



An AVANGRID Company

**BILLING SERVICES AGREEMENT
(UTILITY WITH POR)**

BY AND BETWEEN

ROCHESTER GAS AND ELECTRIC CORPORATION

AND

DATED: _____, 20__

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EXHIBIT A – TECHNICAL BILLING SPECIFICATIONS

EXHIBIT B – PURCHASE OF ACCOUNTS RECEIVABLE (“POR”) PROGRAM

**BILLING SERVICES AGREEMENT
(UTILITY)**

THIS BILLING SERVICES AGREEMENT is made and entered into as of the ___ day of _____, 20 __, by and between ROCHESTER GAS AND ELECTRIC CORPORATION, a New York corporation having an office for the transaction of business at 18 Link Drive, Kirkwood Industrial Park, Binghamton, New York 13902 (sometimes hereinafter referred to as “RG&E”), and _____, a _____ corporation, having an office for the transaction of business at _____ (sometimes hereinafter referred to as “ESCO/Marketer”). RG&E and ESCO/Marketer are hereinafter also sometimes referred to as a “Party” or “Parties.”

WHEREAS RG&E, consistent with the Order Adopting Terms of Settlement Agreement Subject to Modifications and Conditions (Opinion No. 98-1), in Case No. 96-E-0891, issued January 14, 1998, and the Order Adopting Recommended Decision with Modifications, in Case Nos. 02-E-0198 and 02-G-0199, issued March 7, 2003, and the Order Adopting Provisions of Joint Proposals with Conditions in Case Nos. 03-E-0765 and 03-G-0766, issued May 20, 2004, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time (hereinafter collectively referred to as the “Electric Order”), has filed with the State of New York Public Service Commission (the “Commission” or the “PSC”) tariffs and plans to effectuate an electric retail access program (the “Electric Program”); and

WHEREAS, RG&E, pursuant to the Policy Statement Concerning the Future of the Natural Gas Industry in New York State and Order Terminating Capacity Assignment, issued November 3, 1998, in Case No. 97-G-1380, the Order Concerning Reliability, issued December 21, 1999, in Case No. 97-G-1380 and the Order Concerning Assignment of Capacity, issued March 24, 1999, in Case Nos. 93-G-0932, 97-G-1380, 98-G-1096, 98-G-1134, 98-G-1589

and 98-G-1785 (collectively, the “Gas Orders”), as the same may be revised, modified, amended, clarified, supplemented or superseded, has filed tariffs with the Commission to effectuate a gas transportation program (the “Gas Program”); and

WHEREAS, in connection with the Electric Program and the Gas Program, the Commission, in Case No. 99-M-0631, In the Matter of Customer Billing Arrangements, issued an Order Providing for Customer Choice of Billing Entity, issued March 22, 2000, requiring utility companies to allow their retail access transmission, distribution and transportation end-use customers the option of receiving a combined, single bill from either their utility company or a qualified alternate energy supplier, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time (the “Billing Order”); and

WHEREAS, ESCO/Marketer, pursuant to the Order Adopting the Terms and Conditions of the Joint Proposal for the Purchase of Accounts Receivable and Approval Related Tariff Amendments in Cases 03-E-0765 and 03-G-0766, in the Matter of Rochester Gas and Electric Corporation’s Plan to Foster the Development of Retail Energy Markets, issued December 27, 2004, that elects RG&E’s consolidated billing option for all or a portion of its customers is required to sell its accounts receivable for such customers to RG&E under the terms of the Purchase of Accounts Receivable Program (the “POR Program”) as the same may be revised, modified, amended, clarified, supplemented or superseded; and

WHEREAS, RG&E and ESCO/Marketer have entered into an Operating Agreement evidencing the ESCO/Marketer’s participation in the Electric Program and/or Gas Program, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time (the “Operating Agreement”); and

WHEREAS, ESCO/Marketer is a Commission-eligible energy services company, and, as applicable, is established as a load serving entity by the New York Independent System Operator (the “NYISO”), and/or a Commission eligible gas marketer; and

WHEREAS, ESCO/Marketer is an approved participant in RG&E’s Electric Program and/or RG&E’s Gas Program is in compliance with all applicable laws and the Commission’s Uniform Business Practices and has requested, pursuant to the Billing Order, to have RG&E provide a single bill or a consolidated bill, as applicable (hereinafter collectively referred to as the “Consolidated Bill”), to RG&E’s and ESCO/Marketer’s present and future customers who are receiving or may receive Electric Power and/or Gas Supply from ESCO/Marketer in RG&E’s service territory; and

WHEREAS, RG&E has filed electric and gas tariffs with the Commission implementing the Billing Order, the POR Program and the Uniform Business Practices (the “UBPs”), and is willing to provide a Consolidated Bill and purchase the accounts receivable of an ESCO/Marketer, subject to the terms and conditions of this Agreement, the Billing Order, the UBPs, and the POR Program.

NOW THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RG&E and ESCO/Marketer agree as follows:

1. INCORPORATION BY REFERENCE

A. The terms and conditions of the Electric Program, the Gas Program and the following documents are incorporated by reference into this Agreement and are hereby made a part hereof:

- (1) Paragraphs 1.B.(1), (2), (3), (4) (5) and (6) of the Operating Agreement

- (2) The Billing Order
- (3) The POR Program
- (4) Paragraphs 1.B. (7), (8), (9), (10) and (11) of the Operating Agreement.

B. For purposes of this Agreement, the documents listed in Articles 1.A.(1) through 1.A.(4), inclusive, shall sometimes collectively be referred to as the “Contract Documents.” This Agreement and the Contract Documents together constitute the entire agreement between RG&E and ESCO/Marketer with respect to the Consolidated Bill, the POR Program and payment processing services provided hereunder.

2. ORDER OF PRECEDENCE

To the extent there is any conflict between the terms and conditions of this Agreement and any of the Contract Documents, the terms and conditions of this Agreement, to the extent allowed by law, shall take precedence and govern over any of the Contract Documents, except that the Trading Partner Agreement (“TPA”) referred to in Article 1.B.(8) of the Operating Agreement, shall take precedence and govern over the Technical Billing Specifications described in Article 5.A.(1) of this Agreement. In the event of a conflict between the terms and conditions of any of the Contract Documents, the order of precedence for such documents shall be the order in which such documents are listed in Article 1 of this Agreement.

3. DEFINITIONS

Except as otherwise provided herein, the capitalized terms in this Agreement shall have the same meaning as defined in the Contract Documents, as such terms may be revised, modified, amended, clarified, supplemented or superseded from time to time.

4. **TERM**

This Agreement shall commence on the date set forth above, and shall remain in effect for an initial term of one (1) year from the commencement date of this Agreement, and thereafter, on a year-to-year basis, unless terminated by: (i) either Party on not less than thirty (30) calendar days prior written notice; or (ii) sooner as otherwise specifically provided for herein; or (iii) as a result of any law, order, rule, regulation or determination of a court, regulatory agency or other body of competent jurisdiction permitting or requiring termination or a material modification of this Agreement, unless such material modification is mutually acceptable to the Parties.

5. **OBLIGATIONS OF RG&E**

A. RG&E agrees that it shall throughout the term of this Agreement:

(1) Upon the request of ESCO/Marketer, as provided in Article 6, RG&E shall render a Consolidated Bill with respect to the transmission and distribution service provided by RG&E and the Electric Power and/or Gas Supply provided by ESCO/Marketer for RG&E customers receiving electric and/or gas supply service from ESCO/Marketer, which bills shall be in compliance with this Agreement, the Contract Documents and the Technical Billing Specifications attached hereto as Exhibit A and incorporated herein by reference, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time (the “Technical Billing Specifications”); and

(2) Comply with the Contract Documents and the Technical Billing Specifications, as applicable; and

(3) Comply with all terms and conditions of Commission-adopted electronic data interchange (“EDI”) standards, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time; and

(4) Obtain the required certifications from the Commission and/or provide appropriate attestation required by EDI standards to render EDI services, and maintain such certifications and attestations in full force and effect throughout the term of this Agreement; and

(5) Act in compliance with the New York State Home Energy Fair Practices Act (“HEFPA”) and the Commission’s regulations promulgating HEFPA, including with respect to the accounts receivable purchased under this Agreement, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time; and

(6) RG&E shall not be required to include ESCO/Marketer bill inserts in bills rendered by RG&E, provided, however, that RG&E shall make arrangements for mailing ESCO/Marketer inserts required by the Commission or by any applicable law, rule, order or regulation; and

(7) Prior to rendering a Consolidated Bill to a customer, successfully complete the Consolidated Bill testing required by Article 24 of this Agreement.

B. RG&E will purchase the billed and unbilled accounts receivable related solely to supply charges of the ESCO/Marketer constituting the obligation of specific Point of Delivery Identification customers (“POD ID Customers”) designated to receive a Consolidated Bill from RG&E (pursuant to the POR Program outlined in Exhibit B and incorporated herein by reference, as the same may be revised, modified, amended, clarified, supplemented or

superseded from time to time) to pay for natural gas and electricity that has flowed through the customer's meter delivered by or on behalf of ESCO/Marketer (such accounts receivable the "Accounts Receivable"). Exhibit B is intended only as an outline and is subject to the specific provisions of the POR Program set forth in RG&E's Electric Supplier Manual and/or RG&E's Gas Transmission Operating Procedures Manual (hereinafter collectively referred to as the "Manuals"). RG&E shall not purchase any ESCO receivables related to early termination fees, financing, or any other charges that are not specifically, directly and solely commodity supply charges. As used herein, the terms "customer" or "customers" shall refer to customers of ESCO/Marketer that are located in RG&E's service territory.

