

**AGREEMENT FOR BILLING SERVICES AND
FOR THE PURCHASE OF GAS ACCOUNTS
RECEIVABLE**

BY AND BETWEEN

**NIAGARA MOHAWK POWER CORPORATION d/b/a
National Grid**

And

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**AGREEMENT FOR BILLING SERVICES AND
FOR THE PURCHASE OF GAS ACCOUNTS RECEIVABLE**

THIS AGREEMENT ("Agreement"), effective the ____ day of _____, 20__ (‘Effective Date’), is by and between Niagara Mohawk Power Corporation d/b/a National Grid (‘NATIONAL GRID’), a corporation organized and existing under the laws of the State of New York with its principal place of business at 300 Erie Boulevard West, Syracuse, New York 13202, and _____ (‘ESCO’), a _____ organized and existing under the laws of the State of _____ with its principal place of business at _____

NATIONAL GRID and ESCO may be hereinafter referred to individually as "Party" and collectively as the "Parties."

WHEREAS, NATIONAL GRID has implemented a supplier select program for natural gas retail customers in NATIONAL GRID’s service territory ("Program"), in accordance with its tariff on file with the New York State Public Service Commission ("PSC"), P.S.C. No. 219 Gas ("Tariff"); and

WHEREAS, the Agreement was approved by the PSC as part of the joint proposal in Case No. 05-M-0333 ("Joint Proposal"); and

WHEREAS, ESCO is participating in such Program as a provider of the Energy Commodity to Customers as such terms are hereinafter defined; and

WHEREAS, NATIONAL GRID and ESCO desire to enter into this Agreement whereby NATIONAL GRID agrees to bill ESCO’s supply of the Energy Commodity to Customers, and ESCO agrees to sell to NATIONAL GRID, and NATIONAL GRID agrees to purchase all Accounts Receivable, as such term is hereinafter defined.

NOW, THEREFORE, in consideration of the covenants herein set forth, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 Account(s) Receivable. With respect to any Customer, shall mean ESCO’s Energy Commodity revenue and associated charges determined by NATIONAL GRID under Articles 2 and 3 of the Agreement based upon the applicable Billing Price Determinants in effect (including, but not limited to, any applicable state or federal taxes and/or surcharges) that are billed under this Agreement that represent an account of such Customer.

1.2 Accounts Receivable Purchase Price. In respect of any Account Receivable purchased hereunder, shall mean the Account Receivable less applicable Purchase Discount and ESCO Charges as applicable.

1.3 ACH. Shall mean automated clearing house transaction which is part of the Electronic Funds Transfer Act and Federal Reserve Board's fedwire system, consisting of a collection of regional electronic interbank networks used to process transactions electronically.

1.4 Affiliate(s). Shall mean with respect to a Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to vote 10% or more of the Voting Stock of such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

1.5 Billed Amounts. Shall be any and all amounts billed by NATIONAL GRID to Customers, including Accounts Receivable, exclusive of applicable sales tax imposed thereon.

1.6 Billing Cycle. Shall correspond to the meter reading schedule published by NATIONAL GRID located at https://www9.nationalgridus.com/niagaramohawk/energy_supplier/elec_meter_sched.asp

1.7 Billing Date. Shall mean, with respect to any Account Receivable the date on which NATIONAL GRID's billing system calculates such Account Receivable.

1.8 Billing Price Determinant(s). Shall mean a Flat Rate price which consists of a program number and pricing group for each Customer and such other information submitted by ESCO more fully described in Attachment A, attached hereto and made a part hereof, required to calculate Accounts Receivable for the Energy Commodity supplied by ESCO and billed by NATIONAL GRID to Customers under this Agreement.

1.9 Billing Services. The billing services provided to ESCO by NATIONAL GRID under Article 2.

1.10 BSA/Security Agreement. Shall mean any and all existing agreement for billing services and purchase of electric accounts receivable by and between the Parties in effect on or before the Effective Date.

1.11 Business Day. Business Day shall mean any day that is not a Sunday, Federal holiday or other day on which commercial banking institutions in New York City are authorized or obligated by law or executive order to be closed.

1.12 Collateral. Shall have the meaning set forth in Section 3.7.

1.13 Contract. Shall have the meaning set forth in Section 5.5.

1.14 Customer. Shall mean any qualified residential and/or non- residential retail customer in NATIONAL GRID's service territory under the Program that is receiving the Energy Commodity. All of ESCO's customers purchasing Energy Commodity within NATIONAL GRID's service territory will be subject to this Agreement and included in the definition of Customer, unless ESCO and NATIONAL GRID agree to exclude the customers from this Agreement. Those customers, if any, who have been excluded from this Agreement are set forth in Attachment B.

1.15 Customer Payment. Shall mean the Customer payment for the Energy Commodity and any and all NATIONAL GRID Tariff charges and surcharges for energy services provided by NATIONAL GRID inclusive of applicable sales tax imposed thereon.

1.16 Default. Shall mean any event which, but for the passage of time or the giving of notice, or both, would constitute an Event of Default.

1.17 Deposit. Shall mean any deposit required pursuant to Section 10.1.

1.18 Document(s). Shall include Financing Statement(s), this Agreement or other documents, instruments and/or statements.

1.19 DPA. Shall mean a joint deferred payment agreement that meets the requirements of HEFPA or is otherwise voluntarily agreed to by a Customer and NATIONAL GRID that allows the Customer to pay an overdue amount.

1.20 EDI. Shall mean electronic data interchange standards established in PSC Case No. 98-M0667.

1.21 Effective Price Change Date. Shall have the meaning set forth in Section 2.3.

1.22 EFT. Shall mean electronic funds transfer provided under the Electronic Funds Transfer Act and Federal Reserve Board Regulation E which is a transfer of funds other than a transaction originated by check, draft, or similar paper instrument, that is initiated electronically to order, instruct, or authorize a financial institution to debit or credit an account.

1.23 Energy Commodity. Shall mean Customer's supply of natural gas that is provided by ESCO under the Program.

1.24 ESCO Affidavit. Shall have the meaning set forth in Section 4.3.1.

1.25 ESCO Charges. Shall have the meaning set forth in Section 3.3 and in addition shall include other similar charges or amounts or ESCO costs and expenses required under this Agreement, the Tariff, UCC, UBP, as may be amended or modified from time to time.

1.26 Event(s) of Default. Shall have the meaning set forth in Section 9.2.

1.27 FERC. Shall mean the Federal Energy Regulatory Commission or any successor agency thereto.

1.28 Financing Statements. Shall mean any and all financing statements and amendments thereto, required in connection with ESCO's grant of security interest in the Collateral under Section 3.7 to be filed in accordance with requirements of the UCC.

1.29 Flat Rate. Shall mean Billing Price Determinants as submitted by ESCO that are based solely upon a price applied to Customer's Energy Commodity required to determine the Accounts Receivable. Such price is all-inclusive of ESCO's cost of service components, including but not limited to all revenue taxes imposed upon ESCO, such as any gross receipt or revenue taxes *exclusive* of any applicable sales taxes imposed on ESCO's revenues.

1.30 FTN. Shall mean the final termination notice required under HEFPA.

1.31 HEFPA. Shall mean the Home Energy Fair Practices Act.

1.32 Law. Shall have the meaning specified in Section 5.5.

1.33 Lesser Amount. Shall mean the amount paid by a residential Customer of the amount necessary to end the suspension of Tariff delivery service pursuant to the requirements of Public Service Law § 32 (5)(d), which amount shall be the lesser of (i) the total amount the Customer would have owed NATIONAL GRID for the period of non-payment if the entire service (i.e. Energy Commodity and Tariff delivery service) had been obtained from NATIONAL GRID, or (ii) the actual sum of the amount of arrears owed to ESCO and NATIONAL GRID.

