Saturday, Sunday and Monday would then be available on Tuesday;
 - b. The Data will be provided on an ongoing basis for the term of this Agreement;

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- c. The Customer will only be able to view historical data (“Historical Data”) on the Company’s web site for the duration of the Customer’s enrollment in the Energy Profiler Online service, where Historical Data refers to data generated during a contiguous previous period of subscription to the Energy Profiler Online service; and
 - d. The Customer’s enrollment duration in the Energy Profiler Online service will determine the amount of Historical Data available on the Company’s web site. For example, at the end of the month following the completion of one year of contiguous enrollment, the Customer would have a minimum of thirteen (13) months of Historical Data available on the Company’s web site. Historical Data would be available up to a maximum duration of twenty-four (24) months or until twenty-five (25) consecutive months of enrollment has occurred. At such point in time, the oldest twelve (12) months of Historical Data will be removed from the Company’s web site.
- 2. Term.** This Agreement shall remain in force and effect through December 31 of the same calendar year as the Effective Date, unless the Effective Date occurs on or after October 1 of any given year, in which case this Agreement shall remain in force and effect through December 31 of the following calendar year. This Agreement shall be automatically renewed annually for succeeding one (1) year terms upon mutual agreement of the Company and the Customer. Mutual agreement to annual renewal shall be presumed unless, at least sixty (60) days prior to the annual renewal date, one Party to this Agreement gives the other Party formal written notification of termination of this Agreement.
- 3. Conditions.** Where the Customer is not participating in the Company’s Service Classification No. 3 (“SC-3”) Hourly Pricing Program or not otherwise exempt from being billed for metering and/or communications costs outside of the controlling tariff for its service classification, the Customer shall have additional obligations and the Parties agree to the following as a prerequisite to the Company making the Data available to the Customer (the “Work”):
- a. All Company-installed interval recording meters will require remote meter reading capability that conforms to the Company’s communications specifications (the “Communications”). The Customer will be responsible for all costs associated with the Company’s purchase and installation of the interval recording meter(s). The Customer will also be responsible for all costs associated with providing the Communications to the meter(s) if and to the extent such

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Communications are not currently existent and installed and/or are not needed for the Company's operations, as determined by the Company.

- b. As described above, the Customer must provide the Communications to the meter(s) and must bear all costs associated with the installation, operation and maintenance of the Communications including, but not limited to, all communications provider service bills;
 - c. The Customer will be charged the Company's cost to remove or relocate any existing Company-supplied or Company-owned metering or any other equipment that is necessary to accommodate the installation of this enhanced metering;
 - d. In cases where the Company is unable to read the meter through Customer-supplied communications line(s) and the Company has determined that the problem is not caused by the Company's meter or any other Company equipment, the Customer will be responsible for resolving the communications problem with its communications provider and for all associated time and material costs incurred by the Company in visits to the meter location;
 - e. If disputes arise regarding the interpretation of the Data obtained from the interval recording meter(s), the Company's interpretation of the Data will be utilized;
 - f. Any required repairs to Company-supplied metering devices and related equipment, including hardware and software, utilized to provide the Data will be completed during the Company's normal business hours, excepting hazardous situations. Reasonable effort will be made by the Company to repair equipment, hardware and/or software in a timely fashion as circumstances permit; and
 - g. The Company will make reasonable efforts to maintain equipment under its control within the accuracy specifications of that equipment. The Company will investigate and rectify legitimate issues related to obtaining the Data for equipment that is within its control. The Company reserves the right to decline to investigate issues relative to obtaining the Data if the problem is known to be the responsibility of another party. The Customer will be responsible for all associated time and material costs incurred by the Company for investigating problems associated with obtaining the Data where the problem is not caused by Company-supplied equipment or services.
- 4. Price.** The Company will submit an invoice to the Customer for the cost of the Work unless the Customer is exempt from the Conditions specified in Section 3 of

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this Agreement such that any meter and/or communications costs are billed as an incremental monthly charge to the Customer under the corresponding service classification tariff. The Energy Profiler Online subscription service charge is in addition to the specific site costs that pertain to the procurement, installation and maintenance of the interval recording meter(s) and associated communication equipment. The Company's charge for the Energy Profiler Online subscription service is \$50.00 per month (\$600 per year) for the first interval pulse data recorder installed. A Customer with multiple accounts and/or the need for multiple interval recording meters may qualify for a discount for translation and distribution services associated with additional pulse data recorder installations and the Company's Business Services Office will advise such a Customer accordingly. A Customer enrolling in the Energy Profiler Online service with an Effective Date prior to October 1 of any given year will be invoiced for the subscription service on a pro-rata basis for the time remaining in that calendar year. A Customer enrolling in the Energy Profiler Online service with an Effective Date on or after October 1 of any given year will be invoiced for the subscription service for the time remaining in that calendar year plus the annual charge for the following year. The Customer agrees to pay the Company within thirty (30) days after receipt of the Company's invoice and prior to the Work being performed hereunder.

- 5. Termination of Work.** In the event that the Customer should be unable or unwilling to fulfill the terms of this Agreement or be in material breach of this Agreement, the Customer's enrollment in the Energy Profiler Online service shall be terminated. The Customer will not be eligible for a refund of the annual subscription service fee paid to the Company where the Customer terminates the Energy Profiler Online service for convenience. In addition to termination rights for breach in this Agreement, the Company shall have available to it all other remedies at law and equity.
- 6. Termination of Agreement by the Customer.** In the event that the Company should be unable or unwilling to fulfill the terms of this Agreement or be in material breach of this Agreement, the Customer shall have the right to terminate this Agreement and receive a pro-rata refund of the annual subscription service fee paid to the Company for the Energy Profile Online service. In addition to termination rights for breach in this Agreement, the Customer shall have available to it all other remedies at law and equity.
- 7. Warranty Disclaimer. THE DATA IS PROVIDED "AS IS" BY THE COMPANY WITHOUT WARRANTY OF ANY KIND OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT**

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NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE ACCURACY OF THE DATA IS ASSUMED BY THE CUSTOMER.

8. Limitation of Liability. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY DAMAGES, CLAIMS, COSTS OR EXPENSES (INCLUDING ATTORNEYS' FEES) WHATSOEVER, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY, ARISING FROM THE USE OF THE DATA BY THE CUSTOMER, OR BY ANY THIRD PARTY. THIS LIMITATION SHALL APPLY WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY DAMAGE.

9. Indemnity. The Customer agrees to indemnify, save harmless and defend the Company and its officers, directors, employees and agents from and against all claims, demands, losses, liabilities, judgments, damages and related costs and expenses (including attorneys' fees) arising out of or relating to the Data or to the Customer's use of the Data, or to any error or omission therewith.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to provisions thereof relating to conflicts of law. The judicial venue for any disputes arising under this Agreement shall be in the courts of the State of New York located in the Fourth Department, or if in federal court, the United States District Court for the Northern District of New York.

11. Confidentiality. Nothing in this Agreement shall be construed so as to waive any non-disclosure obligation or confidentiality agreement that otherwise may exist between the Customer and the Company.

IN WITNESS WHEREOF, the Customer, through a duly authorized representative, by electronically clicking "I accept", has caused this Agreement to be entered into as of the Effective Date.