

## Appendix A

### PURCHASE OF ACCOUNTS RECEIVABLE PROGRAM

#### TERMS AND CONDITIONS

##### 1.0 BILLING SERVICES

1.1.1 Company shall provide Consolidated Billing using the Bill Ready method to ESCO Customers in accordance with Company's applicable meter reading and billing cycle schedule. If, as of the date of this Agreement, ESCO Customers are receiving a Consolidated Bill from Company, then Consolidated Billing will continue for such customers under this Agreement. If ESCO Customers are not receiving Consolidated Bills from Company as of the date of this Agreement, then Consolidated Billing shall commence for such customers on a date to be agreed upon by the Parties ("Consolidated Billing Commencement Date"). As a condition to Company providing Consolidated Billing, ESCO will have completed all required Electronic Data Interchange ("EDI") testing and will be prepared to provide Company all ESCO Customer billing information required under the UBP ("ESCO Billing Information") via EDI in a format and within the time specified in the UBP If any new or revised EDI transaction sets are approved by the PSC, ESCO covenants that it will promptly develop and test all such transaction sets, as necessary.

ESCO shall provide all ESCO Billing Information to Company in a timely and accurate manner pursuant to the UBP.

1.1.2 If there is an error in ESCO Billing Information provided to Company and such error is not corrected by ESCO before the Consolidated Bill is issued, Company will not cancel or reissue the Consolidated Bill containing such information unless the Parties mutually agree to do so. If Company makes a billing error that causes ESCO Gas Charges to be substantially or wholly excluded from a Consolidated Bill, Company will cancel and reissue the Consolidated Bill for that billing cycle within two (2) business days of the discovery of the error, unless the Parties mutually agree otherwise. In any case, ESCO Customers will be afforded the same grace period to pay bills as they would if an error had not occurred.

1.1.3 ESCO will notify its consolidated billing customers with existing deferred payment agreements ("DPA") that their DPAs with ESCO are cancelled and that Company will offer the ESCO Customer a new DPA that will cover both ESCO Gas Charges and Company Transportation

Charges. ESCOs must continue to offer budget billing for ESCO Gas Charges to residential ESCO Customers as required under Applicable Law.

1.1.4 Company will include ESCO bill inserts required by Applicable Law ("Required Inserts") in Company bill envelopes. A Required Insert may not exceed one-half (1/2) ounce in weight or any of the Company's other mailing guidelines, as set forth in Appendix B. To the extent that Required Inserts do not conform to Company's mailing guidelines, Company may mail such ESCO insert separately for a fee to be determined. (Upon request, Company also will consider arrangements to mail non-required ESCO bill inserts for a fee).

1.1.5 Subject to Company's right to refuse to print ESCO bill messages that do not relate directly to ESCO's natural gas service, or that are false or misleading, Company shall print ESCO bill messages on Consolidated Bills in accordance with the rules established by Applicable Law and Company Requirements. ESCO shall transmit the text of bill messages for Company review prior to inclusion of such message on a Consolidated Bill. Upon Company's notification to ESCO that a bill message is to be included on a Consolidated Bill, ESCO shall transmit the bill message code as part of the same EDI transaction in which ESCO transmits ESCO Billing Information to Company. Bill messages for any Company billing cycle shall not exceed 480 characters, in the aggregate.

1.1.6 Company will provide Consolidated Billing only for ESCO Gas Charges and no other ESCO charges. Consolidated billing is not available for charges billed by ESCO to ESCO Customer before the initiation of Consolidated Billing service for that customer. The consolidated bill will display ESCO's name, ESCO Gas Charges and Company charges in accordance with UBP requirements. Any ESCO request to present unauthorized charges to customer bills ("cramming") is strictly prohibited. All instances of cramming that come to Company's attention will be reported to the Department of Public Service. Company will apply late payment charges ("LPCs") to unpaid ESCO charges billed at the same rate and in the same manner as it applies LPCs to unpaid Company charges. ESCO Gas Charges may not include penalty charges, early termination charges, cancellation fees, or similar charges, however denominated.

1.1.7 Company will send ESCO Customers final termination notices relating to suspension of utility service as required by Applicable Law. ESCO will be responsible for any notices arising under its contracts with ESCO Customers other than notices of termination based on nonpayment of ESCO Charges.

1.2 ESCO will provide written notice to all existing ESCO Customers that they must pay directly to, and to the order of, Company both Company Transportation Charges and ESCO Gas Charges and to all existing non-residential ESCO Customers that their gas service may be disconnected by Company for failure to pay ESCO Gas Charges. ESCO may comply with this notice requirement by transmitting to Company an appropriate bill message via EDI, as provided by the UBP. ESCO will also provide such notices to new ESCO Customers and may do so in its contract with the ESCO Customers or separately in writing.

1.2.1 ESCO irrevocably constitutes Company as its attorney in fact, coupled with an interest, until this Agreement expires or is terminated and all amounts owing by ESCO have been paid to Company. Company's authority as attorney in fact is limited to: (i) signing ESCO's name to financing statements and any other document necessary to create or to maintain Company's security interest in the ESCO Receivables and (ii) in the event Company receives a customer payment for ESCO Gas Charges made payable to the order of ESCO, signing ESCO's name to endorse such payment and deposit it in Company accounts.

1.2.2 All payments on Consolidated Bills that are received by ESCO shall be held in trust by ESCO as the property of Company and shall be remitted in full to Company no later than three (3) Business Days (as that term is defined in the UBP) following ESCO's receipt of such payment, without any deduction or setoff by ESCO.

1.2.3 ESCO shall promptly transfer to Company any and all federal, state, or agency payments, including, without limitation, all Heating Emergency Assistance Program (HEAP) payments, emergency HEAP payments, payments made pursuant to Section 131-s of the New York State Social Services law, and the like.