1.34 Market Clearing Price. Shall be determined by reference to the Platts Gas Daily Index, Daily Price Survey for "Appalachia," "Dominion North Point" ("GAS INDEX") plus the Dominion Transportation, Inc. ("DTI") variable transportation rate to the Company's city gate averaged for the 30 day period ending with the effective date of the submitted energy services company's Billing Price Determinants. In the event that the GAS INDEX is not published for Dominion North Point, then the Platts Gas Daily Index, Daily Price Survey for "Appalachia", "Dominion South Point" for Appalachia shall be substituted for purposes of determining the Market Clearing Price under this Section.

1.35 Person. Shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, limited liability company or other entity, or a government or any political subdivision or agency thereof.

1.36 Program. Shall mean the NATIONAL GRID-implemented retail access program under its Tariff for natural gas retail customers in its service territory.

1.37 PSC. New York State Public Service Commission or any successor agency thereto.

1.38 Purchase Discount. With respect to any Account Receivable within any

service classification, shall mean the discount rate for such service classification multiplied by the face amount of such Accounts Receivable excluding any applicable state sales tax for such Account Receivable.

1.39 Reconnect Chargeback Amount. Shall mean any difference between the amount billed and the amount paid by Customer to reconnect service pursuant to the requirements of Public Service Law § 32 (5)(d) .

1.40 Representatives. Shall mean the Subsidiaries, Affiliates, directors, officers, employees, agents, auditors, attorneys, consultants or advisors by and on behalf of the Parties.

1.41 Sales Tax Adjustment Charge. Shall mean the amount of sales tax included in the Accounts Receivable Purchase Price that is deemed uncollectible by NATIONAL GRID.

1.42 Submission Date. Shall mean the date NATIONAL GRID receives initial or revised Billing Price Determinants from ESCO.

1.43 Subsidiary. Shall mean any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the Voting Stock, (b) the interest in the capital or profits of such limited liability company, partnership or joint venture, or (c) the beneficial interest in such trust is, in each case, at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries, or by one or more of such Person's other Subsidiaries.

1.44 Tariff. Shall mean NATIONAL GRID's Tariff No. 219 - Gas on file with the PSC.

1.45 Term. Shall have the meaning set forth in Article 8.

1.46 Third Party Financing Statements. Shall have the meaning set forth in Section 6.4.

1.47 Transition Fee. Shall mean the fee paid by ESCO to NATIONAL GRID that is determined in accordance with the fee schedule set forth in Attachment C established pursuant to the methodology set forth in the Joint Proposal.

1.48 UBP. Shall mean the Uniform Business Practices adopted by the PSC as amended and modified from time to time.

1.49 UCC. Shall mean the Uniform Commercial Code as in effect in the jurisdiction under the laws of which the ESCO as a "registered organization", as such term is defined in the UCC.

1.50 Unbilled Accounts Receivable. Shall mean the amount of ESCO's Energy Commodity revenue and associated charges to be determined by NATIONAL GRID under Article 2 of this Agreement based upon the applicable Billing Price Determinants in effect (including, but not limited to, any applicable state or federal taxes and/or surcharges) that remain unbilled until such time as such receivables are billed and purchased by NATIONAL

GRID under the terms of this Agreement.

1.51 Voting Stock. Shall mean capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

All capitalized terms used in this Agreement and not otherwise defined have the meaning given to such terms in the Tariff.

ARTICLE 2 - BILLING

2.1 General. NATIONAL GRID agrees to calculate the Accounts Receivable, based upon the Billing Price Determinants in effect, and include on NATIONAL GRID bills to Customers such calculated amount along with any and all NATIONAL GRID Tariff charges and surcharges, if applicable, for energy services provided by NATIONAL GRID in connection with ESCO's supply of the Energy Commodity to Customers. NATIONAL GRID charges and any applicable surcharges in connection with the Customer's Energy Commodity shall be separately identified on the NATIONAL GRID bills prepared under this Agreement except for:

- (a) surcharges that may be included by ESCO as a component of the Billing Price Determinants provided to NATIONAL GRID under this Agreement,
- (b) the net prior ESCO balance remaining (item m in Attachment 3 to Section 9, paragraph G. 4 of the UBPs) and
- (c) if a budget bill, the applicable billing information and resulting budget bill amount due (item p in Attachment 3 to Section 9, paragraph G.4 of the UBPs)

With respect to (b) and (c) above, the general section of a consolidated bill will display the total net prior balance and, where applicable, the total budget installment due and total budget plan balances, for both delivery and commodity charges

2.2 Submission of Initial Billing Price Determinants. ESCO shall submit its applicable initial Billing Price Determinants prior to NATIONAL GRID's performance of any Billing Services under this Agreement. Where a Billing Price Determinant is below the applicable Market Clearing Price, ESCO agrees that NATIONAL GRID has the right to require ESCO to post additional security in the amount of the difference between the Billing Price Determinant and the Market Clearing Price. In the event ESCO fails to post additional security within ten (10) business days of written notice from NATIONAL GRID, NATIONAL GRID shall terminate this Agreement in accordance with Article 9 Section 9.2.

2.3 Changes to Billing Price Determinants. ESCO may change any and all Billing Price Determinants initially provided to NATIONAL GRID at the commencement of the Term of this Agreement, but will be limited to two changes every 30 days, and in no event shall the

changes be effective less than four Business Days after NATIONAL GRID's actual receipt via NATIONAL GRID's Web Site ("Effective Price Change Date"). There will be no retroactive application of revised Billing Price Determinants. Any revised Billing Price Determinants shall apply prospectively as of the Effective Price Change Date.

2.3.1 Flat Rate - Revised Billing Price Determinants. The Flat Rate applied to the Energy Commodity for each Customer as of the Effective Price Change Date shall be based upon the Billing Price Determinant selections in effect as of such date.

2.4 Calculation of Accounts Receivable. Based on the applicable Billing Price Determinants in effect under this Agreement and on available metering data or estimated usage data, NATIONAL GRID, applying its standard billing methods, will determine the Accounts Receivable under Article 2, and include such amounts on NATIONAL GRID bills issued to Customers. NATIONAL GRID's standard billing methods include, but shall not be limited to, a proration of Flat Rate based Billing Price Determinants.

2.5 Billing Services. NATIONAL GRID shall provide billing services which consist of billing and collecting Accounts Receivable and budget billing. ESCO shall be responsible for any and all ESCO Charges. NATIONAL GRID agrees to print ESCO's name (provided that it does not exceed 36 characters) and telephone number and the respective Customer's Accounts Receivable, based upon the current Billing Price Determinants in effect, on each NATIONAL GRID bill to such Customer provided that NATIONAL GRID has received Billing Price Determinants in accordance with the terms of this Agreement. NATIONAL GRID bills shall also contain a statement that directs Customers to make all checks payable to NATIONAL GRID only.

2.6 Sales Tax. The sales tax rates applied to ESCO portion of Billed Amounts hereunder shall be based solely upon the sales tax rates that would have otherwise been charged to the same Customer if the Gas Supply Service had been provided by NATIONAL GRID.