6. OBLIGATIONS OF ESCO/MARKETER

A. ESCO/Marketer agrees that it shall throughout the term of this Agreement:

- (1) Comply with the Contract Documents and the Technical Billing Specifications, as applicable; and
- (2) Provide the applicable ESCO/Marketer and customer information required to be included on the Consolidated Bill to RG&E in a Bill Ready format; and
- (3) Comply with all terms and conditions of Commission-adopted EDI standards, as such standards are posted on the Commission's website, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time; and
- (4) Be and remain in good standing in RG&E's Electric Program and Gas Programs, as applicable, and ESCO/Marketer shall not be in default under any agreement by and between ESCO/Marketer and RG&E; and

(5) Act in compliance with HEFPA and the Commission's orders, rules and regulations promulgating HEFPA, including with respect to accounts receivable purchased under this Agreement, as applicable, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time; and

(6) Obtain the required certifications from the Commission and/or provide appropriate attestations required by EDI standards to render EDI services, and maintain such certifications and attestations in full force and effect throughout the term of this Agreement; and

(7) Notify RG&E of an electric customer's choice for a Consolidated Bill, and coordinate the provision of the billing charges and other billing information for that Consolidated Bill with RG&E not less than five (5) business days prior to such electric customer's next scheduled meter reading date or not less than fifteen (15) calendar days prior to a special meter reading date; and

(8) Notify RG&E of a gas customer's choice for a Consolidated Bill, and coordinate the provision of the billing charges and other billing information for that Consolidated Bill with RG&E not less than ten (10) business days prior to (i) the next scheduled meter reading date or not less than fifteen (15) calendar days prior to a special meter reading date for a non-daily metered gas customer that is an existing gas transportation customer or a gas customer switching from one supplier to another supplier; or (ii) the first day of the month for existing daily metered gas transportation customers or any new gas transportation customer; and

(9) Notify ESCO/Marketer's relevant non-residential customers that RG&E has purchased ESCO/Marketer's accounts receivable for commodity sales by

ESCO/Marketer to these customers under the terms of the POR Program, and
ESCO/Marketer has or will assign, convey and grant RG&E, any and all of
ESCO/Marketer's rights to disconnect any non-residential customers for non-payment of
all amounts on a Consolidated Bill when due, and that RG&E, in accordance with
applicable provisions of law, is authorized to disconnect its delivery service and
ESCO/Marketer's commodity service for non-payment of all amounts due on the
Consolidated Bill, including the amount of the ESCO/Marketer accounts receivable; and

(10) Furnish RG&E with an affidavit from an officer of the ESCO/Marketer
affirming that, as of the effective date of this Agreement, ESCO/Marketer has notified its
current non-residential customers and will notify its future non-residential customers that
ESCO/Marketer has or will assign, convey and grant RG&E, any and all of
ESCO/Marketer's rights to disconnect non-residential customers for non-payment of all
amounts on a Consolidated Bill when due, including the ESCO/Marketer's energy
commodity service charges, in accordance with applicable PSC rules and regulations.
ESCO/Marketer will indemnify RG&E for any cost, expense (including reasonable
attorney's fees), or penalty if the customer's service is discontinued for non-payment and
the customer establishes that it did not receive such notification from the
ESCO/Marketer; and

(11) Provide RG&E with the annual ESCO/Marketer Environmental
Disclosure insert that is to be provided to ESCO/Marketer customers; and

(12) Maintain the capability to provide, or contract with others to provide, dual
billing immediately at the request of customers or where the circumstances require the
same; and

(13) Cooperate with RG&E to the fullest extent possible under the law and to use ESCO/Marketer's best efforts to facilitate the transactions under this Agreement. Such cooperation shall include, but not be limited to, supplying RG&E with all information and assistance that may be necessary or helpful to RG&E in verifying the accuracy of any Accounts Receivable or in correcting any errors.

(14) Be in compliance with the Commission's Uniform Business Practices ("UBP") and all applicable PSC rules, regulations and orders as each may be amended from time to time.

(15) Keep confidential all billing information, issues and data associated with any customer. ESCO will not share individual customer billing or metering information, status or issues with other customers.

B. ESCO/Marketer will sell to RG&E and RG&E shall purchase the Accounts Receivable, which shall include all accounts for natural gas and/or electricity flows through the meter for all POD ID Customers of the ESCO/Marketer receiving a Consolidated Bill from RG&E, pursuant to the POR Program outlined in Exhibit B, and:

(1) In consideration of such purchase, ESCO/Marketer shall grant to RG&E a security interest in the Collateral as defined below. As of the time the relevant natural gas or electricity passes the customer's meter, title to such Accounts Receivable shall pass to RG&E and ESCO/Marketer shall have no rights in or to the accounts receivable, and shall not seek to collect in any manner such amounts from customers.

(2) As collateral for all obligations now existing or hereafter arising from ESCO/Marketer to RG&E, ESCO/Marketer hereby grants to RG&E a first priority perfected security interest in all of the following property of ESCO/Marketer, wherever

located, whether now owned, hereafter acquired, or created, and all proceeds and products thereof: (i) the Accounts Receivable, which for the avoidance of doubt includes all unbilled accounts receivable related to the charges associated with POD IDs identified for the amount of gas or electricity that has passed through the meter but that has not yet been billed; and (ii) the Deposit as defined below (collectively, items i-ii above, are the “Collateral”).

(3) ESCO/Marketer hereby covenants and represents that it has no other liens outstanding on the Collateral and covenants that it will not pledge, mortgage, or create, or suffer to existing any right of any person in or claim by any person to the Collateral, or any security interest, lien or encumbrance in the Collateral in favor of any person other than the Company, with the exception (with respect to (i) and (ii) of any security interest in the Collateral filed by a creditor of ESCO that the secured creditor has subordinated to the Company's first priority security interest in a manner pre-approved by the Company as reasonably acceptable (each an "Approved Subordinated Lien"). ESCO/Marketer hereby agree to promptly execute and/or deliver to RG&E any and all documents RG&E deems necessary to evidence RG&E's first priority security interest in the Collateral or to maintain that interest and satisfy the ESCO/Marketer's obligations under this Agreement. ESCO/Marketer authorizes RG&E to file and/or record documents, at ESCO/Marketer's sole cost and expense, including financing statements deemed necessary by RG&E to perfect its interest in the Collateral under the Uniform Commercial Code (“UCC”) and put third parties on notice of RG&E's interest in the Collateral. ESCO/Marketer further agrees that RG&E may execute, file and/or record any and all documents under the UCC or such other documents, at ESCO/Marketer's sole cost and expense, if required, to

evidence RG&E's first priority security interest in the Collateral, for and on behalf of ESCO/Marketer.

(4) In addition, ESCO/Marketer agrees to assign to RG&E any and all payments, in whatever form, received from local, state, Federal or other agencies associated with the Accounts Receivable, including, without limitation, payments from social services programs, including but not limited to, Heating Emergency Assistance Program ("HEAP"), emergency HEAP, and Section 131s of the Social Services Law as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time.

(5) Pursuant to the discontinuance of service requirements under HEFPA or other applicable PSC rules and regulations, and terms and conditions of ESCO/Marketer's customer contracts, as applicable, ESCO/Marketer, with respect to residential and non-residential customer accounts receivable purchased by RG&E hereunder, hereby grants, assigns and conveys to RG&E any and all ESCO/Marketer's rights (or in the alternative if such rights are not available, ESCO/Marketer appoints RG&E as ESCO/Marketer's agent) to disconnect ESCO/Marketer residential and non-residential customers that fail to make full payment of any and all energy commodity and RG&E Tariff delivery service charges due in accordance with 16 NYCRR Part 11 and Part 13 (i.e. delivery and/or commodity) that are set forth on a Consolidated Bill. ESCO/Marketer agrees to modify the terms and conditions of ESCO/Marketer's contracts, as applicable, with such existing residential and non-residential customers to the extent necessary to provide for discontinuance of residential and non-residential

service for non-payment as authorized under the prior sentence, and in any event agrees to notify such existing non-residential customers of RG&E's right to terminate service in the event of non-payment. In addition, ESCO/Marketer agrees to include an equivalent provision and notice in new contracts with residential and non-residential customers whose customer accounts receivable is purchased by RG&E under this Agreement and the POR Program.

(6) ESCO/Marketer agrees:

(a) prior to the commencement of the POR Program, to obtain any and all necessary amendments or terminations of financing statements, filed by any third party ("Third Party Financing Statements") against the ESCO/Marketer as a debtor in the Collateral contemplated under this Agreement, specifically obtaining a release of the Collateral, except for Approved Subordinated Liens; and

(b) to ensure that, except with respect to Approved Subordinated Liens, any and all Third Party Financing Statements filed subsequent to the commencement of the Term of this Agreement shall expressly except from the description of collateral the Collateral and specifically reference this Agreement to guaranty continuation of RG&E's first priority perfected security interest in the Collateral.

C. The commencement of the Term of this Agreement and the obligations of ESCO/Marketer and RG&E under this Agreement are subject to the satisfaction of the following conditions precedent:

- (1) Prior to the commencement of the Term of this Agreement, ESCO/Marketer shall provide RG&E with the following:
 - (a) complete list of any liens affecting the Collateral in favor of a third party, as creditor against the ESCO/Marketer, as debtor; and
 - (b) copies of all documents evidencing said liens, including any Third Party Financing Statements filed against ESCO/Marketer as a debtor; and
 - (c) a copy of a lien search of the ESCO/Marketer from a third party service provider that is complete and satisfactory to RG&E, such that RG&E is satisfied that ESCO/Marketer has not previously pledged the Collateral to a third party and that no lien currently is recorded against the Collateral. A lien search obtained from an internet based website from the ESCO/Marketer's state of incorporation shall not constitute a valid lien search required under this section. The lien search requested shall be at ESCO/Marketer's sole cost and expense, including copies of all documents evidencing such liens against ESCO/Marketer as debtor.
- (2) If the information provided by ESCO/Marketer hereunder is not, in the opinion of RG&E, satisfactory, complete and acceptable in form and substance, and such information does not provide adequate assurance that RG&E's interest in the Collateral is superior to any third party's interest, then RG&E shall provide written notice to ESCO/Marketer that the Term of this Agreement shall not commence and this Agreement shall be null and void.
- (3) In addition to the requirements hereunder, ESCO/Marketer agrees to provide copies to RG&E of any Third Party Financing Statements affecting the Collateral

to be filed after the commencement of the Term of this Agreement prior to filing any such statements to allow RG&E to review such Third Party Financing Statements. After its receipt of the Third Party Financing Statements, RG&E shall have three (3) Business Days to object to said statements.

7. BILLING FUNCTION RESPONSIBILITIES

A. RG&E shall be responsible for all of the following billing functions and the associated customer care activities:

(1) the receiving and processing of bill charges and/or credits provided by ESCO/Marketer in Bill Ready format (including applicable taxes), and other appropriate billing information including bill messages; and

(2) the rendering of bills for ESCO/Marketer supply services; and

(3) the receiving, depositing, posting and processing of the customer payments to the appropriate account.

B. For any billing function not specifically stated in Article 7.A., or otherwise required to be performed for RG&E to perform its duties and obligations hereunder, RG&E may choose to enter into a mutual agreement with ESCO/Marketer concerning the provision of that function.

8. BILL CONTENT AND FORMAT

In addition to the information required by the Contract Documents, RG&E shall determine the bill format of the Consolidated Bill rendered by RG&E and present the content of the ESCO/marketer portion of the bill as provided by the ESCO/Marketer, consistent with the Contract Documents and the POR Program.

9. BILLING

A. RG&E shall perform budget billing or cycled meter readings in accordance with its normal meter reading schedule and/or current practices and procedures, or as otherwise provided for in accordance with the terms of the Contract Documents or the Technical Billing Specifications. In the event an actual meter reading is not obtained or an actual meter reading cannot be validated in accordance with RG&E's practices and procedures, RG&E shall estimate the consumption for billing purposes in accordance with applicable rules and regulations. If an account is budget billed and no estimate is generated, RG&E shall transmit an indicator for budget billing purposes.

B. RG&E will provide the ESCO/Marketer, or a third party designated in writing by ESCO/Marketer, with EDI transactions containing the applicable customer's usage information, according to RG&E's Service Classification, not later than two (2) Business Days after such information is collected and validated by RG&E. The ESCO/Marketer shall provide or cause RG&E to be provided with the customer billing charges and other billing information in Bill Ready format within two (2) Business Days following receipt by ESCO/Marketer, or its designated representative, of the customer's usage data from RG&E. RG&E will render a Consolidated Bill within two (2) Business Days from receipt of the customer billing charges and other billing information.

C. ESCO/Marketer shall pay RG&E the applicable fees and charges set forth in the Contract Documents and the Program Tariffs for Consolidated Bills.