1.2.4 If ESCO receives a credit card payment from Customer for ESCO Gas Charges, ESCO shall forward a record of such credit card payment and transfer the full amount of such payment to Company, no later than three (3) Business Days following ESCO's receipt of same, without any deduction or setoff by ESCO.

1.2.5 Prior to the Consolidated Billing Commencement Date, ESCO shall transfer to Company all customer security deposits collected from ESCO Customers, together with all accrued interest thereon ("Customer Deposits"). As of the date of such transfer, Company will comply with Applicable Law with respect to the handling and disposition of such Customer Deposits.

1.2.6 ESCO shall be responsible for reconciling records of ESCO Customer accounts billed under this Agreement and notifying Company in writing of any claim that Company erred in billing ESCO Gas Charges. If ESCO fails to provide Company notice of a Company billing error within ninety (90) calendar days from the issuance date of the Consolidated Bill on which ESCO claims the error was made, ESCO shall be deemed to have waived all claims for loss, injury or damage resulting from such error, and Company shall have no liability resulting from such error, whether based in contract or tort (including, without limitation, negligence or gross negligence).

1.3 To the fullest extent permitted by law, Company is hereby authorized at any time and from time to time (including, without limitation, upon the expiration or termination of this Agreement), to set off and apply any and all payments or amounts owing to Company by ESCO under any agreement between the Parties, to or for the credit or the account of Company, against any and all of the obligations of Company to ESCO hereunder including, without limitation, any sums, fees, charges, or other amounts under this Agreement.

1.4 Company, and not the ESCO, will be responsible to comply with HEFPA with respect to ESCO Customers eligible for HEFPA protections, including without limitation, the following: (i) Company will provide a joint Final Termination Notice; (ii) Company will negotiate DPAs with ESCO Customers; and (iii) Company will provide an annual notice required under HEFPA summarizing rights and obligations of residential customers.

## 2.0 **PURCHASE OF ESCO ACCOUNTS RECEIVABLE**

2.1 Effective as of the Consolidated Billing Commencement Date, whenever natural gas flows through an ESCO Customer's gas meter, ESCO hereby sells to Company and Company hereby purchases from ESCO, all New ESCO Accounts Receivable arising from the ESCO Gas Charges resulting from such flow of gas through such meter. Effective as of the date of this Agreement, ESCO hereby sells to Company and Company hereby purchases from ESCO, all of the Aging ESCO Accounts Receivable. As of such dates, title to such New ESCO Accounts Receivable

and Aging ESCO Accounts receivable shall pass to Company and ESCO shall have no further rights in or to such ESCO Accounts Receivable, and ESCO shall not seek to collect payments from any ESCO Customers for any ESCO Gas Charges arising from such ESCO Accounts Receivable.

2.1.1 Company is and will remain obligated, in accordance with this Agreement, to purchase ESCO Accounts Receivable and to issue bills to ESCO Customers for any gas that flows through the ESCO Customer meters. In the event this Agreement is terminated for any reason, such obligations will survive termination of this Agreement, with respect to natural gas delivered to the Company's distribution system before the effective termination date.

2.2 ESCO hereby assigns to Company all its rights and remedies under Applicable Law with respect to the ESCO Accounts Receivable, including, without limitation, all rights and remedies to seek collection of such ESCO Accounts Receivable directly from ESCO Customers and the right to suspend service for non-payment of ESCO Gas Charges.

2.3 (a) No later than twenty (20) calendar days (or the next Business Day if the 20th day falls on a Saturday, Sunday, or public holiday) following the end of the month in which Company issues any Consolidated Bill, Company will pay ESCO the amount due for each New ESCO Account Receivable which, as described more fully in Section 2.4 hereof, amount due will equal (i) the ESCO Gas Charges appearing on such Consolidated Bills for the prior month, (ii) net of any applicable Company Charges (as defined below), and (iii) net of the Discount Rate (as defined below) ("New A/R Purchase Price") via Automated Clearing House ("ACH") credit to a bank (or other mutually agreed to depository or payee) designated in writing by ESCO. Effective on or around December 6, 2013, for KeySpan Gas East Corporation d/b/a National Grid, the amount due for each New ESCO Account Receivable will be paid no later than twenty (20) calendar days (or the next Business Day if the 20th day falls on a Saturday, Sunday, or public holiday) following Company's issuance of a Consolidated Bill to ESCO Customers.

(b) No later than twenty (20) calendar days (or the next Business Day if the 20th day falls on a Saturday, Sunday, or public holiday) following the end of the month in which Company issues any Consolidated Bill, Company will make a single one-time payment to ESCO of the amount due for the Aging ESCO Accounts Receivable, as described more fully in Section 2.5, ("Aging A/R Purchase Price") via ACH credit to a bank (or other mutually agreed to depository or payee) designated in writing by ESCO.

(c) Notwithstanding any other provision hereof, Company reserves the right to modify unilaterally the payment procedure set forth in this Section 2 to accommodate any Company operational and/or system changes, upon a minimum of forty-five (45) calendar days prior written notice to ESCO.