ARTICLE 3 – PURCHASE AND MANAGEMENT OF ACCOUNTS RECEIVABLE

3.1 General. Pursuant to the terms of this Agreement, ESCO agrees to sell and NATIONAL GRID agrees to purchase each Account Receivable as of the Billing Date in respect of such Account Receivable, and in consideration of such purchase ESCO grants to NATIONAL GRID a security interest in the Collateral under this Article 3. As of the Billing Date, title to such Account Receivable shall pass to NATIONAL GRID and ESCO shall have no rights in or to such Account Receivable, and shall not seek to collect in any manner such amount from any Customer. Any Accounts Receivable, or portion thereof, that are billed by NATIONAL GRID under this Agreement and for which payment is received by ESCO from Customers shall be held by ESCO in trust as the property of NATIONAL GRID and shall be remitted in full to NATIONAL GRID immediately, and in any event within 5 Business Days of receipt, without any deduction or setoff by ESCO. NATIONAL GRID shall have the right to endorse the name of ESCO on any and all remittances by Customers received by NATIONAL GRID that are payable to ESCO, and the right to collect the same from Customers. In addition,

ESCO assigns to NATIONAL GRID any and all payments received from state, federal or other agencies associated with the Accounts Receivable including without limitations Heating Emergency Assistance Program (HEAP), emergency HEAP, Section 131s payments from social service programs.

3.2 Accounts Receivable Purchase Price. NATIONAL GRID shall pay to ESCO the Accounts Receivable Purchase Price in the manner and at the time set forth in Section 3.4. For each Account Receivable purchased under this Agreement, if the ESCO Charges in respect thereof exceed the face amount of such Account Receivable, such that the Accounts Receivable Purchase Price is less than zero (0), NATIONAL GRID shall have the right to either (i) set off and apply any and all ESCO Charges, payments, or amounts owing to NATIONAL GRID by ESCO under this Agreement to or for the credit on the account of NATIONAL GRID against any and all of the obligations of NATIONAL GRID including but not limited to the Accounts Receivable Purchase Price to any affected sums, deposits, fees and charges under this Agreement, now or hereafter existing under this Agreement, or (ii) require ESCO to pay such ESCO Charges to NATIONAL GRID in full, without any deduction or setoff, within ten days after receipt of NATIONAL GRID's invoice of any amounts due. NATIONAL GRID may request payments by check, ACH or EFT from ESCO. NATIONAL GRID has the right to impose a continuing late payment penalty each month in the amount of 1.5 % of any unpaid sums previously invoiced and any objections to payment must be made in writing to NATIONAL GRID within 60 days after the date of the subject invoice. **ESCO'S FAILURE TO PRESENT AN INVOICE CLAIM WITHIN**

THIS 60-DAY PERIOD SHALL CONSTITUTE A WAIVER OF ANY CLAIM ESCO MAY HAVE WITH RESPECT TO THE ACCOUNTS RECEIVABLE PURCHASE PRICE SET FORTH IN THE SUBJECT INVOICE. In the event NATIONAL GRID determines that a refund is owed to ESCO with respect to any purchase of Accounts Receivable hereunder, NATIONAL GRID will either make such refund, or credit ESCO's account, within 10 days after its determination.

3.3 Fees and Charges. ESCO agrees that NATIONAL GRID has the right to deduct from or to reduce the Accounts Receivable Purchase Price by the following amounts (collectively the "ESCO Charges"):

3.3.1 Billing Processing Fee. NATIONAL GRID will charge ESCO a processing fee which shall be \$.50 for each ESCO Customer account billed by NATIONAL GRID pursuant to Article 2 or an allowable amount under the Tariff, whichever is greater.

3.3.2 Purchase Discount. NATIONAL GRID will charge ESCO a Purchase Discount. The discount rate for the Purchase Discount shall be consistent with the terms of the Joint Proposal.

3.3.3 Reconnect Amount Charge(s). NATIONAL GRID will determine and charge all Reconnect Chargeback Amounts to ESCO by deducting such amounts from the Accounts Receivable Purchase Price, if applicable. Each affected Customer account will be credited in the amount of the Reconnect Chargeback Amounts. NATIONAL GRID charges for Reconnect Chargeback Amounts under this section may be

deducted by NATIONAL GRID from the Accounts Receivable Purchase Price at any time during the Term of this Agreement and the right to deduct Reconnect Chargeback Amounts shall survive termination of this Agreement.

3.3.4 Re-Billing Services Fee. NATIONAL GRID will charge ESCO a processing fee in the amount of \$5.00 for each account re-billed by NATIONAL GRID only upon written request from ESCO, which written request must be received within 20 calendar days of the original billing date for such account. The written request shall include a list of the NATIONAL GRID bill account numbers for the accounts to be re-billed and the number of re-billed accounts included in the subject list shall be used as the basis for the Re-Billing Services Fee.

3.3.5 Sales Tax Adjustment Charge. NATIONAL GRID will determine and charge all Sales Tax Adjustment Charges to ESCO.

3.3.6 Administrative Fee. NATIONAL GRID shall charge ESCO a pro rata share (except for those costs and expenses that are specifically identified to a particular energy service company) of any and all NATIONAL GRID incremental costs and expenses associated with this Agreement, the purchase of receivable and billing services plan more fully set forth in the Joint Proposals that may be approved by the Commission in Case No.05-M-0333 concerning NATIONAL GRID's Competitive Opportunities Development Plan, or any further retail market development programs that may be approved by the Commission during the term of this Agreement.

3.3.7 Other Charges. NATIONAL GRID shall have the right to impose other fees and expenses in addition to the ESCO Charges provided in this Section 3 ("Other Charges") by providing the ESCO with 20 days advance written notice of the implementation of such Other Charges. In the notice NATIONAL GRID shall set forth the rationale with supporting documentation for such fees and charges. In the event ESCO disagrees with such Other Charges ESCO shall have the right to dispute resolution with respect to the Other Charges only pursuant to Section 3.3 of the Joint Proposal provided that ESCO provides NATIONAL GRID with advance written notice that sets forth ESCO's specific objections to the Other Charges on or before the implementation of the Other Charges.

3.4 Payment by NATIONAL GRID. NATIONAL GRID shall remit to ESCO the Accounts Receivable Purchase Price for each Billing Cycle 20 calendar days after NATIONAL GRID has issued bills to Customers pursuant to Article 2. Payment to ESCO shall, at NATIONAL GRID's option, be either by (a) check mailed to the address of ESCO first set forth above, or (b) ACH or (c) EFT. Except for the calendar days provided in this section, NATIONAL GRID reserves the right to modify the payment procedure under this Article to accommodate any NATIONAL GRID operational and/or system changes upon 30 days' prior written notice to ESCO.

3.5 ESCO Statements/Reports. NATIONAL GRID will provide ESCO with all necessary statements/reports through EDI transactions.

3.6 Right of Offset. To the fullest extent permitted by law, NATIONAL GRID is hereby authorized at any time and from time to time, to set off against and apply any and all payments or amounts owing to ESCO by NATIONAL GRID under this Agreement to, or for the credit on the account of ESCO, against any and all of the obligations of ESCO including, but not limited to, any affected sums, deposits, fees and charges under this Agreement, now or hereafter existing under this Agreement, or any ESCO sums owed to the NYISO for related charges and expenses whether or not NATIONAL GRID shall have made any demand under this Agreement *if* (a) (i) ESCO ceases doing business as a going concern for five or more days; (ii) ESCO makes an assignment for the benefit of creditors; (iii) ESCO admits in writing its inability to pay its debts as they become due; (iv) ESCO is generally not paying its debts as they mature; (v) ESCO files a voluntary petition in bankruptcy; (vi) ESCO files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding; (vii) ESCO consents to or acquiesces in the appointment of a custodian, trustee, receiver or liquidator of it or all or any substantial part of its assets or properties; (viii) ESCO or its shareholders shall take any action looking to its dissolution or liquidation; (ix) any order for relief is entered against ESCO under the federal bankruptcy laws; (x) ESCO fails to pay any sums required by this Article 3 when due or fails to provide any security deposits required by any NATIONAL GRID Tariff or tariffs on file with the FERC or the PSC; (xi) ESCO has failed to pay when due any sums owed to NATIONAL GRID or any other third party under this Agreement or under any other agreement in connection with the Program or under the Tariffs or UBP Section 7; or (xii) ESCO's membership in the NYISO is terminated; or (b) NATIONAL GRID (i) has reasonable grounds for insecurity regarding the performance of ESCO of any obligations under this Agreement (whether or not then due); or (ii) has reasonable grounds to believe that the fees and/or charges owing from ESCO to NATIONAL GRID under this Agreement may exceed any amounts due and owing or to become due and owing from NATIONAL GRID to ESCO; or (c) if any amounts that remain due and owing to NATIONAL GRID after application of any indemnification proceeds due to NATIONAL GRID from ESCO under Articles 4 and 13, which proceeds represent payment for Losses or BSA Losses under such Articles. The rights of NATIONAL GRID under this Article 3 are in addition to other rights and remedies (including, without limitation, other rights of setoff) NATIONAL GRID may have under this Agreement, its Tariff, the UCC, UBP, or the laws of the State of New York, and any applicable rules and regulations thereunder.

