

(D) Operator understands that NFGDC is not able to account for and/or allocate Operator's Gas without using the Chart or index information (as the case may be) referred to in this Article. Accordingly, given (i) the incremental expense and other costs which will be incurred by NFGDC in the event of its tardy receipt of the Chart or index information referred to in this Article; (ii) the difficulty of quantifying such costs and expenses, and (iii) the inconvenience and practical infeasibility of otherwise providing an adequate remedy in respect of Operator's breach of its undertakings expressed in this Article, it is agreed as follows:

In the event that either of the following conditions are met, to wit: (i) Operator shall fail to mail any Chart or index information as stipulated in this Article, or (ii) NFGDC shall fail to receive said Chart or index information on or before the fifth (5th) working day following the mailing date stipulated in this Article, then NFGDC shall be relieved of any obligation to account for any of the production in a timely manner, but NFGDC will endeavor to account for such production in the next accounting cycle. This provision shall not apply if the measurement of gas does not require said Chart or index information.

ARTICLE VI.

TERM

(A) This Agreement shall have no force or effect unless and until it shall have been executed by each of the parties identified on the first page hereof (the "Effective Date").

(B) The term of this Agreement shall extend until the first anniversary of the Effective Date, and, unless otherwise lawfully terminated, this Agreement shall continue in effect month to month thereafter, until the same is terminated by Operator, by written notice to NFGDC, no later than thirty (30) days prior to the termination date. Notwithstanding the above, either party shall be entitled to terminate this Agreement for cause.

(C) Notwithstanding any other provision of this Agreement, and in addition to any other right or remedy available to NFGDC hereunder or under any provision of law, NFGDC shall have the following rights, exercisable at NFGDC's sole option, to wit:

(1) Terminate this Agreement and remove all Receipt Facilities owned by NFGDC at the Exhibit A Receipt Points, or suspend or cease receiving Operator's Gas at any one or more of the Exhibit A Receipt Points, upon thirty (30) days' prior written notice to Operator, in the event that Operator should (i) for any reason experience a loss or cancellation of the security required to be provided by Operator pursuant to Article X hereof, or (ii) for any reason unrelated to NFGDC's inability or

unwillingness to receive Operator's Gas at one or more of the Exhibit A Receipt Points, deliver through each of the affected Exhibit A Receipt Points a volume of less than three hundred (300) Mcf during any period of three hundred sixty five (365) consecutive calendar days following the Effective Date; and

(2) Terminate this Agreement as to the affected Receipt Point(s) and remove all Receipt Facilities owned by NFGDC at the affected Receipt Point(s), or suspend or cease receiving Operator's Gas at any affected Receipt Point(s), upon thirty (30) days' prior written notice to Operator, in the event that Operator should repeatedly violate, in NFGDC's opinion, the standards contained in Article IV. For purposes of this Section, the term "repeatedly violate" shall mean six (6) or more violations in any given two (2) year period, each of which violation Operator fails to cure within thirty (30) days of notice by NFGDC. Notwithstanding the above, NFGDC shall be fully entitled to discontinue receiving Operator's gas at any affected Receipt Point(s) in the event of a violation by Operator, in accordance with the provisions of Article IV, Paragraph(D)(3).

ARTICLE VII.

GOVERNMENTAL REGULATION

(A) This Agreement and the respective obligations of the parties hereunder shall be subject to all valid applicable federal, state and local laws, orders, rules and regulations, whether in effect on the date hereof, or becoming effective thereafter. The parties shall be entitled to regard all laws, orders, rules and regulations issued by any federal, state or local regulatory or governmental body as valid and may act in accordance therewith until such time as same shall have been invalidated by final judgment (no longer subject to judicial review) of a court of competent jurisdiction. Neither party shall be held in default for failure to perform hereunder if such failure is due to compliance with laws, orders, rules or regulations of any such duly constituted authorities. Nothing contained herein, however, shall be construed as affecting any party's right(s) to contest the validity or applicability of any such law, order, rule or regulation.

(B) It is agreed that each party, and their respective obligations under this Agreement are, or in the future may become, subject to the continuing jurisdiction of various regulatory authorities, and that this Agreement may be modified by the rules, regulations, orders or directives of such authorities. In the event any such regulatory authority issues a rule, regulation, order or directive modifying or requiring modification of this Agreement, this Agreement will become effective as modified, unless either party objects to such modification and elects to terminate this Agreement by providing written notice to the other party within thirty (30) days of such regulatory authority's action. In the event of such a termination, this Agreement shall be null and void.

ARTICLE VIII.

FORCE MAJEURE

(A) In the event either NFGDC or Operator is rendered unable, in whole or in part, by force majeure to carry out their respective obligations under this Agreement, other than to make payments due hereunder or to maintain minimum gas quality specifications, it is agreed that the obligations of the party claiming such inability to perform, so far as they are affected by such force majeure, shall be suspended from the inception of and during the continuance of such inability so caused but for no longer period; provided that the party claiming such inability gives notice and reasonably full particulars of such force majeure event relied upon; and provided further that the party claiming such inability shall promptly and diligently take such action as may be necessary and reasonably practicable to correct, or cause to be corrected, such inability.

(B) The term "force majeure" as employed herein shall mean, without limitation, acts of God, governmental action or regulation, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, storms, storm warnings, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to machinery or pipelines, the necessity for making repairs to or alterations of machinery or pipelines, freezing of pipelines, and any other causes, whether of the kind herein enumerated or otherwise, not under or within the control of the party claiming inability to perform and which, by the exercise of reasonable diligence, such party is unable to prevent or overcome.

(C) The settlement of strikes, lockouts or any such labor disputes shall be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure event shall be remedied promptly and diligently shall not require the settlement of strikes, lockouts or other labor disputes by acceding to the demands of any opposing party when such course is inadvisable in the discretion of the party having the difficulty.

ARTICLE IX.

NOTICE

(A) All notices required by the following sections:

Article II, Paragraph A
Article II, Paragraph C
Article II, Paragraph M(3)
Article III, Paragraph (E)

shall be provided in accordance with the provisions of such sections. Any other notice, request, statement, bill or invoice provided for in this Agreement shall be in writing, unless otherwise provided herein, and shall be sent by prepaid mail, facsimile, or by overnight delivery, addressed to the party to whom given, at such party's address stated below, or at such other address as such party may in and by such notice direct hereafter, provided however that any notice of default, breach or termination of this Agreement by either party shall be sent by certified mail, addressed to the party to whom given, at such party's address stated below. Facsimile notices, requests, statements, bills or invoices shall be deemed given only when facsimile receipt is confirmed.

Notice shall be sent:

(1) To NFGDC:

National Fuel Gas Distribution Corporation
Gas Supply Administration Department
1100 State Street
P.O. Box 2081
Erie, PA 16512
24-Hour Telephone: (800) 444-3130 Emergencies Only
Facsimile: (814) 871-8624

(2) To Operator:

(B) The parties shall provide each other with a current telephone number, facsimile number and address at which the party or the party's representatives may be contacted at all hours. For themselves and their agents, NFGDC and Operator agree to the recording of all telephone conversations during which NFGDC notifies Operator to suspend or cease deliveries into any facility owned or operated by NFGDC.

ARTICLE X.

OPERATOR'S CREDITWORTHINESS

(A) At its option, NFGDC may (i) suspend its receipt of Operator's Gas, or (ii) terminate this Agreement, in the event that Operator is or has become insolvent or fails

within a reasonable period, upon NFGDC's request, to demonstrate creditworthiness, or in the event that Operator incurs a poor credit history with respect to any service provided by NFGDC or as established by a reliable reporting agency.

(B) With respect to Operator's creditworthiness, subject to NFGDC's approval as to below subsection X(B)(3), any of the following means of security shall be accepted by NFGDC as sufficient security in respect to any remedy afforded NFGDC under this Agreement or any provision of law:

(1) A security deposit in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500) or higher, to be held in a non-interest-bearing general account by NFGDC for the term of this Agreement;

(2) An irrevocable letter of credit issued by a financial institution acceptable to NFGDC and in a form acceptable to NFGDC with a face amount of Seventeen Thousand Five Hundred Dollars (\$17,500) or higher for the term of this Agreement; or

(3) At Operator's option and subject to NFGDC's approval, a copy of the most recent audited financial statements of Operator (or of a guarantor of Operator's performance hereunder) showing a net worth in excess of Thirty Thousand Dollars (\$30,000), or a copy of the most recent unaudited financial statements of Operator (or of a guarantor of Operator's performance hereunder) showing a net worth of at least Forty Thousand Dollars (\$40,000), in which event, Operator shall also provide NFGDC with evidence of its ownership of unencumbered assets valued, in the aggregate, in excess of Seventeen Thousand Five Hundred Dollars (\$17,500) or higher in each state in which Operator conducts any business with NFGDC.

(C) In connection with Article X, Paragraph B(3), NFGDC reserves the right to require Operator to establish or demonstrate its creditworthiness, from time to time, during the term of this Agreement.

ARTICLE XI.

RESPONSIBILITY FOR GAS

(A) Nothing in this Agreement shall affect the title to gas tendered by Operator for receipt by NFGDC.

(B) Operator shall be deemed in exclusive control and possession of gas while on Operator's system until such gas has been delivered to NFGDC at the Receipt Point(s). NFGDC shall be deemed to be in exclusive control and possession of such gas while on NFGDC's system.

(C) Operator represents that it will have, at the time of delivery of gas to NFGDC, good right to deliver the gas and, provided Operator has good right to deliver said gas, NFGDC represents that it will have, at the time of delivery of gas to NFGDC, good right to receive said gas.

(D) Except insofar as NFGDC is in breach of its obligations or has an obligation to indemnify and save Operator harmless pursuant to this Article XI, Operator agrees to indemnify NFGDC and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of any adverse claims of any and all persons to said gas and/or to royalties, taxes, license fees, or charges thereon which are applicable for such delivery of gas to NFGDC and to indemnify NFGDC and save it harmless from all taxes or assessments which may be levied or assessed upon such delivery and which are by law payable by and the obligation of the party making such delivery.

(E) Except insofar as Operator is in breach of its obligations or has an obligation to indemnify and save NFGDC harmless pursuant to this Article XI, NFGDC agrees to indemnify Operator and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of any adverse claims of any and all persons to said gas accepted for receipt by NFGDC and/or to royalties, taxes, license fees, or charges thereon which are applicable for such receipt of gas to NFGDC and to indemnify Operator and save it harmless from all taxes or assessments which may be levied or assessed upon such receipt and which are by law payable by and the obligation of the party receiving such delivery.

(F) If Operator's right to deliver gas to be accepted by NFGDC is questioned, disputed or involved in any action, Operator shall not qualify for and/or shall be ineligible to continue to receive service hereunder until such time as Operator's right to deliver is free from question; provided, however, NFGDC shall allow Operator to qualify for and/or continue receiving service hereunder if Operator furnishes security satisfactory to NFGDC.

ARTICLE XII.

MISCELLANEOUS

(A) This document shall not be construed as an agreement running with the land.

(B) No change, modification or alteration of this Agreement shall be or become effective until executed in writing by the parties hereto, and no course of dealing between the parties shall be construed to alter the terms hereof, except as expressly stated herein.

(C) No waiver by any party of any one or more defaults by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or of a different character.

(D) Operator (or its designee) and NFGDC shall respond to requests for confirmations of shipper nominations within the applicable time limits set forth in the GISB standards. Operator acknowledges that NFGDC is under no obligation to schedule unconfirmed nominations.

(E) Any company which shall succeed by purchase, merger or consolidation of the gas related properties, substantially as an entirety, of NFGDC or of Operator, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. Either party may, without relieving itself of its obligations under this Agreement, assign any of its rights hereunder to a company with which it is affiliated, but otherwise, no assignment of this Agreement or of any of the rights or obligations hereunder shall be made unless there first shall have been obtained the consent thereto in writing of the other party. Consent shall not be unreasonably withheld.

(F) The headings contained in this Agreement are intended solely for convenience and do not constitute any part of the agreement between the parties and shall not be used in any manner in construing this Agreement.

(G) (1) Agreement Governing Interconnection in New York State:

This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of New York, excluding, however, any such law which would direct the application of the law of another jurisdiction. The parties (i) submit to the jurisdiction of the United States District Court for the Western District of New York, and, in the event that such court lacks subject matter jurisdiction, to the New York State Supreme Court, Erie County, and, as respects those matters which are subject to the exclusive or primary jurisdiction of the Public Service Commission of the State of New York, to that Commission, and (ii) waive any right or entitlement which they or any of them might otherwise have to cause any dispute arising under this Agreement to be adjudicated, determined or resolved pursuant to the law of any other jurisdiction, or, in or by any other court(s) or tribunal(s). Provided, however, that the parties may bring disputed matters before the Public Service Commission of the State of New York according to dispute resolution procedures under NFGDC's Interconnection Rules & Procedures approved by the Public Service Commission of the State of New York and set forth in a certain Joint Proposal, at Appendix F, filed by NFGDC with the Public Service Commission of the State of New York on January 23, 2002.

(2) Agreement Governing Interconnection in Pennsylvania

This Agreement shall be construed, enforced and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, excluding, however, any such law which would direct the application of the law of another jurisdiction. The parties (i) submit to the jurisdiction of the United States District Court for the Western District of Pennsylvania, and, in the event that such court lacks subject matter jurisdiction, to the Erie County Court of Common Pleas, Commonwealth of Pennsylvania, and, as respects those matters which

are subject to the exclusive or primary jurisdiction of the Pennsylvania Public Utility Commission, to that Commission, and (ii) waive any right or entitlement which they or any of them might otherwise have to cause any dispute arising under this Agreement to be adjudicated, determined or resolved pursuant to the law of any other jurisdiction, or, in or by any other court(s) or tribunal(s). Provided, however, that the parties may bring disputed matters before the Pennsylvania Public Utility Commission according to that Commission's applicable procedures.

(H) So that there will be certainty as to the actual agreement between the parties, it is mutually understood and agreed that this Interconnection Agreement and the Exhibit A attached hereto, as the same may be impacted by any applicable provision of NFGDC's Tariff, is intended to constitute the final expression, as well as the complete, exclusive and integrated statement, of the terms of the parties' agreement relative to the interconnection and other transactions described therein.

(I) No presumption shall operate in favor of or against either party hereto as a result of any responsibility either party may have had for drafting this Agreement.

(J) This Agreement establishes rights and obligations only as between the parties to this Agreement and only with respect to the subject matter of this Agreement.

(K) This document and the agreement memorialized thereby shall be without force and effect unless all of the parties identified on the first page of this document shall have fully executed the same prior to _____, 20__, as evidenced by duplicate or counterpart originals thereof which are in each party's possession prior to five o'clock p.m. (5:00 p.m.) Eastern Time on that date.

_____ Operator	NATIONAL FUEL GAS DISTRIBUTION CORPORATION
By _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

INTERCONNECTION AGREEMENT

Between

NFGDC and _____

EXHIBIT A

Receipt Points(s):

EXHIBIT B

Table of Equipment Ownership and Responsibilities

<u>Equipment</u>	<u>Installed by</u>	<u>Owned by</u>	<u>Maintained by</u>	<u>Paid by</u>
Meter/Recording instrument	NFGDC	NFGDC	NFGDC	NFGDC
Meter run and valves	Operator	Operator	Operator	Operator
Regulator	Operator	Operator	Operator	Operator
Drying Equipment	Operator	Operator	Operator	Operator
Odorizing Equipment	NFGDC	NFGDC	NFGDC	Operator
“Pop-offs”/Relief valves	Operator	NFGDC	NFGDC	Operator
Heaters	Operator	Operator	Operator	Operator
Water separator/drips	Operator	Operator	Operator	Operator
Communications facilities	Operator	Operator	Operator	Operator
Telemetrics/Teleflow	NFGDC	NFGDC	NFGDC	Operator

7. Standard-Form Producer Interconnection Agreement

PRODUCER INTERCONNECTION AGREEMENT

THIS INTERCONNECTION AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, _____, by and between _____, hereinafter, "Operator,"

and

NATIONAL FUEL GAS DISTRIBUTION CORPORATION, 6363 Main Street, Williamsville, New York, 14221-5887, hereinafter, "NFGDC."

WITNESSETH

WHEREAS, NFGDC is a public utility authorized and obligated to receive and transport natural gas and to provide retail natural gas service subject to the jurisdiction of the Public Service Commission of the State of New York; and

WHEREAS, by means of facilities operated by it, Operator proposes to deliver to, and deliver into facilities owned and operated by NFGDC natural gas produced in the State of New York; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, NFGDC and Operator agree as follows:

ARTICLE I.

DEFINITIONS

(A) "Receipt Point" means the point of interconnection between Operator's facilities and the facilities of NFGDC located immediately upstream of NFGDC's measurement facility which is used to identify such point of interconnection in Exhibit A.

(B) "Exhibit A" means the document entitled "Exhibit A" which is attached hereto (and by such attachment, made a part hereof), as said document may be amended or supplemented, from time to time.

(C) "Btu" means the amount of heat required to raise the temperature of one (1) pound of water from fifty-eight degrees Fahrenheit (58° F) to fifty-nine degrees Fahrenheit (59° F), as measured through chromatographic analysis, by a calorimeter, or by any other acceptable industry method for establishing heating value, and determined on an anhydrous (dry) basis, at sixty degrees Fahrenheit (60° F), at a standard pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch absolute.

(D) "Cubic Foot" means the volume of gas contained in one (1) cubic foot of space at a standard pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch absolute and a standard temperature of sixty degrees Fahrenheit (60° F), under standard gravitational force.

(E) "Mcf" means one thousand (1,000) cubic feet of gas, determined on the measurement basis set forth in this Agreement.

(F) "Day" means the twenty-four (24) hour period commencing at ten o'clock a.m., Eastern Time (10:00 a.m.) on one calendar day and ending at 10:00 a.m., Eastern Time on the following calendar day, or as otherwise established by the Gas Industry Standards Board ("GISB").

(G) "Month" means the period commencing at ten o'clock a.m., Eastern Time (10:00 a.m.) on the first day of a calendar month and ending at 10:00 a.m., Eastern Time on the first day of the next calendar month, or as otherwise established by GISB.

(H) "Operator's Gas" means the natural gas delivered into NFGDC's facilities at any given time at any given Receipt Point.

ARTICLE II.

DELIVERY OF GAS INTO NFGDC FACILITIES

(A) Operator shall not deliver (or permit the delivery of) any gas into any facility owned or operated by NFGDC other than at a Receipt Point identified on Exhibit A at the time of such delivery (the "Exhibit A Receipt Point(s)"). No Receipt Point shall be deemed to have been added to Exhibit A, and Exhibit A shall not be deemed to have been otherwise amended or supplemented, unless and until such amendment or supplement of Exhibit A shall be evidenced by a writing executed by Operator and NFGDC.

(B) Operator warrants and represents as follows:

- (1) All gas delivered into NFGDC's facilities at any one Receipt Point shall be gas produced exclusively from the wells (and only those wells) which are associated with such Receipt Point and identified on the copy of Exhibit A which is attached to this Agreement at the time of such delivery.
- (2) Gas produced or scheduled by Operator to be produced from wells not identified in Exhibit A shall be authorized for addition to Exhibit A and gas received therefrom accepted by Distribution at the designated Receipt Point so long as:
 - (i) Operator provides Distribution with 15 days written notice of its intent to add said additional well(s) to Exhibit A, together with the scheduled turn-on date; and

- (ii) The well has been tested by or caused to be tested by Distribution and the results therefrom meet Distribution's satisfaction;
- (iii) Provided, however, if Distribution fails to perform or cause to perform such well test by Operator's scheduled turn-on date, as provided in subdivision (i) above, said well(s) may nonetheless be turned on and production therefrom shall be accepted by Distribution at the designated Receipt Point, subject to Operator's sole liability for damages resulting from such production, and further subject to Distribution's determination, upon testing at any later date, that such gas is not acceptable pursuant to the terms and conditions of this Agreement.
- (iv) The criteria contained in this paragraph (2) shall also apply to new or different formations of gas that are accessed from an existing well already identified on Exhibit A.

(C) Operator shall deliver gas at a pressure sufficient to enable such gas to enter NFGDC's facilities against the pressure prevailing therein from time to time, provided, however, that Operator shall not deliver gas at any Receipt Point at a pressure in excess of the pressure designated by NFGDC.

(D) Operator shall not install or operate (or permit any other entity to install or operate) compression facilities in order to deliver gas into any NFGDC facility ("NFGDC-Related Compression Operations") without the express prior written consent of NFGDC, which consent shall not be unreasonably withheld.

(E) Operator warrants that all NFGDC-Related Compression Operations shall be conducted in a manner (i) so as to prevent the pulsations therefrom from interfering with NFGDC's measurement at any Receipt Point, and (ii) so that compressed gas will be delivered to NFGDC at a temperature not exceeding one hundred twenty degrees Fahrenheit (120° F).

(F) Operator shall give NFGDC written notice at least fourteen (14) days prior to the commencement of (and any material change in) authorized NFGDC-Related Compression Operations.

(G) Operator shall give NFGDC written notice at least twenty-four (24) hours prior to any material change in the maintenance routine applicable to any compressor used in NFGDC-Related Compression Operations. For purposes of this subsection, "material" shall mean any change that may produce a variance in gas volumes or pressure.

(H) In the event that the installation, operation and/or maintenance of Operator's compressor used in NFGDC-Related Compression Operations requires (in NFGDC's reasonable judgment) modification(s) to any facility owned or operated by NFGDC, the cost of such modification(s) shall be borne by Operator. Operator shall consult with NFGDC so as to assist NFGDC in ascertaining the extent to which such modification may

be indicated, and on the basis of such consultation and NFGDC's own judgment, NFGDC shall endeavor to notify Operator of its determination prior to the date scheduled by Operator for such installation, operation and/or maintenance. Notwithstanding NFGDC's efforts to provide such notice to Operator, Operator shall remain solely responsible for costs incurred by NFGDC in the event resulting and reasonably unforeseen modification of NFGDC facilities are required.

(I) Operator shall, at its own cost and expense, (i) obtain, provide NFGDC with, and maintain any easement(s) or other land interest(s) which, in NFGDC's judgment as to type and extent, are reasonably necessary for the installation, operation and maintenance of NFGDC's receipt and related measurement facilities; and (ii) upon NFGDC's request, provide NFGDC with a copy of the recorded instruments evidencing such land interests and NFGDC's beneficial interest therein.

(J) Receipt facilities shall be installed, owned and maintained by and at the expense of either NFGDC or Operator according to the below schedule. Such equipment shall be installed at each Exhibit A Receipt Point facility, which, in NFGDC's reasonable judgment, may be necessary to accommodate the deliveries of gas received and projected to be received by it at the Receipt Points. The normal operation, calibration, maintenance, adjustment and repair of the measurement equipment shall be performed by the owner of the equipment. Modifications to Receipt Facilities resulting from changes in Operator's operations shall be performed at Operator's cost and expense. The Receipt Facilities shall be operated in accordance with the applicable specifications of the Gas Measurement Committee of the Natural Gas Department of the American Gas Association, as amended from time to time, or in accordance with any other mutually agreeable standard commonly accepted in the industry.