2.4 The New A/R Purchase Price shall be calculated as follows:

(a) **First**, Company may subtract from the face value of the New ESCO Accounts Receivable the amounts owed by ESCO to Company for the following Company charges ("Company Charges"), each as may be amended from time to time:

- (1) Billing and Payment Processing Fees for each ESCO Customer account as set forth in the Tariff ;
- (2) Gas Imbalance Charges, in accordance with applicable Company Requirements and as set forth in the Tariff ;
- (3) Capacity Release Charges, in accordance with applicable Company Requirements and as set forth in the Tariff ;
- (4) Program Administration Fees to reimburse Company for any incremental labor and administrative costs associated with operating the Program;
- (5) Billing Dispute Charges to be imposed where ESCO has not complied with ESCO Customer Dispute procedures set forth at Section 5.2 herein, and equal to the amount disputed by ESCO Customer;
- (6) Special Meter Reading Fees, in accordance with applicable Company Requirements and as set forth in the Tariff;
- (7) Virtual Storage Charges, in accordance with applicable Company Requirements and as set forth in the Tariff;
- (8) Customer Usage History Fees, in accordance with applicable Company Requirements and as set forth in the Tariff;
- (9) Profile Information Fees, in accordance with applicable Company Requirements and as set forth in the Tariff;
- (10) UCC-1 Filing and UCC/Lien Search Fees incurred by Company in connection with its purchase of the New ESCO Accounts Receivable;
- (11) Bill Insert Fees to be imposed where Company includes a non-required ESCO bill insert in

Company bill envelope or where practical limitations preclude Company from including a Required Bill Insert in a Company billing envelope and a separate Company envelope is used for the insert, provided that the ESCO receives advance notice of the manner in which the insert will be provided and the estimated cost;

- (12) Chargeback Fees equal to the "lesser of" amount that is the difference between the amount billed and the amount paid by an ESCO Customer to reconnect service pursuant to section 32(5)(d) of the Public Service Law, provided that, if and when the ESCO Customer makes a payment that is applicable to the Chargeback Fee, the Company will remit the payment to ESCO in accordance with its routine remittance practices; and
- (13) Other Fees And Charges approved by the PSC.

(b) **Second**, following the subtraction of Company Charges, including associated taxes and surcharges, Company shall apply a Discount Rate to the remaining balance. The resulting amount will equal the New A/R Purchase Price. The term "Discount Rate" means a percentage or factor to be applied to ESCO Gas Charges after applicable Company Charges have been subtracted. The Discount Rate reflects the uncollectible rate of the Merchant Function Charge ("MFC") set forth in the General Information Section of the Company's Tariff and program development costs incurred to modify the Company billing system to implement the Program. Company will notify ESCO of changes to the Discount Rate resulting from inclusion of ongoing operating expenses associated with the Program and/or changes to the uncollectible rate and Company will provide no less than 60 days advance notice to ESCO when the Discount Rate changes.

(c) **Third**, the credit and collections charge will not be a component of the Discount Rate. Instead, the Company will develop a unitized dollar per dekatherm credit and collections expense charge for each GAC Year (12 months starting September 1<sup>st</sup>) set forth on the Statement of Seller Charges and Adjustments that will be separately invoiced to ESCOs. Pursuant to the Commission's December 21, 2007 Order in Cases 06-G-1185/1186, Company will prorate the annual credit and collections expense for each of the Rate Years 2008-2012 (as set forth in Appendix A of the Gas Rates Joint Proposal in Cases 06-G-1185/1186, dated October 10, 2007, and adopted by the Commission) into the corresponding GAC Year. As set forth in the Tariff, Credit and Collections Expense will be unitized by dividing credit and collections costs prorated for the GAC Year by forecasted sales plus forecasted metered consumption of customers of ESCOs

participating in the Program. This per dekatherm charge will be applied to the ESCO's customers' metered consumption. The resulting credit and collections charge will be billed separately from the Discount Rate to ESCOs participating in the Program and will be included as a separate line item in the Company Charges subtracted from the face value of the New ESCO Accounts Receivable<sup>1</sup>.

Each GAC year, recoveries of Credit and Collections charges from Sales Customers (through the MFC) plus ESCOs participating in the Program, will be compared to the Credit and Collections expense allowed to be recovered during the GAC year. The difference will be credited (if recoveries exceed allowed expenses) or surcharged (if recoveries are less than allowed expenses) to Sales Customers and to ESCOs participating in the Program through a unit credit or surcharge calculated by dividing such difference by forecasted Sales plus forecasted metered consumption of customers of ESCOs participating in the Program. The resulting Credit and Collection Expenses Annual Imbalance Surcharge / Refund will be set forth on the Statement of Seller Charges and Adjustments effective each January 1<sup>st</sup>.

2.5 To calculate the Aging A/R Purchase Price, Company shall apply the Aging Discount Rate (as defined herein) to the face value of the Aging ESCO Accounts Receivable owing to ESCO. The resulting amount will equal the Aging A/R Purchase Price. The "Aging Discount Rate" will be calculated as follows:

(a) First, the Aging ESCO Accounts Receivable will be grouped by age into the following categories: (i) current, (ii) 29 to 60 days, (iii) 61 to 90 days, and (iv) greater than 90 days.

(b) Second, Company's historical payment and collection experience for each of the Aging ESCO Accounts Receivable age categories will be used to determine the discount percentage applicable to each. The discount percentage for each of the [Aging ESCO Accounts Receivable] age category will be calculated as follows: (i) Company's historical uncollectible percentage for the Aging ESCO Accounts Receivable age category will be added to, (ii) a risk factor adjustment based on ESCO's distribution of the Aging ESCO Accounts Receivable by age category compared to that of Company, which total will equal the discount percentage for each Aging ESCO Accounts Receivable age category ("Aging ESCO A/R Discount Percentage").

---

<sup>1</sup> For example, in GAC Year 2008/09, the credit and collections charge was \$0.1045/Dth for the Brooklyn Union Gas Company d/b/a National Grid NY.



(d) Third, the ESCO specific discount percentage will be calculated as follows: (i) the dollar value of the Aging ESCO Accounts Receivable in each age category will be multiplied by the Aging ESCO A/R Discount Percentage, and then (ii) the products thereof will be added and then divided by the total Aging ESCO Accounts Receivable to develop a single weighted average discount percentage, which will be applied to all of the Aging ESCO Accounts Receivable.