10. PAYMENT TERMS

A. Except as otherwise specifically set forth herein, and notwithstanding any customer or other lawful instructions or authorizations to the contrary, the ESCO/Marketer

agrees that all amounts due from ESCO/Marketer for services that are set forth on the Consolidated Bill or rendered by RG&E pursuant to the terms of this Agreement will be paid, without setoff, deduction or counterclaim, other than as specifically permitted hereunder or in the Manuals, in accordance with applicable Commission orders, rules and regulations, the UBPs and RG&E's Program Tariffs.

B. Amounts payable to ESCO/Marketer from RG&E under the POR Program will be disbursed to ESCO/Marketer or its designated financial institution, by automated clearing house ("ACH") transaction, within twenty (20) calendar days following issuance of the Consolidated Bill for such receivable. ESCO/Marketer shall provide RG&E with written instructions for the ACH transaction containing the name of the financial institution, the financial institution's routing number, the name of the account and the account number. If ESCO/Marketer fails to provide such instructions, RG&E will make payments by check. If RG&E fails to make timely payments to the ESCO/Marketer, RG&E shall pay interest at the rate of one and one-half percent (1½%) per month, but in no event in excess of the maximum amount authorized by law, on the amount that is not timely paid from the date payment is due to the ESCO/Marketer to the date of payment. Likewise, for any possible overpayments of POR made to ESCO, ESCO shall refund any overpayment within twenty (20) day of notice from the Company.

C. ESCO/Marketer warrants that, except as expressly permitted herein, the ESCO/Marketer amounts for commodity service payable to RG&E hereunder or under the POR Program are not and will not be subject to any other billing, collection, or financing instrument, and have not been billed and will not be collected by or for the benefit of ESCO/Marketer or any other party. ESCO/Marketer further warrants that, except as expressly permitted herein, amounts for commodity service payable to RG&E hereunder or under the POR Program are and will

remain free from any and all encumbrances and security interests, and that no such amounts are or will be assigned, financed, sold, pledged, hypothecated, or otherwise encumbered.

D. No partial payment by either Party, or acceptance by the other Party, of a lesser amount than shall be due from either Party to the other Party, shall be treated otherwise than as a payment on account. The acceptance by a Party of a check for a lesser amount with an endorsement or statement thereon, or upon any correspondence accompanying or relating to such check that such lesser amount is payment in full shall be given no effect, and such Party may accept such check without prejudice to any other rights or remedies which such Party may have against the other Party and apply it as a partial payment. In the event either Party makes an overpayment to the other Party, such other Party shall not be liable for interest or late payment fees associated with the overpayment.

E. Notwithstanding any other provision of this Agreement to the contrary, amounts due to RG&E from ESCO/Marketer, including, but not limited to, amounts for delivery services, balancing and cash out, billing costs and services, late payment charges, and other amounts permitted by tariff, this Agreement or the Contract Documents (“ESCO/Marketer Charges”), may be setoff or deducted from the amounts payable to ESCO/Marketer under the POR Program, provided that ESCO/Marketer has not posted other security that may be used for amounts past due from ESCO/Marketer to RG&E. To the fullest extent permitted by law, RG&E shall have the right to setoff or deduct monies due RG&E from amounts payable to ESCO/Marketer under the POR Program. Any claim ESCO/Marketer may have concerning the amount setoff or deducted from the amounts payable to ESCO/Marketer under the POR Program shall be presented to RG&E in writing within thirty (30) days from receipt of payment.

ESCO/Marketer’s failure to present its claim within this thirty (30)-day period shall constitute a

waiver of any claim ESCO/Marketer may have with respect to the amount due ESCO/Marketer under the POR Program.

F. Any Accounts Receivable or portion thereof inadvertently received by ESCO/Marketer from customers shall be held by ESCO/Marketer in trust as the property of RG&E. In the event a customer inadvertently renders a payment for the Consolidated Bill to the ESCO/Marketer or its designated representative, the ESCO/Marketer shall promptly notify RG&E, by RG&E and ESCO/Marketer account number if available, of the amount inadvertently paid to the ESCO/Marketer or its designated representative, and the ESCO/Marketer or its designated representative will remit such amount by an ESCO check, within five (5) days, without setoff, deduction or counterclaim, to RG&E, together with the customer's name, customer's POD ID, amount paid by such customer, and such other information as reasonably requested by RG&E. RG&E shall have the right to endorse the name of ESCO/Marketer on any and all remittances by customers made to RG&E that are payable to ESCO/Marketer, and the right to collect and retain the same from customers.

11. DISPUTE RESOLUTION

A. Any dispute between RG&E and the ESCO/Marketer involving the services governed by or the interpretation or breach of this Agreement and the Contract Documents may be submitted by the disputing Party for resolution in accordance with the Commission's dispute resolution rules and procedures as set forth in the UBPs. Nothing contained herein shall be construed as a limitation on the right of any Party to pursue any other remedy it may have at law or in equity.

B. Nothing contained in this Agreement is intended to prohibit the Parties from agreeing to use alternate dispute resolution practices or procedures that may vary from those set forth in Article 11.A.

C. If either Party believes that emergency circumstances exist, including public safety, system reliability or significant financial risk that require a more expeditious resolution of a dispute, then such Party may submit such complaint directly to the Commission in accordance with the Commission's expedited process as set forth in the UBPs, with a copy to the non-complaining Party. The Commission can agree to the existence of emergency circumstances and attempt to resolve the dispute in an expeditious manner, or it can find that the dispute can be resolved in accordance with the normal process provided hereunder.

D. All correspondence or documents relating to a dispute or complaint, and sent from one Party to the other must be sent in a manner that provides verification that they were received within the time periods required by this Article 11.

12. CONFIDENTIAL INFORMATION

A. RG&E and ESCO/Marketer agree not to disclose to any third party and to keep confidential, and to cause their affiliates, officers, directors, members, employees and representatives not to disclose to any third party and to keep confidential, any and all information obtained by either Party from the other Party relating to this Agreement (including, but not limited to, all business-sensitive and competitive information disclosed by either Party to the other Party, including all billing information, issues or data associated with any customer, as well as information generated during the performance of the services contemplated herein) that may be obtained from any source, including, but not limited to, all network engineering hardware, software or technical information and/or all pricing, financial, customer, strategic, accounting,

marketing or business data, specifications, models, reports, plans, forecasts, predictions, projections, or other business information as a result of this Agreement (collectively referred to as “Confidential Information”). In addition, both Parties acknowledge that all information furnished and identified by the other Party as being confidential or proprietary information or trade secret is and shall remain the sole and exclusive property of such other Party. Information and data provided to RG&E by ESCO/Marketer under this Agreement shall be used by RG&E for the purposes of billing, receiving, depositing, posting, processing and remittance of customer payments or for determining amounts due to the ESCO/Marketer, and shall not be used by RG&E for any other purpose. Confidential Information may be disclosed by the Receiving Party to its employees, agents, and consultants on a need-to-know basis only, provided such persons agree in writing to be bound by the terms and conditions of this Article 12. The parties agree that each Party shall be responsible for any breach of the terms of this Article 12 by any of its employees, agents and consultants. The receiving Party is required to retain for at least six (6) years from the date received, Confidential Information, and thereafter, destroy such Confidential Information at the request of the disclosing Party or return such Confidential Information at the request of the disclosing Party.

B. The confidentiality obligations of this Article 12 do not apply to information which: (i) is already known to one Party free of any restriction at the time it is obtained from the other Party; (ii) is subsequently learned by one Party from an independent third party free of any restriction and without breach of this Agreement; (iii) is or becomes publicly available through no wrongful act of either Party; (iv) is independently developed by one Party without reference to any Confidential Information of the other; (v) is disclosed by one Party to a third party, with the express permission of the other Party; (vi) is disclosed to the extent required by applicable

laws and regulations or by any subpoena or similar legal process; or (vii) is disclosed pursuant to the lawful requirement or formal request of a governmental agency or a party in any regulatory proceeding, provided that if one Party is requested or, in the written opinion of its counsel, legally compelled by a governmental agency or a party in any regulatory proceeding, to disclose any Confidential Information of the other Party, such Party, to the extent permitted by law, agrees to provide the other Party with prompt written notice of such request so that the other Party has the opportunity to pursue its legal and equitable remedies regarding such potential disclosure. The receiving Party further agrees that if the disclosing Party is not successful in precluding the requesting legal or governmental body from requiring disclosure of the Confidential Information, the receiving Party will furnish only that portion of the Confidential Information which, in the written opinion of its counsel, it is legally required to disclose, and will exercise all reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

C. Each Party acknowledges that its breach or threatened breach of this Article 12 may cause the other Party irreparable harm, which may not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach by either Party, such Party agrees to the granting of equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in addition to any legal remedies to which the other Party may be entitled, without proof of actual damages. Notwithstanding the foregoing, a breach of this Article 12 shall be deemed a material breach of this Agreement.

D. The provisions of this Article 12 shall survive the expiration or termination of this Agreement.

13. AUDIT

A. Subject to the terms hereof, the Commission, or its representatives, at all reasonable times during normal business hours, for the purpose of audit, examination, or review, shall, pursuant to its jurisdiction and authority under the Public Service Law, be allowed access to ESCO/Marketer and RG&E's records, books, documents, data, information and paper (including those on electronic media) (collectively, the "Records") bearing upon the provision of billing services rendered, processes employed hereunder and the POR Program ("Audit").

B. During the term of this Agreement, and for a period of two (2) years after the expiration or termination of this Agreement, RG&E shall have the right to Audit the Records of ESCO/Marketer bearing upon the provision of billing services rendered, processes employed hereunder and the POR Program, during normal business hours upon reasonable notice.

C. All information received or reviewed by RG&E as a result of an Audit shall be considered Confidential Information, as defined herein.

D. RG&E and ESCO/Marketer shall preserve and have the Records subject to Audit for a period of at least six (6) years from the date such Record was created.

14. TERMINATION

A. ESCO/Marketer, if it is not in default hereunder, may terminate this Agreement on not less than thirty (30) calendar days prior written notice to RG&E, provided, however, that such termination shall not be effective unless and until all of RG&E's Eligible Customers have been properly transferred to RG&E for Dual Billing or another entity eligible to provide a Consolidated Bill for billing services.

B. RG&E, if it is not in default hereunder, may terminate this Agreement as specifically set forth in this Agreement or as specifically set forth in the Contract Documents.

RG&E may also terminate this Agreement if ESCO/Marketer terminates or is in default under this Agreement or any of the Contract Documents or if any of the Contract Documents have expired or have been terminated by RG&E.

C. Upon expiration, cancellation, or termination of this Agreement, each Party shall present separate bills to customers for the respective services provided by the Parties. RG&E shall have no obligation to include ESCO/Marketer's accounts receivable on its bills to customers. Notwithstanding anything in Section 14 herein to the contrary, RG&E shall remain obligated to issue invoices for and purchase any Accounts Receivable existing at the effective time of any termination hereof.

