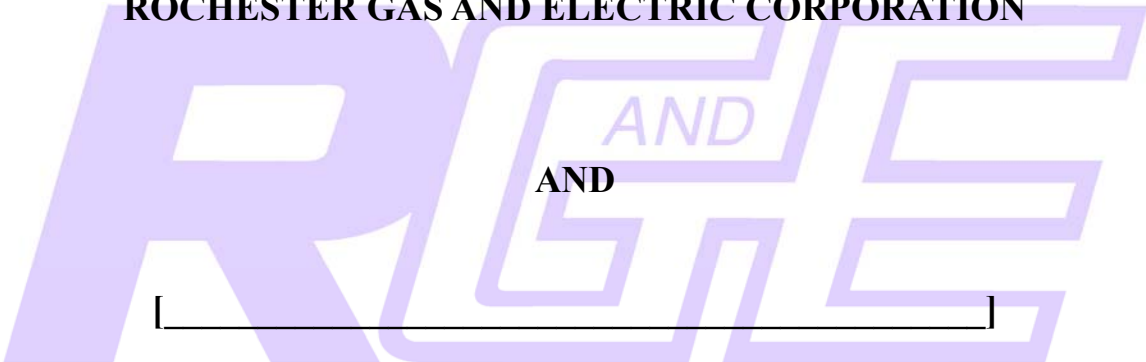


**OPERATING AGREEMENT
(NON-STATE AGENCIES)**

BY AND BETWEEN

ROCHESTER GAS AND ELECTRIC CORPORATION



DATED: _____, 20__

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EXHIBIT A – DESIGNATION OF AGENT AGREEMENT

EXHIBIT B – TRADING PARTNER AGREEMENT

EXHIBIT C – BILLING SERVICES AGREEMENT



OPERATING AGREEMENT

THIS OPERATING AGREEMENT is made and entered into as of the ____ day of _____, 20 __, by and between Rochester Gas and Electric Corporation, a New York corporation having an office for the transaction of business at 89 East Avenue, Rochester, New York 14649 (“RG&E”), and _____, a _____ corporation, with its principal place of business located at _____ (hereinafter “ESCO/Marketer” or “Direct Customer,” collectively with RG&E the “Parties”).

WHEREAS, RG&E, consistent with the Opinion and Order Adopting Terms of Settlement Subject to Conditions and Changes ("Opinion No. 98-1") in Case No. 96-E-0898, issued January 14, 1998, the Order Adopting Recommended Decision With Modifications in Case Nos. 02-E-0198 and 02-G-0199, issued March 7, 2003, and the Order Adopting Provisions of Joint Proposals with Conditions in Case Nos. 03-E-0765 and 03-G-0766, issued May 20, 2004, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time (hereinafter collectively referred to as the “Electric Order”), has filed with the New York State Public Service Commission (the “Commission”) tariffs and plans to effectuate an electric retail access program (the “Electric Program”); and

WHEREAS, RG&E, pursuant to the Policy Statement Concerning the Future of the Natural Gas Industry in New York State and Order Terminating Capacity Assignment, in Case Nos. 93-G-0932 and 97-G-1380, issued November 3, 1998, the Order Concerning Reliability in Case No. 97-G-1380, issued December 21, 1999, and the Order Concerning Assignment of Capacity in Case Nos. 93-G-0932, 97-G-1380, 98-G-1096, 98-G-1134, 98-G-1589 and 98-G-1785, issued March 24, 1999, as the same may be

revised, modified, amended, clarified, supplemented or superseded from time to time (hereinafter collectively referred to as the “Gas Orders”), has filed tariffs with the Commission to effectuate a gas transportation program (the “Gas Program”) (the Electric Program and the Gas Program are hereinafter collectively referred to as the “Program”) and the Commission has approved such tariffs; and

WHEREAS, RG&E’s Program allows the Eligible Customer to either (i) procure Electric Power or Gas Supply (as used herein such term shall have the meaning set forth in the Program Tariffs) solely for its own use (“Direct Customer”) or (ii) to contract with a third party that will act as an Energy Services Company (“ESCO”), gas marketer (a “Marketer”) or gas pool operator (a “Pool Operator”) (the ESCO, Marketer, and the Pool Operator are hereinafter collectively referred to as the “ESCO/Marketer”) to procure and provide for Electric Power or Gas Supply from Commission-eligible suppliers, certified, as applicable, by the New York Independent System Operator (“NYISO”) and/or approved by the Commission or RG&E, as applicable, to participate in the Program, and to have RG&E deliver such Electric Power or Gas Supply over the transmission and distribution systems of RG&E, and

WHEREAS, Direct Customer is able to procure Electric Power or Gas Supply solely for its own use; and

WHEREAS, ESCO/Marketer is able to procure Electric Power or Gas Supply for use by its Eligible Customers; and

WHEREAS, ESCO/Marketer, if applicable, is a Commission eligible energy services company, and is established as a load serving entity by the NYISO, that wants to participate in RG&E’s Program.