2.5.1 In advance of the Consolidated Billing Commencement Date, Company will calculate and provide ESCO such ESCO's Aging ESCO A/R Discount Percentage and Aging A/R Purchase Price, determined according to the methodology set forth herein.

2.6 In lieu of the procedure set forth under Section 2.4 hereof, at its option, Company may apply the Discount Rate to the face value of the applicable ESCO Accounts Receivable, without deduction for some or all Company Charges and separately bill ESCO for such Company Charges. If Company separately bills ESCO for any Company Charges, and ESCO fails to pay the full amount due on such invoice within twenty (20) days of ESCO's receipt of same, ESCO shall pay Company a late payment charge of one and one-half percent (1.5%) per month (but in no event an amount greater than the lawful maximum) on the past due balance. In the event that ESCO does not pay in full such separately invoiced amounts within ten (10) days following notice that such payment has not been received, Company may exercise all of its available remedies, including, without limitation, terminating ESCO's participation in the Program and terminating this Agreement.

2.7 ESCO acknowledges, agrees and understands that payment for Company Charges shall be ESCO's sole responsibility. To ensure such payments are made, Company shall, upon ESCO's nonpayment of Company Charges or the occurrence of any other Breach of this Agreement, as described in Section 7.3 hereof, have the right to require an immediate payment from ESCO of a deposit equal to five (5%) of the total sums received by ESCO for New ESCO Accounts Receivable during the preceding 180 day period ("Deposit"). The Deposit shall be used by Company as security for Company Charges and any other sums or amounts due or owing by ESCO under this Agreement. On a semi-annual basis, Company will re-examine the Deposit amount and make such adjustments as Company determines may be necessary to secure the aforementioned charges attributable to ESCO on the same and consistent method as Company determines such charges for all energy services companies participating in the Program. At the end

of six (6) months from the expiration or termination date of the Agreement, Company will return the unused portion of the Deposit to ESCO. Company shall pay interest on the unused portion of the Deposit at the variable rate per annum equal to the "prime rate" quoted in the "Money Rates" section of the Wall Street Journal from time to time, minus one percent (1%).

### **3.0 SECURITY INTEREST AND FINANCING STATEMENT**

3.1 Company and ESCO intend that all purchases of ESCO Accounts Receivable pursuant to this Agreement are sales by ESCO and purchases by Company and not loans from Company to ESCO secured by such ESCO Accounts Receivable. However, to protect against the possibility that any such sales and purchases of ESCO Accounts Receivable pursuant to this Agreement are deemed to be loans from Company to ESCO, in order to preserve Company's rights under this Agreement, ESCO hereby grants to Company a first priority security interest in all of the ESCO Accounts Receivable and the proceeds and products of all the ESCO Accounts Receivable, as provided in Section 2.1 of this Agreement, arising out of ESCO Charges associated with the gas that has flowed through ESCO Customer's meter but has not yet been billed ("Collateral") as security for the performance by ESCO of its obligations under this Agreement.

3.2 ESCO hereby irrevocably authorizes Company, its counsel or its representative, at any time and from time to time, to file financing statements and amendments thereto covering the Collateral in such jurisdictions as Company may deem necessary or desirable to perfect the security interests granted by ESCO under this Agreement.

3.3 To further the attachment, perfection and first priority of, and ability of Company to enforce and maintain Company's security interest in any or all of the Collateral, ESCO agrees that from time to time, it will promptly execute and deliver all instruments and documents, and take all actions that may be necessary or desirable, or that Company may request, for the attachment, perfection and maintenance of the priority of, the security interest of Company in any and all of the Collateral or to enable Company to exercise and enforce any and all of its rights, powers and remedies under this Agreement with respect to any and all of the Collateral, including, without limitation, executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the New York State Uniform Commercial Code ("UCC"), to the extent, if any, ESCO's signature is required therefor. As attorney in fact, as provided at Section

1.2.1 hereof, Company will have the authority, on behalf of ESCO, to sign ESCO's name on any such financing statements and amendments thereto and continuation statements that may require ESCO's signature. ESCO shall provide Company with thirty (30) days notice of its intention to take any action that would affect Company's maintenance of its security interest in the Collateral.

3.4 ESCO represents and warrants to Company as follows:

(a) The exact legal name of ESCO is the name specified in the preamble to this Agreement, and ESCO has not been known by any other name during the five (5) years prior to the date of this Agreement.

(b) ESCO is an organization of the type, and is organized in the jurisdiction set forth in the preamble to this Agreement.

(c) The preamble to this Agreement accurately sets forth ESCO's principal place of business or, if there is more than one, its chief executive office, as well as ESCO's mailing address.

(d) ESCO is the owner of the Collateral, and with the exception of any security interest in the Collateral filed by a creditor of ESCO that the secured creditor has subordinated to the Company's first priority security interest, the Collateral is free from any right or claim of any person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement.

(e) This Agreement creates a valid security interest in the Collateral and such security interest secures Company's advance payment of the ESCO Accounts Receivable. The security interest of Company in the Collateral is a first priority security interest.

(f) None of the Collateral is subject to a restriction that prohibits, restricts or limits the grant of a security interest in such Collateral pursuant to this Agreement, the right to perfect the security interest granted by this Agreement (including the priority of such security interest) or the exercise by Company of its rights, remedies and powers under this Agreement or otherwise.