15. DEFAULT AND REMEDIES

A. Events of Default by RG&E. Any one or more of the following shall constitute an "Event of Default" hereunder with respect to RG&E:

- (1) default shall occur in the payment of any amounts due from RG&E hereunder for five (5) calendar days after the date such payment is due; or
- (2) failure of RG&E to obtain or properly maintain or submit its EDI certifications and/or attestations with the Commission; or
- (3) default shall occur in the performance of any other material agreement, covenant or condition to be performed by RG&E hereunder and such default shall continue without remedy for a period of fifteen (15) calendar days after written notice from ESCO/Marketer specifying the nature of such default, or, if the default cannot reasonably be cured within fifteen (15) calendar days of such notice, such default shall occur if RG&E has not diligently commenced and pursued the cure within fifteen (15) calendar days of such notice, or

(4) a custodian, receiver, liquidator or trustee of RG&E or of any of the property of RG&E is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) calendar days; or RG&E makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or RG&E is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against RG&E; or any of the material property of RG&E is sequestered by court order and the order remains in effect for more than sixty (60) calendar days; or a petition is filed against RG&E under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) calendar days after filing; or

(5) RG&E files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of RG&E or any of the property of RG&E.

B. Events of Default by ESCO/Marketer. Any one or more of the following shall constitute an “Event of Default” hereunder with respect to ESCO/Marketer:

(1) default shall occur in the payment of any amounts due from ESCO/Marketer hereunder or under any other agreement in connection with the Program or under the Tariffs for five (5) calendar days from the date such payment is due; or

(2) failure of ESCO/Marketer to obtain or properly maintain or submit its EDI certifications and/or attestations with the Commission, or to maintain its status as an eligible supplier with the Commission or the NYISO; or

(3) default shall occur in the performance of any material agreement, covenant or condition to be performed by ESCO/Marketer hereunder or under any other written agreement with RG&E in connection with the Program or under the Tariffs and such default shall continue unremedied for a period of fifteen (15) calendar days after written notice from RG&E specifying the nature of such default, or such other time as may be specifically provided, or, if the default cannot reasonably be cured within fifteen (15) calendar days of such notice or such other time as may be specifically provided, such default shall occur if ESCO/Marketer has not diligently commenced and pursued the cure within fifteen (15) calendar days of such notice or such other time as may be specifically provided; or

(4) a custodian, receiver, liquidator or trustee of ESCO/Marketer or of any of its property is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) calendar days; or ESCO/Marketer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature or is generally not paying its debts as they mature; or ceases doing business as a going concern for (5) Business Days; or ESCO/Marketer is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against ESCO/Marketer; or any of the material property of ESCO/Marketer is sequestered by court order and the order remains in effect more than sixty (60) calendar days; or a petition is filed against ESCO/Marketer under any bankruptcy, reorganization,

arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) calendar days after filing; or

(5) ESCO/Marketer files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of ESCO/Marketer or any of its property; or if its shareholders shall take an action looking into its dissolution or liquidation; or

(6) ESCO/Marketer fails to comply with any tariffs on file with FERC that may be applicable to the Program, or with any Commission requirements applicable to the Program; or

(7) ESCO/Marketer fails to maintain in place at all times, any and all governmental approvals, if required, for ESCO/Marketer to receive service from RG&E under this Agreement or to sell Electric Power and/or Gas Supply to customers, whether such approvals are issued by the PSC or other state or Federal regulatory authority of competent jurisdiction.

C. Remedies. The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

(1) In the event a default shall occur in the payment of any amounts due from ESCO/Marketer hereunder or under any other agreement in connection with the Program when such payment is due, RG&E shall have the right to withhold from sums payable to

ESCO/Marketer under this Agreement, a deposit equal to five percent (5%) of the total amount for commodity service billed by RG&E for ESCO/Marketer under this Agreement during the preceding year (the "Deposit"). In the event amounts due to ESCO/Marketer hereunder are less than the full amount required for the Deposit, RG&E shall have the right to require ESCO/Marketer to make an immediate payment equal to the amount of the deficiency in the Deposit. The Deposit shall be used by RG&E to offset ESCO/Marketer Charges and any other sums or amounts due or owing by ESCO/Marketer to RG&E. After ninety (90) days following the payment of the Deposit, RG&E will re-examine the security amount and make such adjustments as RG&E estimates may be necessary to satisfy the aforementioned charges attributable to ESCO/Marketer on the same and consistent method as RG&E determines such charges for all energy services companies participating in the Program. At the end of six (6) months from the expiration or termination date of the Agreement, RG&E will return the unused portion of the Deposit to ESCO/Marketer, except those sums subject to payment arrangements required by either the laws of the State of New York or any governmental authority, including the PSC. Notwithstanding the foregoing, the deposit of such amounts does not relieve or waive ESCO/Marketer's responsibility and obligation to pay its obligations to RG&E including, without limitation, ESCO/Marketer Charges, and other sums due or owing by ESCO under this Agreement.

(2) Upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right: (i) to immediately collect all amounts then due or thereafter to become due to it from the defaulting Party hereunder; and (ii) to terminate this Agreement at any time during the continuation of such Event of Default; and (iii) to

render separate bills to its customers; and (iv) to pursue any other right or remedy it may have under this Agreement, at law or in equity.

(3) If ESCO/Marketer terminates this Agreement as a result of the occurrence of an Event of Default by RG&E, or as otherwise provided hereunder, and ESCO/Marketer is not in default under this Agreement, then ESCO/Marketer shall have the right to pursue all rights and remedies available to it under applicable law or equity, including, without limitation, the right to recover actual damages. In addition, ESCO/Marketer shall be entitled to reimbursement of all costs incurred by it as a result of the termination of this Agreement, including, but not limited to, costs incurred to establish a single billing system or agreement.

(4) If RG&E terminates this Agreement as a result of the occurrence of an Event of Default by ESCO/Marketer, or as otherwise provided hereunder, and RG&E is not in default under this Agreement, then RG&E shall have all rights and remedies available to it under this Agreement, applicable tariffs, applicable law or in equity, including, without limitation, the right to recover actual damages, including costs incurred by RG&E to implement billing services for customers who were receiving Consolidated Bills. All rights and remedies shall be cumulative and can be exercised separately or concurrently.

(5) Notwithstanding anything to the contrary contained in this Article 15, neither Party shall be entitled to recover special, indirect, punitive, incidental or consequential damages in connection with the occurrence of an Event of Default hereunder, except insofar as any such damages are provided for in this Section 15.C. The

provisions of this Article shall survive the expiration, cancellation, or termination of this Agreement.

16. CUSTOMER COLLECTIONS

A. If any customer shall make any claim for ESCO/Marketer's breach of contract, or cancels or repudiates a contract with ESCO/Marketer, or claims the right to so do, or asserts any counterclaim, defense, or offset against amounts due for ESCO/Marketer supply charges ("Billing Dispute"), ESCO/Marketer shall: (1) notify RG&E of the existence of a Billing Dispute; (2) make a good faith effort to resolve the Billing Dispute with the ESCO/Marketer Eligible Customer; and (3) notify RG&E of the resolution of the Billing Dispute. Any payments made to ESCO/Marketer from RG&E under the POR Program that are the subject of the Billing Dispute shall be adjusted to reflect the resolution of the Billing Dispute. In the event that ESCO/Marketer fails to resolve the Billing Dispute within sixty (60) days after notice thereof, RG&E will setoff or deduct the disputed amount, together with late payment charges of one and one-half percent (1½ %) per month from the date of payment to the date of setoff or deduction by RG&E, from payments due ESCO/Marketer under the POR Program until such time as the Billing Dispute has been resolved. Any adjustment made hereunder shall be reflected in future payments due ESCO/Marketer.

B. RG&E shall have no responsibility or liability with respect to a Billing Dispute.

C. RG&E and ESCO/Marketer shall not be obligated to provide any collection services on behalf of the other Party at any time. In no event shall RG&E or ESCO/Marketer be obligated to initiate any lawsuits or other action to collect amounts due to the other Party from customers billed pursuant to this Agreement.

D. ESCO/Marketer agrees that it will not request RG&E to perform any collection or other services under this Agreement that could make RG&E subject to the Fair Debt Collection Practices Act, 15 USCA Sections 1692 et. seq. (“FDCPA”), and that ESCO/Marketer will comply with FDCPA, if applicable. ESCO/Marketer shall not be required to perform any obligations hereunder, if such performance would be a violation of FDCPA. ESCO/Marketer shall indemnify, defend and hold harmless RG&E from and against any and all loss, cost, claim, demand, liability, damage and expense (including reasonable attorney’s fees) relating to, arising out of or caused by the applicability or alleged applicability of FDCPA to RG&E’s services under this Agreement.

17. AMENDMENTS AND WAIVERS

A. This Agreement may be modified or amended by RG&E, upon not less than twenty (20) calendar days prior written notice to ESCO/Marketer setting forth the amendment or modification, to conform this Agreement to any determination of the Commission, or other regulatory, administrative or judicial body with applicable jurisdiction, or to any changes in the Contract Documents. Such amendment or modification shall become effective on the date set forth in RG&E’s written notice, unless, prior to such date, ESCO/Marketer provides RG&E with its written objections to such amendment or modification setting forth the reasons why the amendment or modification does not conform this Agreement to any determination of the Commission, or other regulatory, administrative or judicial body with applicable jurisdiction, or to any Contract Document changes. Unless ESCO/Marketer objects as provided herein, the amendment or modifications shall be effective and binding on ESCO/Marketer and RG&E on the date set forth by RG&E. If ESCO/Marketer does object, RG&E may keep in place, revise or

withdraw such amendment or modification to satisfy such objections or the Parties may settle such dispute in accordance with the provisions of Article 11 of this Agreement.

B. No waiver of any provision of this Agreement, and no consent to any default under this Agreement shall be effective unless the same shall be in writing and signed by both Parties. In addition, no course of dealing or failure of any Party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.

18. ASSIGNMENT

A. ESCO/Marketer may not assign or otherwise transfer this Agreement and/or any of its rights, including its right to receive payment, duties and obligations hereunder without the prior written consent of RG&E, which consent shall not be unreasonably withheld or delayed; provided, however, that ESCO/Marketer's assignee: (i) is an ESCO/Marketer approved to participate in RG&E's Electric Program or Gas Program, as applicable; and (ii) is capable of rendering supply services in accordance with applicable regulatory requirements, including compliance with all EDI standards and guidelines; and (iii) enters into an assignment and assumption agreement in a form reasonably satisfactory to RG&E, to assume all rights, duties, and obligations of ESCO/Marketer pursuant to this Agreement, which agreement shall specifically provide, among other things, that (a) payments to ESCO/Marketer or assignee will be made in accordance with the provisions of this Agreement, and (b) RG&E shall not be liable for payments made in accordance with written instructions received from ESCO/Marketer or assignee; and (iv) has higher than a Minimum Rating in accordance with the UBPs, or if a Minimum Rating or less, posts the required security under RG&E's Electric Program or Gas Program; and (v) provides to the reasonable satisfaction of RG&E that it is able to perform the

ESCO/Marketer's obligations hereunder. Notwithstanding the foregoing, ESCO/Marketer shall have the right to transfer and assign its right to receive any net payments for ESCO-provided commodity service due and payable by RG&E to ESCO/Marketer under this agreement to any party, provided that prior written notification of the assignment or transfer is provided to RG&E by ESCO/Marketer. For purposes of this Agreement, net payment shall mean all customer payments for ESCO/Marketer-provided commodity services due to ESCO/Marketer after setoff or deduction of any amounts due RG&E from customers and/or ESCO/Marketer and the amount of the discount under the POR Program. ESCO/Marketer shall provide RG&E written instructions for such payment and shall provide written notice of any change in address and/or party to whom such payments are to be made. RG&E shall not be required to send payments to more than one party and/or account. RG&E shall not be held liable and shall be indemnified and held harmless by ESCO/Marketer and assignee in connection with any RG&E compliance with instructions from ESCO/Marketer and/or assignee. Consent to one assignment does not constitute consent to any other assignment or relieve any Party from having to obtain RG&E's consent in accordance with this Agreement.