Equipment	Install by	Own by	Maintain by	Paid by
Meter/Recording instrument	NFGDC	NFGDC	NFGDC	NFGDC
Meter run and valves	Either	Either	Either	Operator
Regulator	Operator	Operator	Operator	Operator
Drying Equipment	Operator	Operator	Operator	Operator
Odorizing Equipment	NFGDC	NFGDC	NFGDC	Operator
"Pop-offs"/Relief valves	Either	Either	NFGDC	Operator
Mainline valve	Either*	NFGDC	NFGDC	Operator
Hcatters	Operator	Operator	Operator	Operator
Water separator/drips	Operator	Operator	Operator	Operator
Communications facilities	Operator	Operator	Operator	Operator
Telemetrics/Teleflow	NFGDC	NFGDC	NFGDC	Operator

*Pursuant to a determination by NFGDC

(K) Operator shall pay to NFGDC the Receipt Facility Maintenance Fee(s), if any, which shall be applicable, from time to time, pursuant to the provisions of NFGDC's Tariff. In this connection, Operator agrees that NFGDC shall have the unilateral right, exercisable at its sole option, to file with any regulatory authority having jurisdiction, and to make effective, (i) initial and revised rates and charges applicable to NFGDC's operations hereunder, (ii) changes in any provision of the General Terms and Conditions of NFGDC's Tariff applicable to NFGDC's operations hereunder, and (iii) the terms and conditions of this Agreement (hereinafter, collectively, the "Receipt Parameters"). NFGDC agrees that Operator may protest or contest any such filing and/or may seek from any duly constituted regulatory authority having jurisdiction such revision of any one or more of the Receipt Parameters as may be necessary or appropriate to cause the same to be, in all respects, just and reasonable.

(L) Operator shall, at its own cost and expense, provide, operate and maintain in safe and efficient operating condition such regulators, relief valves, and other equipment as may be necessary in NFGDC's reasonable judgment to avoid excessive pressures (and the risk of such pressures) in facilities owned and operated by NFGDC or its customers.

(M) Operator acknowledges that:

(1) The Receipt Points identified in Exhibit A are located on NFGDC's gas distribution facilities;

(2) NFGDC must, at all times, be in a position to operate, maintain, enhance, and/or replace any one or more of its facilities in such a manner, at such times, and under such circumstances as will enable it to furnish and provide facilities and service which are safe and adequate and in all respects just and reasonable;

(3) The maximum and/or minimum delivery pressures or other parameters applicable to Operator's delivery of gas into NFGDC's facilities may vary from time to time, in light of the above, and in order to enable NFGDC to satisfy its retail market requirements, including but not limited to its firm service obligations, transportation obligations, and to ensure the maintenance of safe operating conditions throughout its system, including, but not limited to, the maintenance, enhancement and/or improvement of its facilities;

(4) Operator acknowledges NFGDC's right (a) to restrict and/or completely stop Operator's deliveries at any one or more Receipt Points insofar as reasonably necessary in NFGDC's judgment to accommodate the above requirements, and/or (b) to designate and redesignate, from time to time, the maximum pressure or other delivery parameter(s) temporarily applicable to deliveries of gas by Operator at any one or more Receipt Points; and

(5) Without limitation of the remedies available to NFGDC in respect of any breach of this Agreement, a breach of any one or more of the obligations undertaken by Operator under paragraphs (A), (B), (C) and (E) of this Article II shall constitute a material breach of this Agreement.

ARTICLE III.

MEASUREMENT

(A) The unit of volume for purposes of measurement of the gas delivered into NFGDC's facilities at the respective Exhibit A Receipt Points shall be Mcf.

(B) For purposes of measurement and meter calibration, the atmospheric pressure shall be deemed to be constant at fourteen and four-tenths (14.4) pounds per square inch absolute.

(C) Unless temperature compensation measurement equipment is utilized, the temperature of gas flowing through NFGDC's Receipt Facilities shall be deemed to be sixty degrees Fahrenheit (60° F).

(D) The total heating value of the gas delivered into NFGDC's facilities at the respective Exhibit A Receipt Points shall be determined by tests of samples of gas collected at said Receipt Points at such time(s) as may be determined by NFGDC. The unit of measurement of heating value shall be Btu. Btu determinations shall be made as often as NFGDC deems appropriate, and at NFGDC's expense, provided, however, that Btu determinations which are made by NFGDC at Operator's request shall be made by NFGDC at Operator's cost and expense.

(E) If undertaken at Operator's request, NFGDC's test of the accuracy of any meter or other measurement equipment owned and used by NFGDC to measure volumes of gas delivered into its facilities shall be arranged and conducted, insofar as reasonably practicable, so as to permit representatives of Operator to be present. If, upon any such test (whether conducted at Operator's request or upon NFGDC's own initiative) any such meter or measurement equipment shall be found to be inaccurate, NFGDC shall adjust the same as soon as practicable to read correctly; and

(1) If such inaccuracy is less than three percent (3%), the previous readings shall be deemed correct, and, in the event such test was conducted at Operator's request, Operator shall bear all costs of such test;

(2) If such inaccuracy is three percent (3%) or more, the previous readings shall be corrected to zero (0) error for the period of time during which such meter or other measurement equipment is known or agreed to have been inaccurate. If the length of such period of inaccuracy is not known or agreed upon, such correction shall be made for a period equal to one-half ($\frac{1}{2}$) of the time which has elapsed since the date of the last calibration, provided, however, that such correction period shall not exceed thirty (30) days.

If any such meter or other measurement equipment is out of service, or inaccurate by three percent (3%) or more, under circumstances where the correction of previous readings of such equipment to "zero (0) error" is not feasible, then the volume of gas delivered during the period shall be estimated (a) by using data recorded by any check-measuring equipment, if installed and registering accurately, or (b) if such check-measuring equipment is not installed or registering inaccurately, by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, or (c) if neither such method is feasible, by estimating the quantity delivered based upon deliveries under similar conditions during a period when equipment was registering accurately.

ARTICLE IV.

GAS QUALITY

(A) Operator understands and acknowledges that NFGDC will not continuously monitor, test, or otherwise inspect Operator's Gas prior to the delivery thereof into NFGDC's facilities. Operator further acknowledges that, irrespective of the contractual disposition of Operator's Gas, all such gas is commingled with, and becomes an inseparable part of, the gas supply used by NFGDC to satisfy its obligations to its retail and

transportation customers. Accordingly, Operator expressly warrants and represents that (i) Operator's Gas shall, in all respects and at all times, consist solely of gas which is merchantable and fit for use by NFGDC's retail customers, and (ii) without limitation of the generality of the foregoing, Operator's Gas shall at all times, and in all respects, meet at least the following minimum quality specifications:

(1) Operator's Gas shall be entirely free of dust, objectionable odors, and, subject to the provisions of Article IV(A)(3), all other gaseous and solid matter which might damage or interfere with the proper operation of the pipelines, regulators, meters or other equipment and apparatus through which it flows or in which it is used;

(2) Operator's Gas shall be entirely free of all hydrocarbon liquids and other material in liquid form, including, without limitation, water, glycol, brines, condensate and oil;

(3) All gas delivered by Operator to NFGDC hereunder into NFGDC's facilities through any Receipt Point listed on the attached Exhibit A shall be dehydrated by Operator for removal of water present therein in a vapor state to a level determined acceptable by NFGDC, at its sole discretion, from time to time. In no event shall the acceptable level, as determined by NFGDC, be required to be less than seven (7) pounds of water vapor (H_2O) per million cubic feet;

(4) Operator's Gas shall contain not more than twenty (20) grains of total sulfur (S), nor more than three-tenths (0.3) grain of hydrogen sulfide (H_2S) per one hundred (100) cubic feet;

(5) Operator's Gas shall contain not more than two-tenths of one percent (0.02 of 1%) by volume of oxygen (O_2);

(6) Operator's Gas shall contain not more than five percent (5%) by volume of a combined total of carbon dioxide (CO_2) and nitrogen (N_2) components; provided, however, (i) that the total carbon dioxide (CO_2) content of Operator's Gas shall not exceed two percent (2%) by volume, and, (ii) that Operator's Gas shall be entirely free of NO_x compounds;

(7) Operator's Gas shall have a temperature of not more than one hundred twenty degrees Fahrenheit ($120^\circ F$); and

(8) Operator's Gas shall have a total heat content of not less than nine hundred sixty-seven (967) Btu per cubic foot, and not more than eleven hundred (1,100) Btu per cubic foot (determined on the measurement basis set forth in this Agreement), provided, however, that NFGDC shall have the option (but never the obligation) to accept Operator's Gas having a heat content outside of said range, when in

NFGDC's sole judgment, such different heat content does not prevent such gas from being merchantable and fit for use in NFGDC's retail markets.

(B) Operator shall make every reasonable effort to keep Operator's Gas entirely free of oxygen (O₂).

(C) Operator shall furnish, install, operate, maintain and keep in efficient and safe operating condition, at Operator's sole cost and expense, such drips, separators, dehydrators, alcohol bottles, gas cleaners, treatment facilities, and any other devices or equipment as may be or become reasonably necessary to effect compliance with the quality specifications set forth in this Article.

(D) In addition to any other remedy which may be available to NFGDC hereunder, or under any provision of law, in respect of Operator's undertakings expressed in this Article, NFGDC shall have and be entitled to exercise any one or more of the following rights, options and remedies, on a non-exclusive basis, in the event of any breach by Operator of any one or more of said undertakings, to wit:

(1) Upon notice to Operator, treat or process Operator's Gas, at Operator's sole cost and expense, insofar as reasonably necessary in NFGDC's judgment to cause the same to conform to the quality specifications set forth in this Article;

(2) Continue to receive Operator's Gas, with or without treatment or processing thereof;

(3) Discontinue receiving Operator's Gas at the affected Receipt Point(s) until the occasion(s) for the exercise of a remedy by NFGDC has, in NFGDC's reasonable judgment, been corrected;

(4) Terminate this Agreement as respects the delivery of Operator's Gas into NFGDC's facilities at the affected Receipt Point(s) in the event that, in NFGDC's reasonable judgment, the occasion for NFGDC's exercise of a remedy cannot be corrected at a reasonable cost in a reasonable time;

(5) Require Operator to cease receiving into Operator's facilities production attributable to the source which occasioned NFGDC's exercise of a remedy; and

(6) Clean-up and/or repair, at Operator's sole cost and expense, all facilities, equipment and apparatus affected by the occasion for NFGDC's exercise of a remedy. NFGDC shall endeavor to notify the Operator prior to taking such remedial action.

ARTICLE V.CHART CHANGES AND INDEX READINGS

(A) Operator shall, at its own cost and expense, (i) change the charts on each orifice meter associated with the Exhibit A Receipt Points (the "Charts"), on the first (1st) working day of each month, (ii) mail the removed Charts to NFGDC on or before the fifth (5th) working day of each month, (iii) change the Charts regularly, once each seven (7) day period following said first (1st) working day, or on a 31-day cycle in the case of 31-day charts, and (iv) mail these removed Charts to NFGDC within three (3) working days of each such chart change.

(B) Insofar as applicable, Operator shall, at its own cost and expense, read each displacement meter associated with any Exhibit A Receipt Point on the first (1st) working day of each month and shall mail, or , with confirmed receipt, e-mail or fax all such index information to NFGDC on or before the fifth (5th) working day of each month.

(C) All charts and all index information shall be addressed to "NATIONAL FUEL GAS DISTRIBUTION CORPORATION, GAS MEASUREMENT DEPARTMENT, ROOM 1, P.O. BOX 2081, 1100 STATE STREET, ERIE, PENNSYLVANIA, 16512.

(D) Operator understands that NFGDC is not able to account for and/or allocate Operator's Gas without using the Chart or index information (as the case may be) referred to in this Article. Accordingly, given (i) the incremental expense and other costs which will be incurred by NFGDC in the event of its tardy receipt of the Chart or index information referred to in this Article; (ii) the difficulty of quantifying such costs and expenses, and (iii) the inconvenience and practical infeasibility of otherwise providing an adequate remedy in respect of Operator's breach of its undertakings expressed in this Article, it is agreed as follows:

In the event that either of the following conditions are met, to wit:
(i) Operator shall fail to mail any Chart or index information as stipulated in this Article, or (ii) NFGDC shall fail to receive said Chart or index information on or before the fifth (5th) working day following the mailing date stipulated in this Article, then NFGDC shall be relieved of any obligation to account for any of the production in a timely manner but will endeavor to account for such production in the next accounting period.

ARTICLE VI.TERM

(A) This Agreement shall have no force or effect unless and until it shall have been executed by each of the parties identified on the first page hereof and by each of the parties

identified in the Addendum thereto, if any (the "Effective Date"). Thereafter, and unless and until NFGDC shall have notified each of the other parties who executed this Agreement (the "Non-NFGDC Parties") that all applicable gas disposition agreements have become effective, no right or entitlement shall accrue to any Non-NFGDC Party due to the execution of this Agreement.

(B) The term of this Agreement shall extend until the first anniversary of the Effective Date, and, unless otherwise lawfully terminated, this Agreement shall continue in effect thereafter, until the same is terminated by any party to this Agreement, if any, by written notice to all other such parties, no later than thirty (30) days prior to the beginning of a calendar month.

(C) Notwithstanding any other provision of this Agreement, and in addition to any other right or remedy available to NFGDC hereunder or under any provision of law, NFGDC shall have the following rights, exercisable at NFGDC's sole option, to wit:

(1) Terminate this Agreement and remove all Receipt Facilities at the Exhibit A Receipt Points, or suspend or cease receiving Operator's Gas at any one or more of the Exhibit A Receipt Points, upon thirty (30) days' prior written notice to Operator, in the event that Operator should for any reason experience a loss or cancellation of the security required to be provided by Operator pursuant to Article IX hereof; and

(2) Terminate this Agreement as to the affected Receipt Point(s) and remove all Receipt Facilities at the affected Receipt Point(s), or suspend or cease receiving Operator's Gas at any affected Receipt Point(s), upon thirty (30) days' prior written notice to Operator, in the event that Operator should (i) fail to provide satisfactory title to the production or (ii) repeatedly violate, in NFGDC's sole opinion, the standards contained in Article IV.

ARTICLE VII.

GOVERNMENTAL REGULATION

This Agreement and the respective obligations of the parties hereunder shall be subject to all valid applicable federal, state and local laws, orders, rules and regulations, whether in effect on the date hereof, or becoming effective thereafter. The parties shall be entitled to regard all laws, orders, rules and regulations issued by any federal, state or local regulatory or governmental body as valid and may act in accordance therewith until such time as same shall have been invalidated by final judgment (no longer subject to judicial review) of a court of competent jurisdiction. Neither party shall be held in default for failure to perform hereunder if such failure is due to compliance with laws, orders, rules or regulations of any such duly constituted authorities. Nothing contained herein, however, shall be construed as

affecting any party's right(s) to contest the validity or applicability of any such law, order, rule or regulation.

ARTICLE VIII.

FORCE MAJEURE

(A) In the event either NFGDC or Operator is rendered unable, in whole or in part, by force majeure to carry out their respective obligations under this Agreement, other than to make payments due hereunder or to maintain minimum gas quality specifications, it is agreed that the obligations of the party claiming such inability to perform, so far as they are affected by such force majeure, shall be suspended from the inception of and during the continuance of such inability so caused but for no longer period; provided that the party claiming such inability gives notice and reasonably full particulars of such force majeure event relied upon; and provided further that the party claiming such inability shall promptly and diligently take such action as may be necessary and reasonably practicable to correct, or cause to be corrected, such inability.

(B) The term "force majeure" as employed herein shall mean, without limitation, acts of God, Governmental action or regulation, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, storms, storm warnings, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to machinery or pipelines, the necessity for making repairs to or alterations of machinery or pipelines, freezing of pipelines, and any other causes, whether of the kind herein enumerated or otherwise, not under or within the control of the party claiming inability to perform and which, by the exercise of reasonable diligence, such party is unable to prevent or overcome.

(C) The settlement of strikes, lockouts or any such labor disputes shall be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure event shall be remedied promptly and diligently shall not require the settlement of strikes, lockouts or other labor disputes by acceding to the demands of any opposing party when such course is inadvisable in the discretion of the party having the difficulty.

(D) Force majeure shall not include failure or disruption of technical systems or products within the reasonable control of the party claiming force majeure which arise as a result of any leap year.

ARTICLE IX.

NOTICE

(A) Every notice, request, statement, bill or invoice provided for in this Agreement shall be in writing, unless otherwise provided herein, and shall be sent by prepaid mail, facsimile, or by overnight delivery, addressed to the party to whom given, at such party's address stated below, or at such other address as such party may in and by such notice direct hereafter. Facsimile notices, requests, statements, bills or invoices shall be deemed given only when facsimile receipt is confirmed.

Notice shall be sent:

(1) To NFGDC:

NATIONAL FUEL GAS DISTRIBUTION CORPORATION
Gas Supply Administration Department
1100 State Street
P.O. Box 2081
Erie, Pennsylvania 16512
24-Hour Telephone: (800) 444-3130 EMERGENCIES ONLY
Facsimile: (814) 871-8624

(2) To Operator:

24-Hour Telephone: _____
Facsimile: _____

(B) Operator shall provide NFGDC with a current telephone number, facsimile number and address at which Operator or Operator's representatives may be contacted at all hours. For themselves and their agents, NFGDC and Operator agree to the recording of all telephone conversations during which NFGDC notifies Operator to suspend or cease deliveries into any facility owned or operated by NFGDC.

ARTICLE X.

OPERATOR'S CREDITWORTHINESS

(A) At its sole option, NFGDC may (i) suspend its receipt of Operator's Gas, or (ii) terminate this Agreement, in the event that Operator is or has become insolvent or fails within a reasonable period, upon NFGDC's request, to demonstrate creditworthiness, or in the event that Operator incurs a poor credit history with respect to any service provided by NFGDC or as established by a reliable reporting agency.

(B) As a demonstration of Operator's creditworthiness and as security in respect of any remedy afforded NFGDC under this Agreement or under any provision of law, Operator agrees to provide NFGDC, prior to the Effective Date, and to keep in force throughout the term of this Agreement, any one of the following:

(1) A security deposit in the amount of Ten Thousand Dollars (\$10,000), to be held in a non-interest-bearing general account by NFGDC;

(2) An irrevocable letter of credit issued by a financial institution acceptable to NFGDC and in a form acceptable to NFGDC with a face amount of Ten Thousand Dollars (\$10,000); or

(3) At NFGDC's sole discretion, a copy of the most recent audited financial statements of Operator (or of a guarantor of Operator's performance hereunder) showing a net worth in excess of Thirty Thousand Dollars (\$30,000), or a copy of the most recent unaudited financial statements of Operator (or of a guarantor of Operator's performance hereunder) showing a net worth of at least Forty Thousand Dollars (\$40,000), in which event, Operator shall also provide NFGDC with evidence of its ownership of unencumbered assets valued, in the aggregate, in excess of Ten Thousand Dollars (\$10,000) in each state in which Operator conducts any business with NFGDC.

(4) Security, in a form acceptable to NFGDC, provided on behalf of Operator by a creditworthy third party, including but not limited to a marketer, individual, or other entity.

(C) NFGDC reserves the right to require Operator to establish or demonstrate its creditworthiness, from time to time, during the term of this Agreement.

ARTICLE XI.

TITLE TO GAS

(A) Nothing in this Agreement shall affect the title to Operator's Gas.

(B) Operator shall indemnify NFGDC against, and hold it harmless from, and undertake the defense of NFGDC with respect to, all suits, actions, claims, debts, accounts, damages, costs, losses and expenses (including attorneys' fees) arising from or out of adverse claims of any and all persons or entities to Operator's Gas, or to royalties, overriding royalties or other payments with respect thereto, or to taxes, licenses, fees, or charges with respect to Operator's Gas or the disposition thereof (hereinafter, respectively "Adverse Claim To Operator's Gas"). Except insofar as Operator is in breach of its obligations or has an obligation to indemnify and save NFGDC harmless pursuant to this

section XI (B), NFGDC agrees to indemnify and save Operator harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising out of adverse claims of any and all persons to the natural gas after receipt by NFGDC of Operator's gas for redelivery by NFGDC (whether by means of transportation service or NFGDC commodity service) according to NFGDC's tariff.

(C) In the event of any Adverse Claim To Operator's Gas, NFGDC may, at its sole discretion, suspend receipts of Operator's Gas at the Receipt Point(s) where the affected gas is delivered into NFGDC's facilities (without incurring any liability to Operator or any other entity interested in Operator's Gas) until such claim is finally determined and the prevailing party(ies) agree(s) to be bound by this Agreement, or until Operator furnishes NFGDC a bond, in form and amount and with sureties acceptable to NFGDC, conditioned to hold NFGDC harmless from any such Adverse Claim To Operator's Gas, or until Operator demonstrates, to NFGDC's satisfaction, that such gas subject to an adverse claim does not constitute any portion of Operator's Gas

(D) Operator agrees to provide NFGDC, upon request, evidence reasonably satisfactory to NFGDC of Operator's right to handle and deliver into NFGDC's facilities, one hundred percent (100%) of the gas comprising Operator's Gas.

ARTICLE XII.

REMEDIES

In addition to any other remedy available to NFGDC under this Agreement or any provision of law, Operator shall indemnify NFGDC against, hold it harmless from, and undertake the defense of NFGDC with respect to all suits, actions, claims, losses, damages (including punitive damages and economic losses), injuries (including personal injury and death), debts, accounts, costs and expenses (including attorneys' fees and other expenses incurred by NFGDC in responding to, and in partial or full satisfaction of, any such suits, actions, claims, losses, damages and injuries) related to and/or arising from or out of any breach by Operator of any provision of this Agreement.

ARTICLE XIII.

MISCELLANEOUS

(A) This document shall not be construed as an agreement running with the land.

(B) No change, modification or alteration of this Agreement shall be or become effective until executed in writing by the parties hereto, and no course of dealing between the parties shall be construed to alter the terms hereof, except as expressly stated herein.

(C) No waiver by any party of any one or more defaults by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or of a different character.

(D) Not less than five (5) working days prior to the first day of each calendar month during the term of this Agreement, Operator shall notify NFGDC in writing of the identity of the entity and person who shall perform nominations in respect of Operator's Gas at each of the Exhibit A Receipt Points. In the absence of Operator's timely notification to this effect, NFGDC may (but shall not be obligated to) deem the authority of the entity and person identified in Operator's last previous timely notification to continue until its receipt of the Operator's next timely notification under this paragraph.

(E) Any company which shall succeed by purchase, merger or consolidation of the gas related properties, substantially as an entirety, of NFGDC or of Operator, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. Either party may, without relieving itself of its obligations under this Agreement, assign any of its rights hereunder to a company with which it is affiliated, but otherwise, no assignment of this Agreement or of any of the rights or obligations hereunder shall be made unless there first shall have been obtained the consent thereto in writing of the other party. Consent shall not be unreasonably withheld.

(F) The headings contained in this Agreement are intended solely for convenience and do not constitute any part of the agreement between the parties and shall not be used in any manner in construing this Agreement.

(G) This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of New York, excluding, however, any such law which would direct the application of the law of another jurisdiction. The parties (i) submit to the jurisdiction of the United States District Court for the Western District of New York, and, in the event that such court lacks subject matter jurisdiction, to the New York State Supreme Court, Erie County, and, as respects those matters which are subject to the exclusive or primary jurisdiction of the Public Service Commission of the State of New York, to that Commission, and (ii) waive any right or entitlement which they or any of them might otherwise have to cause any dispute arising under this Agreement to be adjudicated, determined or resolved pursuant to the law of any other jurisdiction, or, in or by any other court(s) or tribunal(s). Provided, however, that the parties may bring disputed matters before the Public Service Commission of the State of New York according to dispute resolution procedures under NFGDC's Interconnection Rules and Procedures approved by the Public Service Commission of the State of New York and set forth in NFGDC's Gas Transportation Operating Procedures Manual.