3.5 ESCO covenants with Company as follows:

(a) Prior to changing its name, changing its place of business, changing its mailing address, changing its type of organization or legal structure or changing its jurisdiction of organization, ESCO will provide Company with at least thirty (30) days prior written notice (or, if 30-day notice is not possible, then the maximum notice that is possible under the circumstances) and execute and deliver all such additional documents and perform all such additional acts as

Company may require in its sole discretion to continue or maintain the existence and first priority nature of Company's security interest in the Collateral. If Company is unable to maintain a first priority security interest in the Collateral, Company may terminate this Agreement.

(b) ESCO will keep and maintain at its own expense complete and accurate records related to the Collateral, including records of all payments made, all credits granted, and all other documentation related to the Collateral.

(c) ESCO will not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Collateral, or any security interest, lien or encumbrance in the Collateral in favor of any person other than Company, with the exception of any security interest in the Collateral filed by a creditor of ESCO that the secured creditor has subordinated to the Company's first priority security interest, and ESCO shall defend the Collateral against all claims and demands of all persons at any time claiming any interests therein adverse to Company. ESCO will discharge or cause to be discharged any and all such security interests, liens or other encumbrances and claims on all or any of the Collateral except for the security interest under this Agreement.

(d) Upon reasonable notice to ESCO and during normal business hours, ESCO will permit Company or its designee to review the books and records of ESCO relating to the ESCO Accounts Receivable for the purpose of inspecting the Collateral.

(e) ESCO will promptly pay when due all taxes (including, without limitation, applicable state and local sales and use taxes), assessments, governmental charges, and levies upon, or claims (including, but not limited to, claims for labor, materials and supplies) against the Collateral.

(f) Except for ESCO's right to assign its right to receive payments made by Company hereunder as set forth in Section 11.1 of this Agreement, ESCO will not sell, assign, transfer or otherwise dispose, or offer to sell, assign, transfer or otherwise dispose, of the Collateral or any interest therein.

(g) ESCO will immediately notify Company if (i) any claim, including any attachment, levy, execution or other legal process, is made against any or all of the Collateral, (ii) any representation and warranty included in this Agreement would no longer be true if made on such date, or (iii) there is any material loss or damage to, or material decline in the value of, or material change in the nature of, any of the Collateral.

(h) ESCO will comply in all material respects with all laws applicable to any or all of the Collateral, except to the extent the failure to comply will not have a material adverse effect on the rights of Company under this Agreement, the priority of the security interest of Company in the Collateral, or the value of the Collateral.

3.6 If ESCO is in breach of any term of this Agreement, Company, without any other notice to or demand upon ESCO, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a Company under the UCC and any additional rights and remedies that may be provided to a Company in any jurisdiction in which Collateral is located, including, without limitation, the right to take possession of the Collateral. Company may in its discretion require ESCO to assemble all books and records for the Collateral at such location or location(s) within the jurisdiction(s) of ESCO's principal office(s) or at such other locations as Company may reasonably designate.

3.7 With respect to the ESCO Accounts Receivable, ESCO will be deemed to meet the creditworthiness requirements set forth in Section 3 of the UBP for those accounts.

#### 4.0 **ESCO COVENANTS, REPRESENTATIONS & WARRANTIES**

4.1 Throughout the term of this Agreement, ESCO further covenants with Company as follows:

- (a) ESCO shall comply with all Applicable Laws and Company Requirements.
- (b) ESCO agrees to cooperate with Company to the fullest extent possible under the law and to use its best efforts to facilitate the transactions under this Agreement, including, without limitation, Company's collection of the ESCO Accounts Receivable. Such cooperation shall include, but not be limited to, ESCO supplying Company with all information and assistance that may be necessary or helpful to Company in establishing the accuracy of any ESCO Accounts Receivable or in correcting any ESCO Billing Information errors.

(c) The ESCO Gas Charges giving rise to the ESCO Accounts Receivable shall be imposed and assessed in accordance with ESCO's gas sales agreements with ESCO Customers;

4.2 As of the date of this Agreement, ESCO further represents and warrants as follows:

(a) ESCO has the right and power to transfer the ESCO Accounts Receivable to Company, the New ESCO Accounts Receivable have not already been billed, and none of the ESCO Accounts Receivable will be collected by or for the benefit of any party except Company;

(b) The ESCO Gas Charges giving rise to the ESCO Accounts Receivable have been imposed and assessed in accordance with ESCO's gas sales agreements with ESCO Customers;

(c) The execution, delivery and performance by ESCO of this Agreement and each document to which ESCO is or is to be a party pursuant to this Agreement and the consummation of the transactions contemplated hereby and thereby, are within ESCO's corporate powers, have been duly authorized by all necessary corporate/organizational action(s), and do not (i) contravene ESCO's governance documents, including but not limited to ESCO's charter, bylaws, or articles of limited partnership, as applicable (ii) violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, or (iii) conflict with or result in the breach of, or constitute a default under, any contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument binding on or affecting ESCO, or any of its subsidiaries or affiliates, or any of their properties.

(d) There is no action, suit, investigation, litigation or proceeding affecting ESCO pending or threatened before any court, governmental agency or arbitrator that purports to affect the legality, validity or enforceability of this Agreement, any document, or the consummation of the transactions contemplated thereby, or by this Agreement, including, without limitation, Company's ability to collect the ESCO Accounts Receivable.

(e) ESCO shall provide Company with at least ninety (90) days' prior written notice of any ESCO merger or consolidation with any other entity, or any ESCO sale of all or substantially all of ESCO's assets or, if 90-day notice is not possible, then the maximum notice that is possible under the circumstances. Company will have the right to terminate this Agreement as of the effective date of such merger, consolidation, or sale.

## 5.0 ESCO CUSTOMERS

5.1 Company will respond to general inquiries and complaints from ESCO Customers concerning Company Transportation Charges and the Consolidated Bill. Company will refer ESCO Customers to ESCO for inquiries and complaints concerning ESCO Gas Charges, ESCO gas rates, and other ESCO products and services.