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

1. Applicability and Incorporation By Reference

A. The provisions of this Agreement relating solely to the Electric Program or Gas Program apply to Direct Customers and/or ESCO/Marketers only if, and to the extent, such parties are participating in such program.

B. The terms and conditions of the following documents are incorporated by reference into this Agreement and are hereby made a part hereof:

(1) Applicable Federal and New York State laws, together with rules, codes, regulations, policies and procedures of the Commission, the Federal Energy Regulatory Commission (“FERC”), NYISO, Northeast Power Coordinating Council and the North American Electric Reliability Council, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time.

(2) The Electric Order and the Gas Orders.

(3) Appendix B of the Commission’s Opinion and Order Establishing Regulatory Policies for the Provision of Retail Energy Services (“Opinion No. 97-5”), issued May 19, 1997, in Case No. 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time.

(4) The Commission's Opinion and Order Establishing Regulatory Policies For Competitive Metering ("Opinion No. 97-13"), issued August 1, 1997, in Case No. 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time.

(5) The Commission's Opinion and Order Concerning Uniform Business Practices ("Opinion No. 99-3"), issued February 16, 1999, in Case No. 98-M-1343, In the Matter of Retail Access Business Rules, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time ("UBPs").

(6) The Commission's Opinion and Order on Implementation of Electronic Data Interchange ("Opinion No. 00-05"), issued April 12, 2000, in Case No. 98-M-0667, In the Matter of Electronic Data Interchange, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time (the "EDI Order").

(7) The Commission's Order Adopting the Terms and Conditions of the Joint Proposal for the Purchase of Accounts Receivable and Approving Related Tariff Amendment, issued December 27, 2004, in Case Nos. 03-0765 and 03-G-0766, In the

Matter of Rochester Gas and Electric Corporation for Electric Service and Gas Service, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time.

(8) The Commission's Order Adopting Amendments to the Uniform Business Practices, Granting in Part Petition on Behalf of Customers and Rejecting National Fuel Gas Distribution Corporation's Tariff Filing, issued October 27, 2008, in Case Nos. 98-M-1343, 07-M-1514 and 08-G-0078, In the Matter of Retail Access Business Rules, Petition of New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding Marketing Practices of Energy Service Companies, and Ordinary Tariff Filing of National Fuel Gas Distribution Corporation to Establish a Set of Commercially Reasonable Standards for Door-to-Door Sales of Natural Gas by ESCOs, respectively, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time.

(9) RG&E Tariffs P.S.C. No. 16– Schedule for Gas Service, P.S.C. No. 18 – Schedule for Electric Service (Street Lighting), P.S.C. No. 19 – Schedule for Electric Service and RG&E's and/or the NYISO's open access transmission tariff ("OATT"), as applicable, to the extent all or any portion of the facilities, services or the Program are subject to the jurisdiction of the FERC (including those provisions of such tariffs relating to the Program),

or superseding issues thereof, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time (the tariffs are hereinafter collectively referred to as the “Program Tariffs”).

(10) RG&E’s Trading Partner Agreement (“TPA”) setting forth the minimum requirements for communicating by electronic data interchange, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time, attached hereto as Exhibit B and incorporated herein.

(11) RG&E’s Electric Supplier Manual (“ESM Manual”), dated as of November 1, 2007, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time.

(12) RG&E’s Gas Transmission Operating Procedures Manual, dated as of November 1, 2008, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time (“GTOP”).

C. For purposes of this Agreement, the documents listed in 1.B.(1) through 1.B.(12), inclusive, shall hereinafter sometimes collectively be referred to as the “Contract Documents.” This Agreement and the Contract Documents, and if applicable the Billing Services Agreement (“BSA”) attached hereto as Exhibit C, together constitute the entire agreement between RG&E and ESCO/Marketer or Direct Customer with respect to the Program.

2. Order of Precedence

To the extent there is any conflict between the terms and conditions of this Agreement, and any of the Contract Documents, (a) the terms and conditions of this Agreement, to the extent allowed by law, shall take precedence and govern over any of the Contract Documents. In the event of a conflict between the terms and conditions of any of the Contract Documents, the order of precedence for such documents shall be the order in which such documents are listed in Section 1 of this Agreement.