(H) So that there will be certainty as to the actual agreement between the parties, it is mutually understood and agreed that this Interconnection Agreement and the Exhibit A attached hereto, as the same may be impacted by any applicable provision of NFGDC's Tariff and the Interconnection Rules and Procedures, are intended to constitute the final

expression, as well as the complete, exclusive and integrated statement, of the terms of the parties' agreement relative to the interconnection and other transactions described therein.

(I) No presumption shall operate in favor of or against either party hereto as a result of any responsibility either party may have had for drafting this Agreement.

(J) This document and the agreement memorialized thereby shall be without force and effect unless all of the parties identified on the first page of this document (and on the first page of the Addendum to this document, if any) shall have fully executed the same prior to _____, as evidenced by duplicate or counterpart originals thereof which are in NFGDC's possession prior to five o'clock p.m. (5:00 p.m.) Eastern Time on that date.

(OPERATOR)

NATIONAL FUEL GAS DISTRIBUTION
CORPORATION

By _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

8. Affiliate Rules

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

Affiliate Rules

1.0 Affiliate Relations – In General

- 1.1 National Fuel Gas Distribution Company (“NFGD”) and National Fuel Gas Company’s (“NFG”)⁵ other subsidiaries will be operated as separate entities.
- 1.2 Any transfer of assets or the provision of goods or services, other than tariffed services and corporate governance, administrative, legal and accounting services by NFGD to an unregulated subsidiary or an unregulated subsidiary to NFGD, will be pursuant to regulations of the Securities Exchange Commission (“SEC”) and the Public Service Commission of New York (“PSC”).
- 1.3 Cost allocation guidelines if amended and/or supplemented will be filed with the Director of the Office of Accounting and Finance of the Department of Public Service 30 days prior to becoming effective.
- 1.4 All cost allocations will be subject to review during rate proceedings.

2.0 Non-Discriminatory Application of Tariffed Services

- 2.1 NFGD shall apply its tariffs in a nondiscriminatory manner.
- 2.2 NFGD shall not apply a tariff provision in any manner that would give its affiliates an unreasonable preference over other parties with regard to matters such as scheduling, balancing, transportation, storage, curtailment, capacity release and assignment, or non-delivery, and all other services provided to its affiliates.
- 2.3 Tariff provisions cannot be waived by NFGD absent prior approval of the PSC.

⁵ NFG holding company is registered as a holding company under the Public Utility Holding Company Act of 1935.

- 2.4 If a tariff provision is not mandatory or permits discretionary waivers, NFGD shall grant the waivers without preference to its affiliates. NFGD shall apply the provisions of its Gas Transportation Operating Procedures Manual without preference to its affiliates.
- 2.5 NFGD shall process requests for distribution services promptly and in a nondiscriminatory fashion with respect to other requests received in the same or a similar period.
- 2.6 If NFGD provides a distribution service discount, fee waiver or rebate to customers of its affiliated marketer, NFGD shall offer the same distribution service discount, fee waiver or rebate to other similarly situated parties. Offers shall not be tied to any unrelated service, incentive or offer on behalf of either the natural gas distribution company or its affiliates.

3.0 Personnel

- 3.1 Unregulated affiliates will have separate operating employees.
- 3.2 Non-administrative operating officers of NFGD will not be operating officers of any of the unregulated subsidiaries.
- 3.3 Officers of NFG may be officers of NFGD.
- 3.4 Employees may be transferred between NFGD and an unregulated affiliate upon mutual agreement. Employees transferred to a marketing affiliate may not be reemployed by NFGD for a minimum of 12 months from the transfer date. Employees returning to NFGD from a marketing affiliate may not be transferred to a marketing affiliate for a minimum of 24 months from the date of return or in the case of a transfer to an unregulated affiliate, for a minimum of 12 months. The foregoing limitations will not apply to employees covered by a collective bargaining agreement.
- 3.5 NFGD will not restrict by any means the employment with marketers of employees of NFGD unless NFGD applies the same restriction to its affiliated marketer(s). NFGD may negotiate restrictive employment conditions in severance agreements with employees under which the employee, as a result of a bargained-for exchange, receives value.

- 3.6 The foregoing provision in no way restricts the loaning of employees from any affiliate to NFGD to respond to an emergency that threatens the safety or reliability of service to consumers. Nor does the foregoing provision restrict the “loaned and borrowed labor” arrangement traditionally maintained between NFGD and National Fuel Gas Supply Corporation (“NFGS”) for routine system operational purposes.
- 3.7 The compensation of NFGD employees may not be tied to the performance of any of NFG’s unregulated subsidiaries. However, the stock of NFG may be used as an element of compensation and the compensation of common officers of NFG and NFGD may be based upon the operations of NFG and NFGD.
- 3.8 The employees of NFG, NFGD, NFGS and the unregulated affiliates may participate in common pension and benefit plans.

4.0 Goods, Services and Transactions Between NFGD and Affiliates

- 4.1 NFGD shall justly and reasonably allocate to its affiliates the costs or expenses for general administration or support services provided to said entities.
- 4.2 NFGD shall not condition or tie the provision of any product, service or price agreement by it (including release of interstate pipeline capacity) to the provision of any product or service by its affiliates.
- 4.3 NFGD shall not give its affiliates preference over non-affiliated marketers in the provision of goods and services including processing requests for information, complaints and responses to service interruptions. NFGD shall provide comparable treatment in its provision of such goods and services without regard to a customer’s chosen marketer.
- 4.4 NFGD and affiliated marketers shall not be located in the same building or share office structures or centralized computer and/or communication networks. The NFG Corporate Website and corporate-governance transactions (such as those performed for financial reporting purposes) are exempt from the restriction pertaining to joint use of centralized computer and/or communications network.

- 4.5 NFGD shall maintain separate books and records from its affiliates. Further transactions between NFGD and its affiliates shall not involve cross-subsidies. Any shared facilities shall be fully and transparently allocated between the distribution company and affiliates. NFGD's accounts and records shall be maintained such that the costs incurred on behalf of an affiliate may be clearly identified.
- 4.6 NFGD may provide other services to affiliates, except that NFGD may not use any of its marketing or sales employees to provide services to NFGS or an affiliated marketer. NFGS and the affiliated marketers shall compensate NFGD for the services of employees performing such services in accordance with the orders, rules and regulations of the SEC governing same.
- 4.7 NFGD's affiliates, including NFGS and any affiliated marketers may provide services to NFGD, subject to any applicable requirements of this PSC, the SEC and the Federal Energy Regulatory Commission.
- 4.8 Common property/casualty and other business insurance policies may cover NFG, NFGD, NFGS, and other affiliates. The costs of such policies shall be allocated among the entities in an equitable manner.
- 4.9 Notwithstanding the above, the Commission's Order on Rehearing in Case 98-G-0122 – Proceeding on Motion of the Commission to Review the Bypass Policy Relating to Pricing of Gas for Electric Generation, dated June 29, 2001, and any additional review of that order, continues to control the issues resolved there.

5.0 Customer Information

- 5.1 Release of proprietary customer information relating to customers within NFGD's service territory shall be subject to the Uniform Business Practices ("UBPs") and, if required, prior authorization by the customer and subject to the customer's direction regarding the person(s) to whom the information may be released. If a customer authorizes the release of information to an affiliate and one or more of the affiliate's competitors, NFGD shall make that information available to the affiliate and such competitors on an equal and contemporaneous basis.

- 5.2 NFGD will not disclose to marketing or pipeline affiliates any customer or marketer information that it receives from a marketer, non-affiliated pipeline or gatherer, customer, or potential customer, which is not available from sources other than NFGD. Excluded from this restriction is operational information supplied to a pipeline affiliate necessary to implement changes in system operations.
- 5.3 Subject to customer privacy or confidentiality constraints, NFGD shall not disclose, directly or indirectly, any customer proprietary information to its affiliate unless authorized by the customer or the UBPs.
- 5.4 Distribution shall not disclose to its affiliates including marketing affiliates any information relating to the availability of transportation services that it does not disclose to all marketers at the same time. Excluded from this restriction is operational information supplied to a pipeline affiliate necessary to conduct day-to-day and long term system operations.

6.0 Customer Communications

- 6.1 NFGD shall not directly or by implication, represent to any customer, natural gas supplier or third party that an advantage may accrue to any party through use of NFGD's affiliates, such as:
 - a. That the PSC regulated services provided by NFGD are of a superior quality when such services are purchased from its affiliated marketer; or
 - b. That the commodity services (for natural gas) are being provided by NFGD when they are in fact being provided by an affiliated marketer;
 - c. That the natural gas purchased from a non-affiliated marketer may not be reliably delivered;
 - d. That natural gas must be purchased from an affiliated marketer in order to receive the PSC regulated services.
- 6.2 On a one-time basis NFGD shall disclose to all of its affiliated marketer's customers the distinction between the LDC and its marketing affiliate. NFGD will disclose the same information to new customers of its marketing affiliate in the anti-slammings letter required by the UBPs. Proposed disclosure language shall be distributed to the marketer signatories to this agreement and shall be subject to their approval.

7.0 Standards of Competitive Conduct

The following standards of competitive conduct shall govern NFGD's relationship with any energy supply and energy service affiliates:

- 7.1 There are no restrictions on affiliates using the same name, trade names, trademarks, service name, service mark or a derivative of a name, of NFG or NFGD, or in identifying itself as being affiliated with NFG or NFGD. However, NFGD will not provide sales leads for customers in its service territory to any affiliate and will refrain from giving any appearance that NFGD speaks on behalf of an affiliate or that an affiliate speaks on behalf of NFGD. If a customer requests information about securing any service or product offered within the service territory by an affiliate, NFGD may provide a list of all companies known to NFGD operating in the service territory who provide the service or product, which may include an affiliate, but NFGD will not promote its affiliate.
- 7.2 NFGD will not represent to any entity that an advantage may accrue to anyone in the use of NFGD's services as a result of that customer, supplier or third party dealing with any affiliate. This standard does not prohibit two or more of the unregulated subsidiaries from lawfully packaging their services.
- 7.3 All similarly situated customers, including but not limited to energy services companies and customers of energy service companies, whether affiliated or unaffiliated, will pay the same rates for NFGD's utility services. NFGD shall apply any tariff provision in the same manner if there is discretion in the application of the provision.

8.0 Enforcement of Standards

- 8.1 If any competitor or customer of NFGD believes that NFGD has violated the standards of conduct established in this section of the agreement, such competitor or customer may file a complaint in writing with NFGD. NFGD will respond to the complaint in writing within 20 business days after receipt of the complaint. Within 15 business days after the filing of such response, NFGD and the complaining party will meet in an attempt to resolve the matter informally. If NFGD and the complaining party are not able to resolve the matter informally, the matter will be subject to the Dispute Resolution Procedures in accordance with the UBPs.
- 8.2 Nothing in this section prevents the PSC from taking action to enforce its statutory obligations.

9. Daily Metered Transportation - Imbalance Netting Agreement (DMT-INA)

DAILY METERED TRANSPORTATION IMBALANCE NETTING AGREEMENT

AGREEMENT made as of the ____ day of 20____, by and between _____
Aggregator Name

("Aggregator") having offices at _____ and _____
Aggregator Address

National Fuel Gas Distribution Corporation, a New York corporation, with offices at 6363 Main Street, Williamsville, New York, 14221-5887 ("Company").

DEFINITIONS APPLICABLE TO THIS AGREEMENT

Aggregator	Signatory to this Agreement who, in the judgment of Company, has been determined creditworthy for participation in DMT Customer imbalance management.
DMT	Daily Metered Transportation
DMT Customer	SC 13D Transportation service customer who has appointed Aggregator.
DMT Market Pool	The pool or group of DMT Customers enrolled by the Aggregator.
DMT Imbalance	Net imbalances developed by the DMT Market Pool and the primary financial responsibility of the Aggregator
Commission	Public Service Commission of the State of New York
Customer Consent Form	Form by which Transportation Customer appoints Aggregator to manage it's imbalances.
SC 13D	Service Classification No. 13D under Company's tariff
Tariff	Company's Schedule of Gas service, P.S.C. No. 8, GAS, or successor.
Transportation Customer	Transportation service customer of Company pursuant to an effective Transportation Service Agreement.

WHEREAS, Aggregator desires to participate in Company's DMT program by performing imbalance management services for DMT Customer(s) under SC 13D;

WHEREAS, Aggregator wishes to assume responsibility for payment, on behalf of its DMT Customer(s), of DMT imbalance charges incurred by DMT Customer Account(s) in Aggregator's DMT Market Pool;

WHEREAS, Aggregator wishes to do all things necessary to effectuate all services under Company's DMT program as set forth under SC 13D;

WHEREAS, Company is willing to provide such services to Aggregator as are necessary and sufficient to effectuate the DMT program under SC 13D in accordance with all laws, rules, regulations, permits, orders and authorization applicable to the DMT program, or any part thereof.

The parties agree as follows:

A. Designation as Aggregator:

Company shall accept designation and appointment of Aggregator, and identification of DMT Market Pool, upon receipt of a valid enrollment, upon the terms and conditions contained in this Agreement and SC 13D. The Aggregator, upon request, shall provide the Company with evidence of consent, e.g. copies of fully-executed Customer Consent Form(s).

B. Identification of DMT Customer:

DMT Customers shall be identified by the Customer Consent Form(s), subject to the terms and conditions contained therein and under SC 13D.

C. Term of Agreement:

The term of this Agreement shall commence on _____ and shall continue through _____
(beginning date)
unless otherwise terminated by the following events:
(ending date)

1. Default by Aggregator of any terms or conditions contained in this Agreement;
2. By mutual agreement of Company and Aggregator;
3. At the discretion of Company to the extent necessary to preserve system operational integrity;
4. Pursuant to an order of the Commission.

D. Aggregator's Duties and Obligations:

1. Aggregator hereby assumes primary responsibility DMT Customer transportation nominations and for DMT Imbalances as calculated and billed by Company under SC 13D.
2. DMT Imbalances shall be resolved as described under SC 13D. Aggregator shall be billed for applicable imbalance services pursuant to the tariff.
3. All other terms and conditions under SC 13D and Company's tariff apply as if fully stated herein, and as amended from time to time.

E. Company's Duties and Obligations:

1. Company shall accept Aggregator's DMT Market Pool, as determined by DMT Customer Consent Form(s), and shall provide all services required to effectuate service under SC 13D.
2. Company shall bill Aggregator on a monthly basis for DMT imbalance charges, plus applicable fees, taxes and surcharges incurred.
3. Company shall bill DMT Customer for DMT delivery charges, plus applicable fees, taxes and surcharges incurred.
4. All other terms and conditions under SC 13D and Company's Tariff apply as if fully stated herein.

F. Rates and Charges:

Applicable rates and charges for DMT service shall be billed to Aggregator pursuant to SC 13D.

G. Consequences of Default:

In the event Aggregator fails to comply with any of the terms and conditions set forth herein and under SC 13D, this Agreement shall terminate and Company shall refund Aggregator's security deposit minus amounts due Company for services rendered under SC 13D or any applicable Service Classification for past DMT Imbalances, fees, and residual DMT Imbalances, if applicable.

H. Incorporation by Reference:

A copy of the currently effective form of SC 13D is attached hereto and is incorporated herein. If there is any inconsistency between this Agreement, SC 13D and other provisions of the Tariff, either as presently effective or as amended, then the provisions of SC 13D and the Tariff shall apply.

I. Notices:

All notices, invoices and billing should be directed in care of the Transportation Services Department; inquiries regarding rates should be directed to the Energy Services Dept.; nominations and other correspondence pursuant to this Agreement shall be sent to the Transportation Services Department at the following address:

To Company: National Fuel Gas Distribution Corporation
6363 Main Street
Williamsville, New York 14221-5887

To Aggregator:

(name)

(address)

J. Limitation on Company's Liability:

Company shall not be liable for any error in judgment or any mistake of law or fact or any act done in good faith in the exercise of the powers and authority herein conferred or for any loss, damage, delay or failure to perform in whole or in part resulting from causes beyond Company's control, including, but not limited to, fires, strikes, insurrections, riots, embargoes, shortages in supplies, delays in transportation, or requirements of any governmental authority. Furthermore, in no event shall Company be liable for consequential, punitive, incidental, indirect or special damages in the provision of services hereunder.

K. Aggregator Indemnity Obligations:

Aggregator shall indemnify, save harmless and, at Company's option, defend Company from and against any and all losses, claims, demands, damages, costs (including, without limitations, reasonable attorneys' fees), expenses, liabilities, proceedings, suits, actions, restrictions, injunctions, fines, judgments, penalties and assessments which Company may suffer for, on account of, by reason of or in connection with any adverse claim of any person or persons to the gas purchased by Company pursuant to paragraph 1 under SC 13D, regarding purchases of DMT Net Surplus Imbalances, and in connection with any bodily injury, including death to any person or persons (including, without limitation, Customers' employees) or any damage to or destruction of any property, including, without limitation, loss of use thereof, arising out of, in any manner connected with or resulting from the goods, work or services furnished by Agent with respect to this Agreement. The provisions of this Paragraph K shall survive the termination or expiration of this Agreement.

L. Entire Contract:

This agreement and express incorporations sets forth the entire contract between the parties concerning the subject hereof, and supersedes all prior and contemporaneous written or oral negotiations and agreements between them concerning the subject hereof.

M. Modification of Agreement:

Any amendment to this Agreement may be made in the sole discretion of Company so long as such changes are not inconsistent with the Tariff and any modification of this Agreement must be in writing and signed by both parties, except that modifications of the Tariff affecting this Agreement shall modify this agreement automatically with no further writings.

N. Interpretation of Agreement:

The interpretation, construction, and performance of this Agreement shall be in accordance with the laws of the State of New York, without recourse to the law regarding the conflicts of law, and the parties to this Agreement hereby submit and consent to the jurisdiction of the courts of the State of New York (including, without limitation, the federal courts located within the State of New York) in any action brought to enforce (or otherwise relating to) this Agreement.

O. Drafting Presumptions:

No presumption shall operate in favor of Aggregator or against Company as a result of drafting this Agreement.

P. Waiver:

No waiver by any party of any one or more defaults by the other in performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character.

Q. Assignment:

Aggregator shall not assign this Agreement, or any of its rights, duties or obligations hereunder without the prior written consent of Customer.

R. Severability:

If any provision of this Agreement is determined to be invalid or unenforceable or contrary to Commission Rules or law, the provision shall be deemed to be void as of the date of this Agreement and shall not be part of this Agreement and shall otherwise be severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement. If any provision of this Agreement does not comply with any law, ordinance or regulation of any governmental or quasi-governmental authority, now existing or hereinafter enacted, such provision shall to the extent possible be interpreted in such a manner so as to comply with such law, ordinance or regulation, or if such interpretation is not possible, it shall be deemed amended to satisfy the requirements thereof.

S. Creditworthiness:

In order to qualify for service hereunder, DMT Aggregator will be required to meet Company's credit requirements according to criteria contained in the Commission's Uniform Business Practices. Aggregator agrees to execute, on an ongoing basis, at the discretion of Company, any other agreements necessary in order to remain qualified as a DMT Aggregator. Failure to execute said other Agreements shall constitute default.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Agreement to be signed by their duly authorized officers as of the day and year first above written.

**NATIONAL FUEL GAS DISTRIBUTION
CORPORATION**

(Witness)

By: _____

Title: _____
(please type/print name & title of person signing)

(Witness)

By: _____

Title: _____
(please type/print name & title of person signing)

10. Billing Services Agreement for Consolidated Billing Service**Billing Services Agreement for Consolidated Billing Service
Under Service Classification No. 19**

BILLING SERVICES AGREEMENT ("Agreement") entered into this ____ day of _____, 200__, by and between National Fuel Gas Distribution Corporation ("Company") and ("Marketer") (the "Parties").

WHEREAS Marketer is receiving service from Company as a "Supplier" under Service Classification No. 19, Supplier Transportation, Balancing and Aggregation ("STBA" or "STBA tariff"), such service classification being contained and subsumed in Company's tariff, P.S.C. No. 8 – GAS ("Tariff");

WHEREAS by means of such STBA service Marketer purchases natural gas commodity on behalf of STBA customers ("Customers") on Company's system and causes such natural gas commodity to be delivered to the Company for redelivery, or transportation, by the Company to Marketer's Customers;

WHEREAS as a result, Marketer is interested in charging such Customers ("Customer Accounts") for Marketer's commodity service ("Marketer charges"), and Company is interested in charging the same Customers for Company's transportation and other services ("Company charges"), on a single bill that includes Marketer charges and Company charges;

WHEREAS Marketer has elected to receive, and Company agrees to provide, a consolidated billing service ("CBS"), commencing December 1, 2005, pursuant to the STBA tariff;

WHEREAS, with respect to Customer Accounts for Customers that consume less than 25,000 Mcf annually, Marketer has requested that Company purchase, free and clear of all liens, claims and encumbrances, without recourse except as described in this Agreement, all amounts billed by Company hereunder on Marketer's behalf and make payments to Marketer relating to such purchases;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants, conditions and terms set forth below, Marketer and Company agree as follows:

A. Applicable Tariff and Operating Procedures

1. Tariff and Operating Procedures. The terms and conditions of the Tariff, STBA agreements, Gas Transportation Operating Procedures ("GTOP" or "Operating Procedures") and the New York State Public Service Commission's ("NYPSC") Uniform Business Practices ("UBPs"), as applicable, are fully incorporated in this Agreement except as otherwise expressly stated herein.

2. Tariff Controls. If there is any inconsistency between this Agreement and the Tariff (including the STBA tariff contained within the Tariff), in its current form or as subsequently amended, then the provisions of the Tariff shall apply.

B. Consolidated Billing and Purchase of Accounts Receivable

1. Billing Service. Pursuant to the STBA tariff, Marketer hereby elects to receive CBS and authorizes Company to perform certain retail billing functions for Marketer's Customers, as defined in the STBA tariff and the UBPs, including invoicing, remittance processing and customer service activities. Marketer and Company shall comply in every respect with the provisions of CBS under the STBA tariff, Company's Tariff and, where applicable, the UBPs. Service hereunder is available only to Customers and not for retail customers under any other service classifications.

2. Purchase of Accounts Receivable.

a. For Customer Accounts with annual consumption less than 25,000 Mcf and subject to the other terms and conditions of this Agreement: Marketer hereby assigns, sells and conveys to Company free and clear of all liens, claims and encumbrances, and Company agrees to purchase without recourse except as described in sections B ¶11 and ¶12 below, Marketer's right, title and interest in all accounts receivable, being amounts due from all such Customers as shown on CBS bills issued by Company on and after the later of December 5, 2005 or the effective date of this Agreement and past due amounts due from such Customers on consolidated bills issued previously under any prior consolidated billing service agreement with Company, provided that such prior amounts are included in the consolidated bill balance as of December 5, 2005 ("Purchased Customer Accounts").

b. Title to Marketer's Purchased Customer Accounts shall pass to Company as of the date bills are issued by Company (the "Billing Date"), and as of such Billing Date Marketer shall have no rights in or to the Purchased Customer Accounts and shall not seek to collect in any manner such amounts from Customers or pledge or attempt to encumber such amounts as security.