B. For the purposes of this Agreement, an assignment, transfer or other disposition shall include, but not be limited to: (i) any restructuring, desegregation or divestiture of all or substantially all of the assets of the ESCO/Marketer; (ii) any acquisition, consolidation, merger or other form of combination of the ESCO/Marketer, by or with any person or entity; or (iii) any change in the controlling interest of the ESCO/Marketer.

C. Any assignment, transfer or other disposition of this Agreement or any rights duties or obligations hereunder, by the ESCO/Marketer except as specifically permitted herein, shall be null and void.

D. Unless otherwise expressly provided in a written instrument signed by the non-assigning Party in connection with the consummation of such assignment or transfer, an assignment by a Party of any of its rights, duties and obligations under this Agreement shall not release, waive, or in any way modify, the assigning or transferring Party's liability for the performance of its obligations hereunder.

19. INDEMNIFICATION

In addition to any other indemnity specifically provided hereunder, ESCO/Marketer shall indemnify, defend and hold harmless RG&E and its officers, directors, shareholders, agents, employees, affiliates, contractors, representatives, successors and assigns from and against any and all suits, actions, legal proceedings, claims, losses, demands, damages, costs, liabilities, fines, penalties, royalties, obligations, assessments, diminutions in value of any kind and expenses of whatsoever kind or character, including reasonable attorneys' fees and expenses (whether incurred in a third party action or in an action to enforce this provision) (collectively, the "Losses"), in connection with any action, suit or proceeding by or on behalf of any person, firm corporation or other entity arising from, caused by or relating to any actions taken or failures to act under the terms of this Agreement or the POR Program, including but not limited to any collection activity by ESCO/Marketer adjudged to be in violation of Federal, state or local laws on collection; ESCO/Marketer's failure to remit to the appropriate taxing jurisdiction any sales and use taxes or other taxes owed by ESCO/Marketer pursuant to Article 20; and any inaccuracy in any document or affidavit provided to RG&E under this Agreement or the POR

Program, or other breach of any representation, warranty or affidavit made by ESCO/Marketer in this Agreement or the POR Program. ESCO/Marketer shall take prompt action to defend and indemnify RG&E against any and all claims, actual or threatened, but in no event later than the service of a notice, summons, complaint, petition, or other service or process against RG&E alleging damage, injury, liability, or expenses attributed in any RG&E actions or inactions, including, as applicable the engagement of legal counsel, to respond to, defend, or settle, or compromise any claim or threatened claim. ESCO/Marketer shall pay any and all costs and expenses (including attorneys' fees and expert fees) incurred by RG&E to enforce the provisions of this Article 19. The obligations of ESCO/Marketer set forth in this Article 19 shall survive the expiration, cancellation, or termination of this Agreement or the POR Program.

20. TAXES

A. At or prior to the date of its execution of this Agreement, ESCO/Marketer shall provide RG&E with a copy of its State of New York Certificate of Authority as a sales tax vendor. At all times during the term of this Agreement, ESCO/Marketer shall keep current such Certificate of Authority.

B. RG&E will remit directly to the State of New York the appropriate state and local sales taxes applicable to RG&E's transmission and distribution services which are paid to RG&E in accordance with Article 10 hereof. The obligation of filing required sales tax returns and paying all applicable taxes related to supply services remains with ESCO/Marketer. Nothing in this Agreement shall be construed as imposing upon RG&E the obligation of remitting to any Federal, state, or local taxing authority those taxes that are the collection and remittance responsibility of ESCO/Marketer. ESCO/Marketer shall be liable for and pay all such taxes and

shall further indemnify, defend, and hold harmless RG&E from and against any and all liability for such taxes, and any interest and penalties herein.

21. INDEPENDENT CONTRACTORS

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

22. FORCE MAJEURE

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement to the extent that such failure or delay is caused by acts of God, acts of civil or military authority, government regulations, compliance with any order or request of any governmental or judicial authority, compliance with RG&E's public service obligations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers or other causes beyond the reasonable control of such Party relying on such cause to excuse its performance hereunder to the extent that the Party cannot remedy the cause by the exercise of due diligence ("Force Majeure"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate written notice to the other Party. During the pendency of the Force Majeure, the duties of the Party affected by the Force Majeure condition shall be abated and shall resume without liability thereafter, provided that no obligation to make

payments under this Agreement for services already provided or costs and charges already incurred shall be excused by the occurrence of an event of Force Majeure described herein. If any such excusable delay shall last for a period of more than sixty (60) calendar days, the Party not relying on the excusable delay, at its option, may terminate this Agreement, in whole or in part, without penalty.

23. NOTICES

Except as otherwise provided under this Agreement, any notices, demands, or requests, elections or other communications made by either Party to the other Party hereunder shall be in writing and shall be deemed given, and any other document to be delivered hereunder shall be deemed delivered, if in writing and (i) delivered by hand, or (ii) deposited for next business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by registered or certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that Party:

To RG&E:
(Electric) Rochester Gas and Electric Corporation
James A. Carigg Center
18 Link Drive
P.O. Box 5224
Binghamton, NY 13902-5224
Attn: Supplier Relations

To RG&E:
(Gas) Rochester Gas and Electric Corporation
James A. Carigg Center
18 Link Drive
P.O. Box 5224
Binghamton, NY 13902-5224
Attn: Supplier Relations

With a copy to: Amy A. Davis
Senior Counsel
180 South Clinton Avenue
Rochester, NY 14607

TO ESCO/Marketer: _____

Attn:

with a copy to: _____

Attn:

The address to which such notices, demands, requests, elections or other communications may be given by either Party may be changed by written notice given by such Party to the other Party pursuant to this Article 23.

24. CONSOLIDATED BILL TESTING

A. Prior to rendering a Consolidated Bill, each Party will demonstrate to the other Party and the Commission Staff's reasonable satisfaction that it has the capability to receive and process billing information via EDI from ESCO/Marketer in a Bill Ready format in accordance with the Commission-approved EDI standards.

B. When the Parties have completed testing to their reasonable satisfaction, RG&E will provide notice to ESCO/Marketer, the parties will obtain certifications or provide attestations, as required, and, thereafter, RG&E will provide eligible customers with a Consolidated Bill in accordance with the terms of this Agreement.

C. In the event there is a change in RG&E's or ESCO/Marketer's EDI system, the Party changing its system shall provide not less than thirty (30) calendar days prior written notice detailing such change, and RG&E, in its sole discretion, may decide that such change requires additional testing pursuant to this Article 24. If RG&E determines additional testing is needed,

no Consolidated Bill shall be issued by RG&E until such testing has been satisfactorily completed.

25. PROVIDER OF LAST RESORT

A. Nothing contained in this Agreement shall be construed or interpreted in such manner as to interfere with or prevent RG&E from performing its duties and responsibilities as the so-called provider or supplier of last resort during the term of this Agreement.

B. In the event RG&E must act as the so-called provider or supplier of last resort during the term of this Agreement, RG&E, at its sole option, may terminate this Agreement and render a separate bill for supply and distribution services.

26. NON-EXCLUSIVE AGREEMENT

This Agreement is non-exclusive. The Parties reserve the right to extend to others the terms and conditions provided for herein.

27. SEVERABILITY

If one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision(s) shall be replaced by a mutually acceptable provision(s), which, being valid, legal and enforceable, comes closest to the intention of the Parties underlying the invalid, illegal or unenforceable provision(s).

28. ENTIRE AGREEMENT

This Agreement and all Exhibits and attachments hereto constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes any and all prior understandings, oral or written agreements, representations, statements, negotiations, proposals and undertakings with respect to the subject matter hereof. This

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

29. HEADINGS

The headings in this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meanings or interpretation of this Agreement. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of this Agreement and are intended solely to facilitate reading of the Agreement.

30. CHANGES IN LAW

If and to the extent that during the term of this Agreement, any laws or regulations shall change which govern any transaction contemplated herein or business operations so as to make either unlawful, then RG&E and ESCO/Marketer hereby agree to effect such modifications to this Agreement as shall be reasonably necessary for this Agreement to accommodate any such legal or regulatory changes consistent with the intent of the Parties.

31. INTERPRETATION

In the event of any dispute concerning the construction or interpretation of this Agreement or any ambiguity hereof, there shall be no presumption that this Agreement or any provision hereof be construed against the Party who drafted this Agreement.

32. FURTHER ASSURANCES

In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and/or deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement. RG&E and ESCO/Marketer shall cooperate with, and assist each

other in, promptly identifying and correcting problems arising out of RG&E's provision of the Consolidated Bill under this Agreement or the POR Program.

33. GOVERNING LAW AND FORUM

Interpretation and performance of this Agreement or the Contract Documents shall be in accordance with, and shall be controlled by, the laws of the State of New York, other than its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. The ESCO/Marketer irrevocably consents that any legal action, motion or proceeding arising under or relating to this Agreement shall be brought in a court of the State of New York, County of Broome or a Federal court of the United States of America located in the State of New York, County of Broome. The ESCO/Marketer irrevocably waives any objection that it either may now or in the future have to the State of New York, County of Broome as the proper and exclusive forum for any legal action, motion or proceeding arising out of or relating to this Agreement or the Contract Documents.

34. CONSENT TO SERVICE OF PROCESS

The Parties agree that service of any process, summons, complaint, notice or petition in person, by U.S. Certified Mail (return receipt requested) or by other method available under applicable state and Federal laws, to the address of the Party set forth in Article 23 shall constitute valid and effective service of process upon such Party and its successors and assigns in any action or proceeding with respect to any matter as to which it has submitted to jurisdiction hereunder.

35. ADVERTISING/PUBLICITY

Neither Party shall use the name or marks, refer to or identify the other Party in advertising or publicity releases, promotional or marketing correspondence to others without first

securing the written consent of such other Party. Regarding the execution of this Agreement, each Party agrees that it shall not, without the prior written consent of the other Party, make any news release, public announcement, or denial or confirmation of the whole or any part of this Agreement which names the other Party.

36. NO THIRD-PARTY BENEFICIARIES

Except as expressly provided hereunder, nothing in this Agreement nor any action taken hereunder shall create any duty, liability or standard of care to, or create a legal or equitable right inuring to the benefit of any person not a Party to this Agreement.

37. EXECUTED IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same document.

IN WITNESS THEREOF, and intending to be legally bound, the Parties have executed this Agreement for billing services by their duly authorized representatives as set forth below as of the date and year first above written:

ROCHESTER GAS AND ELECTRIC CORPORATION

Witness:

By: _____

Name: Regina Hoffman
Title: Manager, Supplier Relations

[ESCO/Marketer]

Witness:

By: _____

Name:
Title:

EXHIBIT A

RG&E

TECHNICAL BILLING SPECIFICATIONS

Definitions

This section contains definitions for commonly used terms related to billing and payment processing utilizing EDI for the rendering of a Consolidated Bill. In the event a term is not defined herein, it shall have the meaning ascribed to it in the Billing Services Agreement to which these specifications are an exhibit.