3. Term

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

4. Delivery Point

ESCO/Marketers and Direct Customers will schedule and deliver Electric Power Supply through the NYISO to the same subzone where their load is located, and RG&E will receive such Electric Power Supply at such point and deliver Electric Power Supply to the Direct Customer or the ESCO/Marketer's Eligible Customers.

ESCO/Marketers and Direct Customers will schedule and deliver Gas Supply in the same pooling area where their load is located and RG&E will receive such

Gas Supply at such point and deliver such Gas Supply to the Direct Customer or/to the ESCO/Marketer's Eligible Customers.

5. Billing Services

RG&E and the ESCO/Marketer will render separate bills to Eligible Customers, unless RG&E and the ESCO/Marketer have executed and delivered a BSA, substantially in the form attached hereto as Exhibit C. RG&E will provide the ESCO/Marketer and the Direct Customer, or a third party designated in writing by the ESCO/Marketer or Direct Customer, with applicable billing determinants and such other information as required by the Contract Documents or as otherwise may be agreed to by the Parties as being necessary for the Direct Customer to verify bills from its supplier and for the ESCO/Marketer to bill its Eligible Customers for Electric Power or Gas Supply. Such information provided hereunder will be provided by electronic data interchange and otherwise in accordance with the procedures set forth in the Contract Documents, and will be used by the ESCO/Marketer or Direct Customer, or its designated representative, solely for billing related matters between the ESCO/Marketer and its Eligible Customers, or between the ESCO/Marketer and RG&E. All such information provided hereunder will be kept confidential by ESCO/Marketer or Direct Customer, or its designated representative. Except as specifically provided for herein and in the Contract Documents, RG&E shall not be obligated to provide any information to a Direct Customer or any information on any customer to an ESCO/Marketer or its designated third party representative.

6. Resolution of Disputes

Any dispute between RG&E and ESCO/Marketer or Direct Customer involving services governed by, or the interpretation or breach of this Agreement and the

Contract Documents must be submitted by the disputing Party (“complainant”) in writing setting forth the position of the complainant, to a designated representative of the other Party (“respondent”). The respondent must respond to the complainant in writing setting forth respondent’s position, no more than ten (10) calendar days after receipt of the complainant’s position. Not later than fifteen (15) calendar days after the receipt of the response, a designated representative of RG&E and a designated representative of the ESCO or Direct Customer shall meet to resolve the dispute on an informal basis as promptly as practicable. If a resolution is not obtained within thirty (30) calendar days after the initial complaint is received or the mutually agreed-upon time frame, and no action or proceeding has been commenced under Section 20 hereof, either Party may initiate a formal dispute resolution process with the Commission in accordance with the Uniform Business Practices (“UBPs”), the Manual and the GTOP, as applicable. Nothing contained herein shall be construed as a limitation on the right of any Party to pursue any other remedy it may have at law or in equity.

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

7. Information Requests

RG&E may request from the ESCO/Marketer or Direct Customer, and the ESCO/Marketer or Direct Customer shall provide or cause to be provided to RG&E at no charge, data reasonably required by RG&E to perform its responsibilities pursuant to this Agreement and the Contract Documents. In the event RG&E requests the ESCO/Marketer or Direct Customer to provide proof of eligibility to participate or continue participation in the Program, the ESCO/Marketer or Direct Customer will provide or cause the same to be provided to RG&E in writing not later than five (5) business days after receipt of the request for such proof.

The ESCO/Marketer may reasonably request, and RG&E shall provide to the ESCO/Marketer, customer information pertaining to the ESCO/Marketer's Eligible Customers, as set forth in the BSA or Contract Documents. The ESCO/Marketer shall keep all such customer information confidential, and may not disclose or request that such information be disclosed to any third parties without the prior written authorization of the Eligible Customer to which such information applies, and, provided further that such third party agrees to abide by the terms of this Section 7. The ESCO/Marketer shall be responsible for any violations of the provisions of this Agreement caused by the third party to whom the ESCO/Marketer discloses or requests customer information be disclosed.