3.7 Security Interest. As collateral for all obligations now existing or hereafter arising from ESCO to NATIONAL GRID, ESCO hereby grants to NATIONAL GRID a first priority perfected security interest in all the following property of ESCO, wherever located, whether now owned, hereafter acquired, or created, and all proceeds and products thereof (the "Collateral"):

3.7.1 All Accounts Receivable purchased by NATIONAL GRID under this Agreement;

3.7.2 The Deposit; and

3.7.3 All Unbilled Accounts Receivable to be purchased by NATIONAL GRID under this Agreement.

3.8 Application of Customer Payment. NATIONAL GRID agrees to calculate the fractional share of the Customer Payment (i.e., proration of Customer Payment) for each Party in accordance with HEFPA requirements except upon payment of the Lesser Amount, in which case the payment will be prorated to the Lesser Amount. Upon payment of the Lesser Amount, the unpaid portion of the Customer Accounts Receivable shall be identified and included in subsequent bills to Customer until either the unpaid amount is charged back under this Agreement or paid in full, whichever occurs first.

ARTICLE 4 – DISCONTINUANCE OF DELIVERY AND COMMODITY SERVICES

4.1 HEFPA Activities for Residential Customers.

4.1.1 NATIONAL GRID, and not the ESCO, will be responsible for all HEFPA activities in relation to Accounts Receivable(s) of only those Customers that are eligible for HEFPA protections that are purchased from the ESCO under this Agreement, including without limitation, the following activities:

a. NATIONAL GRID shall provide a joint FTN, consistent with NATIONAL GRID collection policies.

b. NATIONAL GRID will contact Customer to seek Customer's consent to a DPA.

c. ESCO shall agree to not offer its own deferred payment agreement to any HEFPA eligible Customer until such account has been charged back in accordance with Section 3.3.3 of this Agreement.

d. NATIONAL GRID shall provide an annual notice required under HEFPA summarizing rights and obligations of residential Customers under HEFPA.

4.1.2 NATIONAL GRID shall indemnify and hold harmless the ESCO, except in cases of negligence or intentional misconduct or wrongdoing by ESCO, for any costs or liabilities to third parties arising out of NATIONAL GRID's HEFPA actions under this Section 4.1, (any of the above being a "HEFPA Claim") provided that: (i) ESCO provides NATIONAL GRID actual written notice of any HEFPA Claim by third parties within three days of ESCO's receipt of such HEFPA Claim, (ii) ESCO irrevocably appoints NATIONAL GRID as its attorney-in fact in connection with the settlement, litigation, or other resolution of any HEFPA Claim, (iii) ESCO cooperates in all reasonable respects with NATIONAL GRID and its attorneys in the investigation, trial, defense and settlement of such HEFPA Claim and any appeal arising therefrom, (iv) ESCO does not take any actions inconsistent with NATIONAL GRID's rights under Section 4.1. ESCO shall not have any authority, either express

or implied, to enter into any settlement negotiations regarding any HEFPA Claim or offer to settle or compromise any Claim. In no event shall any settlement of a HEFPA Claim by NATIONAL GRID require consent of ESCO.

4.1.3 Pursuant to the discontinuance of service requirements under HEFPA, applicable PSC rules and regulations thereto, and terms and conditions of ESCO's Customer contracts as applicable, ESCO, with respect to residential Customer Accounts Receivable purchased by NATIONAL GRID hereunder, hereby grants, assigns and conveys to NATIONAL GRID any and all ESCO's rights (or in the alternative if such rights are not available, ESCO appoints NATIONAL GRID as ESCO's agent), to terminate Energy Commodity service and/or suspend NATIONAL GRID Tariff delivery service of any ESCO residential Customer that fails to make full payment of any and all Energy Commodity and NATIONAL GRID Tariff delivery service charges due in accordance with 16 NYCRR Part 11, (i.e. delivery and or commodity) that are set forth on a consolidated bills required under Article 2.

4.2 Non-Payment and Discontinuance of Non- Residential Customer Service

4.2.1 ESCO, with respect to non- residential Customer Accounts Receivable purchased by NATIONAL GRID hereunder, hereby grants assigns and conveys to NATIONAL GRID any and all of ESCO's rights, (or in the alternative if such rights are not available, ESCO appoints NATIONAL GRID as ESCO's agent), to disconnect ESCO non- residential Customer that fails to make full payment of any and all Energy Commodity and NATIONAL GRID Tariff delivery service charges due in accordance with 16 NYCRR Part 13, (i.e. delivery and or commodity) that are set forth on a consolidated bills required under Article 2. Pursuant to such assignment and/or appointment, NATIONAL GRID shall be authorized to disconnect its Tariff delivery service and ESCO's Energy Commodity service in accordance with 16 NYCRR Part 13, to non-residential Customers when (i) the Customer fails to make full payment of all amounts due on the consolidated bill as required under Article 2; (ii) NATIONAL GRID has purchased the ESCO's Account(s) Receivable; and (iii) ESCO executes and furnishes NATIONAL GRID with the affidavit, as set forth in Attachment D, from an officer of ESCO representing to NATIONAL GRID that ESCO has notified its current non-residential Customers and will notify its future non-residential Customers that NATIONAL GRID is permitted to disconnect the Customer for non-payment of ESCO Energy Commodity charges. The Company's receipt of such properly executed affidavit shall be condition of any service or NATIONAL GRID obligations under this Agreement. ESCO will indemnify and hold harmless NATIONAL GRID for any cost, expense, or penalty or unpaid Account(s) Receivable purchased by NATIONAL GRID if the Customer's service is discontinued for non-payment and the Customer establishes that it did not receive such notification. ESCO waives the right to seek termination for non-payment of ESCO service and/or to request suspension of NATIONAL GRID's Tariff delivery service.

4.3 ESCO Indemnification for Non-Payment

4.3.1 ESCO, to the fullest extent of the law, shall indemnify, defend, and save harmless and shall reimburse NATIONAL GRID, and its Representatives, from and against any and all losses, damages, 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 "NonPayment Losses"), which may at any time be imposed on, incurred by or asserted against NATIONAL GRID 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 (i) discontinuance of a customer's service for non-payment and such discontinuance action is based upon and in reliance of ESCO's officer affidavit ("ESCO Affidavit") and the customer establishes that it did not receive the ESCO required notification represented by ESCO to NATIONAL GRID in the ESCO Affidavit; or (ii) any collection activity for non-payment or discontinuance of service by NATIONAL GRID that is deemed to be subject to federal, state or local laws on collection and such activity is adjudged to be in violation thereof that are not the result of the sole negligence of NATIONAL GRID.