3. Rate-Ready Service. CBS is a "rate ready" service, as defined in the UBPs. Marketer shall provide to Company all rates, charges and other information, including Customer Account information, necessary for billing purposes, in a form and manner determined by Company, at least four (4) business days prior to the Customers' Meter Read Date. Such information shall be deemed received for processing only upon Company's express confirmation of receipt. Company shall not be responsible for billing errors or delays caused by

Marketer's failure to timely and properly provide accurate billing information to Company. Marketer agrees to indemnify Company against any and all actions, charges, complaints, proceedings, liabilities, damages, penalties and fines resulting from errors caused by untimely or inaccurate information provided by Marketer.

4. Bills based on Meter Reads. Bills issued by Company shall be based on actual or estimated meter readings retrieved by Company in the manner, and according to procedures, utilized for Company's general billing practices. Meter readings are recorded for billing purposes on the Meter Read Date or on such other special reading date as the Company may determine appropriate. Marketer will not be responsible for billing errors resulting from meter reading inaccuracies or errors. Consumption adjustments shall be reflected on subsequent Customer bills in the ordinary course of billing. Company reserves the right; however, to re-bill Customers or issue corrected bills if justified by the circumstances and as permitted by the UBPs and Company's Tariff.

5. Bill Content. CBS bills will display Marketer's charges. The Company will calculate the Customer's total Marketer charge(s) by multiplying the commodity rate(s), provided by Marketer, by the consumption determined by Company. CBS bills will also identify Marketer as the Customer's natural gas Marketer, and will set forth a phone number at which Marketer can be reached for Customer inquiries. Company's charges will also be displayed on the bill in the manner prescribed by the Tariff and NYPSC directives, orders, rules and regulations.

6. Taxes. Company is not responsible for the paying or remitting to the applicable taxing authorities, on behalf of Marketer, of any federal, state or local taxes as a result of this Agreement. Company will calculate and identify the sales and use tax applicable to Marketer's charges and will provide such calculations to Marketer. Marketer shall be liable for and pay all such taxes and shall indemnify, defend and hold harmless Company from and against any and all liability for such taxes and any interest, penalties and attorney fees.

7. Late Payment Charges. Late payment charges ("LPC") shall be assessed on Customers by Company for untimely payment of amounts billed. The LPC for unpaid Company charges shall be 1.5% per month (also assessed on unpaid LPCs), or as otherwise directed by the NYPSC. The LPC for unpaid Marketer charges shall be 1.5% per month. Provided, however, that for Customer Accounts that are not Purchased Customer Accounts, the LPC shall be designated by Marketer (subject to Company's billing capabilities) pursuant to Marketer's agreement with the Customer. The LPC, if assessed, shall be inclusive of all billed charges. To the extent necessary, Marketer hereby grants, assigns and delegates to Company all of Marketer's rights to assess and collect a LPC on the Marketer's charges included in the CBS bill. LPC proceeds collected on Purchased Customer

Accounts shall be retained by the Company. LPC proceeds collected on Customer Accounts that are not Purchased Customer Accounts shall be remitted to Marketer.

8. Budget Billing. Company offers budget billing (also known as balanced billing) through CBS for the entire bill as a Customer option, and will provide such service according to Company procedures for Budget Billing.

9. Authorized Payment Agencies. Customers may pay CBS bills at authorized payment agencies in the same manner as is permitted for Company bills.

10. Billing and Collection Procedures; Security Interest; Setoff.

a. Company charges and Marketer charges will be shown on CBS bills and collected by Company. Company shall have the exclusive right to receive and process Customer payments, and will perform for itself and on behalf of Marketer required billing and collection activities on Customer Accounts in conformance with the Home Energy Fair Practices Act ("HEFPA") with respect to residential Customers and in accordance with Part 13 of 16 NYCRR with respect to non-residential Customers.

b. Marketer hereby grants, assigns and delegates to Company all of Marketer's rights under New York law and regulations to terminate and suspend Marketer's service to a Customer who fails to make full payment of all amounts due for such service on the CBS bill.

c. Company agrees to indemnify Marketer against any and all actions, charges, complaints, proceedings, liabilities, damages, penalties and fines resulting from Company's failure to properly apply HEFPA procedures for billing and collection activities as provided in this Agreement.

d. For non-residential Customers, Company shall terminate its transportation service and the Marketer's commodity service where: (i) the Customer fails to make full payment of all amounts due on the CBS bill; (ii) the Customer Account is a Purchased Customer Account; and (iii) the Marketer has executed and furnished Company with an affidavit from an officer of Marketer attesting to the representation and warranty set forth below at section C ¶5. The Company's receipt of such properly executed affidavit shall be condition of service under this Agreement. Marketer will indemnify Company for any cost, expense, or penalty incurred if any of Marketer's Customer's service is terminated for non-payment and the Customer establishes that it did not receive such notification.

e. Any Customer payment or portion thereof that is billed by Company and received by Marketer shall be held by Marketer in trust as the property of Company and shall be remitted in full to Company within three (3) business days without any deduction or set-off by Marketer.

f. For Customer Accounts that are not Purchased Customer Accounts, Marketer agrees to permit Company to set-off any unsatisfied Marketer obligations to Company with proceeds received from Customers' payments of Marketer charges, with the remainder, if any, remitted to Marketer in the ordinary course. Marketer hereby grants a security interest in such Customer Accounts and Company may in its discretion perfect a security interest in such Customer Accounts to the extent necessary in order to give effect to this Agreement.

11. Purchase Amount. Subject to the other terms and conditions of this Agreement: For Purchased Customer Accounts, Company shall pay Marketer an amount equal to _____% for residential amounts billed (inclusive of taxes pursuant to above section B ¶6), and _____% of non-residential amounts billed (also inclusive of taxes) hereunder. For non-current balances on Purchased Customer Account balances existing as of December 5, 2005, Company will remit such payment to Marketer, via wire transfer or such other means as may be mutually agreeable, beginning on the second Billing Date in December 2005 and continuing for each Billing Date through the billing month. For current balances on Purchased Customer Accounts, Company will remit payment twenty-three (23) days (plus two (2) business days for processing) following the Billing Date (or the next following business day if the 23rd day falls on a bank holiday or a Company holiday) of all Marketer charges billed to Customers in the previous month. For Budget Billing CBS bills, the amount purchased shall be based on the total billed amount without regard to current debit or credit balances, provided, however, that the amount remitted shall be equal to the Budget Bill amount as stated on the CBS bill. Upon termination of the Customer's commodity service with Marketer, Budget Billed Customer debits or credits shall be treated as follows: debit amounts shall be charged to the Customer in a final bill, and shall be redeemed to Marketer according to the procedure described herein. Credit amounts shall be credited to the Customer and deducted from future Purchased Customer Account amounts redeemed to Marketer.

12. Other Deductions.

a. Company's payment obligation to Marketer in accordance with above section B ¶11 shall be subject to netting of all amounts owed to Company by the Marketer for STBA services and/or other charges under the Tariff or GTOP, including (but not limited to):

- Special meter read fees;
- Customer usage history fees;
- Gas imbalance charges;
- Billing and payment processing charges;
- Amounts due under other Marketer accounts;

- Amounts disputed by Marketer's Customers as described below; and
- At the time the amount is written off by the Company or when Customer's service is restored with a different marketer, billed amounts in excess of the amount necessary to restore Customer service pursuant to Public Service Law §32(5)(d).

Such amounts deducted from Company's payment to Marketer in accordance with section B ¶11 shall be itemized and described by Company at the time of payment. At Marketer's request, Company agrees to provide Marketer with calculations and other documentation supporting such deductions.

b. Disputed Amounts. An amount is deemed disputed if a Customer initiates a bill complaint under Part 12 of the NYPSC's Rules of Procedure (16 NYCRR Part 12) questioning the validity of Marketer's bill, charges or services. A Customer's claim of inability to pay or inaccurate meter reading shall not constitute a dispute for purposes of Company's obligation to pay Marketer amounts billed.

13. Bill Format. CBS bill format shall be determined by Company and based on the sample bill provided as Attachment A, subject to changes at Company's discretion and to accommodate bill content requirements under the UBPs and applicable directives of the NYPSC. At Marketer's option, Marketer's logo will be printed (according to the capabilities of CBS) so long as Marketer's logo is provided in an acceptable electronic format at least thirty (30) days before it is to be used. Both Parties' bill message spacing shall be governed by the Parties' agreement and CBS capabilities but shall not be less than four hundred eighty (480) characters for either Party. Information required by statute, regulation or order shall be printed on or inserted into CBS bills without additional charge so long as inserts do not exceed one-half ounce in weight. Additional bill inserts may be provided at negotiated rates. Company reserves the right to reject bill message or bill insert content requested by Marketer if Company in its sole judgment finds such content inappropriate or otherwise offensive.

14. Customer Inquiries. Company will receive and endeavor to process Customer inquiries relating to the CBS bill. Provided, however, that Customer inquiries relating to Marketer's rates or services shall be directed to Marketer's phone number shown on the bill. Marketer shall remain obligated to maintain a system capable of handling Customer complaints.

15. Security Deposits. Marketer hereby grants, assigns and delegates to Company Marketer's complete right to obtain security deposits and other forms of security. Existing deposits held on Customer Accounts shall be refunded to

Customer or transferred to Company within five (5) days of commencement of service hereunder.

C. Representation and Warranties

1. Agreement Not for the Benefit of Third Parties. Marketer warrants and hereby agrees that it is not entitled to and shall not pledge Company's credit for any purpose whatsoever. This Agreement is for the benefit of the Parties hereto and not for the benefit of third parties, except to the extent of any amounts payable to Marketer under this Agreement to the extent Marketer grants a security interest to its bona fide lender in amounts due to Marketer pursuant to this Agreement.

2. Marketer Eligibility. Marketer represents and warrants, and shall demonstrate at Company's request, that it has satisfied all requirements to qualify as an eligible gas marketer in New York State for service to the class of Customers served under this Agreement, and will continue to be in compliance with such requirements and subsequently adopted laws and regulatory requirements throughout the term of this Agreement.

3. No Encumbrances. Marketer warrants and shall demonstrate to Company that Purchased Customer Accounts are unencumbered and not subject to a security interest or lien held by a third party. Marketer further warrants that it will not allow any interest or permit any third party to assert a claim of any type on those Purchased Customer Accounts or any new Purchased Customer Accounts opened during the term of this Agreement.

4. Late Payment Charge. Marketer represents and warrants that Marketer's Customers billed under this Agreement have received notice that a LPC of 1.5% per month shall be assessed as described in this Agreement and any and all Customer Accounts or portions thereof are subject to a LPC at such rate.

5. Non-residential Service Termination. Marketer represents and warrants and shall demonstrate at Company's request that it has notified its current non-residential Customers and will notify its future non-residential Customers that Company is permitted to terminate the non-residential Customer for non-payment of Marketer charges.

6. Marketer charges. Marketer represents and warrants that Marketer charges reflect and are limited exclusively to charges for Marketer's gas commodity service or other authorized charges as provided under the STBA tariff or Commission regulations, orders or directives.

7. Security Deposits. Marketer represents and warrants that deposits previously held on Customer Accounts will be returned to Customers or

refunded to Company within five (5) business days of commencement of service hereunder.

D. Term of Agreement

Service shall commence under this Agreement on December 1, 2005 or the later of the date an executed copy of this Agreement is received or the date set forth on the signature page attached hereto and continues on a month-to-month basis unless terminated as follows: Either Party shall have the right to terminate this Agreement on thirty (30) days written notice; provided, however, that this Agreement may be terminated by Company (i) on one (1) day's written notice if the STBA agreement is terminated for any reason or if Marketer or a creditor commences a proceeding or any other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to Company or any creditor, or seeking to adjudicate Marketer as bankrupt or insolvent, or seeking reorganization, dissolution, winding up, liquidation or other relief with respect to Marketer or Marketer's debts, or seeking appointment of a receiver, trustee, custodian or other similar official for Marketer, or Marketer makes a general assignment for the benefit of Marketer's creditors; (ii) on not less than fifteen (15) days written notice if Marketer breaches any provision hereof and does not cure said breach within the fifteen (15) day period, such fifteen (15) day periods to run concurrently; or (iii) on one (1) day's written notice following issuance of an order or ruling by the NYPSC materially impacting any of the terms or conditions herein. Termination of this Agreement shall not suspend or discontinue Marketer's right to offer single-retailer billing or dual billing.

E. Miscellaneous

1. Liability. Company shall not be liable for any damages arising from CBS bills rendered based on untimely or inaccurate rate information provided by Marketer. Company's total cumulative liability to Marketer for all claims of any kind associated with Company's performance under this Agreement shall in no case exceed the payment or remittance amounts otherwise due under this Agreement. In no event, shall Company be liable for special, punitive, indirect or consequential damages, nor shall any action or inaction on Marketer's part, constitute a waiver by Company of any cause of action or defense. Company shall have no obligation to pursue, or assist Marketer in pursuing, any claim Marketer may have against any third party.

2. Further Indemnification. Marketer, to the fullest extent allowed by law, shall indemnify, defend and hold harmless and shall reimburse Company, from and against any and all damages, losses, liabilities, obligations, judgments, orders, writs, injunctions, decrees, fines, penalties, taxes, costs, suits, charges, expenses (including attorneys' fees), claims, investigations, proceedings, or causes of action (collectively, "Damages") which may at any time be imposed on, incurred by, or asserted against Company by third parties (including Customers) that are directly or indirectly caused by, arise out of or under, associated with, incident to or in connection with this Agreement, including, but not limited to any of the following: (i) Marketer's acts or omissions regarding Customer Accounts or Marketer charges; (ii) any claim, demand, cause of action, litigation, suit, proceeding, hearing or investigation (collectively, "Claims") by any persons for payments based upon any

agreement or understanding alleged to have been made by such person, directly or indirectly, with Marketer or any of its representatives, in connection with any of the transactions contemplated by this Agreement; (iii) any Claims with respect to the action or inaction of Marketer or its representatives, which is contrary to the requirements of this Agreement; (iv) any inaccuracy in or other breach of any representation or warranty made by Marketer in this Agreement; (v) any failure by Marketer to perform or comply, in whole or in part, with any covenant, agreement or provision of this Agreement; and (vi) any costs and expenses, including reasonable fees and attorneys' fees associated with all Damages incurred by Company in connection with any Claims subject to indemnification rights as provided herein.

3. Force Majeure. Any delays in or failure of performance by the Parties shall not constitute a default and shall be excused under this Agreement, if and to the extent such delays or failures of performance are caused by occurrences that are both: (1) beyond the reasonable control of the Parties, including, but not limited to, acts of God, compliance with any order or request of any governmental or judicial authority, compliance with Company's public service obligations, riots or strikes or other concerted acts of workers, storms, fires, floods, and accidents; and (2) beyond the ability of the Parties to prevent, by the exercise of reasonable diligence. Marketer agrees that Company shall have no obligation to Marketer to add personnel, equipment or facilities in order to perform any activities under this Agreement.

4. Additional Personnel. Marketer agrees that Company shall have no obligation to Marketer to add personnel, equipment or facilities in order to perform any activities under this Agreement.

5. Notice. Any notice to be provided under this Agreement will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (a) delivered by hand, (b) deposited for next business day delivery (fee prepaid) with an established overnight delivery service, or (c) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that Party (or at some other address as that Party may from time-to-time designate by giving written notice thereof).

Notice to: National Fuel Gas Distribution Corporation
Rates and Regulatory Affairs Department
6363 Main Street
Williamsville, NY 14221
Fax no. (716) 857-7254
Attention:
Michael Reville
Beverly Hogan

Marketer: _____

6. Financing Statements. At Company's request, Marketer shall execute and deliver to Company all financing statements, and amendments thereof, and other documents and instruments that Company may request to perfect, protect or establish the security interests granted hereunder or to provide notice of Company's purchase of Marketer's Purchased Customer Accounts, or Company may execute and file any financing statements and amendments without Marketer's signature which Marketer hereby authorizes. Marketer hereby ratifies and consents to the filing of any such financing statements by Company prior to the date this Agreement is executed.

7. Complete Agreement. This Agreement is the complete agreement between the Parties as to the subject matter hereof, all prior contracts, commitments, proposals, negotiations concerning the subject matter hereof are superseded and merged herein.

8. Amendments. Notwithstanding any provision of this Agreement, Company may at any time propose and file with the NYPSC changes to the rates, terms and conditions of the Tariff, and/or Operating Procedures. Such amendment or modification shall be effective with respect to service pursuant to this Agreement on the date specified by the NYPSC.

9. Assignment. Neither Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, except that Marketer, upon ten (10) days' prior written notice to Company, may assign all or any part of the monies payable by Company under this Agreement without the consent of Company, to any party, lender, or financial institution. Marketer shall at all times remain liable for the repayment on demand to Company of all obligations owed Company. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations are expressly assumed by the assignee in writing.

10. Waiver and Modification. No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the Parties. No such waiver shall apply prospectively to subsequent events unless expressly stated. No delay or failure on Company's part in exercising any right, privilege or option hereunder shall operate as a waiver of such or of any other right, privilege or option.

11. Dispute Resolution. Dispute resolution procedures, if utilized, shall be governed by the UBPs.

12. Applicable Law. This Agreement is made in the State of New York and shall be governed by and construed in accordance with the laws of New York State, without regard to conflict of law principles.

13. Venue. At Company's option, all actions and proceedings based on, arising from or relating to this Agreement shall be litigated in the Supreme Court of the State of New York, County of Erie. Marketer consents to the jurisdiction of such court and waives any and all rights to transfer or change the venue of any such action or proceeding to any other court.

14. Waiver of Jury Trial. MUTUAL WAIVER OF RIGHT TO JURY TRIAL. MARKETER AND COMPANY EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION BASED UPON, ARISING FROM, OR IN ANY WAY RELATING TO:

(I) THIS AGREEMENT, OR ANY SUPPLEMENT OR AMENDMENT HERETO; OR
(II) ANY OTHER PRIOR, PRESENT OR FUTURE INSTRUMENT OR AGREEMENT
BETWEEN COMPANY AND MARKETER; OR (III) ANY CONDUCT, ACTS OR
OMISSIONS BY COMPANY OR MARKETER OR ANY OF COMPANY'S OR
MARKETER'S RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS,
ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH COMPANY OR
MARKETER; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN
CONTRACT OR TORT OR OTHERWISE.

15. Captions and Headings. The captions and headings herein are for convenience only and are not to be construed as a part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

The above terms and conditions are acknowledged and agreed as of this ____ day of _____, 200__.

MARKETER

By_____

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

By_____

Addendum 1. Uniform Business Practices

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**UNIFORM BUSINESS PRACTICES
CASE 98-M-1343**

November 2006

TABLE OF CONTENTS

	<u>Section</u>	<u>Pages</u>
DEFINITIONS	1	1-4
ELIGIBILITY REQUIREMENTS	2	5-12
CREDITWORTHINESS	3	13-18
CUSTOMER INFORMATION	4	19-22
CHANGES IN SERVICE PROVIDERS	5	23-36
CUSTOMER INQUIRIES	6	37-38
DISTRIBUTION UTILITY INVOICES	7	39-40
DISPUTES INVOLVING DISTRIBUTION UTILITIES, ESCOs OR DIRECT CUSTOMERS	8	41-42
BILLING AND PAYMENT PROCESSING	9	43-57

DEFINITIONS

As used in the Uniform Business Practices (UBP), the following terms shall have the following meanings:

Assignment – Transfer by one ESCO to another ESCO of its rights and responsibilities relating to provision of electric and/or gas supply under a sales agreement.

Bill ready – A consolidated billing practice that requires each non-billing party, after receiving customers' usage data, to calculate its charges and send via EDI charges, billing information, and bill messages to the billing party in a form that allows the transfer of the information to the bill in a format the billing party selects.

Billing cycle – The period for which a customer is billed for usage of electricity or natural gas.

Billing services agreement (BSA) – An agreement between the distribution utility and the ESCO stating the billing practices and procedures and the rights and responsibilities of billing and non-billing parties relating to issuance of consolidated bills to customers.

Budget billing – A billing plan that provides for level or uniform amounts due each billing period over a set number of period, typically 12 months, and determined by dividing projected annual charges by the number of periods. Installment amounts may be adjusted during the period and may include reconciliations at the end of the budget period to account for differences between actual charges and installment amounts.

Business day – Monday through Friday, except for public holidays.

Consolidated billing – A billing option that provides customers with a single bill combining charges from more than one service provider and issued by a distribution utility providing delivery service (utility consolidated bill) or by a commodity supplier (ESCO consolidated bill).

Customer inquiry – A question or request for information from a customer relating to a rate, term, or condition of service provided by an ESCO, distribution utility or other service provider.

Cramming – The addition of unauthorized charges to a customer's bill.

Deferred payment agreement (DPA) – A fair and equitable payment plan agreed upon by a customer and utility and/or a customer and an ESCO that allows a customer to pay an overdue amount in installments. A DPA is based upon the customer's financial circumstances and ability to pay the overdue amount while making payment on current charges.

Demand – The amount of electricity or natural gas that is or could be immediately needed by a customer at any given point in time referred to as customer load. For consolidated billing, the term is used in the context of "billing period demand" for customer bills.

Electric – The amount of electricity, measured in kilowatts (kW), that a customer uses at a point in time, the customer's usage averaged over a period, or capacity of facilities reserved for the customer for stand-by or other service.

Natural Gas – The amount of gas measured in cubic feet or therms that a customer uses or may use over a period, or capacity of facilities reserved for the customer for stand-by or other service.

Direct customer – An entity that purchases and schedules delivery of electricity or natural gas for its own consumption and not for resale. A customer with a minimum peak connected load of 1 MW at a single service point qualifies for direct purchase and scheduling of electricity provided the customer complies with ISO requirements. A customer with annual use of a minimum of 3,500 dekatherms of natural gas at a single service point qualifies for direct purchase and scheduling of natural gas.

Distribution utility – A gas or electric corporation owning, operating or managing electric or gas facilities for the purpose of distributing gas or electricity to end users.

Distribution utility customer account number – A number used by a distribution utility to identify the account of a utility customer.

Distribution utility tariff – A schedule of rates, terms and conditions of services provided by a distribution utility.

Drop – A transaction that closes a customer's account with a provider. This term is used when: (1) a customer's enrollment is pending and the customer rescinds the enrollment; (2) a customer enrolled with an ESCO returns to distribution utility service or enrolls with another ESCO; or (3) the ESCO discontinues service to a customer.

Dual billing – A billing option that provides for separate calculation of charges and presentation of bills to the customer by the distribution utility and ESCO.

Electronic data interchange (EDI) – The computer-to-computer exchange of routine information in a standard format using established data processing protocols. EDI transactions are used in retail access programs to switch customers from one supplier to another or to exchange customers' history, usage or billing data between a distribution utility or MDSP and an ESCO. Transaction set standards, processing protocols and test plans are authorized in orders issued by the Public Service Commission in Case 98-M-0667, In the Matter of Electronic Data Interchange and available on the Department of Public Service (DPS) Web site at: www.dps.state.ny.us/98m0667.htm.

Energy broker – A non-utility entity that performs energy management or procurement functions on behalf of direct customers or ESCOs but does not make retail energy sales to customers.

Energy services company (ESCO) – An entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility. ESCOs may perform other retail service functions. Sometimes, other terms are used for such entities, such as, ESCO/Marketer to describe a supplier of both commodities, ESCO to describe a supplier of electricity and marketer to describe a supplier of natural gas. For simplicity, the term ESCO is used in the UBP to refer to suppliers of natural gas and/or electricity.