8. Representations and Warranties

A. Each Party, for itself, makes the following representations and warranties to the other Party, which representations and warranties shall be true and correct throughout the term of this Agreement:

(1) It is an entity that is duly organized or formed, validly existing and in good standing under the laws of the state of its incorporation or formation, is qualified to do business in every jurisdiction necessary to perform its obligations hereunder and has the power and authority to carry on its business as now being conducted, to enter into this Agreement and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement or the Contract Documents; and

(2) The execution and delivery of this Agreement or any Contract Documents, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement and any Contract Documents will not conflict with or constitute a breach of or a default under, any obligation under any agreement by which either Party is bound, any of the terms, conditions or provisions of any law, any order of any court or other agency of government, or the articles of incorporation or organization of either Party; and

(3) All actions required to be taken by or on the part of either Party in connection with the transactions contemplated by this Agreement and necessary to make the same effective have been duly and validly authorized, executed and delivered by each Party and constitute its legal, valid and binding obligations, enforceable in accordance with their terms, except as they may be rendered unenforceable by reason of bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law); and

(4) All governmental approvals, consents and permits that are required for the execution, delivery and performance of this Agreement have been duly obtained or made, are final and are in full force and effect, and such approvals, consents and permits are not subject to any appeal or further judicial or administrative proceedings; and

(5) There are no actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body pending or threatened against or affecting either Party or any property of either Party or brought or asserted by either Party in any court or before any arbitrator of any kind or before or

by any governmental authority which relate in any manner to this Agreement or the Contract Documents or any transaction contemplated by this Agreement or the Contract Documents could reasonably be expected to have a material adverse effect on either Party, either Party's ability to perform its obligations under the Agreement or the Contract Documents or the validity or enforceability of the Agreement or the Contract Documents.

B. RG&E makes the following representations and warranties to ESCO or Direct Customer, which representations and warranties shall be true and correct throughout the term of this Agreement:

(1) It is an entity that is duly organized, validly existing and in good standing under the laws of the State of its incorporation, is qualified to do business in every jurisdiction necessary to perform its obligations hereunder and has the power and authority to carry on its business as now being conducted; and

(2) It has the power and authority to enter into this Agreement and the Contract Documents, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and the Contract Documents.

C. The ESCO/Marketer or Direct Customer makes the following representations and warranties to RG&E, which representations and warranties shall be true and correct throughout the term of this Agreement:

(1) ESCO/Marketer or Direct Customer is in compliance with all of the requirements set forth in the Contract Documents, which are applicable to ESCO/Marketer or Direct Customer, and will continue to be in compliance with such requirements throughout the term of this Agreement; and

(2) No material changes in the data contained in the ESCO/Marketer's initial eligibility application filing with the Commission, if required, have occurred or are continuing, except such changes as have been reported to, and accepted by, the Commission; and

(3) The ESCO/Marketer or Direct Customer participating in the Program is duly qualified as required by the Commission, FERC or any other applicable regulatory agency, has become and will maintain the status of a qualified load serving entity as determined by the NYISO, and has executed service agreements under the NYISO Tariffs; and is, and will remain, in compliance with the rules and regulations of the NYISO as of the Effective Date of this Agreement.

(4) Throughout the term of this Agreement, the ESCO/Marketer will adhere to its own material policies and procedures as set forth in its disclosure statement filed with the Commission;

(5) Throughout the term of this Agreement, the ESCO/Marketer or Direct Customer will be in compliance with the EDI Order and other electronic data interchange requirements necessary to participate in the Program; and

(6) The ESCO/Marketer will not, either directly or indirectly, engage in, participate in or encourage or assist others to engage or participate in, the practice of customer switching commonly referred to as “slamming” or , to the extent applicable, “cramming” or incorrectly billing customers; and

(7) The ESCO/Marketer or Direct Customer has or will have sufficient Electric Power and/or Gas Supply resources available to it to provide its own supply (Direct Customer) or to serve Eligible Customers who have chosen the ESCO/Marketer as their supplier; and

(8) The ESCO/Marketer has the authority to act for its Eligible Customers in connection with scheduling, balancing and settlement under the Program, and will have such authority under the NYISO Tariffs, if required; and

(9) Throughout the term of this Agreement, ESCO/Marketer or Direct Customer will continue to meet the creditworthiness standards set forth in the applicable NYISO, Gas Pipeline and/or Program tariffs or Contract Documents which are required for participation in the Program, and will not exceed the credit limit established for ESCO/Marketer or Direct Customer as set forth in the Contract Documents; and

(10) Direct Customer represents that the Electric Power or Gas Supply it has or will procure is to be used by the Direct Customer solely for its own use, except as otherwise specifically authorized herein; and

(11) ESCO/Marketer warrants that it has the rights in, or power to, transfer the Collateral (as defined in the Billing Services Agreement) to RG&E. Furthermore, ESCO/Marketer warrants that its title to the Collateral is free and will remain free of all adverse claims, liens, encumbrances, security interests and restrictions on transfer or pledge and are not and will not be subject to any other valid or existing assignment, sale, pledge, billing, collection, or financing instrument, hypothecation, or other encumbrance, except to RG&E, and have not been billed and will not be collected by or for the benefit of any other party except RG&E; and