Billing Credit	A monetary amount that is subtracted from the customer's utility portion of the consolidated bill.
Bill Calculator	The entity responsible for calculating the customer charges.
Bill Method	The method in which the non-billing party provides the billing party with their charges.
Bill Presenter	The entity responsible for producing the consolidated customer bill.
Bill Window	The amount of time the non-billing party has to send their charges to the billing party for inclusion on the consolidated bill.
BSA	Billing Services Agreement. A contract or agreement between RG&E and an ESCO describing billing and payment processing.
Consolidated Bill	One bill that is sent to the customer, which includes the utility T&D charges and the ESCO energy charges.
Dual Billing	A customer receives separate bills; a bill from the utility for T&D charges; and a bill from the ESCO for energy charges.
EDI	Electronic Data Interchange. The computer-to-computer exchange of routine business information in a standard form. See also - Transaction Sets
ESCO	An entity that can supply energy and customer service functions in a competitive environment.
EFT	Electronic Funds Transfer.
Utility Bill Ready	The single bill option where the ESCO calculates the customer's energy charges and sends the charges to the utility for presentment on the customer's bill.
Retail Access	RG&E's electric and gas choice programs.
T&D	Transmission and Distribution.

Transaction Sets

New York EDI Standards

- TS814c Change (Account Maintenance)
- TS814d Drop Request & Response
- TS814e Enrollment Request & Response
- TS814hu Consumption History Request & Response
- TS814r Reinstatement Request & Response
- TS824aa Application Advice
- TS867hu Consumption History/Gas Profile
- TS867mu Monthly Usage
- TS997 Functional Acknowledgement
- TS810ubr Invoice -- Utility Bill Ready Billing
- TS820ucb Remittance Advice -- Utility Consolidated Bill Models
- TS248 Account Assignment -- All Consolidated Bill Models
- TS824pn Application Advice – Positive Notification

UBP

New York's Uniform Business Practices in connection with retail access.

Requirements for Consolidated Bill

ESCOs that choose to only perform basic retail access data exchange via EDI and choose not to perform Utility Consolidated Bill need to only test and certify the Core transactions.

ESCOs that choose to additionally perform Utility Consolidated Bill will need to test and certify the Core transactions as well as test and attest to the Billing and Payment transactions.

ESCOs and RG&E must both meet NY PSC Ordered EDI standards for all transactions.

Information regarding RG&E's test program and test schedule are located in the ESCO/Marketer section/page on the RG&E website at www.rge.com.

Core transactions from the New York EDI standards are:

TS814c	Change (Account Maintenance)
TS814d	Drop Request & Response
TS814e	Enrollment Request & Response
TS814hu	Consumption History Request & Response
TS814r	Reinstatement Request & Response
TS824aa	Application Advice
TS867hu	Consumption History/Gas Profile
TS867mu	Monthly Usage
TS997	Functional Acknowledgement

'Single Bill' transactions from the New York EDI standards are:

TS810ubr	Invoice - Utility Bill Ready Billing
TS820ucb	Remittance Advice - Utility Consolidated Bill Models
TS248	Account Assignment - All Consolidated Bill Models
TS824pn	Application Advice - Positive Notification

Billing Terms and Conditions

Bill Presenter and Bill Calculator Segments

The ESCO must send the Bill Calculator (REF~BLT) and Bill Presenter (REF~PC) segments in enrollment transactions (TS814e). RG&E requires that both of these elements be provided when enrolling an account in retail access, and the Bill Calculator must be 'DUAL', as RG&E has adopted the bill-ready billing model.

To change the bill option (should the ESCO be qualified for multiple bill options), the ESCO will utilize the REF~BLT segment of the change transaction (TS814c). Any attempt by the ESCO to change the Bill Calculator (REF~PC) will be rejected.

Static Billing Information

The ESCO is expected to send static billing information to RG&E 15 calendar days prior to initiation of enrolling accounts into RG&E's Utility Bill Ready Consolidated Bill. Static information is defined as:

- ESCO name, address, and phone information for billing contact purposes to be displayed on the bill
- ESCO logo (sent as an image file) should the ESCO choose to have it displayed on the bill
- ESCO website address, should the ESCO choose to have it displayed on the bill

ESCO logo image will conform to the standard identified in Appendix A to this document.

ESCO Messages

Bill text messages will be presented on the ESCO portion of the Consolidated Bill via the use of pre-defined codes to designate associated text messages. The ESCO will send the desired text to RG&E at least 15 days prior to the ESCO's use of such text. The ESCO will transmit the data by e-mail to the RG&E Supplier Relations mailbox (supplier_relations@rge.com). RG&E will provide the ESCO with the associated code that corresponds to each text message. Each message can be composed of up to 8 lines of up to 60 characters. Each message cannot exceed the resulting 480-character limit.

Messages are placed on the bill in the order specified by the relative position code provided in element PID06 on each PID segment. The ESCO can specify up to 6 codes on a total of 6 PID segments.

If a billing window is missed, an 810 for the missed billing period (prior period) may be present in the current billing window as well as the 810 for the billing period of the current billing window. If multiple 810s exist, the billing messages from the current 810 will be placed on the printed bill followed by the billing messages from the prior period 810.

ESCO/Marketers Account Number

ESCOs are required to send the ESCO account number when they wish to have it presented on the consolidated bill. ESCOs should include the ESCO account number on the initial TS814e Enrollment Request & Response transaction. Thereafter, ESCOs will use the 814c transaction to maintain this number.

When the ESCO does not send an ESCO account number on the invoice, RG&E shall place the ESCO account number of record on the consolidated bill. If the ESCO does not send an ESCO account number on the invoice and RG&E does not have an ESCO account number of record, no ESCO account number will be printed on the consolidated bill.

RG&E will reject an invoice that contains an account number that does not match the ESCO account number of record with RG&E.

Commodity Specific Invoice

Utility Bill Ready Consolidated Bill requires that the ESCO send a commodity specific TS810ubr Invoice. Utility Bill Ready Consolidated Bill does not allow the ESCO to send a dual commodity invoice (i.e., a TS810ubr Invoice will contain charges for electric or gas; it will not contain charges for both electric and gas).

2-Day Billing Window

RG&E will initiate the open billing window for an account by transmittal of the usage record (TS867mu) when the account is ready for billing. RG&E will transmit the usage record (TS867mu) to indicate actual or estimated usage.

The ESCO is responsible to get the TS810ubr invoice to RG&E within the open 2-day billing window. Should RG&E receive an invoice transaction outside of this 2-day billing window, the invoice transaction will be rejected and a TS824aa application advice will be sent to the ESCO indicating the cause for the rejection.

All TS810ubr Invoices received within the open billing window, and not rejected for errors, will be consolidated on the RG&E Consolidated Bill and presented to the customer. The ESCO will be advised of this activity via a TS824pn Positive Notification.

Positive Notification

Should multiple TS810ubr invoices be received within the open billing window and consolidated on the RG&E Consolidated Bill, RG&E will respond to each TS810ubr invoice with a TS824pn Positive Notification. Each TS824pn Positive Notification will be populated with the Consolidated Bill data and will contain duplicative information with the exception of the TS810ubr Invoice reference number.

ESCO Charges and Credits

The ESCO is responsible for calculation of their own billing charges and credits for each account on a Consolidated Bill, including late payment charges, applicable taxes, and budget installment or budget settlement amounts.

The ESCO may not send a starting (beginning) balance for the account.

The ESCO may send a budget installment or a budget settlement amount for the account. If so, the ESCO will send this data to RG&E in the TS810ubr. The current month budget bill charges will be sent in a SLN loop with a SAC segment where SAC01 = 'C' and SAC04 = 'BUD001'. The budget settlement amount will be sent in a SLN loop with a SAC segment where SAC01 = 'C' and SAC04 = 'BUD002'.

The ESCO may use the SAC15 to describe ESCO charges for specific items (only when SAC04 = 'TPI002'). RG&E will present this text up to a maximum of 50 characters.

An ESCO may not send a value in a BAL segment that exceeds \$999,999,999.99. Any TS810ubr invoice that includes a BAL segment that exceeds this amount will be rejected with a TS824aa and a reject reason of 'A13' with the associated text 'value in BAL exceeds limit'.

If an ESCO sends a TS810ubr invoice that includes the TXI03 element (rate used to calculate the tax) that has more than 7 significant decimal places, the field will be truncated to 7 significant digits.

ESCO-Only Direct Payment

Should the ESCO receive a payment directly for ESCO-only charges, the ESCO will apply the payment within their system and communicate that payment in the TS810ubr invoice in a PAM segment with the PAM04 element = 'QZ'. It is expected that this situation may occur during the period of time with a change from dual billing to Consolidated Bill.

ESCO Receives Payment for Consolidated Bill

Should the ESCO receive a payment directly that is actually payment of the entire Consolidated Bill, the ESCO will notify RG&E of this payment by sending an e-mail to the RG&E Supplier Relations mailbox (supplier_relations@rge.com). The ESCO will remit the entire payment to RG&E, via a process to be determined by RG&E Supplier Relations, so that the payment may be processed through normal payment allocation.

ESCO Preparation of TS810ubr

The ESCO is responsible for correctly formatting invoice data charges, credits, message codes, and directly received payments on the TS810ubr invoice.

Consolidated Bill Content

RG&E will present a Consolidated Bill that contains ESCO information such as:

- Starting balance - sent by the ESCO in the first TS810ubr invoice, and defined as an unpaid amount that the ESCO has on the customer account
- Budget installment amount or budget settlement amount - sent by the ESCO in any TS810ubr invoice
- ESCO Customer Account number - sent by the ESCO in each TS810ubr Invoice or, as present within the RG&E system when previously sent by the ESCO on either an enrollment (TS814e) or change (TS814c) transaction.
- ESCO charge and credit text - text length sent may be a maximum of 50 characters.

RG&E will present the ESCO portion of the consolidated bill in a manner described below. Appendix B contains example bill formats for the Consolidated Bill.

RG&E will present Consolidated Bill information such as:

- Customer name;
- Service address;
- Billing address, if different than service address;

- Billing party (RG&E) account number;
- Start of billing cycle period (prior meter reading date for metered customers);
- Starting period meter reading (for metered customers);
- End of billing cycle period (current meter reading date for metered customers);
- Ending period meter reading (for metered customers);
- Billing period metered usage, and any multiplier necessary to convert usage to billing units and resulting billing units (for metered customers);
- Billing period demand (if applicable);
- Indicators, if usage is estimated, actual or customer provided;
- Total charges for RG&E, including late charges and taxes;
- Total charges for the ESCO, including late charges and taxes;
- Total prior bill charges (total of RG&E and ESCO prior bill charges, including prior late charges and taxes);
- Total payments received by RG&E since last bill;
- Date through which the payments were applied;
- Total current bill (total of RG&E and ESCO charges plus prior bill charges less payments);
- Billing party name - RG&E;
- Billing party address - RG&E;
- Billing party toll-free or local telephone number - RG&E;
- Date late payment charges are applied to the RG&E charges;
- General RG&E bill messages of any length, that apply in general to the RG&E portion of the bill and the services provided by RG&E.