Enroll/Enrollment – The process used to switch a customer from a distribution utility to an ESCO or from one ESCO to another.

Enrollment date – The effective date for commencement of electric or natural gas service from an ESCO or distribution utility.

Guarantor – An entity that agrees to pay another's debt or perform another's duty, liability or obligation.

Independent System Operator (ISO) – An independent management organization, authorized by the Federal Energy Regulatory Commission, operating the bulk electric transmission system.

Interval data – Actual energy usage for a specific time interval for a specific period recorded by a meter or other measurement device.

Load profile – Actual or estimated customer energy usage by interval over a period representing usage for a customer or average usage for a customer class.

Lockbox – A billing payment receipt method agreed upon by a distribution utility and an ESCO, involving use of a third party financial institution to receive and disburse customer payments.

Marketer – The term marketer typically refers to the supplier of natural gas. In the UBP, the term ESCO is used to refer to a supplier of either or both electricity and natural gas.

Meter – A device for determination of the units of electric or natural gas service supplied to consumers.

Meter Data Service Provider (MDSP) – An entity that provides meter data services, consisting of meter readings, meter data translations, and customer association, validation, editing and estimation.

Meter Service Provider (MSP) – An entity that installs, maintains, tests and removes meters, or other measurement devices and related equipment.

Multi-retailer model – A model for retail access that involves provision of electric or natural gas supply and of delivery service, provided separately to end use customers by two or more entities.

New delivery customer – A customer initiating delivery service by a distribution utility.

Nomination – A request for delivery of a physical quantity of natural gas or for its delivery at a specific point under a purchase, sale, or transportation agreement.

Pay-as-you-get-paid method – A payment processing method offered by a billing party presenting consolidated bills, whereby the billing party forwards payment to the non-billing party after receiving payment from the customer.

Pending enrollment – A stage in processing an enrollment that commences with validation of an enrollment transaction request and ends on the enrollment date that the new supplier is expected to deliver energy.

Purchased accounts receivable – A debt owed to an ESCO by a customer for receipt of supplies of gas or electricity and transferred to a distribution utility in exchange for consideration.

With recourse – Purchase of accounts receivable with recourse by a distribution utility means that the ESCO remains liable if its customers fail to make payments. A distribution utility that purchases accounts receivable with recourse sends payments to an ESCO at predetermined intervals for amounts billed that are not in dispute and may offset subsequent purchase payments against or obtain reimbursement from an ESCO of any unpaid amounts.

Without recourse – Purchase of accounts receivable without recourse by a distribution utility means that the ESCO is not liable if its customers fail to make payments. A distribution utility that purchases accounts receivable without recourse sends payments to an ESCO at predetermined intervals for amounts billed that are not in dispute and has no right to seek reimbursement from an ESCO of any unpaid amounts.

Rate ready – A consolidated billing practice that requires each non-billing party to furnish in advance of the billing cycle, rates, rate codes or prices (fixed and/or variable), tax rates, billing information, and bill messages to the billing party. The billing party, after receipt of usage data from the MDSP, uses the information on record to calculate the non-billing party's charges.

Sales agreement – An agreement between a customer and an ESCO that contains the terms and conditions governing the supply of electricity and/or natural gas provided by an ESCO. The agreement may be a written contract signed by the customer or a statement supporting a customer's verifiable verbal or electronic authorization to enter into an agreement with the ESCO for the services specified.

Single retailer model – A model for retail access that involves provision of electric and/or natural gas service to end users by an ESCO that purchases delivery service from the distribution utility and resells it along with electricity and/or natural gas to end users.

Slamming – Enrollment of a customer by an ESCO without authorization.

Special meter reading – An actual meter reading performed, upon request, on a date that is different than the regularly scheduled meter reading date.

Special needs customer – A customer who has a certified medical emergency condition, who is elderly, blind or physically challenged, or who may suffer serious impairment to health or safety as a result of service termination during cold weather periods and, thus, is eligible for special procedures before termination of service under the Home Energy Fair Practices Act (HEFPA) (Public Service Law §32(3)).

Switch – Transfer of a customer from one ESCO to another, from a distribution utility to an ESCO, or from an ESCO to a distribution utility.

Switching cycle – For electric service, the period between the date of the last meter reading and the next regularly scheduled meter reading. For gas customers, the period between the date of the last meter reading and the next regularly scheduled meter reading or the first day of the month and the first day of the following month.

ELIGIBILITY REQUIREMENTS**A. Applicability**

This Section sets forth the process that an applicant is required to follow for a Department of Public Service (DPS) finding of eligibility to sell natural gas or electricity as an ESCO, that an ESCO is required to follow to maintain eligibility, and that a distribution utility is required to follow for discontinuance of an ESCO's or Direct Customer's participation in a distribution utility's retail access program.

B. Application Requirements

1. Applicants seeking eligibility to sell natural gas and/or electricity as ESCOs are required to submit to the DPS an application package containing the following information and attachments:
 - a. A completed Retail Access Eligibility Form, available on the DPS web site: www.dps.state.ny.us.
 - b. A sample standard Sales Agreement for each customer class that includes the following information written in clear, plain language:
 1. Terms and conditions applicable to the business relationship between the ESCO and the customer, including provisions governing the process for rescinding or terminating an agreement by the ESCO or the customer;
 2. Procedures for resolving disputes between the ESCO and a customer;
 3. Consumer protections provided by the ESCO to the customer;
 4. Method for applying payments and consequences of non-payment;
 5. Any charges and fees, services, options or products offered by the ESCO;
 6. DPS contact information, including the DPS retail market complaint line at 1-800-342-3377;
 7. ESCO contact information, including a local or toll-free number from the customer's service location, and procedures used for after-hours contacts and emergency contacts, including transfer of emergency calls directly to a distribution utility and/or an answering machine message that includes an emergency number for direct contact with the distribution utility.
 8. A statement that the ESCO shall provide at least 15 calendar days notice prior to any cancellation of service to a customer; and
 9. If a condition of service, a statement that the ESCO reserves the right to assign the contract to another ESCO.

- c. Sample forms of the notices sent upon assignment of sales agreements, discontinuance of service, or transfer of customers to other providers.
 - d. A sample ESCO bill used when dual billing is in effect and, if applicable, a sample ESCO consolidated bill, with terms stated in clear, plain language;
 - e. Procedures used to obtain customer authorization for ESCO access to a customers' historic usage or credit information;
 - f. Sample copies of informational and promotional materials that the ESCO uses for mass marketing purposes;
 - g. Proof of registration with the New York State Department of State;
 - h. Internal procedures for prevention of slamming and cramming;
 - i. Name, postal and e-mail addresses, and telephone and fax numbers for the applicant's main office;
 - j. Names and addresses of any entities that hold ownership interests of 10% or more in the ESCO, including a contact name for corporate entities and partnerships; and,
 - k. Detailed explanation of any criminal or regulatory sanctions imposed during the previous 36 months against any senior officers of the ESCO or any entities holding ownership interests of 10% or more in the ESCO.
- 2. Applicants shall submit to the DPS Test Moderator designated EDI transactions required for syntactical verification in the Phase I testing program. The DPS shall maintain a list of ESCOs that successfully complete Phase I test requirements by transaction type.
 - 3. An ESCO that knowingly makes false statements in its application package is subject to denial or revocation of eligibility
 - 4. If the application package contains information that is a trade secret or sensitive for security reasons, the applicant may request the DPS to withhold disclosure of the information, pursuant to the Freedom of Information Law (Public Officers Law Article 6) and Public Service Commission regulations (16 NYCRR §6-1.3).

C. DPS Review Process

The DPS shall review the application package and conduct EDI Phase I testing as required for each applicant. An ESCO shall notify the DPS of any major changes in the information submitted in the Form and/or application package that occurs during the DPS review process. The DPS shall advise the applicant, in writing, if the applicant submitted the required information and EDI testing is successfully completed.

D. Maintaining ESCO Eligibility Status

- 1. An ESCO shall submit by January 31 each year:

- a. a statement that the information and attachments in its Retail Access Eligibility Form and application package are current; or
 - b. a description of revisions to the Form and application package and a copy of the revised portions or, at the ESCO's option, a copy of the revised portions identifying the revisions by highlighting or other means.
2. An ESCO shall submit at other times during the year:
 - a. a description of any major change in the Form and/or application package and a copy of the revised portions or, at the ESCO's option, a copy of the revised portions identifying the revisions by highlighting or other means. For purposes of Subdivision D of this Section, the term, "major change," means a revision in the terms and conditions applicable to the business relationship between the ESCO and its customers, including provisions governing the process for termination of sales agreements.
 - b. changes in the ESCO's business and customer service information displayed on the DPS Web site.
 - c. no later than the 5th day of each month, each price, on a per unit basis, that the ESCO offered and would have charged for each of its services generally available to eligible residential customers as of the 1st day of that month, along with such other information about each price as is required to complete the standardized price reporting format developed by the DPS.
3. The DPS shall provide written notice to an ESCO of any deficiency in the maintenance of its eligibility status, including failure of an ESCO to disclose any major change and failure of any ESCO to timely and accurately submit required price information.
 - a. The ESCO shall have ten business days after receipt of written notice to provide a response or to file a request for an extension of time.
 - b. The ESCO shall have 10 days after receipt of a written determination from the DPS that price information was not timely or accurately reported to cure the deficiency identified in the determination by reporting the information required. If the ESCO fails to timely cure the deficiency, the DPS may notify the distribution utilities that they shall cease to enroll new customers for that ESCO, until such time as the DPS informs them the processing of new enrollments shall resume.
4. The DPS may, at any time, determine that an ESCO is no longer eligible to sell electricity and/or natural gas to retail customers for reasons, including, but not limited to:
 - a. false or misleading information in the application package;

- b. failure to adhere to the policies and procedures described in its Sales Agreement;
 - c. failure to comply with required customer protections;
 - d. failure to comply with applicable ISO requirements, reporting requirements, or DPS oversight requirements;
 - e. failure to provide notice to the DPS of any material changes in the information contained in the Form or application package;
 - f. failure to comply with the UBP terms and conditions, including discontinuance requirements;
 - g. failure to comply with EDI transaction set standards and processing protocols and/or use properly functioning EDI systems; or,
 - h. repeated failures to comply with price reporting requirements, reporting misleading price information, or continuing to fail to comply with price reporting requirements after withdrawal of eligibility to enroll new customers; or
 - i. any of the reasons stated in Subdivision F of this Section.
5. An ESCO's eligibility to serve customers is valid: unless revoked by the DPS, after notice and opportunity for response; the ESCO abandons its eligibility status; or, a court of competent jurisdiction issues a final order authorizing discontinuance of the ESCO's participation in the distribution utility's retail access program.
6. The DPS shall notify distribution utilities, and the ISO, if applicable, of any determination to revoke an ESCO's eligibility to sell natural gas and/or electricity. The distribution utility shall notify the ESCO's customers, in accordance with paragraph 3 of Subdivision F of this Section, of any DPS revocation of an ESCO's eligibility.

E. Distribution Utility Requirements

- 1. After receipt of the DPS compliance letter, the ESCO shall notify the distribution utility, and ISO, if applicable, of its eligibility status and intent to complete the process to commence operation in the distribution utility's service area, including execution of any operating agreement that is required.
- 2. Upon satisfaction of the distribution utility's and, if applicable, the ISO's requirements, and successful completion of EDI testing conducted by the distribution utility, the ESCO may enter into an operating agreement, if any is required, with the distribution utility to commence operations in its service territory.

F. Discontinuance of an ESCO's and Direct Customer's Participation in a Retail Access Program

1. In accordance with the procedures established in this Subdivision, a distribution utility may discontinue an ESCO's or Direct Customer's participation in its retail access program for the following reasons:
 - a. failure to act that is likely to cause, or has caused, a significant risk or condition that compromises the safety, system security, or operational reliability of the distribution utility's system, and the ESCO or Direct Customer failed to eliminate immediately the risk or condition upon verified receipt of a non-EDI notice;
 - b. failure to provide natural gas (provided zero quantity) to the distribution utility's city gate;
 - c. failure to pay an invoice upon the due date;
 - d. failure to provide for delivery of at least 95% of the amount of natural gas directed by a distribution utility for delivery or at least 80% of the daily metered usage of the ESCO's customers or a Direct Customer's specified load or lower percentages included in a balancing program established in a distribution utility's tariff and/or any operating agreement;
 - e. failure to maintain a creditworthiness standard or provide required security;
 - f. failure to comply with the terms and conditions of a distribution utility's tariff, operating agreement, or Gas Transportation Operating Procedures (GTOP) Manual;
 - g. discontinuance of an ESCO's or Direct Customer's participation in a distribution utility's retail access program by the ISO; or,
 - h. DPS determination that an ESCO is not eligible to sell natural gas or electricity to retail customers.
2. To initiate the discontinuance process, a distribution utility shall send a non-EDI discontinuance notice by overnight mail and verified receipt, to the ESCO or Direct Customer and DPS. The notice shall contain the following information:
 - a. the reason, cure period, if any, and effective date for the discontinuance;
 - b. a statement that the distribution utility shall notify the ESCO's customers of the discontinuance if the ESCO fails to correct the deficiency described in the notice within the cure period, unless the DPS directs the distribution utility to stop the discontinuance process;
 - c. the distribution utility may suspend the ESCO's right to enroll customers until correction of the deficiency; and
 - d. correction of the deficiency within the cure period, or a DPS directive, will end the discontinuance process.

3. The distribution utility shall send notices to the ESCO's customers informing them of the discontinuance and providing the following information:
 - a. The discontinuance shall or did occur on one of the following dates selected by the distribution utility: the scheduled meter reading date, the first day of the month, or another date, if readings are estimated, or on the date of a special meter reading;
 - b. Customers have the option to select another ESCO or return to full utility service or, if a program authorizing random assignment is in effect, to enroll with a designated ESCO through that program;
 - c. Names and telephone numbers of ESCOs offering service to retail customers in the distribution utility's service territory;
 - d. Any ESCO selected by a customer may file an enrollment request on the customer's behalf with the distribution utility, and the distribution utility shall charge no fee for changing the customer's provider to the new ESCO; and,
 - e. During any interim between discontinuance of a customer's current ESCO and enrollment with a new ESCO, the distribution utility shall provide service under its applicable tariff, unless the distribution utility notified the customer that it is terminating its delivery services to the customer on or before the discontinuance date.
4. The distribution utility shall submit a sample copy of its discontinuance notice to the DPS for review and approval prior to distribution to customers.
5. The distribution utility may request permission from the DPS to expedite the discontinuance process, upon a showing that it is necessary for safe and adequate service or in the public interest. Any expeditious discontinuance process shall include the ESCO or Direct Customer, and the distribution utility.
6. Upon any discontinuance, an ESCO or Direct Customer shall remain responsible for payment or reimbursement of any and all sums owed under the distribution utility tariffs, any tariffs on file with the FERC and service agreements relating thereto, or any agreements between the ESCO and the distribution utility.
7. The notice requirements and time limits for a distribution utility to discontinue an ESCO's or Direct Customer's participation in a distribution utility's retail access program (discontinue participation) are:
 - a. Upon a distribution utility determination that an ESCO's or Direct Customer's action, or failure to act, is likely to cause, or has caused, a significant risk or condition that compromises the safety, system security, or operational reliability of the distribution utility's system and that the ESCO or Direct Customer failed to eliminate immediately the risk or condition upon verified receipt of a non-EDI notice, the distribution utility may discontinue participation as soon as practicable.

- b. Upon a distribution utility determination that an ESCO or Direct Customer responsible for the delivery of natural gas failed, except under force majeure conditions, to deliver natural gas (provided zero quantity) to the distribution utility's service territory for its load, the distribution utility may discontinue participation no sooner than two business days after receipt by the ESCO or Direct Customer of a discontinuance notice.
- c. Upon a distribution utility determination that an ESCO or Direct Customer failed to pay an invoice on the due date, as specified in the distribution utility's tariff, and the ESCO's or Direct Customer's required security or credit limit is insufficient to cover the unpaid amount, with interest, the distribution utility may discontinue participation no sooner than ten business days (cure period) after receipt by the ESCO or Direct Customer of a discontinuance notice. If the ESCO or Direct Customer pays the amount due on or before the expiration of the cure period, the distribution utility shall stop the process to discontinue participation.
- d. Upon a distribution utility determination that an ESCO or Direct Customer responsible for the nomination and delivery of natural gas failed, except in force majeure conditions, to nominate and/or deliver sufficient natural gas to the distribution utility's service territory to satisfy at least 95% of the amount of natural gas directed by a distribution utility for delivery or at least 80% of the daily metered usage of the ESCO's customers or the Direct Customer's specified load or lower percentages included in a balancing program established in a distribution utility's tariffs and/or any operating agreement on any three days during any month, the distribution utility may initiate a discontinuance process no sooner than five business days (cure period) after receipt by the ESCO or Direct Customer of a discontinuance notice. If the ESCO or Direct Customer provides adequate assurances and a description of any necessary process changes that ensure adequate nominations and deliveries on or before the expiration of the cure period, the distribution utility shall stop the discontinuance process. Upon a determination to continue the discontinuance process because the assurances and proposed process changes are inadequate, the distribution utility shall notify the ESCO or Direct Customer that it will discontinue participation no later than 15 business days from the expiration of the cure period. The distribution utility shall notify the ESCO's customers that the distribution utility will discontinue participation on or before the expiration of 15 business days from the end of the cure period. If a failure to provide sufficient natural gas for any 3 days during a calendar month occurred during the past 12 months and the distribution utility sent a related discontinuance notice for each occurrence, it may discontinue participation no sooner than two business days after receipt by an ESCO or Direct Customer of a discontinuance notice.

- e. Upon a distribution utility determination that an ESCO or Direct Customer failed to provide or maintain a creditworthiness standard or required security, the distribution utility may initiate a discontinuance process no sooner than five business days (cure period) after receipt by the ESCO or Direct Customer of a discontinuance notice. If the ESCO or Direct Customer satisfies the creditworthiness standard or provides the required security on or before the expiration of the cure period, the distribution utility shall stop the discontinuance process. Upon a determination to continue with the discontinuance process because the ESCO or Direct Customer failed to comply with the creditworthiness standard or provide adequate security, the distribution utility shall notify the ESCO or Direct Customer that it will discontinue participation no later than 15 business days from the expiration of the cure period. The distribution utility shall notify the ESCO's customers that it will discontinue participation on or before 15 days from the expiration of the cure period. If a failure to comply with the creditworthiness standard or provide adequate security occurred twice during the past 12 months and the distribution utility sent a related discontinuance notice for each failure, it may discontinue participation no sooner than two business days after receipt by an ESCO or Direct Customer of a discontinuance notice.
- f. Upon a distribution utility determination that an ESCO or Direct Customer failed, except in force majeure conditions, to comply with any other applicable provision of the distribution utility's tariff, operating agreement, or GTO manual, the distribution utility may initiate a discontinuance process no sooner than ten business days (cure period) after receipt by the ESCO or Direct Customer of a discontinuance notice. If the ESCO or Direct Customer provides adequate assurances and a description of any necessary process changes that ensure compliance on or before the expiration of the cure period, the distribution utility shall stop the discontinuance process. Upon a determination to continue the discontinuance process because the assurances and proposed process changes are inadequate, the distribution utility shall notify the ESCO or Direct Customer that it will discontinue participation no later than 15 business days from the expiration of the cure period. The distribution utility shall notify the ESCO's customers that it will discontinue participation on or before the expiration of 15 business days after the end of the cure period.

CREDITWORTHINESS**A. Applicability**

This Section establishes creditworthiness standards that apply to ESCOs and Direct Customers. An ESCO's and Direct Customer's participation in a distribution utility's retail access program is contingent upon satisfaction of creditworthiness requirements and provision of any security.

B. ESCOs

1. An ESCO shall satisfy a distribution utility's creditworthiness requirements if:
 - a. The ESCO, or a guarantor, maintains a minimum rating from one of the rating agencies and no rating below the minimum from one of the other two rating agencies; for the purposes of this Section, minimum rating shall mean "BBB" from Standard & Poor's, "Baa2" from Moody's Investor Service, or "BBB" from Fitch Ratings (minimum rating); or,
 - b. The ESCO enters into a billing arrangement with the distribution utility, whereby the distribution utility bills customers on behalf of the ESCO and retains the funds it collects to offset any balancing and billing service charges provided that the distribution utility has a priority security interest with a first right of access to the funds. The ESCO shall submit an affidavit from a senior officer attesting to such utility interest and right.
2. If an ESCO, or a guarantor, is not rated by Standard & Poor's, Moody's Investor Service or Fitch Ratings, it shall satisfy a distribution utility's creditworthiness requirements if the ESCO, or a guarantor:
 - a. Maintains a minimum "1A2" rating from Dun & Bradstreet (Dun and Bradstreet minimum rating) and the ESCO maintains 24 months good payment history with the distribution utility; and,
 - b. Provides any security required by the distribution utility, calculated in accordance with Subdivision D, after deduction of the following unsecured credit allowances:

<u>Rating</u>	<u>Unsecured Credit Allowance</u>
5A1 or 5A2	30% of an ESCO's tangible net worth, up to 5% of the distribution utility's average monthly revenues for the applicable service
4A1 or 4A2	30% of an ESCO's tangible net worth, up to 5% of the distribution utility's average monthly revenues for the applicable service
3A1 or 3A2	30% of an ESCO's tangible net worth, up to 5% of the distribution utility's average monthly revenues for the applicable service
2A1 or 2A2	50% of an ESCO's tangible net worth, up to \$500,000
1A1 or 1A2	50% of an ESCO's tangible net worth, up to \$375,000

An ESCO shall provide information, upon request of the distribution utility, to enable the distribution utility to verify the ESCO's equity. The distribution utility may request reasonable information to obtain the verification and shall safeguard it as confidential information and protect it from public disclosure. The distribution utility may deny the unsecured credit allowance to any ESCO that fails to provide the requested information.

3. A distribution utility may require an ESCO to provide and maintain security in the full amount of the distribution utility's credit risk, calculated in accordance with Subdivision D, if:
 - a. The ESCO, or a guarantor, is not rated;
 - b. The ESCO, or a guarantor, with a minimum rating is placed on credit watch with negative implications or is rated below the minimum rating;
 - c. The ESCO, or a guarantor, is rated below the Dun & Bradstreet minimum rating or the ESCO fails to maintain 24 months good payment history with the distribution utility; or,
 - d. An ESCO issuing consolidated bills fails to render timely bills to customers or to make timely payments to the distribution utility.
4. If a distribution utility's credit risk, associated with an ESCO's participation in its retail access program, exceeds 5% of the distribution utility's average monthly revenues for the applicable service, the distribution utility may require the ESCO, in addition to maintaining a minimum rating, to provide and maintain security in the amount of such excess credit risk.

C. Direct Customers

A Direct Customer shall satisfy a distribution utility's creditworthiness requirements if:

1. Its account is current and remained current for the past 12 months; and,
2. If its debt is rated, it maintains a minimum rating of its long-term unsecured debt securities from one of the rating agencies and no rating below the minimum rating from one of the other two rating agencies.