(12) ESCO/Marketer warrants that the prices charged to customers are in accordance with ESCO/Marketer's agreements with those customers; and

(13) The ESCO/Marketer or Direct Customer and each of its Subsidiaries and Affiliates has filed, has caused to be filed or has been included in all tax returns (Federal, state, local and foreign) required to be filed and has paid all taxes shown thereon to be due, together with applicable interest and penalties

9. Billing and Payment

A. RG&E shall invoice ESCO/Marketer or Direct Customer for services rendered for or on behalf of the ESCO/Marketer or Direct Customer including, but not limited, to fees or charges for special services set forth in the applicable RG&E Tariffs, services set forth in the Contract Documents and for Gas Supply and/or Electric Power supplied for or on behalf of ESCO/Marketer or Direct Customer.

Payment of the full amount stated in any invoice from RG&E to ESCO/Marketer or Direct Customer, without deduction, set-off or counterclaim, shall be made by automated clearing house ("ACH") transaction within twenty (20) calendar days from the date of electronic transmittal or postmarked date ("Due Date"). ESCO/Marketer or Direct Customer may object to all or any portion of such invoice, and if such objection proves to be correct, receive a refund of the amount due ESCO/Marketer or Direct Customer, provided, however, that ESCO/Marketer or Direct Customer may not object to any invoice more than three (3) months after the date on which such invoice is rendered and waives any such objection thereafter. The ESCO/Marketer and/or Direct Customer are

responsible for payment of disputed charges during any pending dispute.

ESCO/Marketer shall provide RG&E with written instructions for the ACH transaction containing the name of the financial institution, the financial institution's routing number, the name of the account and the account number. If ESCO/Marketer fails to provide such instructions, RG&E will make payments, if any are due, by check.

B. If any amount due RG&E is not paid when due, or if any portion is received in funds which are not immediately available to RG&E, then a late payment charge equal to one and one-half percent (1.5%) per month, or portion thereof, of the amount owed to RG&E shall be paid from the date such payment is due to the date of payment, provided, however, that such late payment charge shall not exceed the maximum amount authorized by law.

C. Upon failure of ESCO/Marketer or Direct Customer to make any payment when due under this Agreement, RG&E may give ESCO/Marketer or Direct Customer written notice of such failure. If payment is not made within thirty (30) calendar days after receipt of such notice, then, subject to the provisions of Section 6 hereof, RG&E may terminate this Agreement and its obligations hereunder without limiting any other rights and remedies available to RG&E at law or equity. RG&E shall also have the right, at its sole option, to deduct, set off or counterclaim any amounts due from RG&E to ESCO/Marketer or Direct Customer by withholding receivable purchases if the ESCO/Marketer or Direct Customer has executed the Billing Services Agreement and participates in RG&E's Purchase of Receivables Program.

10. Amendments

A. This Agreement may be modified or amended by RG&E, upon not less than twenty (20) calendars days prior written notice to the ESCO/Marketer or Direct

Customer setting forth the amendment or modification, to conform this Agreement to any changes in the Contract Documents. Such amendment or modification shall become effective on the date set forth in RG&E's written notice unless, prior to such date, the ESCO/Marketer or Direct Customer provides RG&E with its written objections to such amendment or modification setting forth the reasons why the amendment or modification does not conform this Agreement or the Contract Document changes. Unless the ESCO/Marketer or Direct Customer objects as provided herein, the amendment or modification shall be deemed effective and binding on the ESCO/Marketer or Direct Customer and RG&E on the date set forth by RG&E. If the ESCO/Marketer or Direct Customer objects, RG&E may revise or withdraw such amendment or modification to satisfy such objection, or the Parties may settle such dispute in accordance with the provisions of Section 6 of this Agreement.

B. This Agreement may be modified or amended by RG&E, upon not less than thirty (30) calendar days prior written notice to ESCO/Marketer or Direct Customer setting forth the amendment or modification, to conform this Agreement to any valid and binding determination of the Commission in the exercise of its jurisdiction, or other regulatory, administrative or judicial body with applicable jurisdiction, including but not limited to mandated changes in the Contract Documents. Such amendment or modification shall become effective on the date set forth in RG&E's written notice, unless, prior to such date, ESCO/Marketer or Direct Customer provides RG&E with its written objections to such amendment or modification setting forth the reasons why the amendment or modification does not conform this Agreement, to any determination of the Commission, or other regulatory, administrative or judicial body with applicable

jurisdiction. Unless ESCO/Marketer or Direct Customer objects as provided herein, the amendment or modification shall be effective and binding on ESCO/Marketer or Direct Customer and RG&E on the date set forth by RG&E. If ESCO or Direct Customer does object, RG&E may terminate the Agreement on not less than thirty (30) days prior written notice to ESCO/Marketer or Direct.