RG&E will present ESCO specific information, some of which is provided by the ESCO on the TS810ubr invoice, such as:

- ESCO name;
- ESCO logo;
- ESCO address;
- ESCO toll-free or local telephone number for billing inquiries;
- ESCO account number (if provided on the TS810ubr invoice or the ESCO account number of record, as described above);
- ESCO rate classification;
- ESCO rate per billing unit (if provided on the TS810ubr invoice);
- ESCO rate not based on utility unit (if provided on the TS810ubr invoice);
- ESCO charge adjustments and adders (if provided on the TS810ubr invoice);
- Taxes on ESCO charges, if required to be separately stated (if provided on the TS810ubr invoice);
- Billing period total ESCO charges;
- Prior billing period total ESCO charges, including any prior late charges;
- Payments and adjustments on prior ESCO charges;
- Net prior ESCO balance remaining;
- Late charge for unpaid prior ESCO balance (if provided on the TS810ubr invoice);
- Total net amount due for ESCO services;

- A budget bill, applicable billing information and resulting budget bill amount due (if provided on the TS8IOubr invoice);
- The ESCO's bill message, if any (as described above). ESCO bill messages shall be related to the services provided for the charges on the bill. RG&E may print the messages on the bill requested by the ESCO, provided that RG&E and other parties to the bill do not have any objections to the message.

Due Date of Consolidated Bill and Confirmation of Bill Sent

RG&E will communicate the due date of the Consolidated Bill for each account to the ESCO by use of the TS824pn Positive Notification. The due date of the Consolidated Bill will conform to HEFPA regulations governing Utility-billing practices.

ESCO Bill Insert

RG&E will conform to regulations requiring that customers receive the annual environmental disclosure insert. This is the only insert that RG&E will accommodate under the Bill Ready method.

ESCO Bill Cancellation

RG&E may cancel usage on an account. When RG&E cancels usage, RG&E does not automatically cancel ESCO charges associated with that usage.

An ESCO will become aware of the cancellation of usage via a TS876mu transaction with BPT01 = '00'. In the event that RG&E does cancel usage on an account, the ESCO may choose to cancel charges associated with the usage or they may choose not to cancel charges associated with the usage.

RG&E will only cancel ESCO charges upon notification, via the TS810ubr invoice from the ESCO. In the event that the ESCO chooses to cancel charges, all ESCO charge cancellations will be included on a new TS810ubr invoice sent to RG&E.

The Utility Bill Ready process does not accommodate a "cancel invoice" transaction. The TS810ubr invoice implementation guide details the method required to communicate this cancellation information.

Credits and/or debits created during a cancellation event remain with the party (billing party or non-billing party) on which they were created. If the cancel charges result in a credit to the ESCO balance, the credit will remain on the ESCO balance until additional charges are received to offset the credit. If the cancel charges result in a debit to the ESCO balance, the debit will remain on the ESCO balance until payment or credits are received to offset the debit.

Presentation of Rebilled Charges

In the event that a bill cancel and rebill event occurs, RG&E will present rebilled ESCO charges as sent by the ESCO for the rebilled period under the current RG&E Consolidated Bill option. The requirements for this process are:

- The ESCO has remained the supplier for the customer account, i.e., the account has not had a drop from retail access.
- The ESCO previously provided the customer account a dual or ESCO consolidated bill (under the Single Retail model).

When the ESCO wants RG&E to provide a RG&E consolidated bill to the customer for previous periods, i.e. periods that were prior to the current billing option, the ESCO will send charges and/or credits for the periods in the TS810ubr. The ESCO will reference the TS867mu associated to the TS810ubr invoice.

RG&E will not provide a consolidated bill for prior periods when there has been a break in the retail access period.

ESCO Collection Activities

RG&E will not perform collection activities for the ESCO. ESCO messages may contain text that informs the customer that collection activities for ESCO charges may be undertaken by the ESCO.

Bill Consolidation Period

RG&E is required to issue the consolidated bill to the customer within two business days from the close of the billing window. Should RG&E be unable to meet this two-day requirement, RG&E will notify the ESCO of this issue via e-mail notification to the ESCO.

When it becomes necessary to perform a due date extension, RG&E will cancel and rebill the account (with the same usage). The ESCO will become aware of the due date extension via the TS824pn Positive Notification if they chose to send a TS810ubr transaction for the rebilled usage.

When the issuance of the Consolidated Bill may be delayed beyond an acceptable time, the ESCO may issue a bill to the customer directly for the ESCO charges. The ESCO is responsible to notify RG&E of all ESCO issued bills. The ESCO shall notify RG&E of these bills via e-mail notification to the RG&E Supplier Relations mailbox (supplier_relations@rge.com).

Change to Dual Billing

RG&E may revert an account to dual billing due to conditions that exist on the account.

In the event that RG&E does revert the account to dual billing, and therefore ends the billing option of a RG&E consolidated bill, RG&E will continue to allocate any customer payments until the customer account is reverted to dual billing.

ESCO Requested Change to Billing Option

The ESCO will use the TS814c to request a change of a current billing option for an account. The billing option will be changed via the use of a 'REF~BLT' segment in the TS814c transaction. Requests from an ESCO to move an account or accounts from dual billing to

consolidated billing will be effective on the next scheduled meter read date.* All usage by a customer served by an ESCO prior to the scheduled meter read date shall be billed by the ESCO under dual billing. The sole exception to this timeframe will be in those instances in which the account is subject to a cancel/re-bill situation as discussed in the “Billing for Prior Periods, Cancel and Re-Bill Process” section below.

*When a valid billing option is selected, RG&E shall make the billing option effective on the next meter read date at least five (5) business days for electric and ten (10) business days for gas from receipt of the TS814c.

Account Assignment

RG&E will utilize the TS248 account assignment transaction to communicate, to the ESCO; any account that has been assigned to the ESCO. RG&E will provide information regarding balance existing at the time of assignment to the ESCO in the TS248 account assignment transaction.

The TS248 account assignment transaction is used by RG&E to communicate that any future activity on the account, i.e. payment received, will not be communicated to the ESCO as the billing relationship has ended.

Billing for Prior Periods, Cancel and Re-Bill Process

RG&E may cancel usage and previous RG&E bills for a number of reasons. When RG&E cancels usage and the RG&E bill, RG&E will issue TS867mu cancellations for the previously transmitted usage records.

The cancel usage transactions will be sent to coincide with the same periods as they were originally issued. The re-billed usage may be sent in individual periods or the re-billed usage may be sent for the total period cancelled.

RG&E will not automatically cancel an ESCO invoice associated with the cancelled usage transaction(s). RG&E will only cancel charges for an ESCO upon receipt of the new TS810ubr invoice from the ESCO. Refer to the TS810ubr for field level details.

In the event that there had been bill options other than the current RG&E consolidated bill and a continuation of retail access contract with the ESCO, RG&E will present cancellation of previous charges and ESCO calculated new charges under the current RG&E Consolidated Bill option. As an example, consider the scenario where in January and February an account was enrolled in dual billing, and in March and April the account was enrolled in RG&E Consolidated Bill. In April, the account is cancelled back through January and re-billed from January to the April date. RG&E will send TS867mu cancellations and new usage to the ESCO for the entire 4 months. The ESCO may then send RG&E invoice(s) that are for the entire 4-month period; RG&E will present charges and other activity on behalf of the ESCO for the dual and RG&E Consolidated Bill periods.

Whenever there is a break in retail access with the ESCO, RG&E will only present charges for the ESCO from the point at which the current retail access enrollment begins. As an example, consider the scenario where in January and February an account was enrolled in retail access

with the ESCO (billing option does not matter). In March the retail access period ends and the account is back on RG&E supply and delivery. During April the account re-enrolls into retail access on RG&E Consolidated Bill. In April, the account is cancelled back through January and re-billed from January to the April date. RG&E will send TS867mu cancellations for January, February, and April, and new usage for January, February, and April to the ESCO. No cancelled usage or new usage is transmitted for March, the period of time that the account was not on retail access. RG&E will present ESCO cancelled charges and ESCO new charges for April only.

A similar result will occur if more than one (1) ESCO is involved. As an example, consider the scenario where in January and February an account was enrolled in retail access with 'ESCO A' (billing option does not matter). In March the retail access period ends and the account is back on RG&E supply and delivery. During April the account enrolls into retail access with 'ESCO B' on RG&E Consolidated Bill. In April, the account is cancelled back through January and re-billed from January to the April date. RG&E will send TS867mu cancellations for January and February to 'ESCO A' and new usage for January and February to 'ESCO A'. RG&E will also send TS867mu cancellation for April to 'ESCO B' and new April usage to 'ESCO B'. No cancelled usage or new usage is transmitted for March, the period of time that the account was not on retail access. RG&E will present 'ESCO B's cancelled charges and 'ESCO B's new charges for April only.

Process Flows for RG&E Bill Ready Consolidated Bill

New Enrollment into Retail Access and Consolidated Bill

Basic process flow for initiating an account in retail access and RG&E Consolidated Bill:

- ESCO transmits enrollment request (TS814e) with Bill Presenter LDC (REF-BLT-LDC) and Bill Calculator dual (REF-PC-DUAL).
- RG&E verifies request is technically valid, does not contain errors, and is eligible for retail access and Consolidated Bill.
- RG&E enrolls the account (effective on the next meter read date at least five (5) business days for electric and ten (10) business days for gas in the future) and transmits an enrollment response.
- RG&E transmits a monthly usage transaction that contains usage data.
- Transmission of usage transaction initiates 2-day billing window. RG&E will now wait 2 days from this point for the ESCOs incoming invoice.
- ESCO calculates ESCO charges associated with the usage or calculates a budget billing installment amount.
- ESCO transmits a valid invoice (TS810ubr) to RG&E for inclusion on the consolidated bill.
- When RG&E receives the incoming ESCO invoice within the 2-day billing window, RG&E will use the data contained within the invoice along with information maintained within the RG&E system to generate a consolidated bill to the customer.
- RG&E will consolidate ESCO information with RG&E information and will present the consolidated bill to the customer within 2 days after receipt of ESCO invoice. Note that dual service accounts (electric and gas) will be consolidated when both commodity invoices are received or elapse of the 2-day window.

- RG&E will provide ESCO notification of bill consolidation by use of the Positive Notification transaction (TS824pn).

Account Currently Enrolled in Retail Access, Request for RG&E Consolidated Bill

- ESCO transmits a change request (TS814c) indicating Bill Presenter LDC (REF~TD~REFBLT and REF~BLT~LDC).
- RG&E verifies the request is technically valid, does not contain errors, and is eligible for the billing option.
- RG&E establishes the billing option on the next meter read date at least 5 business days for electric and 10 business days for gas in the future.
- RG&E transmits usage transaction (TS867mu) that contains usage data.
- Process described in the preceding section then occurs.