ARTICLE 5 - ESCO REPRESENTATIONS AND WARRANTIES

- 5.1** ESCO warrants that it has the rights in, or the power to, transfer the Collateral to NATIONAL GRID. Furthermore, ESCO warrants that its title to the Collateral is free of all adverse claims, liens, security interest and restrictions on transfer or pledge and are not and will not be subject to any other valid or existing billing, collection, or financing instrument, and have not been billed and will not be collected by or for the benefit of any other party except NATIONAL GRID.
- 5.2** ESCO warrants that the Collateral is and will remain free from any and all liens, claims, encumbrances, security interests and restrictions on transfer or pledge, and that no Collateral will be assigned, financed, sold, pledged, hypothecated, or otherwise encumbered, except to NATIONAL GRID.
- 5.3** ESCO warrants that the prices charged to Customers are in accordance with ESCO's agreements with these Customers.
- 5.4** ESCO warrants that its legal name and state of organization is as set forth in the preamble to this Agreement and ESCO (i) is a _____ duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) is duly qualified in New York and each other jurisdiction and in good standing as a foreign _____ in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed, and (iii) has all requisite power and authority (including, without limitation, all governmental licenses, permits and other approvals) to own or lease and operate its properties and to carry on its business as now conducted. If ESCO is a non-New York entity, ESCO is a registered organization as defined in Section 9-102 of the UCC in its state of organization. This applies only in the case of a

non-New York entity qualified to do business and in good standing in the State of New York.

- 5.5** ESCO warrants that the execution, delivery and performance by ESCO of this Agreement and each Document to which it is or is to be a party, 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 _____ *[specify governance documents, i.e., charter/bylaws/articles of limited partnership]*, violate any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award (each a "Law"), (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 (each a "Contract") binding on or affecting ESCO, or its Subsidiaries, or any of their properties, or (iv) result in or require the creation or imposition of any lien upon or with respect to any of the Collateral other than under this Agreement.
- 5.6** ESCO warrants that neither ESCO nor any of its Subsidiaries is in violation or breach of any Contract or Law, the violation or breach of which is reasonably likely to have a material adverse effect on ESCO's ability to perform under this Agreement.
- 5.7** ESCO warrants that no authorization, consent or approval, license, exemption or filing or registration with any court or other action by, and no notice to or filing with any governmental authority or regulatory body or any other third party is required for the due execution, delivery, recordation, filing or performance by ESCO of this Agreement or any other Document to which it is a party, or for the consummation of the other transactions contemplated hereby.
- 5.8** ESCO warrants that this Agreement has been, and each other Document when delivered hereunder will have been, duly executed and delivered by ESCO except as otherwise provided in this Agreement. This Agreement is, and each other Document to which ESCO is a party when delivered hereunder will be, the legal, valid and binding obligation of ESCO, enforceable against ESCO in accordance with its respective terms.
- 5.9** ESCO warrants that 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.
- 5.10** ESCO warrants that Collateral is free of all tax liens claims and/or encumbrances and that ESCO will pay and remit on a timely basis all applicable state and federal tax levied or assessed upon the Accounts Receivable or the Collateral.

ARTICLE 6 - ESCO COVENANTS AND OBLIGATIONS

- 6.1** **Legal Identity.** During the Term of this Agreement and until all of ESCO's obligations under this Agreement are completed, ESCO agrees that it will:

- a. provide NATIONAL GRID with 60 days prior written notice of any change in *[specify corporation / limited liability company / partnership]* existence and status as a registered organization, and NATIONAL GRID shall have the right to terminate this Agreement on the effective date of any such change;
- b. provide NATIONAL GRID with 60 days' prior written notice, if ESCO merges into or consolidates with any other entity, or sells all or substantially all of its assets, and NATIONAL GRID shall have the right to terminate this Agreement on the effective date of the merger, consolidation or sale;
- c. provide NATIONAL GRID with 30 days' prior written notice of any change in ESCO's state where it is located, incorporated or is registered, as the case may be;
- d. not change its corporate name without providing NATIONAL GRID with 30 days' prior written notice; and
- e. not grant any security interest in the Collateral except to NATIONAL GRID.

6.2 ESCO Cooperation. ESCO agrees to cooperate with NATIONAL GRID to the fullest extent possible under the law and to use its best efforts to facilitate the transactions under this Agreement. Such cooperation shall include, but not be limited to, supplying NATIONAL GRID with all information and assistance that may be necessary or helpful to NATIONAL GRID in establishing the accuracy of any Accounts Receivable or in correcting any errors.

6.3 ESCO Document Delivery. ESCO hereby agrees to promptly execute and/or deliver to NATIONAL GRID any and all Documents NATIONAL GRID deems necessary to evidence NATIONAL GRID's first priority security interest in the Collateral and satisfy ESCO's obligations under this Agreement. ESCO authorizes NATIONAL GRID to file and/or record Documents, at ESCO's sole cost and expense, including Financing Statements deemed necessary by NATIONAL GRID to perfect its interest in the Collateral under the UCC and put third parties on notice of NATIONAL GRID's interest in the Collateral. ESCO further agrees that NATIONAL GRID may execute, file and/or record any such other documents at ESCO's sole cost and expense, if required, to evidence NATIONAL GRID's interest in the Collateral, for and on behalf of ESCO.

6.4 Financing Statements. ESCO agrees to use its best efforts to:

- a. obtain any and all necessary amendments or terminations of financing statements, filed by any third party ("Third Party Financing Statements") before the commencement of the Term of this Agreement against ESCO as a debtor in the Collateral contemplated under this Agreement, specifically obtaining a release of the Collateral; and
- b. ensure that any and all Third Party Financing Statements filed subsequent to the commencement of the Term of this Agreement shall expressly except from the description of collateral the Collateral and specifically reference this Agreement to ensure continuation of NATIONAL GRID's first priority perfected security interest in the Collateral.

6.5 Conditions Precedent. The commencement of the Term of this Agreement and the obligations of ESCO and NATIONAL GRID under this Agreement are subject to the satisfaction of the following *conditions precedent*:

- a. ESCO shall deliver the information in (i)-(iii) below to NATIONAL GRID to the attention and address of its representatives in Section 6.6 prior to the commencement of the Term of this Agreement. ESCO shall provide the following:
 - (i) complete list of any liens in favor of a third party, as creditor against ESCO, as debtor;
 - (ii) copies of all documents evidencing such liens including any Third Party Financing Statements filed against ESCO as a debtor;
 - (iii) a certified copy of a lien search of ESCO from the UCC filing offices under the UCC or a report that is complete and satisfactory to NATIONAL GRID, such that NATIONAL GRID is satisfied that any Collateral that has been previously pledged by the ESCO, whether recorded or not, has been fully discharged and released, and that no lien currently is recorded against the Collateral. An uncertified lien search obtained from an internet based website from ESCO's state of organization shall not satisfy requirements under this section. The lien search obtained shall be at ESCO's sole cost and expense; and
 - (iv) An original or certified copy of a certificate of good standing with respect to ESCO issued by the Secretary of State of ESCO's jurisdiction of organization and, if such jurisdiction is not the State of New York, then an original certificate of authority evidencing that ESCO is duly qualified and in good standing as a foreign organization in the State of New York.
- b. If the information provided by ESCO under Section 6.5 (a)(i)-(iii) is not, in the opinion of NATIONAL GRID, satisfactory, complete and acceptable in form and substance, and such information does not provide adequate evidence that NATIONAL GRID's interest in the Collateral is superior to any third party's interest, then NATIONAL GRID shall provide written notice to ESCO that the Term of this Agreement shall not commence and this Agreement shall be null and void.