D. Calculation of Credit Risk and Security

The distribution utility shall calculate its credit risk and establish its security requirements as follows:

1. Delivery Service Risk
 - a. For an ESCO that issues a consolidated bill under a multi-retailer model, a distribution utility may require security in an amount no greater than 45 days of peak usage of the ESCO's customers' projected energy requirements during the next 12 months, priced at the distribution utility's applicable delivery service rate and including relevant customer charges.
 - b. For an ESCO that bills customers for delivery and commodity services under a single retailer model, a distribution utility may require security in an amount no greater than 60 days of peak usage of the ESCO's customers' projected energy requirements during the next 12 months, priced at the distribution utility's applicable delivery service rate and including relevant customer charges.
 - c. Upon an ESCO request, the distribution utility shall establish separate security requirements for summer (April 1 - October 31) and winter (November 1 - March 31) and may retain winter security until the end of two months (April and May) after the end of the winter period.
2. Natural Gas Imbalance Risk
 - a. The distribution utility may require an ESCO or Direct Customer to provide security in an amount no greater than the ESCO's customers' or a Direct Customer's projected maximum daily quantity times peak forecasted NYMEX price for the next 12 months and for upstream capacity to the city gate times 10 days.
 - b. Upon the request of an ESCO or Direct Customer, the distribution utility shall establish separate security requirements for summer (April 1 - October 31) and winter (November 1 - March 31) and may retain winter security until the end of two months (April and May) after the end of the winter period.

3. Major Change in Risk

- a. A major change shall mean a change in credit risk of more than the greater of 10% or \$200,000.
- b. The ESCO or Direct Customer shall promptly notify the distribution utility and DPS of any major change in credit and or rating risk.
- c. The distribution utility may require an ESCO or a Direct Customer, within five days, to provide additional amounts of security if a major change occurs to increase its credit risk, as follows:
 1. If Standard & Poors, Moody's Investor Service, or Fitch Ratings downgrades an ESCO's, or its guarantor's, rating or a Direct Customer's debt below the minimum rating or Dun & Bradstreet downgrades an ESCO's, or its guarantor's, rating or a Direct Customer's debt; or,
 2. An increase occurs in customer usage or in energy prices and such increase is sustained for at least 30 days.
- d. In the event that a major change occurs to decrease a distribution utility's credit and/or rating risk, results in compliance by an ESCO or Direct Customer with creditworthiness requirements, and elimination of the basis for holding some or all of the security, the distribution utility shall return or release the excess amount of the ESCO's or Direct Customer's security with accumulated interest, if applicable. The distribution utility shall return such amount within five business days after receipt of an ESCO or Direct Customer notice informing the distribution utility of the occurrence of such major change.

E. Security Instruments

1. The following financial arrangements are acceptable methods of providing security:
 - a. Deposit or prepayment, which shall accumulate interest at the applicable rate per annum approved by the Public Service Commission for "Other Customer Capital";
 - b. Standby irrevocable letter of credit or surety bond issued by a bank, insurance company or other financial institution with at least an "A" bond rating;
 - c. Security interest in collateral; or,
 - d. Guarantee by another party or entity with a credit rating of at least "BBB" by S&P, "Baa2" by Moody's, or "BBB" by Fitch; or
 - e. Other means of providing or establishing adequate security

2. A distribution utility may refuse to accept any of these methods for just cause provided that its policy is applied in a nondiscriminatory manner to any ESCO.
3. If the credit rating of a bank, insurance company, or other financial institution that issues a letter of credit or surety bond to an ESCO or Direct Customer falls below an "A" rating, the distribution utility shall allow a minimum of five business days for an ESCO or Direct Customer to obtain a substitute letter of credit or surety bond from an "A" rated bank, insurance company, or other financial institution.

F. Lockbox

If the distribution utility and ESCO arrange for a lockbox, security requirements are reduced by 50% provided that the arrangement includes the following:

1. Agreement on allocation of funds and the first right of the distribution utility, in the event of an ESCO's financial difficulty, to obtain funds in the lockbox deposited to the credit of the ESCO;
2. Establishment of rules for managing the lockbox;
3. Agreement on conditions for terminating the lockbox for non-compliance with the rules or for failure to receive customer payments on a timely basis; and,
4. Responsibility of an ESCO for any costs associated with implementing and administering the lockbox.

G. Calling on Security

1. If an ESCO or Direct Customer fails to pay the distribution utility, in accordance with UPB Section 7, Invoices, the distribution utility may draw from security provided that the distribution utility notifies the ESCO or Direct Customer five business days' in advance of the withdrawal and the ESCO or Direct Customer fails to make full payment before the expiration of the five business days.
2. If an ESCO receives a discontinuance notice or elects to discontinue service to customers and owes amounts to the distribution utility, the distribution utility may draw from the security provided by the ESCO without prior notice.
3. If an ESCO files a petition or an involuntary petition is filed against an ESCO under the laws pertaining to bankruptcy, the distribution utility may draw from security, to the extent permitted by applicable law.

H. Application by Distribution Utilities

1. Within ten business days after receipt of a complete ESCO application, a distribution utility shall complete its evaluation of initial creditworthiness, state the rationale for its determination, and provide the calculation supporting the credit limit and any resulting security requirement.

2. A distribution utility shall perform, at least annually, an evaluation, at no charge, of an ESCO's satisfaction of creditworthiness standards and security requirements.
3. A distribution utility shall perform evaluations of creditworthiness, security requirements, and security calculations in a non-discriminatory and reasonable manner.
4. Pending resolution of any dispute, the ESCO or Direct Customer shall provide requested security within the time required in this Section.
5. A distribution utility may reduce or eliminate any security requirement provided that it reduces or eliminates the requirement in a nondiscriminatory manner for any ESCO or Direct Customer. The distribution utility may request reasonable information to evaluate credit risk. If an ESCO or Direct Customer fails to provide the requested information, a distribution utility may deny the ESCO or Direct Customer an opportunity to provide lower or no security.

CUSTOMER INFORMATION**A. Applicability**

This Section establishes practices for release of customer information by distribution utilities or MDSPs to ESCOs and Direct Customers and identifies the content of information sets. The distribution utility or MDSP and an ESCO shall use EDI standards, to the extent developed, for transmittal of customer information and may transmit data, in addition to the minimum information required, via EDI or by means of an alternative system.

B. Customer Authorization Process. The distribution utility or MDSP shall provide information about a specific customer requested by an ESCO authorized by the customer to receive the information.

1. An ESCO shall obtain customer authorization to request information, in accordance with the procedures in UBP Section 5, Changes in Service Providers, Attachments 1, 2, and 3. An ESCO shall inform its customers of the types of information to be obtained, to whom it will be given, how it will be used, and how long the authorizations will be valid. The authorization is valid for no longer than six months unless the sales agreement provides for a longer time.
2. A distribution utility and a MDSP shall assume that an ESCO obtained proper customer authorization if the ESCO is eligible to provide service and submits a valid information request.
3. An ESCO shall retain, for a minimum of two years, verifiable proof of authorization for each customer. Verification records shall be provided by an ESCO, upon request of the DPS staff, within five calendar days after a request is made. Locations for storage of the records shall be at the discretion of the ESCOs.
4. Upon request of a customer, a distribution utility and/or MDSP shall block access by ESCOs to information about the customer.
5. An ESCO and its agent shall comply with statutory and regulatory requirements pertaining to applicable state and federal do-no-call registries.

C. Customer Information Provided to ESCOs¹

1. Release of Information. A distribution utility and a MDSP shall use the following practices for transferring customer information to an ESCO:
 - a. A distribution utility shall provide the information in the Billing Determinant Information Set upon acceptance of an ESCO's enrollment request and the information in the Customer Contact Information Set and the Credit Information Set, upon ESCO request.
 - b. The distribution utility or MDSP shall respond within two business days to valid requests for information as established in EDI transaction standards and within five business days to requests for data and information for which an EDI transaction standard is not available. The distribution utility or MDSP shall provide the reason for rejection of any valid information request.
2. Customer Contact Information Set. The distribution utility or MDSP, to the extent it possesses the information, shall provide, upon an ESCO request, consumption history for an electric account and consumption history and/or² a gas profile for a gas account.
 - a. Consumption history³ for an electric or gas account shall include:
 1. Customer's service address;
 2. Electric or gas account indicator;
 3. Sales tax district used by the distribution utility;
 4. Rate service class and subclass or rider by account and by meter, where applicable;
 5. Electric load profile reference category or code, if not based on service class;
 6. Usage type (e.g., kWh or therm), reporting period, and type of consumption (actual, estimated, or billed);

¹ Upon enrollment of a customer, an ESCO shall receive usage data and any subsequent changes, corrections and adjustments to previously supplied data or estimated consumption for a period, at the same time that the distribution utility validates them for use. An ESCO issuing consolidated bills is entitled to receive billing information, in accordance with UBP Section 9, Billing and Payment Processing.

² If a distribution utility or MDSP offer a gas profile and consumption history, an ESCO may choose either option. A distribution utility or MDSP shall make available, upon request, class average load profiles for electric customers.

³ A distribution utility or MDSP, in addition to EDI transmittal, may provide Web based access to customer history information.

7. 12 months, or the life of the account, whichever is less, of customer data via EDI and, upon separate request, an additional 12 months, or the life of the account, whichever is less, of customer data via EDI or an alternative system at the discretion of the distribution utility or MDSP, and, where applicable, demand information;⁴ if the customer has more than one meter associated with an account, the distribution utility or MDSP shall provide the applicable information, if available, for each meter; and
 8. Electronic interval data in summary form (billing determinants aggregated in the rating periods under a distribution utility's tariffs) via EDI, and if requested in detail, via an acceptable alternative electronic format.
- b. A gas profile for a gas account shall include:
1. customer's service address;
 2. gas account indicator;
 3. sales tax district used by the distribution utility for billing;
 4. rate service class and subclass or rider, by account and by meter, where applicable;
 5. date of gas profile; and,
 6. weather normalization forecast of the customer's gas consumption for the most recent 12 months or life of the account, whichever is less, and the factors used to develop the forecast.
3. Billing Determinant Information Set. Upon acceptance of an ESCO enrollment request, a distribution utility shall provide the following billing information for an electric or gas account, as applicable⁵:
- a. customer's service address, and billing address, if different;
 - b. electric and/or gas account indicator;
 - c. meter reading date or cycle and reporting period;
 - d. billing date or cycle and billing period;
 - e. meter number, if available;
 - f. distribution utility rate class and subclass, by meter;
 - g. description of usage measurement type and reporting period;
 - h. customer's load profile group, for electric accounts only;
 - i. life support equipment indicator;
 - j. gas pool indicator, for gas accounts only;

⁴ A distribution utility may provide data for a standard 24 months or life of the account, whichever is less, as part of its customer contract information set.

⁵ As specified in the EDI standard for an enrollment request and response, the distribution utility may transmit additional data elements, based upon the request, the responding distribution utility, and the commodity type.

- k. gas capacity/assignment obligation code;
- l. customer's location based marginal pricing zone, for electric accounts only; and,
- m. budget billing indicator.⁶

4. Credit Information Set. The distribution utility or MDSP shall provide credit information for the most recent 24 months or life of the account, whichever is less, upon receipt of an ESCO's electronic or written affirmation that the customer provided authorization for release of the information to the ESCO. Credit information shall include number of times a late payment charge was assessed and incidents of service disconnection.

D. Direct Customer Information

A Direct Customer shall receive usage data and any subsequent changes, corrections and adjustments to previously supplied data, and estimated consumption for a period, at the same time that the distribution utility validates them for use. The distribution utility or MDSP shall make available, upon request, to an electric Direct Customer, a class load profile for its service class.

E. Charges for Customer Information

No distribution utility or MDSP shall impose charges upon ESCOs or Direct Customers for provision of the information described in this Section. The distribution utility may impose an incremental cost based fee, authorized in tariffs for an ESCO's request for customer data for a period in excess of 24 months or for detailed interval data per account for any length of time.

F. Unauthorized Information Release

An ESCO, its employees, agents, and designees, are prohibited from selling, disclosing or providing any customer information obtained from a distribution utility or MDSP, in accordance with this Section, to others, including their affiliates, unless such sale, disclosure or provision is required to facilitate or maintain service to the customer or is specifically authorized by the customer or required by legal authority. If such authorization is requested from the customer, the ESCO shall, prior to authorization, describe to the customer the information it intends to release and the recipient of the information.

⁶ This indicator is limited to 12 month levelized payment plans and does not include other payment plans.

CHANGES IN SERVICE PROVIDERS

A. Applicability

This Section establishes practices for receiving, processing, and fulfilling requests for changing a customer's electricity or natural gas provider and for obtaining a customer's authorization for the change. A change in a provider includes transfer from: (1) one ESCO to another; (2) an ESCO to a distribution utility; and (3) a distribution utility to an ESCO. This Section also establishes practices for: an ESCO's drop of a customer or a customer's drop of an ESCO, retention of an ESCO after a customer's relocation within a distribution utility's service area, assignment of a customer, and initiation or discontinuance of procurement of electricity or natural gas supplies by a Direct Customer. This Section does not establish practices for obtaining other energy-related services or changing billing options.

The process of changing a service provider is comprised of two steps. For enrollment with an ESCO, the first step is obtaining customer agreement to accept electric or natural gas service, or both, according to the terms and conditions of an offer. A sales agreement establishes the terms and conditions of the customer's business arrangement with the ESCO. The second step is enrollment and the distribution utility's modification of its records to list the customer's transfer to a provider on a specific date. This transaction is primarily between the ESCO and the distribution utility.

B. Customer Agreement Procedures

An ESCO, or its agent, may solicit and enter into a sales agreement with a customer subject to the following requirements.

1. The ESCO shall obtain a customer agreement to initiate service and enroll a customer and customer authorization to release information to the ESCO by means of one of the following methods.
 - a. telephone agreement and authorization, preceded or followed within three business days by provision of a sales agreement, in accordance with requirements in Attachment 1 – Telephonic Agreement and Authorization;
 - b. electronic agreement and authorization, attached to an electronic version of the sales agreement, in accordance with requirements in Attachment 2 – Electronic Agreement and Authorization; or
 - c. written agreement bearing a customer's signature on a sales agreement (original or fax copy of a signed document), in accordance with requirements in Attachment 3 – Written Agreement and Authorization.
2. The ESCO shall provide residential customers the right to cancel a sales agreement within three business days after its receipt (cancellation period).

C. Provision of List of ESCOs to Customers

Distribution utilities shall offer to provide a customer who requests initiation of delivery service with an up-to-date list of ESCOs and provide the list at any time, upon request of any customer.

D. Customer Enrollment Procedures

1. An ESCO shall transmit an enrollment request⁷ to a distribution utility no later than 15 calendar days prior to the effective date of the enrollment. The enrollment request shall contain as a minimum, the information required for processing set forth in Attachment 4 - Enrollment Request.
2. The distribution utility shall process enrollment requests in the order received.
3. The distribution utility shall accept only one valid enrollment request⁸ for each commodity per customer during a switching cycle. If the distribution utility receives multiple enrollment requests for the same customer during a switching cycle, it shall accept the first valid enrollment request and reject subsequent requests.
4. An ESCO shall submit an enrollment request after it provides the sales agreement to the customer and, for residential customers, after the expiration of the cancellation period⁹.
5. After receipt of an enrollment request, the distribution utility shall, within one business day, acknowledge its receipt, and, within two business days, provide a response indicating rejection and the reason, or acceptance and the effective date for the change of provider.
6. Upon acceptance of an enrollment request, the distribution utility shall send a notice to any incumbent ESCO that the customer's service with that ESCO will be terminated on the effective date of the new enrollment. In the event that the distribution utility receives notice no later than three business days before the effective date that a pending enrollment is cancelled, the

⁷ When a utility customer selects, or agrees to be randomly assigned to, an ESCO through participation in an ESCO Referral Program, an enrollment request from an ESCO is not sent. The utility will enroll the participating customer, notify the ESCO of the customer selection or designation, and provide customer account details via a response transaction.

⁸ Criteria for determining the validity of an EDI transaction are described in the EDI processing protocols adopted in Case 98-M-0667, Electronic Data Interchange.

⁹ When the utility enrolls the customer with an ESCO, in conjunction with the customer's participation in an ESCO Referral Program, it is the responsibility of the ESCO to provide the customer with a sales agreement. A customer enrolled by the utility will continue to have the opportunity to cancel prior to the expiration of the initial incentive period established by the utility.

distribution utility shall transmit a request to reinstate service to any incumbent ESCO, unless the ESCO previously terminated service to the customer or the customer requests a return to full utility service.

7. With the exception of a new installation use of an interim estimate of consumption or a special meter reading,¹⁰ a change of providers is effective: for an electric customer, on the next regularly scheduled meter reading date; and, for a gas customer, on the next regularly scheduled meter reading date or the first day of the month, in accordance with provisions set forth in the distribution utility's tariff.¹¹ The distribution utility shall set the effective date, which shall be no sooner than 15 calendar days after receipt of an enrollment request. Service to new delivery customers is effective after the installation is complete and, if necessary, inspected.
8. An off-cycle change of an electric service provider is allowed no later than 15 calendar days before the date requested for the change if a new ESCO or a customer arranges for a special meter reading or agrees to accept an interim date for estimating consumption. The ESCO or customer is required to pay the cost for any special meter reading, in accordance with provisions set forth in the distribution utility's tariff. A change based upon an interim estimate of consumption or a special meter reading is effective on the date of the interim estimate or special meter reading. Off-cycle changes of gas service providers are allowed if the incumbent and new ESCO agree on an effective date no later than 15 calendar days following the request.

E. Customer Notification

1. The distribution utility shall send no later than one calendar day after acceptance of an enrollment request a verification letter to the customer notifying the customer of the acceptance. The notice shall inform the customer that if the enrollment is unauthorized or the customer decides to cancel it, the customer is required immediately to so notify the distribution utility and pending ESCO.
2. Upon receipt of such cancellation, the distribution utility shall cancel the pending enrollment and reinstate the customer with the incumbent ESCO, if any, or the distribution utility, provided that no less than three business days remain before the planned effective date. If less than three business days remain, the change to the new provider shall occur and remain effective for one billing cycle. The customer shall return to full utility service at the end of

¹⁰ If meters are read bimonthly and bills are issued monthly using estimated usage, the effective date for the interim months is the date usage estimated for billing purposes.

¹¹ If meters are not read within two business days of the scheduled meter reading day, the distribution utility or MDSP shall estimate usage as of the scheduled meter reading day. The effective date for a change of provider is that date, except where changes of natural gas suppliers are scheduled for the first of the month.

the next switching cycle, unless the customer is enrolled by another ESCO at least 15 days before the beginning of the next switching cycle.

3. If a customer notifies the pending ESCO of such cancellation, the pending ESCO shall send a customer's drop request to the distribution utility at least three business days prior to the effective date for the pending enrollment.

F. Rejection of Enrollment Requests

The distribution utility may reject an enrollment request for any of the following reasons:

1. Inability to validate the transaction;
2. Missing or inaccurate data in the enrollment request;
3. ESCO's ineligibility to provide service in the specified territory;
4. No active or pending delivery service;
5. A pending valid prior enrollment request; or
6. The account is coded as ineligible for switching.

G. Customer Relocations Within a Service Territory

1. A customer requesting relocation of service within a distribution utility's service territory and continuation of its ESCO service arranges for continuation at the new location of delivery service by contacting the distribution utility and of commodity service by contacting the ESCO.¹² Each provider contacted by the customer shall remind the customer of the need to contact the other provider to initiate the change in service or arrange for a conference call with the other provider and customer, and within two days, notify the other provider that a customer requested relocation of service.
2. The distribution utility's representative shall inform the customer, or the customer's agent, and the ESCO of the effective dates, contingent upon the customer's approval, for discontinuance of service at one location and commencement of service at the new location. The ESCO shall confirm to the distribution utility that it shall continue service to the customer at the new location.
3. In the event that the ESCO is unable, or does not wish, to continue service to the customer at the new location, the distribution utility shall provide full utility service to the customer.

H. Customers Returning to Full Utility Service

1. A customer arranges for a return to full utility service by contacting the distribution utility and ESCO. Each provider contacted by the customer shall,

¹² In the Single Retailer Model, the customer contacts only its ESCO. The ESCO notifies the distribution utility of the customer's new service location and mailing address, if applicable. Direct customers contact only the distribution utility.

within two days, notify the other provider that a customer requested a change of service and remind the customer of the need to contact the other provider to initiate the change in service providers, or arrange for a conference call with the other provider and customer. An ESCO, acting as a customer's agent, may contact the distribution utility to initiate a return to full utility service from ESCO service. If a change to full utility service results in restrictions on the customer's right to choose another supplier or application of a rate that is different than the one applicable to other full service customers, the distribution utility shall provide advance notice to the customer.

2. A Direct Customer that intends to change from procuring its own supplies to full utility service shall notify the distribution utility.
3. No ESCO shall transfer 5,000 or more customers during a billing cycle to full utility service, unless it provides no less than 60 calendar days notice to the distribution utility and DPS. The transfers shall occur on the customers' regularly scheduled meter reading dates, unless the distribution utility and ESCO agree to a different schedule.
4. The following process sets forth the steps for an ESCO's return of a customer to full utility service .
 - a. An ESCO may discontinue service to a customer and return the customer to full utility service provided that the ESCO notifies the customer and the distribution utility no later than 15 calendar days before the effective date of the drop. The ESCO's right to discontinue service to any customer is subject to any limitations contained in its sales agreement.
 - b. An ESCO's notice to retail customers shall provide the following information:
 1. Effective date of the discontinuance, established by the distribution utility, unless the ESCO arranged for an off-cycle date;
 2. Statement that the customer has the options to select another ESCO, receive full utility service from the distribution utility, or, if available in the distribution utility's service area and the customer is eligible, accept random assignment by the distribution utility to an ESCO; and,
 3. Statement that customer shall receive full utility service until the customer selects a new ESCO and the change in providers is effective, unless the distribution utility notified the customer that it will terminate its delivery service on or before the discontinuance date.
 - c. The ESCO shall provide a sample form of the notice it plans to send to its customers when it transfers 5,000 or more customers to the DPS for review no later than five calendar days before mailing the notice to customers.

I. New Delivery Customers

1. A customer may initiate distribution utility delivery service and subsequently enter into a customer agreement with an ESCO for commodity supply, or arrange for both services at the same time.
2. A customer may initiate commodity supply through programs offered by some distribution utilities that involve assignments of customers to ESCOs that have agreed to accept additional customers.
3. A customer may authorize an ESCO to act as the customer's agent (ESCO agent) in establishing distribution utility service. The ESCO agent shall retain, and produce upon request, documentation that the customer authorized the ESCO to act as the customer's agent.
4. An ESCO acting as a customer's agent shall establish a new delivery account on behalf of the customer and enroll the customer with the distribution utility so that ESCO commodity service commences when distribution utility delivery service begins. The ESCO shall retain, and produce upon request, documentation that the customer authorized the ESCO to act as the customer's agent. An ESCO that is a customer's agent is authorized to submit the customer's application for new delivery service, in compliance with requirements for such applications stated in the law, rules and distribution utility tariffs. An ESCO shall provide the customer's name, service address and, if different, mailing address, telephone number, customer's requested service date for initiation of delivery service, and information about any special need customers, including any need for life support equipment. An ESCO shall refer a customer directly to a distribution utility for arrangement of distribution related matters, such as contribution-in-aid of construction and construction of facilities necessary to provide delivery service and settling of arrears and posting security.
5. Upon a customer's application for service, the distribution utility shall provide an ESCO with the effective date for initiation of delivery service and any other customer information provided to an ESCO in an acceptance of an enrollment request. The distribution utility may notify the customer of the acceptance.