ESCO Invoice received outside of 2-day billing window

- Should RG&E receive the ESCO invoice outside of the 2-day billing window (i.e. “late”), RG&E will reject the ESCO invoice and will notify the ESCO of this rejection marked to indicate that the invoice was received outside of billing window (via the TS824aa transaction).
- When the ESCO invoice is rejected, RG&E will issue a bill that indicates ESCO prior period activity and will state that no new charges were received from the ESCO.
- The ESCO may send charges in the next open 2-day billing window.

RG&E recommends that the ESCO submit new charges in the next open 2-day window. Alternatively, should the ESCO choose to present an ESCO bill directly to the customer, the ESCO will notify RG&E of this ESCO-direct bill and billed amount(s) via e-mail to the RG&E Supplier Relations mailbox (wholesale__ops@rge.com) within one day of rendering the ESCO bill. When the ESCO receives the payment for the ESCO bill, the ESCO will apply the payment within their system and communicate that payment in the next TS810ubr invoice sent to RG&E in a PAM segment. Since these payments are for ESCO-only charges, these payments will not be applied using the payment algorithm.

Payment Processing

Receipt of Customer Payments

RG&E will receive customer payments from a variety of sources, consistent with the payment locations and methods appropriate for customer type.

Payment Allocation

RG&E will allocate customer payments received on a RG&E Consolidated Bill account pursuant to PSC Orders, the UBPs, and the Contract Documents.

ESCO Notification of Customer Payment

RG&E will send the ESCO a TS820ucb remittance advice for the ESCO portion of the customer's payment, as appropriate, RG&E will send the TS820ucb remittance advice within 2 days of receipt of payment. The TS820ucb remittance advice transaction is used to transmit payment information to the ESCO/Marketer when consolidated bills are rendered and payments are received by RG&E, and funds are owed to the ESCO.

Total Payments Negative

RG&E will not send the ESCO a TS820ucb remittance advice with the total presented as a negative number. Whenever an ESCO's total of the daily payment transaction is negative, all positive and negative transactions will be included as long as the supplier's total remains positive. Any negative transaction that could not be included will be "held over" until the next day. Should the payment activity on the second day still total as negative, RG&E will continue to perform these activities and will only include the negative transaction in the TS820ucb to the ESCO when the total amount becomes positive. The individual account detail in the TS820ucb remittance advice will contain the actual payments or payment reversal amounts for those payment transactions that are included in the total.

RG&E will continue to send the TS820ucb remittance advice each day so the ESCO is able to track individual account activity in a timely manner.

ESCO Payment for Customer Accounts

RG&E will make payment for the ESCO portion of the customer's payment by an ACH transaction. The ACH transaction will note the reference number from the TS820ucb for ESCO tracking purposes.

APPENDIX A - ESCO LOGO

Presenting ESCO Logos on the RG&E Single Bill

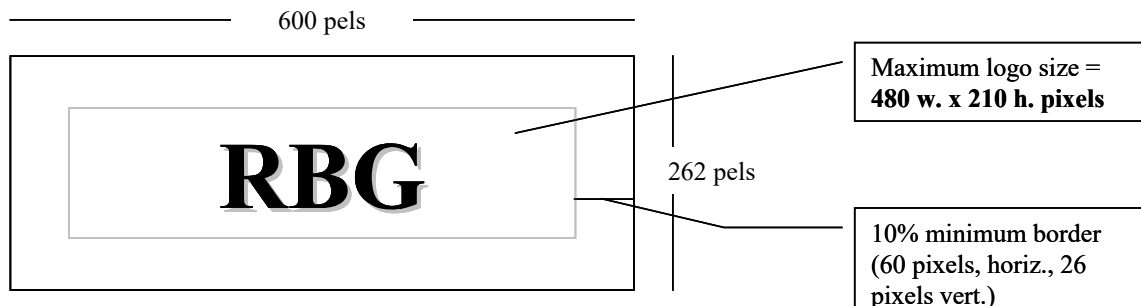
The corporate logo of an ESCO can optionally be presented on the RG&E-generated customer bill at the beginning of each section in which the ESCO billing detail is formatted. A suitable graphic image provided by the supplier can be displayed in the left column of the bill, situated aside the heading portion of the ESCO billing detail section.

If this type of graphic embellishment on the bill is desired, the ESCO is required to provide RG&E a digital bitmap file of the logo image to be presented in association with their billing information. The image is required for printing on the mailed paper bill. This image must be received by RG&E no later than 15 days prior to their first scheduled use in customer bills, and must conform to the following technical specifications:

Image for the printed customer bill

The presentation space available for formatting the ESCO logo on the printed page is an area 2.0” wide x 0.875” high. This area represents the space in the left bill column associated with the first six (6) lines of information in the ESCO bill detail heading. The printing resolution of the RG&E bill is 300 dots-per-inch (dpi), therefore the space in which the image is presented is exactly 600x262 dots (otherwise called ‘pixels’ or ‘pels’ - *picture elements*). The size of the graphic bitmap file provided to RG&E should therefore be **exactly 600 w. x 262 h. pixels in dimension** and conform to the following rules:

1. The graphic bitmap must be a **monochrome** (using black and white colors only) image that employs a ‘dithering’ or ‘diffusion’ color reduction technique to present different colors as various ‘shades’ of gray.
2. The graphic image file should be provided in a **.TIF** bitmap format. If the format chosen supports a ‘lossy’ compression scheme (wherein a certain degree of image quality is ‘lost’), no compression should be used.
3. The logo image is to be centered within the 600 w. x 262 h. pixel dimensions of the bitmap provided. It should be no larger than 80% of the total image size in either dimension, so that a minimum of 10% ‘white space’ borders the logo image within the presentation space. The maximum logo size is consequently limited to **maximum dimensions of 480 pixels width and 210 pixels height:**



Presentation space for printed ESCO logo

Written requests for a logo image to be included in the RG&E bill presentation of supplier billing detail should include:

- the .TIF files described above (provided either as an email attachment or on an accompanying 3.5" floppy disk)
- the URL link to be associated with the image (if any)
- indicate the earliest date on which the use of the logo can begin.

To provide RG&E staff an adequate time in which implements the necessary programming changes, such requests should be provided no later than 15 days prior to their first scheduled use in customer bills. Requests should be emailed to the RG&E Supplier Relations mailbox (supplier_relations@rge.com).

APPENDIX B - BILL EXAMPLES

The following bill example shows the consolidated summary, RG&E summary, and ESCO summary and detail for a consolidated bill.

Consolidated Summary:

Consolidated Account Summary	
Previous invoice	\$166.85
Payments received as of 08/14/10	-166.85
Balance forward	0.00
NYSEG energy charges	96.12
ESCO charges	169.06
<hr/>	
Payment due upon receipt.	\$265.18

To avoid a 1.5% late payment charge, please make payment by the "Last Day to Pay" date displayed below.

RG&E Summary:

Electricity Delivery Charges				
Basic service charge				13.11
Delivery charge	2280	kwh	@ 0.0347	79.12
Transition charge	2280	kwh	@ -0.00593448	-13.53
NY state assessment	2280	kwh	@ 0.0025	5.70
SBC/RPS charge	2280	kwh	@ 0.0043	9.80
<hr/>				
Subtotal Electricity Delivery				\$94.20
<hr/>				
Electricity Taxes and Surcharges				
Taxes on delivery charges			@ 2.0408%	1.92
<hr/>				
Subtotal Electricity Taxes and Surcharges				\$1.92
<hr/>				
Total Electricity Cost				\$96.12
<hr/>				
Total Energy Charges				\$96.12

ESCO Summary:

Electricity Supply Detail				
CONS BILL CHG - ELECTRIC	1	Each	@ 0.89	0.89
05/11/10 - 06/09/10	2280	kwh	@ 0.0716	163.25
TAXES @ 3.0000 %	1	Each	@ 4.92	4.92
<hr/>				
Current Electricity Supply Charges				\$169.06

EXHIBIT B

PURCHASE OF ACCOUNTS RECEIVABLE (“POR”) PROGRAM

Subject to the details contained in the Manuals, effective February 1, 2006, for ESCO/Marketers that elect the RG&E consolidating billing option for all or a portion of their customers, RG&E will purchase and ESCO/Marketer will sell the ESCO/Marketer’s accounts receivable for electric and gas commodity services to customers receiving a Consolidated Bill from RG&E under the following terms and conditions:

A. RG&E will purchase the accounts receivable at a discount, without recourse, for electric and gas commodity services by ESCO/Marketers that provide commodity service in RG&E’s territory.

B. ESCO/Marketer hereby agrees to promptly execute and/or deliver to RG&E any and all Documents RG&E deems reasonably necessary to evidence RG&E’s first priority security interest in the Collateral.

C. After deductions or setoffs permitted under the Agreement and/or this Exhibit B, RG&E will purchase the accounts receivable of the ESCO/Marketer for the commodity service indicated at the following discount rates which are in effect as of September 15, 2008:

Gas Discount Rate – 2.23%

Electric Discount Rate – 1.15%

Discount rates will be adjusted annually as set forth in the Manuals.

D. Sixty (60) days before the effective date of the discount rate applicable to years after 2006, RG&E will notify all Active Parties to Cases 05-E-1222 and 01-G-1668 of the opportunity to receive information about the discount rate and will provide such information to interested Active Parties and to all ESCO/Marketers authorized to serve customers in RG&E’s

service territory. Any Party may invoke the Commission's dispute resolution process if the Parties fail to reach agreement on the application of the discount rate.

E. For ESCO/Marketers that have been participating in RG&E's consolidated billing option as of February 1, 2006, RG&E will, on a one-time, initial basis, also purchase those ESCO/Marketer arrearages existing under previously issued RG&E Consolidated Bills on January 1, 2006, at the discount rate pursuant to paragraph C above and without recourse. No purchase of arrearages will be made after February 1, 2006.

F. Payment will be made by RG&E by ACH transaction twenty (20) calendar days following issuance of the Consolidated Bill. The first payment made by RG&E hereunder after February 1, 2006, will include all arrearages payable under paragraph E above. Payments thereafter will only include accounts receivable, unless otherwise agreed to by the parties or directed by the Commission.

G. RG&E shall be entitled to receive and retain all payments from customers whose accounts were purchased under this POR Program, and such amounts will not be subject to the pro-ration rules for partial payments found in the UBPs, HEFPA or other Contract Documents.

H. RG&E is authorized, pursuant to Section 6.B.(5) of the Agreement, to discontinue delivery and commodity service to residential and non-residential customers whose accounts were purchased and who fail to make full payment. Any such discontinuance of service shall be in accordance with the disconnection provisions of the Contract Documents.

I. ESCO/Marketer waives the right to terminate or seek termination of commodity service and/or to request suspension of delivery service with respect to any customer whose accounts were purchased by RG&E.

J. The term of the POR Program will be the term of this Agreement unless modified or extended by written consent of RG&E and ESCO/Marketer or as otherwise required by the Commission.

K. If the ESCO/Marketer customer is on a budget or levelized payment plan, RG&E shall only be obligated to purchase each month the amount of the monthly installment under the budget or levelized payment plan. RG&E shall also purchase accounts receivable of ESCO Marketer's customers based upon an estimated bill.

L. RG&E shall setoff or deduct any payments due RG&E from amounts due to ESCO/Marketer that result from reconciliations, adjustments or recalculations of budget or levelized plans, estimated readings, cancel and rebills, or any other applicable billing adjustment.

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