6.6 Notification. In addition to the requirements in Section 6.5, ESCO agrees to provide copies to NATIONAL GRID of any Third Party Financing Statements filed after the commencement of the Term of this Agreement prior to the filing of any such statements to allow NATIONAL GRID to review such Third Party Financing Statements. After its receipt of the Third Party Financing Statements, NATIONAL GRID shall have three Business Days to object to such statements on the ground that the execution of the Financing Statement would grant a security interest in the Collateral or otherwise affect NATIONAL GRID's security interest in the Collateral. ESCO shall deliver the Third Party Financing Statements by a nationally recognized courier service **and** by facsimile to NATIONAL GRID at the following address and facsimile numbers:

National Grid
175 East Old Country Road
Hicksville, New York 11801

ATTENTION: Customer Choice - NiMO
Facsimile No. (516) 545-3252

Third Party Financing Statements delivered by facsimile shall be deemed given on the day of receipt provided that the statements delivered by a nationally recognized courier service are received by NATIONAL GRID before noon New York time on the next Business Day following the receipt of the facsimile.

- 6.7 Suspension of Tariff Delivery Service.** During the Term of this Agreement, ESCO assigns to NATIONAL GRID any and all rights to request NATIONAL GRID to suspend its Tariff delivery service or collect Accounts Receivable and ESCO waives all of its rights to exercise these activities without NATIONAL GRID's consent.

ARTICLE 7 - TAXES

- 7.1 Certificate of Authority.** At or prior to the date of its execution of this Agreement, ESCO shall provide NATIONAL GRID 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.
- 7.2 Payment of Taxes.** In accordance with Section 3.5, the amount of sales and use taxes invoiced to Customers in connection with ESCO's portion of Billed Amounts will be provided in ESCO's Statements/Reports. ESCO shall be considered the vendor for purposes of liability for taxes related to Billed Amounts. Nothing in this Agreement shall be construed as imposing upon NATIONAL GRID the obligation of remitting to any federal, state, or local taxing authority those taxes that are the collection and remittance responsibility of ESCO with respect to any Billed Amounts or with respect to NATIONAL GRID's purchase of Accounts Receivable from ESCO. ESCO shall be liable for and shall pay all such taxes, and shall further indemnify, defend, and save harmless NATIONAL GRID from and against any and all liability for such taxes, and any interest or penalties thereon.

ARTICLE 8 - TERM OF AGREEMENT

- 8.1** The initial term of this Agreement ("Term") shall commence on either the (i) Effective Date or (ii) the date that ESCO submits the initial Billing Price Determinants to NATIONAL GRID, whichever is later, provided, however, that ESCO fulfills its condition precedents under Article 6 to NATIONAL GRID's satisfaction. If ESCO does not fulfill the obligations under Article 6 as determined by NATIONAL GRID, in its sole and absolute discretion, the Term of this Agreement shall not commence and no obligations will arise with respect to NATIONAL GRID and this Agreement shall be null and void except as otherwise set forth in this Section

8.1. The Term of this Agreement shall only commence in accordance with express terms and conditions of this Agreement, and continue in full force and effect for the duration of the Program, unless earlier terminated in accordance with Article 9.

ARTICLE 9 – TERMINATION / EVENTS OF DEFAULT

9.1 Termination for Convenience. Either Party may terminate this Agreement upon 60 days' prior written notice to the other Party.

9.2 Termination for Default. Except as otherwise provided in this Article 9, this Agreement may be terminated by either Party (the "Terminating Party") upon the occurrence of any of the following events ("Events of Default") with respect to the other Party (the "Defaulting Party"):

9.2.1 The Defaulting Party's failure to make any payment required under this Agreement when or before due which such failure continues for five days after receipt of written notice from the Terminating Party; or

9.2.2 Any representation or warranty made or deemed made by the Defaulting Party herein or in connection with this Agreement proves to have been incorrect in any respect when made or deemed made; or

9.2.3 The Defaulting Party's failure to perform or observe any other term, covenant or agreement contained in this Agreement on its part to be performed or observed if such failure shall remain unremedied for a period of 30 days after written notice thereof shall have been given to the Defaulting Party; or

9.2.4 The Defaulting Party's ceasing to do business for five or more days, or generally not paying its debts as such debts become due, or admitting in writing its inability to pay its debts generally, or making an assignment for the benefit of creditors; or the institution of any proceeding by or against the Defaulting 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 bankruptcy, 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 shall remain undismissed or unstayed for a period of 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 Defaulting Party or any of its Subsidiaries or Affiliates shall take any corporate/organizational action to authorize any of the actions set forth or the appointment of a receiver, trustee or custodian over, or an execution, attachment or levy upon, all or any material part of the property of the Defaulting Party; or

9.2.5 Upon termination for default, the Terminating Party shall have the additional right to declare all amounts owing under this Agreement from the Defaulting Party to be immediately due and payable.

9.3 Additional NATIONAL GRID Rights. In addition to the termination rights set forth in Section 9.1 and 9.2 above, NATIONAL GRID has the following additional rights under the Agreement:

9.3.1 In the event of the issuance of an order by a court of competent jurisdiction staying the implementation of or overturning the orders of the PSC regarding the Program, NATIONAL GRID shall have the right to immediately terminate this Agreement;

9.3.2 In the event of ESCO's failure to comply with the Tariff, or with any tariffs on file with the FERC that may be applicable to the Program, or with any PSC requirements applicable to the Program, NATIONAL GRID shall have the right to exercise any such rights authorized and provided in the Tariff or tariffs or by any PSC requirements applicable to the Program including the right to immediately terminate this Agreement;

9.3.3 In the event of ESCO's failure to maintain in place at all times, any and all governmental approvals, if required, for ESCO to receive service from NATIONAL GRID under this Agreement or to sell the Energy Commodity to Customers, whether such approvals are issued by the PSC or other state or federal regulatory authority of competent jurisdiction, NATIONAL GRID shall have the right to immediately terminate this Agreement upon the expiration of any applicable cure period provided to ESCO by such state or regulatory authority; and

9.3.4 In the event of ESCO's breach of this Agreement, or any other written agreement with NATIONAL GRID, in connection with the Program, NATIONAL GRID shall have the right to terminate this Agreement in the event such breach continues uncured for ten days after written notice by NATIONAL GRID.

9.4 Payment Obligations. At the end of the Term or upon the earlier termination of this Agreement, whether for convenience or for default, the Parties shall remain responsible for their respective payment or reimbursement obligations of any and all sums due or owing under this Agreement. NATIONAL GRID shall have the right to set off such sums against amounts otherwise payable to ESCO in accordance with the provisions of this Agreement. In the event such sums exceed the amount of the Deposit, ESCO shall remit to NATIONAL GRID such additional amounts in accordance with the provisions under Article 3.

9.5 Cumulative Remedies. The rights and remedies set forth in this Article 9 are in addition to any and all rights allowed by this Agreement, the Tariff or any other applicable tariff, the UCC, UBP, the applicable laws of the State of New York, and any applicable rules and regulations thereunder or the common law. All rights and remedies shall be cumulative and may be exercised separately or concurrently.

ARTICLE 10 - DEPOSIT

10.1 Deposit. ESCO acknowledges, agrees and understands that payment for ESCO Charges in Article 3 to NATIONAL GRID shall be ESCO's sole responsibility. To ensure such payments, NATIONAL GRID shall, upon the occurrence of any Event of Default, withhold from sums payable to ESCO under this Agreement, or require an immediate payment from ESCO of, a Deposit equal to 5% of the total sums received by ESCO under this Agreement during the preceding 180-day period. The Deposit shall be used by NATIONAL GRID to offset ESCO Charges and any other sums or amounts due or owing by ESCO under this Agreement. After 90 days following the payment of the Deposit, NATIONAL GRID will re-examine the security amount and make such adjustments as NATIONAL GRID estimates may be necessary to satisfy the aforementioned charges attributable to ESCO on the same and consistent method as NATIONAL GRID determines such charges for all energy services companies participating in the Program. At the end of six months from the expiration or termination date of the Agreement, NATIONAL GRID will return the unused portion of the Deposit to ESCO except those sums subject to payment arrangements required by either the laws of the state of New York or any governmental authority, including the PSC. NATIONAL GRID 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 1%.