5.2 For the purpose of this Agreement, an "ESCO Customer Dispute" is an ESCO Customer claim or dispute related to ESCO Gas Charges. ESCO will promptly examine, investigate, and attempt to resolve all ESCO Customer Disputes, whether received from ESCO Customer or Company. ESCO shall acknowledge receipt of any ESCO Customer Dispute and/or respond to the ESCO Customer within two (2) calendar days. If ESCO initially provides only an acknowledgment to the ESCO Customer, ESCO shall provide a comprehensive response to the ESCO Customer within the time period required by the UBP. ESCO shall promptly report to Company the outcome of any ESCO Customer Dispute that was brought to the attention of ESCO by the Company and the reason for ESCO's determination, together with a copy of any close-out correspondence from ESCO to the ESCO Customer. If ESCO decides to reduce the ESCO Gas Charges as the result of an ESCO Customer Dispute, ESCO will promptly send Company an adjustment via EDI of the credit amount for application to the ESCO Customer's open balance, and promptly contact the ESCO Customer to explain the account credit. If the dispute is the basis of a proceeding before the PSC or any legal action initiated by the ESCO Customer, ESCO will participate and/or cooperate with Company in the proceeding even if ESCO is not a named party. If the Company determines, in its sole discretion, that ESCO is not in compliance with this procedure, the Company will have the right to assess a charge on ESCO equal to the amount disputed by the ESCO Customer.

## 6.0 TAXES

6.1 At or prior to the date of its execution of this Agreement, ESCO shall provide Company with a copy of its State of New York Certificate of Authority as a sales tax vendor. At all times during the term of this Agreement, ESCO shall maintain current its Certificate of Authority.

6.2 ESCO shall include the amount of sales and use taxes and all other applicable taxes to be invoiced in connection with ESCO Gas Charges as part of the ESCO Billing Information

provided to Company. ESCO shall be considered the vendor for purposes of liability for taxes related to ESCO Gas Charges. Nothing in this Agreement shall be construed as imposing upon Company the obligation to remit to any federal, state, or local taxing authority those taxes that are the collection and remittance responsibility of ESCO.

## **7.0 EFFECTIVE DATE/TERM; TERMINATION; REMEDIES**

7.1 This Agreement shall be effective as of the date first above written and will remain in full force and effect unless (a) terminated earlier in accordance with its terms, or (b) terminated earlier by an order of the PSC.

7.2 This Agreement may be terminated by ESCO at any time on thirty (30) days' prior written notice to Company.

7.3 This Agreement may be terminated by either Party (the "Terminating Party") upon the occurrence of any of the following events (each a "Breach"):

- (a) Either Party fails to make any payment required hereunder when due and such failure continues for fifteen (15) days after receipt of written notice from the other Party;
- (b) Any representation or warranty made by either Party in this Agreement proves to have been incorrect in any respect when made;
- (c) Either Party fails to perform or observe any term, covenant, or agreement in this Agreement and such failure is not remedied for a period of fifteen (15) days after notice thereof has been given to the other Party;
- (d) Either Party ceases to do business for five (5) or more days, or generally is not paying its debts as they become due, or admits in writing its inability to pay its debts generally, or makes an assignment for the benefit of creditors; or a proceeding is instituted by or against a Party seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding is not dismissed or stayed within sixty (60) days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for



relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or the Party or any of its subsidiaries or affiliates shall take any corporate/organizational action to authorize any of the actions set forth for the appointment of a receiver or trustee.

7.3.1 Upon termination of this agreement for Breach, the Terminating Party shall have the right to declare all amounts owing under this Agreement from the other Party to be immediately due and payable. Upon the expiration or termination of this Agreement for any reason, the Parties shall remain liable for their respective payment and reimbursement obligations on any and all sums due hereunder.

7.4 If ESCO ceases to be authorized to sell natural gas in Company's service territory or if ESCO terminates its retail natural gas business in Company's service territory, ESCO shall immediately notify Company and this Agreement shall be suspended or terminated effective the same day as such event occurred. In such case, ESCO shall remain liable for all Company Charges to the extent not paid before the termination of this Agreement and Company may bill ESCO and ESCO shall pay Company for adjustments in ESCO Gas Charges resulting from Company's cancellation and rebilling of ESCO Gas Charges originally billed during the period this Agreement was in full force and effect.

7.5 In addition to the termination rights set forth herein, Company shall have the following additional rights under the Agreement:

(a) If ESCO fails to comply with any Applicable Law or Company Requirement relating to the sale of natural gas in the Company's service territory, Company may terminate this Agreement if such failure to comply is not remedied within fifteen (15) days from ESCO's receipt of written notice thereof;

(b) If ESCO breaches this Agreement, or any other written agreement with Company in connection with the Program, Company shall have the right to terminate this Agreement if such breach continues uncured for fifteen (15) days after written notice from Company.

7.6 In the event this Agreement is terminated for any reason and Company is no longer providing Consolidated Billing to ESCO Customers, ESCO shall immediately notify all ESCO Customers that ESCO will be rendering future ESCO gas bills to ESCO Customer and that ESCO Customers should make future payments for ESCO Charges directly to, and to the order of, ESCO.

7.7 The rights and remedies set forth in this Agreement are in addition to any and all rights under Applicable Law or Company Requirements. All rights and remedies in this Agreement shall be cumulative and may be exercised separately or concurrently.