11. Assignment

A. An ESCO/Marketer may assign its customer contracts to other eligible ESCO/Marketers, and transfer the rights to those customers to such ESCO/Marketers, provided that the ESCO/Marketer's contracts and disclosure statements clearly state that such assignments and transfers may occur, and, provided further, that such assignments and transfers are completed in accordance with the requirements and procedures set forth in the Contract Documents.

B. If an ESCO/Marketer assigns or transfers customers or service obligations other than in accordance with the requirements set forth in paragraph A of this Section 11, RG&E shall notify the Commission and/or Staff of the New York Department of Public Service ("Staff"), in the event Staff is authorized by the Commission to receive such notice, of such assignments or transfers and take such action as authorized by this Agreement or the Contract Documents or as otherwise may be directed by the Staff or the Commission.

C. If an ESCO/Marketer fails to comply with the assignment and transfer requirements, the ESCO/Marketer may be found by the Commission to be ineligible to provide Electric Power or Gas Supply to customers in New York State and/or assessed a monetary or other penalty by the Commission.

D. An ESCO/Marketer or Direct Customer may not assign, transfer or otherwise dispose of this Agreement, or any of its rights, duties or obligation hereunder, without the prior written consent of RG&E, which consent will not unreasonably be withheld if the ESCO/Marketer provides RG&E with adequate documentation showing the ESCO/Marketer has notified its Eligible Customers of such assignment if such notification is required by the Contract Documents, and each assignee can demonstrate, to the reasonable satisfaction of RG&E, that it is capable of fulfilling the requirements of this Agreement, including the most stringent creditworthiness standards identified or set forth in the Contract Documents or this Agreement.

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

F. Notwithstanding any other provision of this Agreement to the contrary, RG&E shall have the right, without the consent of the ESCO/Marketer or Direct Customer, to assign or otherwise transfer its rights, duties and obligations under this Agreement to an affiliate of RG&E or a transmission and distribution entity, provided that such entity is and shall be a successor to RG&E's rights and obligations arising under this Agreement, and shall be and remain liable for the performance of RG&E's obligations hereunder. For purposes of this Agreement, a retail transmission and

distribution entity shall mean any person or entity which: (i) owns or has the right to use all or substantially all of the existing electric and gas transmission and distribution network; and (ii) has the right or is otherwise authorized by the Commission to distribute and transmit or transport electricity and gas and make electric and gas sales to, all or substantially all of the existing electric and gas franchise service territory of RG&E.

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

12. Audit

Subject to the terms hereof, the Commission, or its representatives, at all reasonable times during normal business hours, for the purpose of audit, examination, and review, shall, pursuant to its jurisdiction and authority under the Public Service Law, be allowed access to ESCO/Marketer and RG&E's records, books, documents, data, information and paper (including those on electronic media or any other media) (collectively, the "Records") for the purpose of ensuring compliance with the provisions of this Agreement and the Contract Documents ("Audit").

B. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, RG&E shall have the right to Audit the Records of ESCO/Marketer for purposes of ensuring compliance with the provisions of this Agreement and the Contract Documents during normal business hours upon reasonable notice.

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

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

13. Provider of Last Resort

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

14. Notices

Any notice to be given by either Party hereunder shall be deemed given, and any other document to be delivered hereunder shall be deemed delivered, if in writing and (i) delivered by hand, or (ii) deposited for next business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by registered or certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that Party (or at such other address as that Party may from time to time designate in writing and give to the other Party pursuant to this Section 14):

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

With a copy to: Brian T. FitzGerald, Esq.
Noelle M. Kinsch, Esq.
Dewey & LeBoeuf LLP
99 Washington Avenue, Suite 2020
Albany, NY 12210

To ESCO/Marketer or _____

 Direct Customer: _____

 With a copy to: _____

15. Scheduling, Balancing and Settlement

A. The ESCO/Marketer shall be responsible for the scheduling, balancing and settlement of its Eligible Customers' Electric Power Supply with the NYISO and the Direct Customer shall be responsible for the scheduling, balancing and settlement of its own Electric Power Supply with the NYISO.

B. Scheduling, balancing and cash-out of an ESCO/Marketer or Direct Customer's Gas Supply shall be in accordance with the Gas Program Tariffs.