10.2 No Waiver. Notwithstanding the foregoing, the deposit of such amounts does not relieve or waive ESCO's responsibility and obligation to pay its obligations to NATIONAL GRID including, without limitation, ESCO Charges, and other sums due or owing by ESCO under this Agreement.

ARTICLE 11 - FORCE MAJEURE

11.1 Any delays in or failure of performance by the Parties, other than the payment of monies, shall not constitute a Default or Event of 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 NATIONAL GRID'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. ESCO understands and agrees that NATIONAL GRID shall have no obligation to ESCO to add personnel, equipment, or facilities in order to perform any activities under this Agreement.

ARTICLE 12 - LIMITATION OF LIABILITY

12.1 Liability Limitations. Except for NATIONAL GRID's obligation to pay the Accounts Receivable Purchase Price in respect of Accounts Receivable purchased by NATIONAL GRID from time to time pursuant to Section 3.1 and its obligations under Section 4.1.2, NATIONAL GRID's total cumulative liability to ESCO for all claims of any kind, whether based upon

contract, tort (including negligence and strict liability) or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement or any acts or omissions of NATIONAL GRID in connection with this Agreement or its activities hereunder, shall in no case exceed \$10,000 in the aggregate. In no event shall NATIONAL GRID be liable to ESCO for any special, indirect, incidental, penal, punitive or consequential damage of any kind, including, but not limited to, lost profits or revenues and expenses involving cost of capital.

- 12.2 Survival.** The provisions of this Article 12 shall survive the expiration, cancellation, or termination of this Agreement. As of the expiration of this Agreement or, if earlier, its termination, the Parties shall no longer be bound by the terms and provisions hereof, except
- (a) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before such expiration or termination or
 - (b) such terms and provisions that expressly or by their operation survive the termination or expiration of this Agreement.

ARTICLE 13 - INDEMNIFICATION

- 13.1 Scope.** ESCO, to the fullest extent of the law, shall indemnify, defend, and save harmless and shall reimburse NATIONAL GRID, and its Representatives, from and against any and all losses, damages, 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 "Losses"), which may at any time be imposed on, incurred by or asserted against NATIONAL GRID 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) ESCO's acts or omissions regarding the Accounts Receivable or Billing Price Determinants; (ii) ESCO's failure to remit to the appropriate taxing jurisdiction any sales and use taxes remitted to ESCO by NATIONAL GRID as provided under Article 7.2; (iii) any claim, demand, cause of action, litigation, suit, proceeding, hearing or investigation (collectively "Claims") by any Person for payments based upon any agreement or understanding alleged to have been made by such Person, directly or indirectly, with ESCO or any of its Representatives in connection with any of the transactions contemplated by this Agreement; (iv) any Claims with respect to the action or inaction of ESCO or its Representatives which is contrary to the requirements of this Agreement or the operating procedures of the Program; (v) any inaccuracy in any Document or affidavit provided to NATIONAL GRID under this Agreement or other breach of any representation or warranty or affidavit made by ESCO in this Agreement; (vi) any failure by ESCO to perform or comply, in whole or in part, with any covenant, agreement or provision of this Agreement; and (vii) all costs and expenses, including reasonable fees and expenses of counsel and other advisors, associated with any Losses incurred by NATIONAL GRID or its Representatives in connection with any Claims subject to indemnification rights as provided under this Article.

- 13.2 Defense.** ESCO shall take action to defend, indemnify and hold NATIONAL GRID harmless against all Claims, actual or threatened, promptly, but in no event later than the service of a notice, summons, complaint, petition, or other service of process with respect to such Claims. ESCO shall defend all such Claims including, as applicable, the engagement of legal counsel, to respond to, defend, or settle, or compromise any claim or threatened claim.

13.3 Enforcement. ESCO shall pay any and all costs and expenses (including reasonable attorneys' fees) incurred by NATIONAL GRID to enforce the provisions of this Article 13.

13.4.1 Survival. The obligations of ESCO set forth in this Article 13 shall survive the expiration, cancellation, or termination of this Agreement.

ARTICLE 14 – MISCELLANEOUS

14.1 Entire Agreement / Integration / Merger / Survivability. This Agreement, as may be amended in accordance with Article 14.4, constitutes and expresses the entire understanding between the Parties with respect to the subject matter hereof. The Parties agree that there are no understandings, agreements, or representations, expressed or implied, other than those expressed herein. This Agreement supersedes and merges all prior and contemporaneous agreements, discussions, understandings, inducements, or conditions, whether expressed or implied, written or oral. This Agreement shall not merge with or be terminated or suspended by any future agreement between the Parties which does not specifically and in writing so provide. Upon execution of this Agreement by the Parties, except as otherwise provided in this Agreement, the Parties shall no longer be bound by the terms and provisions of any previous definitive billing service agreements between the Parties and such agreements shall be terminated and superseded by this Agreement except for such terms and provisions that expressly or by their operation survive the termination or expiration of such definitive billing services agreement. The Parties understand and agree that there may be other written agreements executed by the Parties in connection with other services provided by NATIONAL GRID to ESCO under the Program. The terms on which NATIONAL GRID supplies such other services to ESCO shall not be affected in any way by the provisions of this Agreement. As of the expiration of this Agreement or, if earlier, its termination, the Parties shall no longer be bound by the terms and provisions hereof, except (a) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before such expiration or termination or (b) for such terms and provisions that expressly or by their operation survive the termination or expiration of this Agreement.

14.2 Transition Fee. NATIONAL GRID shall charge ESCO a Transition Fee and ESCO shall grant to NATIONAL GRID a right to offset and reduce any and all amounts (i) due and owing ESCO from NATIONAL GRID under a BSA/Security Agreement and (ii) due and owing from NATIONAL GRID to ESCO under this Agreement until the Transition Fee is paid in full.

14.3 Dual Billing. Upon expiration, cancellation, or termination of this Agreement, each Party shall present separate bills to Customers for the respective services provided by the Parties. NATIONAL GRID shall thereafter have no obligation to include ESCO's Accounts Receivable on its bills to Customers.

14.4 Modifications. This Agreement, and any provision thereof, shall not be superseded, modified, amended, waived, or otherwise changed, except in a writing duly signed by both Parties.

14.5 Assignment. ESCO shall not assign all or any part of the monies payable by NATIONAL GRID under this Agreement without the prior written consent of NATIONAL GRID, which consent NATIONAL GRID may grant or withhold within its sole and absolute discretion, except ESCO may, upon 20 days' prior written notice to NATIONAL GRID, assign such monies to any lender, Energy Commodity supplier or financial institution of ESCO for financing or credit purposes excluding any assignment of the Collateral. ESCO, to the fullest extent of the law, shall indemnify and hold NATIONAL GRID harmless from any loss, damage or claim which may at any time be imposed on, incurred by or asserted against NATIONAL GRID by ESCO or any third parties (including Customers) that are directly or indirectly caused by, arise out of or under or are associated with, incident to or in connection with any assignment under this Section 14.5. Notwithstanding anything to the contrary herein, under no circumstances shall ESCO sell, assign, transfer, pledge or otherwise dispose of any of the Collateral.