## **8.0 LIMITATION OF LIABILITY**

8.1 To the fullest extent allowed by law, in no event shall either Party be liable for any consequential, incidental, indirect, special or punitive damages incurred by the other Party and connected with, arising from or related to this Agreement or the performance or failure to perform services hereunder, including but not limited to loss of good will, cost of capital, claims of customers and lost profits or revenue, whether or not such loss or damages is based in contract, warranty, tort, negligence, strict liability, indemnity, or otherwise, even if a party has been advised of the possibility of such damages.

## **9.0 INDEMNIFICATION**

9.1 ESCO, to the fullest extent allowed by law, shall indemnify, defend and save harmless Company, its parent, subsidiary and affiliate companies, and its and their officers, directors, shareholders, agents, employees, contractors, representatives, successors and assigns ("Indemnified Parties") from and against any and all suits, actions, legal proceedings, claims, losses, demands, damages, costs, liabilities, fines, penalties, royalties, obligations, judgments, orders, writs, injunctions, decrees, assessments, diminutions in value of any kind and expenses of whatsoever kind or character, including reasonable attorneys' fees and court costs, whether incurred in a third party action or in an action to enforce this provision that may at any time be imposed on, incurred by or asserted against any of the Indemnified Parties by any third party, including, without limitation, ESCO Customers, that are directly or indirectly caused by, arise out of or under, or are associated with, incident to or in connection with this Agreement, including but not limited to (a) ESCO's acts or omissions; (b) ESCO's breach of any term or condition of this Agreement; (c)

ESCO's breach of any term or condition of any of its agreements with ESCO Customers; (d) any collection activity by ESCO in violation of the terms of this Agreement, or federal, state or local laws; (e) ESCO's failure to remit to the appropriate taxing jurisdiction any taxes owed by ESCO; (f) any inaccuracy in any document provided by ESCO to Company under this Agreement, (g) any breach of any representation, warranty or covenant made by ESCO in or in connection with this Agreement; or (h) any violation by ESCO of any other Applicable Law or Company Requirement; and (I) any inaccurate or incorrect ESCO Billing Information or other information provided by ESCO.

9.2 Company, to the fullest extent allowed by law, shall indemnify, defend and save harmless ESCO, its parent, subsidiary and affiliate companies, and its and their officers, directors, shareholders, agents, employees, contractors, representatives, successors and assigns ("Indemnified Parties") from and against any and all suits, actions, legal proceedings, claims, losses, demands, damages, costs, liabilities, fines, penalties, royalties, obligations, judgments, orders, writs, injunctions, decrees, assessments, diminutions in value of any kind and expenses of whatsoever kind or character, including reasonable attorneys' fees and court costs that may at any time be imposed on, incurred by or asserted against any of the Indemnified Parties by an ESCO Customer, and that are directly or indirectly caused by, arise out of or under, or are associated with, incident to or in connection with Company's performance under this Agreement, provided such action or claim is based on an allegation that the Company's actions or omissions in collecting ESCO Gas Charges pursuant to Section 1.4 of this Agreement from the ESCO Customer violated the Home Energy Fair Practices Act.

9.3 ESCO and Company, respectively, shall take prompt action to defend and indemnify the Indemnified Parties against any and all claims, actual or threatened, but in no event later than the service of a notice, summons, complaint, petition, or other service of process against the Indemnified Parties with respect to such claims including, as applicable, the engagement of legal counsel to respond to, defend, or settle, or compromise any claim or threatened claim.

9.4 The obligations of ESCO and Company as set forth in this Article shall survive the expiration, cancellation, or termination of this Agreement.

## **10.0 FORCE MAJEURE**

Any delay in the performance of any of the duties or obligations of either Party hereto shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any occurrence beyond the reasonable control of a Party which causes such Party to be delayed in or prevented from performing or carrying out any of its obligations under this Agreement and which, by the exercise of due diligence, that Party is unable to prevent, avoid, mitigate, or overcome, including any of the following: any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, ice, explosion, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities; provided, however, that a failure of a party to make any payment when due shall not be excused. The Party so affected shall give prompt written notice to the other Party of such cause and shall take whatever reasonable steps are necessary to relieve the affect of such cause as rapidly as possible.

## **11.0 MISCELLANEOUS**

11.1 Neither Party shall assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that ESCO has an unconditional right to assign its right to payments to be made by Company hereunder. ESCO shall provide Company with a copy of the document in which the assignment is made or so much of the document as may be necessary to make clear the identity of the parties and the terms of the assignment. ESCO hereby waives any claim against Company for making payment pursuant to any such assignment and, to the fullest extent allowed by law, agrees to indemnify, defend, and save harmless Company from and against any losses, claims, or liability (including reasonable attorneys' fees and court costs) to any third party claiming any right, title or interest to any amount paid by Company to ESCO's assignee. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement. Any assignment in violation of this Section shall be void.

11.2 This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, supersedes any and all previous agreements and understandings between the Parties with respect to the subject matter hereof, and binds and inures

to the benefit of the Parties, their successors and permitted assigns.

11.3 Except as otherwise provided herein, no modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the Parties or their agents. A waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

11.4 Interpretation and performance of this Agreement will be in accordance with, and will be controlled by the laws of the State of New York, except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. Both parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement will be brought in a court of the State of New York in New York or Kings County, or a Federal court of the United States of America located in the State of New York, New York or Kings County. Both Parties irrevocably waive any objection that it may now or in the future have to the State of New York, New York or Kings County as the proper and exclusive forum for any legal action or proceeding arising under or relating to this Agreement.

11.5 If one or more provisions herein are held to be invalid, illegal or unenforceable in any respect, it will be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

11.6 This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between Company and ESCO or any other parties or to impose any such obligation or liability upon Company.