C. In the event that the ESCO/Marketer or Direct Customer seeks to designate an agent for the purposes of scheduling, balancing and settlement or such other lawful business purposes related to matters governed by this Agreement, said ESCO/Marketer or Direct Customer shall designate an agent for such business purposes by completing and returning to RG&E the Designation of Agent Form, substantially in the form attached hereto as Exhibit A, and such designation shall be in full force and effect throughout the term of this Agreement, unless modified or revoked in writing on ten (10) business days notice to RG&E by ESCO/Marketer.

16. Default and Termination

A. ESCO/Marketer or Direct Customer, if it is not in default hereunder, may terminate this Agreement on not less than thirty (30) calendar days prior written notice to RG&E, provided, however, that such termination shall not be effective unless and until all of the ESCO/Marketer's Eligible Customers have been properly transferred to other suppliers or returned to the RG&E system in accordance with the Contract Documents.

B. RG&E, if it is not in default hereunder, may terminate this Agreement on not less than thirty (30) calendar days prior written notice to ESCO/Marketer or Direct Customer; or as specifically set forth in the Contract Documents.

C. RG&E, if it is not in default hereunder, may immediately terminate this Agreement in the event: (i) the ESCO/Marketer or Direct Customer fails to provide its consent to an assignment by RG&E of this Agreement or its rights hereunder; or (ii) any of the representations or warranties of the ESCO/Marketer or Direct Customer prove to be false or inaccurate; or (iii) the ESCO/Marketer or Direct Customer terminates or is in default under this Agreement or any of the Contract Documents; (iv) any of the Contract Documents have expired or have been terminated by RG&E; or (v) the ESCO/Marketer or Direct Customer is not in compliance with the worthiness and security provisions of Section 17 below.

17. Creditworthiness

ESCO/Marketer or Direct Customer's acceptance into and continued participation in the Program is contingent on the ESCO/Marketer or Direct Customer's continued compliance with the NYISO's applicable creditworthiness standards and

security requirements, the applicable pipeline's creditworthiness standards and security requirements, and/or as otherwise required in the Program tariffs and the Contract Documents.

18. Prior Agreements Superseded

This Agreement and the Contract Documents constitute the entire understanding between the Parties hereto with respect to the subject matter hereof, supersede any and all previous understandings between the Parties with respect to the subject matter hereof, and bind and inure to the benefit of the Parties, their successors and permitted assigns.

19. Waiver and Modification

No modification or waiver of all or any part of this Agreement or the Contract Documents shall be valid unless it is reduced to writing and signed by authorized representatives of both Parties hereto. Any waiver shall be effective only for the particular event for which it is issued and shall not be deemed a waiver with respect to any subsequent performance, default or matter.

20. Applicable Law and Forum

A. Interpretation and performance of this Agreement or the Contract Documents shall be in accordance with, and shall be controlled by, the laws of the State of New York, other than its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. ESCO/Marketer or Direct Customer irrevocably consents and agrees that any legal action, motion or proceeding arising under or relating to this Agreement shall be brought in a court of the State of New York, or a Federal court of the United States of America located in the State of New York. The ESCO/Marketer and Direct Customer irrevocably waive any objection that either may

now or in the future have to the State of New York as the proper and exclusive forum for any legal action, motion or proceeding arising out of or relating to this Agreement or the Contract Documents. If either Party has initiated a formal dispute resolution process under Section 6 hereof, and either Party subsequently files any action, motion or proceeding under this Section 20, prior to the conclusion of the dispute resolution process, the proceeding or process under Section 6 shall cease without prejudice and any non-final recommendation or determination by Staff pursuant to the dispute resolution process shall be of no force and effect.

21. Consent to Service of Process

A. The Parties agree that service of any process, summons, complaint, notice or petition in person, by U.S. Certified Mail (return receipt requested) or by other method available under applicable state and Federal laws, to the address of the Party set forth in Section 14 shall constitute valid and effective service of process upon such Party and its successors and assigns in any action or proceeding with respect to any matter as to which it has submitted to jurisdiction hereunder.

22. Headings

Article and section headings are for convenience only and shall not affect the interpretation of this Agreement or the Contract Documents. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of this Agreement.

23. Severability

If one or more provisions herein shall be invalid, illegal or unenforceable in any respect it shall be given effect to the extent permitted by applicable law, and such

invalidity, illegality or unenforceability shall not affect the validity of the other provisions of this Agreement.

24. Agency and Third Party Beneficiary

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

B. The Parties agree that the provisions of this Agreement are not intended to and do not create any third party beneficiary.