J. Multiple Assignments of Sales Agreements

1. An ESCO may assign all or a portion of its sales agreements to other ESCOs provided that the assigned sales agreements clearly authorize such assignments or the ESCO provides notice to its customers prior to the assignments and an opportunity for each customer to choose another ESCO or return to full utility service. An ESCO shall provide a written notice no later than 30 calendar days prior to the assignment or transfer date to each customer and distribution utility. The notice to the distribution utility shall include a copy of the assignment document, with financial information redacted, executed by the officers of the involved ESCOs, and a copy of the notice sent to the customer, or, if a form notice, a copy of the form and a list of recipients.

2. The assignment documents shall specify the party responsible for payment or reimbursement of any and all sums owed under any distribution utility tariff or Federal Energy Regulatory Commission tariff and any service agreements relating thereto, and under any agreements between ESCOs and distribution utilities and between ESCOs and their customers.
3. An ESCO's notices to customers shall provide the following information:
 - a. effective date of the assignment;
 - b. the name, mailing and e-mail addresses, and telephone number of the assigned ESCO; and,
 - c. any changes in the prices, terms and conditions of service, to the extent permitted by the sales agreement.
4. The ESCO shall provide sample forms and any major modifications of such notices to the DPS for review no later than five calendar days before mailing them to customers.
5. The distribution utility shall, within two business days after receipt of an assignment request, acknowledge and initiate processing of the request and send written notice of the request to the ESCO's assigned customer.

K. Unauthorized Customer Transfers

1. A change of a customer to another energy provider without the customer's authorization, commonly known as slamming, is not permitted. The distribution utility shall report slamming allegations to the DPS.
2. An ESCO that engages in slamming shall refund to a customer the difference between charges imposed by the slamming ESCO that exceed the amount the customer would have paid its incumbent provider and pay any reasonable costs incurred by the distribution utility to change the customer's provider from the ESCO that engaged in slamming to another provider.
3. ESCOs shall retain for two years documentation of a customer's authorization to change providers. Such documentation shall comply with the requirements described in Attachments 1, 2 or 3.

L. Lists of ESCO Customers; Budget Billing; Charges and Fees

1. A distribution utility, upon an ESCO's request, shall provide at no charge, once each calendar quarter, a list of the ESCO's customers at the time of the request and, monthly, the number of accounts enrolled with an ESCO and the ESCO's sales (kWh and/or dekatherms). ESCOs may obtain such customer lists at other times for cost-based fees set forth in distribution utility tariffs.
2. A distribution utility shall adjust its bills rendered under a budget billing plan on the effective date for changing a provider and include the adjustments in the customer's next bill.
3. Upon enrollment of a distribution utility customer with an ESCO or return of an ESCO customer to full utility service, a distribution utility shall impose no

restrictions on the number or frequency of changes of gas or electricity providers, except as provided in this paragraph. The distribution utility shall accept only one valid enrollment request for each commodity per customer during a switching cycle. If multiple requests are received for the same customer during a switching cycle, the distribution utility shall accept the first valid enrollment request and reject subsequent enrollment requests.

4. A distribution utility shall impose no charge for changing a customer's gas or electricity provider.
5. A distribution utility may establish a \$20 fee in its tariffs for a special meter reading.

Attachment 1**Telephonic Agreement
and Authorization Requirements**

- A. To enter into a telephonic agreement with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information, an ESCO, or its agent, shall audio record the telephone conversation with the potential customer. The conversation shall contain the following information, as applicable, to substantiate the customer's agreement or authorization:
1. A statement that the conversation is recorded and that oral acceptance of the ESCO's offer is an agreement to initiate service and begin enrollment;
 2. A description of the prices, terms and conditions of the ESCO's offer;
 3. A statement from the customer accepting such terms and conditions;
 4. A description of the types of information that the ESCO needs to obtain from a distribution utility or MDSP and the purposes of its use, a request that the customer provide authorization for release of this information, and effective duration of the authorization;
 5. A statement from the customer providing such authorization;
 6. A statement that a customer will receive a written copy of the sales agreement by mail, e-mail or fax and that a residential customer may rescind the agreement within three business days after its receipt; a statement that a customer may rescind the authorization for release of information at any time; provision of a local or toll-free telephone number or e-mail address to the customer for these purposes; upon cancellation of the agreement, the ESCO shall provide a cancellation number to the customer during the telephone call or in response to an e-mail message;
 7. A statement from the customer verifying the date and time of the telephone call; and
 8. A statement from the customer providing or verifying the customer's name, postal and, any e-mail address (if the customer chooses to provide it), distribution utility customer account number, and any additional information needed to verify the customer's identity.
- B. The ESCO, or its agent, shall provide a copy of any sales agreement to the customer by mail, e-mail or fax within three business days after the telephone agreement and authorization occurs. The sales agreement shall set forth the customer's rights and responsibilities and describe the offer in detail, including the specific prices, terms, and conditions of ESCO service.
- C. The ESCO, or its agent, shall conduct the telephone conversation in the same language used in marketing or sales materials presented to the customer, and communicate clearly and in plain language.

Attachment 1 (cont.)

- D. An ESCO shall retain telephonic agreement and/or authorization records for no less than two years from the effective date of the agreement and/or authorization. In the event of any dispute involving a telephonic agreement or authorization, the ESCO shall make available the audio recording of the customer's agreement and/or authorization within five business days after a request from the DPS.

Attachment 2**Electronic Agreement and
Authorization Requirements**

- A. To enter into an electronic agreement with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information, an ESCO, or its agent, shall electronically record communications with the potential customer. An ESCO shall provide the following electronic information, as applicable, to substantiate the customer's agreement and/or authorization:
1. A statement that electronic acceptance of a sales agreement is an agreement to initiate service and begin enrollment;
 2. The sales agreement containing the prices, terms and conditions applicable to the customer; an identification number and date to allow the customer to verify the specific sales agreement to which the customer assents;
 3. A requirement that the customer accept or not accept the sales agreement by clicking the appropriate box, displayed as part of the terms and conditions; after the customer clicks the appropriate box to accept the sales agreement, the system shall display a conspicuous notice that the ESCO accepts the customer;
 4. Use of an electronic process that prompts a customer to print or save the sales agreement and provides an option for the customer to request a hard copy of the sales agreement; an ESCO shall send the hard copy by mail within three business days after a customer's request;
 5. A description of the types of information that the ESCO needs to obtain from a distribution utility or MDSP and the purposes of its use, a request that the customer provide authorization for release of this information, and effective duration of the authorization;
 6. A requirement that the customer agree or not agree to provide such authorization by clicking the appropriate box, displayed as part of the terms and conditions;
 7. A statement that a residential customer may rescind the agreement and authorization within three business days after electronic acceptance of the sales agreement; a statement that a customer may rescind the authorization for release of information at any time; provision of a local or toll-free telephone number, and/or an e-mail address for these purposes; upon cancellation of the agreement, the ESCO shall provide a cancellation number;
 8. Verification of the date and time of the electronic agreement and authorization; and
 9. Provision by the customer of the customer's name, address, distribution utility customer account number, and any additional information to verify the customer's identity.

Attachment 2 (cont.)

- B. The ESCO shall, within three business days of any final agreement to initiate service to a customer, send an electronic confirmation notice to the customer at the customer's e-mail address.
- C. The ESCO shall use an encryption standard that ensures the privacy of electronically transferred customer information, including information relating to enrollment, renewal, re-negotiation, and cancellation.
- D. Upon request of a customer, the ESCO shall make available additional copies of the sales agreement throughout its duration. An ESCO shall provide a toll-free telephone number and e-mail address for a customer to request a copy of the sales agreement.
- E. An ESCO shall retain in a retrievable format for no less than two years from the effective date of the customer's acceptance and documentation of a customer's agreement and/or authorization. In the event of any dispute involving an electronic agreement or authorization, the ESCO shall provide a copy of the customer's acceptance of the sales agreement or and/or authorization for release of information or on-line access to the acceptance and/or authorization within five calendar days after a request from the DPS.

Attachment 3**Written Agreement and Authorization
Requirements**

- A. An ESCO may enter into a written agreement (original or fax copy of a signed document) with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information. A sales agreement shall contain the following information, as applicable:
1. A statement that a signature on a sales agreement is an agreement to initiate service and begin enrollment;
 2. A description of the specific prices, terms, and conditions of ESCO service applicable to the customer;
 3. A description of the types of information that the ESCO needs to obtain from a distribution utility or MDSP, the purposes of its use, and effective duration of the authorization;
 4. A statement that acceptance of a the agreement is an authorization for release of such information;
 5. A customer signature and date; the sales agreement shall be physically separate from any check, prize or other document that confers any benefit on the customer as a result of the customer's selection of the ESCO;
 6. A statement that a residential customer may rescind the agreement within three business days after signing the sales agreement; a statement that a customer may rescind the authorization for release of information at any time; provision of a local, toll-free telephone number, and/or e-mail address for these purposes; the customer may fax a copy of a signed sales agreement to the ESCO; upon cancellation of the agreement, the ESCO shall provide a cancellation number; and
 7. The customer's name, mail and any c-mail address (if the customer chooses to provide it), distribution utility account number, and any additional information to verify the customer's identify.
- B. ESCOs shall retain written agreements and/or authorizations for no less than two years from the effective date of the agreement and/or authorization. In the event of any dispute involving a sales agreement or authorization, the ESCO shall provide a copy of the sales agreement and/or authorization within five business days after a request from the DPS.

Attachment 4**Enrollment and Drop Requests
Information Requirements**

- A. An ESCO shall provide the following information for enrollment requests, and an ESCO or distribution utility shall provide the following information for drop requests:
1. Utility ID (DUNS# or tax ID);
 2. ESCO ID (DUNS# or tax ID);
 3. Commodity requested (electric or gas); and,
 4. Customer's utility account number (including check digit, if applicable).
- B. The following information is required for enrollment requests:
1. Customer's bill option;
 2. For distribution utility rate ready consolidated billing:
 - a. an ESCO's fixed charge, commodity price, sales and use tax rate or rate code;
 - b. ESCO customer account number;
 - c. budget billing status indicator; and,
 - d. tax exemption percent and portion taxed as residential.
 3. For Single Retailer Model: special needs indicator;
 4. For gas service: gas capacity assignment/obligation indicator, and, if applicable, gas pool ID, gas supply service options, and human needs indicator;
 5. For electric service: indicator for a partial requirements customer, if applicable;
- C. For drop requests:
1. Reason for the drop;
 2. For distribution utility request, service end date;
 3. For ESCO initiated request, effective date of customer move, if applicable; and
 4. For ESCO initiated request in Single Retailer Model, customer's service and mailing address.

CUSTOMER INQUIRIES**A. Applicability**

This Section establishes requirements for responses by an ESCO or distribution utility to retail access customer inquiries. An ESCO or distribution utility shall respond to customer inquiries sent by means of electronic mail, telecommunication services, mail, or in meetings. The subjects raised in inquiries may result in the filing of complaints.

B. General

1. Distribution utilities and ESCOs shall provide consistent and fair treatment to customers.
2. Distribution utilities and ESCOs shall maintain processes and procedures to resolve customer inquiries without undue discrimination and in an efficient manner and provide an acknowledgement or response to a customer inquiry within 2 days and, if only an acknowledgement is provided, a response within 14 days.
3. Distribution utilities and ESCOs shall provide local or toll-free telephone access from the customer's service area to customer service representatives (CSRs) responsible for responding to customer inquiries and complaints.
4. CSRs shall obtain information from the customer to access and verify the account or premises information. Once verification is made, the CSR shall determine the nature of the inquiry, and, based on this determination, decide whether the distribution utility or the ESCO is responsible for assisting the customer.
5. The CSR shall follow normal procedures for responding to inquiries. If the inquiry is specific to another provider's service, the CSR shall take one of the following actions;
 - a. Forward/transfer the inquiry to the responsible party;
 - b. Direct the customer to contact the responsible party; or,
 - c. Contact the responsible party to resolve the matter and provide a response to the customer.
6. Each distribution utility and ESCO shall maintain a customer service group to coordinate and communicate information regarding customer inquiries and designate a representative to provide information relating to customer inquiries to the DPS.
7. ESCOs may provide a teletypewriter (TTY) system or access to TTY number, consistent with distribution utility tariffs.

C. Specific Requests for Information

1. A distribution utility or ESCO shall respond directly to customer inquiries for any information that is related to commodity supply and/or delivery service, to the extent it has the necessary information to respond.
2. The entity responsible for the accuracy of meter readings shall respond to customer inquiries related to usage.
3. The distribution utility and ESCO shall respond to customer inquiries about billing and payment processing, in accordance with UBP Section 9, Billing and Payment Processing.

D. Emergency Contacts

1. An emergency call means any communication from a customer concerning an emergency situation relating to the distribution system, including, but not limited to, reports of gas odor, natural disaster, downed wires, electrical contact, or fire.
2. The ESCO CSR shall transfer emergency telephone calls directly to the distribution utility or provide the distribution utility's emergency number for direct contact to the distribution utility. If no ESCO CSR is available, the ESCO shall provide for after-hours emergency contacts, including transfer of emergency calls directly to a distribution utility or an answering machine message that includes an emergency number for direct contact to the distribution utility.
3. Each ESCO shall provide periodic notices or bill messages to its customers directing them to contact the distribution utility in emergency situations and providing the emergency number.

DISTRIBUTION UTILITY INVOICES**A. Applicability**

This Section establishes procedures for invoices of charges for services provided by the distribution utility directly to an ESCO or Direct Customer. A distribution utility and ESCO or Direct Customer may agree to establish other arrangements and procedures for presentation and collection of invoices for services rendered.

B. Invoices

1. An ESCO or Direct Customer shall pay the full amount due, without deduction, set-off or counterclaim, within 20 calendar days after the date of electronic transmittal or postmarked date (due date). Subsequent to the due date, charges are overdue and subject to late payment charges at the rate of 1.5% per month. The overdue charges include the amount overdue, any other arrears, and unpaid late payment charges. The distribution utility may provide, upon request, supporting or back-up data in electronic form, if available on its computer system.
2. A distribution utility shall provide interest at the rate of 1.5% on an overpayment caused by the distribution utility's erroneous billing, provided that it may, without applying interest, credit all or a portion of the overpayment to the next bill issued within 30 days and/or refund all or a portion of the overpayment, upon request, within 30 days after its receipt. The distribution utility shall refund any credit balances, upon request.
3. An ESCO or Direct Customer shall make payments by means of an electronic funds transfer. A distribution utility shall use any partial payments first to pay any arrears and second to pay current charges.

C. Billing Inquiries and Disputes

1. An ESCO or Direct Customer shall make any claims relating to inaccuracies of invoices in writing no later than 90 calendar days after the date of electronic transmittal or postmarked date. ESCOs and/or Direct Customers are responsible for payment of disputed charges during any pending dispute.
2. A distribution utility shall designate an employee and provide a telephone number and e-mail address for receipt of inquiries from an ESCO or Direct Customer relating to invoices. The employee shall direct an ESCO or Direct Customer that presents an inquiry or complaint to the responsible and knowledgeable person able to explain charges on an invoice.
3. A distribution utility shall acknowledge in writing receipt of an inquiry within five calendar days after its receipt. A distribution utility shall investigate and respond in writing to the inquiry within 20 calendar days after its receipt.
4. A distribution utility shall refund any overpayments, including interest, within five calendar days after it makes a determination that an ESCO or Direct Customer made an overpayment. It may provide the refund by applying a

credit to any overdue amounts or making direct payment of any remainder. The distribution utility shall provide refunds by means of an electronic funds transfer. Interest is calculated at the rate of 1.5 % per month from the date of the overpayment to the refund.

5. No interest is required on overpayments voluntarily made by an ESCO or Direct Customer to an account, unless an overpayment is applied to security.

**DISPUTES INVOLVING
DISTRIBUTION UTILITIES, ESCOs
OR DIRECT CUSTOMERS**

A. Applicability

This Section describes the dispute resolution processes available at the DPS to resolve disputes relating to competitive energy markets involving utilities, ESCOs and/or Direct Customers, including disputes alleging anti-competitive practices. The processes are not available to resolve disputes between retail customers and ESCOs or distribution utilities. They are also not applicable to matters that, in the opinion of the DPS Staff, should be submitted by formal petition to the Public Service Commission for its determination or are pending before a court, state or federal agency. The availability of the processes does not limit the rights of a distribution utility, ESCO or Direct Customer to submit any dispute to another body for resolution.

B. Dispute Resolution Processes

The parties shall in good faith use reasonable efforts to resolve any dispute before invoking any of these processes. Distribution utility tariffs and operating and service agreements between the parties shall identify the processes used to resolve disputes, and shall refer to the dispute resolution processes described in this Section as acceptable processes to resolve disputes.

1. Standard Process

The parties shall use a method to send documents described in this paragraph that will verify the date of receipt.

Any distribution utility, ESCO or Direct Customer may initiate a formal dispute resolution process by providing written notice to the opposing party and DPS Staff. Such notice shall include a statement that the UBP dispute resolution process is initiated, a description of the dispute, and a proposed resolution with supporting rationale. DPS Staff may participate in the process at this or any later point to facilitate the parties' discussions and to assist the parties in reaching a mutually acceptable resolution.

- a. No later than ten calendar days following receipt of the dispute description, if no mutually acceptable resolution is reached, the opposing party shall provide a written response containing an alternative proposal for resolution with supporting rationale and send a copy to DPS Staff.
- b. No later than ten days after receipt of the response, if no mutually acceptable resolution is reached, any party or DPS Staff may request that the parties schedule a meeting for further discussions. The parties shall

meet no later than 15 calendar days following such request, upon advance notice to DPS Staff, unless the parties and DPS Staff agree upon another date. The DPS may assign one or more Staff members to assist the parties in resolving the dispute.

- c. If no mutually acceptable resolution is reached within 40 calendar days after receipt of the written description of the dispute, any party may request an initial decision from the DPS. A party to the dispute may appeal the initial decision to the Public Service Commission.
- d. If the parties reach a mutually acceptable resolution of the dispute, they shall provide to DPS Staff a description of the general terms of the resolution.

2. Expedited Process

In the event that an emergency situation arises to justify immediate resolution of a dispute, any party may file a formal dispute resolution request with the Secretary to the Public Service Commission asking for expedited resolution. An emergency situation includes, but is not limited to, a threat to public safety or system reliability or a significant financial risk to the parties or the public. The filing party shall provide a copy of the request to other involved parties and the DPS Staff designated to receive information related to dispute resolution under this Section. The request shall describe in detail the emergency situation requiring expedited resolution, state in detail the facts of the dispute, and, to the extent known, set forth the positions of the parties.

BILLING AND PAYMENT PROCESSING

A. Applicability

This Section establishes requirements¹³ for billing and payment processing options offered by a distribution utility and ESCO in a multi-retailer model. This Section does not establish requirements for billing and payment processing in the single retailer model. A distribution utility and ESCO shall comply with the requirements established in this Section, unless they agree upon modifications or other procedures for billing and payment processing in a Billing Services Agreement.

B. Billing and Payment Processing Options: General Requirements

1. A distribution utility shall offer to ESCOs without undue discrimination the billing and payment processing options available in its service territory.
2. A customer participating in a retail access program shall select from the billing and payment processing options offered by ESCOs.
3. A distribution utility shall allow its customers to select, through their ESCOs, one of the billing and payment options available in the distribution utility's service territory.
4. An ESCO may offer to its customers billing and payment processing options available in the customer's service territory and shall maintain or provide for the capability of issuing a separate bill for its services under the dual billing option. An ESCO customer may direct the billing party to send its consolidated bills or dual bills to a third party for processing and payment.
5. A distribution utility or ESCO may perform the responsibilities of a billing party for a customer and the other provider (non-billing party) based upon the billing and payment processing options available to the customer and the customer's choice.
6. A distribution utility or MDSP shall make validated usage information available to the billing and non-billing parties at the time that the distribution utility or MDSP determines that the information is acceptable.¹⁴
7. Information on customer usage, billing, and credit is confidential. A distribution utility or MDSP may release such information, upon a customer's authorization, in accordance with the UBP Section 5, Changes in Service Providers.
8. A distribution utility and ESCO shall demonstrate the technical capability to exchange information electronically for their billing and payment processing options.
9. An ESCO shall provide 60 calendar days notice by mail, e-mail or fax to a distribution utility of any plan to offer a billing option that is not currently offered to its customers. The distribution utility may agree to a shorter notice period preceding initiation of the

¹³ The requirements are applicable when EDI is available upon issuance by the Commission of data standards applicable to a bill model and operational upon successful completion of the testing required for a bill model.

¹⁴ A distribution utility or MDSP shall provide electronic interval data in summary form (billing determinants aggregated in the rating periods under a distribution utility's tariffs) via EDI and, if requested, in detail via an acceptable alternative electronic format if retrieved from meters.

option. The 60 calendar-day notice shall not impose any obligation on any party to proceed without a successful test of data exchange capability and the fulfillment of other obligations described in this Section. If an ESCO later changes its system, it shall provide adequate advance notice and conduct any additional testing required.

10. A distribution utility and an ESCO are responsible for separately remitting their tax payments to the appropriate taxing authorities.

C. Consolidated Billing: General Requirements

1. A distribution utility and ESCO shall establish in a BSA detailed expectations for their responsibilities, including consequences for any failure to carry out such responsibilities.
2. A distribution utility may use the bill ready or rate ready method¹⁵ for issuing consolidated bills. An ESCO that offers consolidated billing shall use a bill ready method.
3. A customer receiving delivery service from a distribution utility that is a combination natural gas and electric corporation (combination retail access customer) may receive a consolidated bill for both energy services if:
 - a. The distribution utility issues the consolidated bill;
 - b. One ESCO supplies the customer with both natural gas and electricity;
 - c. An ESCO supplying only one of the commodities agrees to bill for charges for the service provided by the other ESCO; or,
 - d. Separate distribution utility accounts are established for each service.
4. A combination retail access customer may receive separate consolidated bills for each commodity or a dual bill for one commodity and a consolidated bill for the other provided that the distribution utility's system is capable of providing separate accounts for each commodity. A distribution utility shall establish bill cycles and payment due dates. A distribution utility may charge a fee, as set forth in its tariff, to an ESCO to establish, upon the ESCO's request, a separate account for one of the commodities the distribution utility provides.

D. Consolidated Billing: Functions and Responsibilities

1. A billing party shall perform the following functions and responsibilities:
 - a. If the bill ready method is used, receive bill charges and other billing information from the non-billing party;
 - b. If the rate ready method is used, receive rates, rate codes and/or prices (fixed and/or variable) and other billing information from the non-billing party;
 - c. Receive bill messages and bill inserts from the non-billing party;
 - d. If the bill ready method is used, acknowledge receipt of the non-billing party's information and accept or reject it;

¹⁵ A distribution utility electing the rate ready method for utility consolidated billing is not obligated to calculate or bill separately for other goods and services that an ESCO may provide.