11.7 This Agreement is for the benefit of the Parties hereto and not for the benefit of any third parties.

Appendix A-1

ELIGIBLE SERVICE CLASSIFICATIONS

**KeySpan Gas East Corporation d/b/a National Grid**

127 - Residential General

137 - Residential Water Heating

147 - Residential Space Heating

158 - Multiple Dwelling Heating

159 - Multiple Dwelling Non-Heating

167 - Commercial Water Heating

177 - Commercial Space Heating

267 - Distributed Generation (High Load Factor)

277 - Year Round Space Conditioning

347 - Baseload Distributed Generation

357 - Baseload Distributed Generation

367 - Baseload Distributed Generation

Appendix A-2

ELIGIBLE SERVICE CLASSIFICATIONS

**The Brooklyn Union Gas Company d/b/a National Grid NY**

SC 1 - Residential

SC 2 - Commercial

SC 3 - Multi-Family

SC 4A - High Load Factor

SC 4B - Year Round Air Conditioning

SC 7 - Seasonal

SC 21 - Baseload Distributed Generation

## Appendix B

### BILL INSERT PRODUCTION AND DELIVERY GUIDELINES

To support efficient processing of Company bills, paper stock, weight and size, and packing and delivery requirements of bill inserts supplied from outside sources must conform to the following criteria.

#### 1. ESCO Responsibilities:

- 1) ESCO will prearrange an insert schedule with Company.
- 2) ESCO will deliver inserts to the mail facility provider 15 calendar days prior to the scheduled mailing date of each insert.
- 3) ESCO will ensure that inserts are manufactured in accordance with the specifications in this document.
- 4) ESCO will arrange for the manufacturing and delivery of the inserts.
- 5) ESCO will provide Company with specific direction for the disposition of unused inserts. If no direction is given when the insert is scheduled, unused inserts will be destroyed.

#### 2. Insert Physical Specifications:

##### A. Size Requirements:

###### Minimum Maximum

Height 7.00 in. 8.25in.

Width 3.25 in. 3.75 in.

##### B. Fold Requirements: Bill inserts must conform to the following fold requirements:

###### 1) Acceptable insert folds:

- No fold
- Half fold — folded insert must conform to size requirements noted above
- “C” fold — folded insert must conform to size requirements noted above

###### 2) Unacceptable insert folds:

- Accordion folds
- “Z” folds

###### 3) Folds must be even, square, crisp, and uniform.

###### 4) Fold must be along the 7” edge



C. Paper Stock: Inserts that are single cards are to be a minimum of 80 lb text weight and a maximum of 65 lb cover weight. Folded inserts are to be printed on 50 or 60 lb matt offset paper stock. Glossy finish or gloss coated paper inserts are not acceptable. 50 lb stock may be used only when folded. Recycled paper stock (carrying the recycled symbol on the printed piece) is preferable but not mandatory.

D. Miscellaneous Production Notes:

- 1) Inserts must not have cutouts.
- 2) Company must secure prior approval from the mail facility to include insert features that deviate from the insert specifications set forth in this document. The supplier may be required to provide the mail facility with a minimum of 250 test inserts to be used for production testing. Requests for inserts that deviate from the specifications will be handled on a case by case basis, and must be reviewed each time a deviation is requested. Acceptance of any deviation by Company will not be deemed ongoing approval of any deviation to the specifications stated herein.
- 3) The following guidelines must be followed regarding pull off labels or stickers on inserts:
  - Label or sticker must be on the inside fold and cannot be in the fold.
  - If there is one label it must be centered. Note this Packaging Requirement: The packaged stock of inserts with labels must have a firm piece of cardboard on the top and bottom before being paper banded.
  - If there are two labels, they must be centered to the degree possible, and one label must not overlap the other.

**3. Insert Packaging Specifications:**

A. Banding:

- 1) Paper banding only.
- 2) Single panel inserts—band using minimum of 60 lb paper in minimum 4 inch to maximum 4.5-inch bundles.
- 3) Multi-panel folded inserts:
  - Band using minimum of 70 lb paper in 3 inch bundles
  - Folded edges must face in the same direction
  - Chip board must be placed at the top and bottom of each insert bundle.

B. Bundle Packing in Cartons:

- 1) Bundles must all face the same direction.
- 2) Bundles must be placed flat in cartons.
- 3) Bundles must not be placed on sides or ends.

C. Carton Weight and Size:

- Maximum carton weight is 35 lb.

- Cartons must be the same size for any given insert

D. Carton Markings:

1) The exterior of the carton must be clearly marked with:

- The words "National Grid"
- The amount of inserts bundled per pack
- The number of packs contained in the carton
- The number of cartons per shipment (1 of 5, 2 of 5, etc.)

2) Sample of the insert must be affixed to the outside of each carton.

E. Pallet Requirements:

- 1) No pallets are to be double stacked.
- 2) Size 48" x 36"
- 3) Maximum pallet height is four (4) feet
- 4) Shrink wrapping of pallets is preferable

**4. Insert Delivery Requirements:**

A. Delivery Date:

- The outsourcing provider must deliver inserts a minimum of 15 days in advance of scheduled mailing date.

B. Receiving Days/Hours:

- Monday through Friday, 9:00 a.m. to 3:00 p.m.

C. Truck Size:

- No larger than 24 feet in length

D. Delivery Address:

\_\_\_\_\_

E. Delivery Documentation:

- Insert vendor delivery bill of lading must include the number of cartons delivered, and must clearly identify the type of stock and paper weight used for inserts (e.g., 60 lb offset matt).

**5. Contingency for Damage:**

- Additional Inserts Requirement: Additional inserts as a contingency for damaged inserts should be included in the delivery based on the following schedule:

Quantity Shipped % Extra Inserts Required

0-100 25% 101-5,000 15% 5,001-10,000  
10% 10,001-50,000 7% 50,001-1,000,000  
6%

1,000,001 or more 5%