25. Indemnification

In addition to any other indemnity specifically provided hereunder, the ESCO/Marketer and Direct Customer agree to indemnify, defend and save harmless RG&E and its officers, directors, shareholders, agents, employees, affiliates, contractors, representatives, successors and assigns from and against any and all suits, actions, legal proceedings, claims, losses, demands, damages, costs, liabilities, fines, penalties, royalties, obligations, assessments, diminutions in value of any kind and expenses of whatsoever kind or character, including reasonable attorneys' fees, expert fees, and all expenses (whether incurred in a third party action or in an action to enforce this provision) (collectively "claims"), in connection with any action, suit or proceeding by or on behalf of any person, firm, corporation or other entity arising from, caused by or relating to the: (i) curtailment or interruption of services to the ESCO/Marketer, its Eligible Customers, or the Direct Customer due to causes beyond the control of RG&E;

or (ii) interruption, irregularity, failure or defective character of services to the ESCO/Marketer, its Eligible Customers, or the Direct Customer due to causes beyond the control of RG&E (including, without limiting the generality of the foregoing, executive or administrative rules or orders issued from time to time by Federal or State officers, commissions, boards, local municipalities, or other bodies having jurisdiction); or (iii) failure by the ESCO/Marketer or Direct Customer to perform any of the agreements, terms, covenants or conditions of this Agreement or the Contract Documents; or (iv) failure of ESCO/Marketer to perform any agreement between the ESCO/Marketer and its Eligible Customers.

26. Force Majeure

Except for the obligation to make payments, neither RG&E nor the ESCO/Marketer or Direct Customer shall be liable in damages to the other for any act, omission or circumstances occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, terrorist acts, terrorism, pole hits, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to transmission and distribution equipment, machinery or electric lines or wires, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the Party claiming suspension.

27. Taxes

RG&E and ESCO or Direct Customer shall be responsible only for the calculation and payment of sales, use, gross receipts or other similar taxes, fees or assessments upon the revenues derived or services rendered by such Party, provided, however, that if either Party is entitled to tax exemptions, such exemptions shall be recognized by the other Party.

28. Limitation on Liability

A. RG&E will endeavor at all times to provide regular and uninterrupted service to the ESCO/Marketer or Direct Customer, but in case the service shall be interrupted or be irregular or defective or shall fail, from causes beyond the control of RG&E (including, without limiting the generality of the foregoing, executive or administrative rules or orders issued from time to time by local, municipal, state or Federal officers, commissions, boards, or bodies having jurisdiction) or because of the ordinary negligence of RG&E or its employees, servants or agents, RG&E shall not be liable to the ESCO or Direct Customer therefor.

B. Compliance with directives of the Commission, NYISO, FERC, and the Gas Pipelines shall, without limitation, constitute a circumstance beyond the control of RG&E for which RG&E shall not be liable; provided, however, that RG&E shall not be absolved from any liability to which it may otherwise be subject for gross negligence or intentional wrongdoing in the manner in which it carries out the Commission's, FERC's or NYISO instructions.

C. Without limiting the generality of the foregoing, RG&E may, without liability therefore, interrupt, reduce or impair service to the ESCO/Marketer or Direct Customer in the event of an emergency threatening the integrity of RG&E's

system, or any other systems with which it is directly or indirectly interconnected, if in RG&E's sole judgment or that of the Commission, FERC, NYISO, or the Gas Pipelines such action will prevent, alleviate or reduce the emergency condition, for such period of time as RG&E or the Commission, FERC, NYISO or the Gas Pipelines deems necessary.

D. RG&E SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, PURCHASED POWER COSTS OR AMOUNTS OWED BY A ESCO/MARKETER OR DIRECT CUSTOMER, SUFFERED BY A ESCO/MARKETER OR DIRECT CUSTOMER OR TO ANY OTHER PERSONS OR ENTITIES CAUSED BY, ARISING FROM OR RELATED TO THE PERFORMANCE OF OR FAILURE TO PERFORM ANY OF THE SERVICES OR OBLIGATIONS OF RG&E UNDER THE ELECTRIC PROGRAM OR THE CONTRACT DOCUMENTS, EVEN IF RG&E HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

29. Executed in Counterparts

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

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IN WITNESS WHEREOF, RG&E and ESCO/Marketer or Direct

Customer have executed this Agreement as of the ____ day of _____ 20__.

ROCHESTER GAS AND ELECTRIC
CORPORATION

By: _____

By: _____

Name: _____

Name: Mark Webster

Title: _____

Title: Manager, Supplier Relations



EXHIBIT A

DESIGNATION OF AGENT AGREEMENT



EXHIBIT B

TRADING PARTNER AGREEMENT



EXHIBIT C

BILLING SERVICES AGREEMENT