- e. If the rate ready method is used,¹⁶ calculate billed charges, including sales and use taxes; the non-billing party is required to provide the customer's sales and use tax rate to the billing party;
 - f. Print or make available electronically consolidated bills that state the non-billing party's charges, including taxes, arrearages, late fees, and bill messages;
 - g. Insert in bill envelopes consolidated bills and inserts required by statute, regulation or Public Service Commission order;
 - h. Stamp, sort and mail consolidated bills or, if authorized, transmit bills electronically;
 - i. Cancel and rebill charges;
 - j. Notify the non-billing party of amounts billed, by account, within two business days after rendering bills to customers;
 - k. Receive and record customer payments;
 - l. Allocate and transmit the non-billing party's share of receipts, by account, to the non-billing party;
 - m. Respond to general inquiries and complaints about the bill and its format; refer customers to the non-billing party for inquiries and complaints related to the non-billing party's rates, charges, services, or calculations; and,
 - n. Maintain records of billing information, including amounts collected, remaining and transferred, and dates.
- 2. If the bill ready method is used, each party shall calculate and separately state sales and use taxes applicable to its charges; if the rate ready method is used, the billing party shall calculate and separately state the state sales and use taxes applicable to its charges and the non-billing party's charges.
 - 3. A party that requires a customer's deposit shall administer it. If a non-billing party applies a customer deposit to an outstanding balance, it shall notify the billing party.
 - 4. Upon receipt of payments, a non-billing party shall notify the billing party.
 - 5. To initiate consolidated billing using the rate ready method, the non-billing party shall provide the billing party with the rates, rate codes, and/or prices (fixed and/or variable) and tax rates necessary to calculate the non-billing party's charges. The billing party shall specify in the BSA the number of prices for each service class per commodity accepted, deadline for transmission, effective date, and acceptable frequency of changes.¹⁷
 - 6. The billing party may process special handling requests from customers provided that it obtains agreement from the non-billing party for requests that affect it;

¹⁶ A distribution utility is not required to calculate or bill for ESCO services that are not directly related to the commodity it delivers.

¹⁷ If a billing party's billing system is capable of providing the service, a billing party shall, upon request, apply a different rate, rate code, and/or price and tax rate to usage during different portions of the billing cycle to service provided after the effective date of the change. The non-billing party shall request a change in the rate, rate code, and/or price no later than four business days prior to the effective date requested.

7. The billing party is not required to calculate or provide separate statements to customers regarding gross receipts taxes applicable to a non-billing party's charges. The non-billing party may calculate and provide information on the gross receipts taxes applicable to its charges in a bill message or, if the bill ready method is used, as a line item on the bill.
8. The non-billing party may offer special billing features, such as budget billing or average payment plans.

E. Consolidated Billing: Initiation, Changes or Discontinuance

1. Initiation

- a. An ESCO that proposes to issue consolidated bills shall establish and provide to a distribution utility written procedures for billing and payment processing that ensure billing accuracy and timeliness, proper distribution of a distribution utility's bill messages and inserts, and proper allocation and transfer of distribution utility funds.
- b. No distribution utility may impose a fee on an ESCO to process its application to offer consolidated billing.

2. Changes

A request to change a customer's billing option shall be made on or before 15 calendar days prior to the scheduled meter reading date.

3. Suspension and Discontinuance

- a. A distribution utility may suspend or discontinue an ESCO's right to offer consolidated billing as a billing party or a non-billing party for failure to comply with a Billing Services Agreement. Suspension of the right to offer consolidated billing means that the ESCO is prohibited from offering consolidated billing to new customers.
- b. Upon a determination by a distribution utility to suspend or discontinue an ESCO's right to offer consolidated billing to customers, it shall provide notice on or before 15 calendar days prior to the proposed date for the suspension or discontinuance (cure period) to the ESCO and state the reason for its determination. Upon failure of the ESCO to correct the deficiency on or before the expiration of the cure period, the distribution utility may require a change to dual billing for the ESCO's customers.
- c. Upon discontinuance of consolidated billing rights, an ESCO may reapply to the distribution utility to offer consolidated billing. A distribution utility shall expedite consideration of such requests. Customers may begin receiving consolidated bills again after requirements are satisfied, including submission of transaction requests to establish consolidated billing for customers.

F. Consolidated Billing: Customer Requests

1. A customer may request an ESCO to change its billing option. The ESCO shall request the bill option change on or before 15 calendar days prior to the scheduled meter reading date. An EDI change request is used to request a change in a customer's bill option. After receipt of the change request, a distribution utility shall, within one business day, acknowledge receipt of the request and, within two days, provide a response indicating rejection and the reason or acceptance and the effective date.
2. No distribution utility may impose a charge on a customer or an ESCO for changing a billing option.
3. When more than one request to change a customer's billing option is transmitted for a billing cycle, a billing party shall accept the last timely request received.
4. A distribution utility may deny a request to initiate consolidated billing or discontinue consolidated billing for a customer with an amount past due for at least 38 calendar days, unless the past due amount is subject to a DPA and the customer is fulfilling DPA obligations.

G. Consolidated Billing: Content

1. A billing party may decide upon the format for its consolidated bill provided that it states a summary of total charges and separately states distribution utility and ESCO charges in sufficient detail to allow a customer to judge their accuracy. Such separate statements shall appear in clearly separated portions of the bill and identify their source, distribution utility or ESCO. An ESCO that provides consolidated billing shall state on its consolidated bill the unadjusted distribution utility charges for delivery services provided by a distribution utility, without change.
2. A consolidated bill shall contain the information listed in Attachment 1 – General Information, preferably in a summary section. The billing party may place the information on the bill in any order or location.
3. A consolidated bill shall contain the information listed in Attachment 2 – Distribution Utility Content, separately stated for each distribution utility.
4. A consolidated bill shall contain the information listed in Attachment 3 – ESCO Content, separately stated for each ESCO.
5. If the rate ready method is used, the ESCO shall provide to the distribution utility information listed in Attachment 3 – ESCO Section Content, to the extent necessary for the distribution utility to calculate and issue bills. To initiate utility consolidated billing using the rate ready method, an ESCO shall provide the information to the distribution utility on or before 15 calendar days prior to the scheduled meter reading date. An ESCO may request a price or rate change no later than four business days prior to its effective date.
6. If a billing party and non-billing party agree to show the non-billing party's logo on the bill, the non-billing party shall provide it in an acceptable electronic format at least thirty days before its initial use.
7. If the rate ready method is used, a non-billing party is not required to provide information after it is initially submitted, except when a change is made.

8. When an ESCO issues a consolidated bill and the distribution utility transmits bill ready data, the distribution utility shall transmit to the ESCO at the appropriate time the applicable information listed in Attachment 2 – Distribution Utility Content, items d – q, and the customer’s name and service address.
9. When an ESCO issues consolidated bills on behalf of other ESCOs and distribution utilities and the other ESCOs provide information, the non-billing ESCOs shall provide bill ready information listed in Attachment 3 – ESCO Content to the billing ESCO.
10. No party shall engage in cramming.
11. A non-billing party may display its bill messages up to 480 characters in length on the bill provided that the billing party raises no reasonable objection to the message. There is no limit in message length for the billing party. If the bill ready method is used, the non-billing party shall transmit the text of the messages or agreed upon message codes in the same EDI transaction as the billed charges. If the rate ready method is used, a non-billing party shall submit a common bill message on or before 15 calendar days before the date used. Unless a final print date is provided, the billing party shall continue to print the message on bills until the non-billing party transmits a different message or requests its discontinuance. In emergencies requiring printing of messages on bills, the billing party shall accommodate the needs of the non-billing party, if practicable.
12. The billing party shall, in a timely manner, print on bills or insert into bill envelopes information that a statute, regulation, or Public Service Commission order requires a distribution utility or ESCO to send to its customers. The billing party may not assess charges for inclusion of required inserts that do not exceed one-half ounce. A distribution utility may charge for any excess weight in accordance with its tariff. The party responsible for providing the information shall submit it to the billing party. If the information is provided in a bill insert, the responsible party shall deliver the inserts in preprinted bulk form in a proper size on or before 15 calendar days before the date requested for initiation of distribution to customers to a location designated by the billing party.
13. Due dates and other general payment terms and conditions shall be identical for distribution utility and ESCO charges, unless different terms and conditions would have no impact on them. In the event of a conflict, the distribution utility’s payment terms and conditions shall govern.

H. Consolidated Billing: Bill Issuance

1. No late charge may be applied to customers’ bills for distribution utility charges, if payment is received by the billing party within the grace period.
2. If the bill ready method is used, the non-billing party shall transmit its charges and other information to the billing party on or before two business days after receipt of valid usage data for a customer account. If the rate ready method is used, the non-billing party shall transmit any revisions in rate and/or price data to the billing party on or before four business days prior to the prescribed date.
3. If the bill ready method is used, a billing party that receives a non-billing party’s transaction within the prescribed time and rejects the transaction for cause shall, within one business day after receipt of the transaction, send the non-billing party an EDI reject transaction and state the reason for the rejection. The non-billing party may, if time

permits, submit a corrected file containing billing charges for inclusion in the current billing statement.

4. If a non-billing party's transaction is sent to the billing party outside the prescribed time frame, the billing party may reject the transaction and shall notify the non-billing party on or before two business days after its receipt that the charges were not billed. The non-billing party may resubmit its charges the following billing period in accordance with prescribed time limits and without late charges. If the bill ready method is used, the non-billing party may submit a separate bill to the customer and notify the billing party of the action. The parties may also agree that the billing party shall hold the non-billing party's charges for inclusion in the next bill.
5. If a non-billing party's transaction is accepted using the bill ready method, the billing party shall render a bill within two business days after receipt of the transaction. If a rate ready method is used, a billing party shall render a bill in accordance with the distribution utility's regular bill issuance schedule. A bill is rendered upon transfer to the custody of the U.S. Postal Service or other delivery service or, if authorized by a customer, sent electronically to a valid e-mail address or telefax number, displayed on a secure web site, or presented directly to the customer or customer's representative.
6. If the billing party has not purchased a non-billing party's accounts receivable, is able to process the non-billing party's transaction, and is unable to render a bill within the prescribed time, the billing party shall notify the non-billing party immediately. A billing party shall afford customers the same grace period to pay the bill.
7. If the rate ready method is used, the billing party shall provide to the non-billing party within two business days after bill issuance, a statement of the accounts billed, date of issuance and amount of the non-billing party's charges shown on the bill (past due, current, and late payment charges and taxes).

I. Consolidated Billing: Cancellations and Rebills

1. If non-billing party errors occur and are not corrected before the bill is issued, a billing party is not required to cancel bills or issue new bills. The non-billing party shall provide any necessary explanations to the customer and billing party and make any necessary adjustments on the next bill.
2. If billing party errors cause the non-billing party charges to miss the billing window, the billing party shall cancel and reissue the bills within two business days after notification, unless the billing party and non-billing party arrange an alternative bill correction process.¹⁸ A billing party shall afford customers the same grace period to pay bills.
3. If no party errs, the parties may agree to cancel and rebill.
4. To cancel a bill, a billing party shall:
 - a. Cancel usage by billing period;
 - b. Send consumption in the cancel transaction that matches consumption sent in the original transaction;

¹⁸ Such errors do not include usage-related adjustments necessary when an actual meter reading becomes available to replace an estimated reading required, for example, because a customer denies access to a meter.

- c. Send cancelled usage at the same level of detail as the original usage;
 - d. Using the rate ready method, if a bill is to be cancelled and reissued, recalculate charges and issue revised bills to customers within two business days after receipt of the revised usage data;
 - e. Using the bill ready method, if a bill is to be cancelled and reissued, issue the revised bill to customers within two business days after receipt of the revised usage data.
5. To restate usage for a period, the distribution utility or MDSP shall first cancel usage for that period and then send the full set of restatement transactions.

J. Consolidated Billing: Payment Processing and Remittance

- 1. The parties shall set forth their responsibilities, performance parameters, financial arrangements and other details associated with payment processing and remittance in a BSA, subject to the requirements in this Section.
 - a. In the Pay-as-You-Get-Paid Method, the billing party sends payments to the non-billing party, within two business days of receipt and posting of the funds and processes the payments in accordance with the required priority for application of payments established in this Section.
 - b. A BSA shall establish procedures for processing payments made on any purchased accounts receivable.
- 2. Payment Processing
 - a. The billing party shall notify the non-billing party that payment is received and send payments to the non-billing party, within two business days after receipt and posting, by use of Electronic Funds Transfer (EFT), Automated Clearing House (ACH), or similar means to banks or other entities as agreed upon by the parties. The notice shall include, in account detail, the payments received from customers, the date payments are posted, the date payments are transferred, and the amounts allocated to the non-billing party's charges.
 - b. The billing party may impose late payment charges on unpaid amounts not in dispute for the non-billing party provided the terms of the late payment charges are stated in a tariff or a sales agreement and previously disclosed to the customers. If the bill ready method is used, each party shall calculate its late payment charges. If the rate ready method is used, the billing party shall calculate the non-billing party's late payment charges under terms agreed upon by the parties. If a customer's check is returned for any reason, the billing party may charge the customer's account for the return fee and any reasonable administrative fee.
 - c. Upon failure of the billing party to pay the non-billing party its proper share of customer payments within two business days after their receipt and posting or at the time agreed upon when accounts receivable are purchased, the billing party shall pay interest on the unremitted amount. The billing party shall calculate the interest at the rate of 1.5 percent per month from the date the payment was due to be

received by the non-billing party or its bank.¹⁹ The payment of interest is in addition to, and not in lieu of, the rights and remedies otherwise available to the parties.

3. Collections

The billing party is not responsible for collection of non-billing party funds, unless agreed to in a BSA.

4. Application of payments

- a. The billing party²⁰ shall allocate customer payments to the following categories of charges on the bill or contained in a notice that are not in dispute in this order of priority of payment: (1) amounts owed to avoid termination, suspension or disconnection of commodity or delivery service; (2) amounts owed under a DPA, including installment payments and current charges; (3) arrears; and (4) current charges not associated with a DPA. The billing party shall pro-rate payments to the charges within each category in proportion to each party's charges in that category. After satisfaction of the charges in a category, assuming available funds, the remainder of the payment shall apply to the next highest category according to the priority of payments and in the same manner as described above until the payment is exhausted.
- b. The billing party may retain any payment amounts in excess of the amounts due as prepayments for future charges or return the excess amounts to customers. The billing party shall, in a timely manner, combine any excess payment amounts with the customer's payment on the next bill, and allocate and pro-rate the sum as set forth in § 9.J.4.a.²¹
- c. When the billing or non-billing party enters into a multi-month payment agreement with a customer or waives any charges, that party shall notify the other party of such action.
- d. The billing party shall hold payments received without account numbers or enough information for the billing party to identify the accounts and attempt to obtain

¹⁹ Upon request, the billing party shall provide the non-billing party with a verified copy of the posting log of payments received and transferred to the non-billing party during any calendar month specified by the non-billing party.

²⁰ Distribution utilities supplying delivery service for both natural gas and electricity to customers receiving consolidated bills shall apply the receipts to the separate services in accordance with their regular procedures. Where a consolidated bill displays delivery charges for separate gas and electric distribution utilities, the customer's payments shall be first prorated between the utility accounts in accordance with the amount each is due compared with the total amount due both distribution utilities.

²¹ Where the customer elects to make a charitable donation, such as funding a low income program, satisfaction of the donation shall be made prior to allocation and pro-ration of the customer's excess payment.

information to identify the payer. If sufficient information is not obtained to identify the account information prior to the next bill, the billing party shall present the unpaid amount and late charge, if applicable, on the bill. If the customer contacts the billing party to inquire about the late charge and the lack of payment credit, the billing party shall resolve the matter and reverse the late charges. The billing party shall notify the non-billing party of the matter and its resolution and then allocate payments as necessary to balance the account.

5. Multiple Account Payment Processing

Processing of a single customer payment for multiple accounts requires proactive action on the part of the billing party and the non-billing party to apply payments correctly. The parties shall set forth arrangements for multiple account payment processing in a Billing Services Agreement.

6. Non-billing Party's Balance

- a. Except as provided in § 9.J.6 d., when a final bill is issued, the billing party shall maintain a current and past due balance for each account of the non-billing party until payment of the last bill issued for service provided by the non-billing party or 23 days after issuance of such bill, whichever is sooner. After such time, the account shall be considered "inactive."
- b. Except as provided in § 9.J.6 d., when a customer changes to a new ESCO, the billing party shall continue to receive and apply a customer's payments for the active account of the prior ESCO. If the customer does not pay the outstanding balance owed to the prior ESCO on or before 23 days after the final bill containing the prior ESCO's charges is issued, the billing party shall notify the ESCO and report the balance due.
- c. With regard to a new distribution utility/ESCO relationship following a change of ESCOs or a change in a distribution utility, the new billing party shall, upon request of the new non-billing party, bill for the balances that may exist at the time of the change. The new billing party may include the arrears on current bills or in a separate bill if its billing system is not capable of accepting prior charges. If a change of providers occurs, a distribution utility is not required to post any arrears of the prior ESCO on consolidated bills issued after the final billing of its charges, unless the arrears become the property of the new ESCO and it provides documentation of its property right to the distribution utility.
- d. Upon ESCO termination of the commodity supply of a residential customer due to failure to pay charges, the billing party shall maintain a current and past due balance for the account of the terminating ESCO for one year from the date of termination by the ESCO. In the event that the terminating ESCO seeks suspension of delivery service within one year of the termination, or the residential customer has a DPA, the billing party shall maintain a current and past due balance for each account of the terminating ESCO until the arrears are paid in full.

7. Customer Disputes: Initiating a Bill Complaint

- a. A customer or authorized representative may initiate a customer complaint regarding some or all of the charges on the customer's bill at any time.
- b. When a complaint relates to the entire bill, to only the billing party's charges or services, or, using the rate ready method, to calculation of the billing or non-billing party's charges, the customer should contact the billing party. The billing party shall resolve the complaint and, if appropriate, place the customer's account in dispute. In the event the inquiry concerns only a non-billing party's bill, charges, services, or calculations, the billing party shall refer the customer to the non-billing party.

8. Customer Complaints: Notification

- a. Upon a determination that a complaint affects the entire bill, the billing party shall notify the non-billing party of the subject and amount in dispute, if known.
- b. The non-billing party shall inform the billing party of disputes related to non-billing party charges that would affect the billing process.
- c. Once such complaints are resolved and the billed amounts are no longer in dispute, the other party shall be notified.

K. Consolidated Billing: Call Centers

A billing party shall provide call centers with toll-free or local telephone access available 24 hours a day and an answering machine or voice mail service during the hours when call center staff is not available. A billing party shall maintain adequate staff to respond to customers' inquiries or refer inquiries to the non-billing party, where appropriate, within two business days.

L. Dual Billing

1. The distribution utility and ESCO, acting as separate billing parties, shall render separate bills directly to the customer or the customer's representative. The customer or its representative shall pay the distribution utility and the ESCO separately.
2. The distribution utility's bill shall conform to the standards set by the Public Service Commission.
3. The distribution utility or MDSP shall transmit usage data to the ESCO at the time the information is available for rendering bills to customers, which may or may not coincide with meter reading cycle dates.
4. The ESCO may decide upon its bill format provided that it states its charges in sufficient detail to allow customers to judge the accuracy of their bills. At a minimum, an ESCO shall provide the following information:
 - a. Customer's name and billing address and, if different, service address;

- b. Customer's account number or ID;
 - c. Period or date associated with each product or service billed;
 - d. Name of the entity rendering the bill;
 - e. Address to which payments should be sent or the location where payments may be made;
 - f. Local or toll free number for billing inquiries; if an ESCO enrolls and communicates with customers electronically, an e-mail address and telephone number with area code;
 - g. Due date for payment and a statement that late payment charges shall apply to payments received after the due date; and
 - h. Amount and date of payments received since the last bill.
5. Whenever a distribution utility or MDSP cancels consumption for an account, it shall provide a notice of cancellation and restated billing parameters for the account to an ESCO and a distribution utility, if applicable, and shall:
- a. Cancel usage by billing period;
 - b. Send consumption in the cancel transaction that matches consumption sent in the original transaction;
 - c. Send cancelled usage at the same level of detail as the original usage; and,
 - d. To restate usage for a period, cancel usage for that period and send the full set of billing parameter restatements.

Attachment 1**General Information**

- a. Customer name
- b. Service address
- c. Billing address, if different than service address
- d. Billing party account number, if any
- e. Start of billing cycle period (prior meter reading date for metered customers)
- f. Starting period meter reading (for metered customers)
- g. End of billing cycle period (current meter reading date for metered customers)
- h. Ending period meter reading (for metered customers)
- i. Billing period metered usage, any multiplier necessary to convert usage to billing units and resulting billing units (for metered customers)
- j. Billing period demand, if applicable
- k. Indicators, if usage is estimated, actual or customer provided
- l. Total current charges (total of billing and non-billing party charges, including late charges and taxes)
- m. Total prior billed charges (total of billing and non-billing party prior bill charges, including prior late charges and taxes)
- n. Total credits since last bill (total of billing and non-billing party credits);
- o. Date through which the credits are applied
- p. Total current bill (total of billing and non-billing party charges plus prior bill charges less credits)
- q. Billing party name (and billing party logo, if billing party wishes it shown)
- r. Billing party address
- s. Billing party toll-free or local telephone number, and for a billing party that enrolls and communicates electronically with customers, an e-mail address and telephone number with area code, in lieu of a toll-free or local telephone number
- t. Distribution utility toll free-or local telephone number and emergency telephone number
- u. Method and location for payments
- v. Date of bill
- w. Payment due date
- x. Billing party messages of any length that apply in general to the bill and services provided by billing and non-billing parties, that are not reasonably objectionable to the parties

Attachment 2**Distribution Utility Content**

- a. Distribution utility name, and logo, if the parties agree
- b. Distribution utility address, if the distribution utility is not the billing party
- c. Distribution utility toll-free or local telephone number for inquiries about the distribution utility portion of the bill, if the distribution utility is not the billing party, and distribution utility emergency number
- d. Distribution utility customer account number, if the distribution utility is not the billing party
- e. Distribution utility rate classification identifier
- f. Distribution utility rates per billing unit, if applicable
- g. Distribution utility rates not based on billing units, if applicable, and unbundled, if applicable
- h. Distribution utility charge adjustments and adders, separately stated
- i. Taxes on distribution utility charges, if separately stated
- j. Billing period total distribution utility charges
- k. Prior billing period total distribution utility charges, including any prior late charges
- l. Credits on prior distribution utility charges
- m. Net prior distribution utility balance remaining, unless included in total prior billed charges stated in the General Information Section
- n. Late charge for unpaid prior distribution utility balance, unless included in total prior billed charges stated in the General Information Section
- o. Total amount due for distribution utility services
- p. If a budget bill, applicable billing information and resulting budget bill amount due for distribution utility services
- q. The distribution utility's bill message, if any, up to 480 characters, if the distribution utility is not the billing party

Attachment 3**ESCO Content**

- a. ESCO name and logo, if parties agree
- b. ESCO address, if the ESCO is not the billing party
- c. ESCO toll-free or local telephone number for billing inquiries if the ESCO is not the billing party; ESCOs that enroll and communicate electronically with customer may provide an e-mail address and telephone number with area code in lieu of a toll-free or local telephone number; if a rate ready method is used, the billing party shall include a notice directing ESCO customers to call the billing party first to clarify bill calculations
- d. ESCO account number, if the ESCO is not the billing party and has a unique account number
- e. ESCO rate classification, if applicable
- f. ESCO rate per billing unit, if applicable
- g. ESCO rate not based on distribution utility unit, if applicable
- h. ESCO charge adjustments and adders, if any, separately stated
- i. Taxes on ESCO charges, if required to be separately stated
- j. Billing period total ESCO charges
- k. Prior billing period total ESCO charges, including any prior late charges, unless included in total prior billed charges stated in the General Information Section
- l. Credits on prior ESCO charges
- m. Net prior ESCO balance remaining
- n. Total amount due for ESCO services
- o. If a budget bill, applicable billing information and resulting budget bill amount due
- p. The ESCO's bill message, if any, up to 480 characters, if the ESCO is the non-billing party.