14.6 Successors Bound. This Agreement shall be binding upon and inure to the benefit of each Party and its respective legal representatives, successors, and permitted assigns, and shall survive any acquisition, merger, reorganization or other business combination to which it is party.

14.7 No Third-Party Beneficiaries. This Agreement is solely between the Parties and is not intended to confer any rights whatsoever on any third parties.

14.8 Notices. Except as otherwise provided in this Agreement, each Party hereby designates the following individuals to be its duly authorized representative for the receipt of any legal or contractual notices required to be sent to such Party. Such notices shall be deemed duly sent when personally delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to the intended Party's designated representative at the addresses set forth hereafter or to such other address as the Party to whom the same is intended shall have specified in conformity with the following:

NATIONAL GRID: National Grid
Attn: Customer Choice - NiMO
175 East Old Country Road
Hicksville, NY 11801

ESCO: _____

Attn: _____

14.9 Choice of Law. This Agreement shall be interpreted and enforced according to the laws of the State of New York, without regard to the choice of law provisions thereof. Venue in any legal action shall lie exclusively in the County of Onondaga of the State of New York. ESCO hereby consents to the personal jurisdiction of courts in the State of New York in any litigation or proceeding concerning any issues related to this Agreement, including the validity, enforceability, or interpretation of this Agreement.

14.10 Severability. To the extent that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, it shall be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions of the Agreement.

14.11 Headings. The headings contained in this Agreement are provided solely for the convenience of the Parties and shall neither expand nor restrict the rights and obligations created herein.

14.12 Conflict/Order of Precedence. In the event of conflict between the terms of this Agreement as executed or amended and the provisions of the Tariff, UBP and HEFPA, including, without limitation, the definitions set forth in this Agreement, this Agreement will prevail except for NATIONAL GRID's modifications to the Tariff to reflect changes in the UBP and HEFPA. Such modifications may be implemented by NATIONAL GRID subject to the Commission's approval.

14.13 No Waiver. No failure on the part of any Party to exercise, or delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

14.14 Additional Service(s) and Opt-In Programs.

14.14.1 Additional Services.

In the event that ESCO requests additional service(s) from NATIONAL GRID that are not provided under this Agreement, NATIONAL GRID will provide ESCO with a price quote(s) for service(s) so requested. If ESCO accepts NATIONAL GRID's price quote(s) and NATIONAL GRID agrees to provide such service(s), then the associated prices for each service shall be more fully set forth on Attachment E, annexed hereto and made a part hereof. The additional service(s) set forth on Attachment E shall be in addition to any service(s) under this Agreement and shall be at ESCO's sole cost and expense. ESCO shall pay NATIONAL GRID for the additional service(s) in accordance with the price and upon terms set forth on Attachment E. The price for the additional service(s) may consist of a price associated with the implementation of the requested additional service (s) that shall be paid to NATIONAL GRID prior to providing ESCO such services and/or a recurring price per bill associated with such service(s) that will be paid to NATIONAL GRID as an adjustment, increasing the per bill amount by the price of the additional service(s), to the Billing Processing Fee in Article 3 Section 3.3.1,

which shall be payable for the Term of the Agreement or such lesser period as shall have elapsed from the commencement of the Term of the Agreement.

14.14.2 Opt-In Programs.

In the event that ESCO is notified in writing by NATIONAL GRID of any future ESCO programs offered by NATIONAL GRID and ESCO elects to participate in any such future programs ("Opt-In Program"), the applicable terms and conditions for any such Opt-In Program shall be more fully set forth hereto as Attachment F to this Agreement by amendment. ESCO shall provide NATIONAL GRID with 60 days prior written notice of its desire to participate in any future Opt-In Program. The applicable Opt-In Program shall then become effective within 60 days of receipt of such ESCO notice ("Opt-In Program Effective Date). As of the Opt-In Program Effective Date, the terms and conditions for the applicable Opt-In Program set forth in any attachment to this Agreement shall be incorporated in this Agreement by reference as if fully stated herein.

14.15 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be as effective as delivery of a manually executed counterpart of this Agreement.

14.16 Amendment and Restatement of BSA/Security Agreement; Pre-Filing. This Agreement amends and restates the BSA/Security Agreement. As of the date hereof, this Agreement shall supersede the BSA/Security Agreement in its entirety, and the rights and obligations of the parties under the BSA/Security Agreement shall be subsumed within and governed by this Agreement. The security interest granted by this Agreement is an extension of the security interest granted in the BSA/Security Agreement. The ESCO hereby acknowledges that any and all UCC financing statements filed in connection with the BSA/Security Agreement, naming NATIONAL GRID as secured party and ESCO as debtor, shall be effective to perfect NATIONAL GRID's security interest granted by ESCO pursuant to this Agreement to the extent that such security interest may be perfected by the filing of UCC financing statements and amendments thereto. Until all of the obligations under the Agreement have been finally paid and satisfied in full, the provisions of this section shall continue to apply, and such pre-filings shall continue to be effective and not subject to any right of termination in respect of the security interests granted herein

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions of this Agreement, and agree to be bound by the same, and represent that their signatories have complete authority to sign and accept this Agreement.

ESCO:

By: _____ (signature)
Type Name: _____
Title: _____
Date: _____

NIAGARA MOHAWK POWER CORPORATION d/b/a National Grid

By: _____ (signature)
Typed Name: _____
Title: _____
Date: _____

ATTACHMENT A

(SPECIMEN FORM)

BILLING PRICE DETERMINANTS

The following table of information must be provided by ESCO to NATIONAL GRID prior to the commencement of any Billing Services under the Agreement.

Program Number	Applicable Gas Service Classification	Prices for Pricing Groups (01 thru 99) for each Program Number					
		01	02	03	04	05	06
801	SC1						
802	SC2						
805	SC5						
806	SC6						
807	SC7						
808	SC8						
809	SC9						
814	SC14						

ATTACHMENT B

EXCLUDED CUSTOMERS

ESCO has with NATIONAL GRID's consent excluded the following Customers or classes of Customers from this Agreement:

[List individual customers or define class of customers excluded from the Agreement]

**ATTACHMENT C
TRANSITION FEE**

[To Be Provided]

ATTACHMENT D

OFFICER AFFIDAVIT

DISCONNECTION OF NON-RESIDENTIAL CUSTOMERS FOR NON-PAYMENT

(to be executed by ESCO Officer)

I, _____ [name of officer], the _____ [title of officer] of _____ [legal name of ESCO], hereby swear and affirm under penalty of perjury that all current non-residential ESCO Customers that will be billed under the terms and conditions of an Agreement For Billing Services and For The Purchase Of Gas Accounts Receivable By And Between Niagara Mohawk Power Corporation d/b/a National Grid and [*specify ESCO full legal name*] (the “BSA”) have been notified that failure to make full payment of ESCO commodity charges due on any consolidated bills prepared for ESCO by NATIONAL GRID will be grounds for disconnection of utility services in accordance with NYPSC rules and regulations on the termination of service to non-residential customers, 16 NYCRR §13.3. In addition, ESCO will notify each new non-residential ESCO Customer that failure to make full payment of ESCO charges when due on any consolidated bill prepared pursuant to the BSA will be grounds for disconnection of service in accordance with NYPSC rules on the termination of service to non-residential customers, 16 NYCRR §13.3.

Officer’s Signature

Officer’s Name [Print]

Date

Sworn to before me this _____ day of _____ 20__

Notary Public

ATTACHMENT E

ADDITIONAL SERVICES

The following is a list of Additional Services, as described in Article 14, not included in the Billing Processing Fee.

Printing of ESCO Logo on Customer Bill

Other Additional Services

ATTACHMENT F

FUTURE OPT-IN PROGRAMS

[Terms and conditions to be determined by Amendment]