

## GAS SUPPLIER SERVICE AGREEMENT

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between **Boston Gas Company d/b/a National Grid** a Massachusetts Corporation with a principal place of business at 40 Sylvan Road, Waltham, MA (the “Company”) and \_\_\_\_\_ [name of supplier], a \_\_\_\_\_ [state] \_\_\_\_\_ [type of legal entity] with a principal place of business at \_\_\_\_\_ [address include city and state] (“Supplier”). The Company and the Supplier are also individually referred to herein as a “Party” or collectively as the “Parties.”

### BASIC UNDERSTANDINGS

WHEREAS, the Company operates as a natural gas local distribution company and provides firm transportation of third-party gas on its distribution system; and

WHEREAS, the Company’s Distribution Service Terms and Conditions (“ the Terms and Conditions”) on file with, and approved by, the Massachusetts Department of Public Utilities (“the MDPU”) permits firm transportation customers to assign their rights of nominating and scheduling delivery of gas for transportation on the Company’s system to a third-party natural gas supplier; and

WHEREAS, Supplier seeks to nominate and schedule delivery of gas for distribution on the Company’s system on behalf of one or more customers taking delivery service from the Company; and

WHEREAS, the Company’s Terms and Conditions, Section 24.2.3, require a Supplier to enter into this Supplier Service Agreement (the “Agreement”) with the Company prior to the initiation of Supplier Service, as defined therein;

NOW THEREFORE, the Parties hereto, each in consideration of the agreement of the other, do hereby agree as follows:

#### **1. SCOPE AND APPLICATION**

1.1 This Agreement shall be subject to the Company’s Distribution Service Terms and Conditions and related Rate Schedules as on file with the MDPU and in effect from time to time. The Company’s Terms and Conditions and applicable rate Schedules are hereby incorporated by reference as though directly set forth herein. In the event the terms of the Agreement conflict with the Company’s Terms and Conditions, the Terms and Conditions shall control.

- 1.2 This Agreement is intended for use between the Company and natural gas suppliers providing service to customers on the Company's distribution system, and may not be waived, altered, amended, or modified, except as provided herein.
- 1.3 Exhibits A and B, attached hereto and incorporated herein by reference, include additional terms that are a part of this Agreement.

## **2. DEFINITIONS**

- 2.1 Any Capitalized terms used in this Agreement and not defined herein shall be as defined in the Company's Terms and Conditions or as stated in the MDPU regulations at 220 C.M.R. 14.00.

## **3. TERM**

- 3.1 This Agreement shall become effective on the date hereof (the "Effective Date") and shall continue in full force and effect from month to month unless terminated by either Party by written notice given no less than thirty (30) days prior to the desired termination date, or unless otherwise agreed by the parties. Notwithstanding the foregoing, the Parties agree to abide by all terms of this Agreement until any transactions that are outstanding at the time of termination are completed, including, but not limited to, the payment by Supplier to the Company of any and all outstanding balances.
- 3.2 Notwithstanding anything to the contrary elsewhere in this Agreement or in the Company's Terms and Conditions, any Party, by written notice to the other Party (the "Breaching Party") may terminate this Agreement, in whole or in part, with respect to such Breaching Party or suspend further performance without terminating this Agreement upon the occurrence of any of the following: (a) the Breaching Party terminates or suspends doing business; (b) the Breaching Party becomes subject to any bankruptcy or insolvency proceeding under federal or state law (unless removed or dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to direct control of a transferee, receiver or similar authority, or makes an assignment for the benefit of creditors; or (c) the Breaching Party commits a material breach of any of its obligations under this Agreement or the Terms and Conditions and has not cured such breach within fifteen (15) days after receipt of a written notice from the other Party specifying the nature of such.
- 3.3 Consistent with the provisions of Section 24.3.8 of the Company's Terms and Conditions, the Company also maintains the right to terminate the Supplier's eligibility to act as a Supplier on the Company's system in the event that Supplier fails to comply with or perform any of the obligations on its part established in the Terms and Conditions or in this Agreement, including but not limited to, failure to deliver gas or to make payment of amounts due to the Company.

- 3.4 Notwithstanding the Effective Date, Supplier acknowledges and agrees that the Company is obligated to provide services pursuant to this Agreement only upon full satisfaction of the Conditions Precedent set forth in Section 4 of this Agreement.
- 3.5 No delay by either Party in enforcing any of its rights hereunder shall be deemed a waiver of such rights, nor shall a waiver of one default be deemed a waiver of any other or subsequent default.
- 3.6 The enumeration of the foregoing remedies shall not be deemed a waiver of any other remedies to which either Party is legally entitled.

#### **4. CONDITIONS PRECEDENT**

- 4.1 The following requirements shall be conditions precedent to the Company's obligations hereunder:
- (a) Supplier shall provide the Company with all information requested in Exhibit B attached hereto and incorporated herein;
  - (b) Pursuant to Section 24.3.1 of the Company's Terms and Conditions, the Company shall confirm the Supplier's creditworthiness. In the event that Supplier has not demonstrated to the Company's satisfaction that it has met the Company's credit evaluation standards, the Supplier shall provide financial assurances as required by the Company consistent with the provisions of Section 24.3.3 of the Company's Terms and Conditions;
  - (c) Pursuant to Section 24.2.3 of the Company's Terms and Conditions, Supplier shall register and obtain the applicable certification from the MDPU and provide evidence of such to the Company on an annual basis;
  - (d) Pursuant to Section 24.2.3 of the Company's Terms and Conditions, Supplier shall demonstrate to the Company that it is an approved shipper on the upstream pipelines and underground storage facilities on which the Company will assign capacity;
  - (e) Pursuant to Section 14.2.1 of the Company's Terms and Conditions, where Supplier elects to utilize the Standard Complete Billing Services from the Company, Supplier shall furnish to the Company a complete schedule of its relevant rates and rate pricing options for Supplier Service in written form or in an electronic format reasonably acceptable to the Company, at Company's option, by 5 P.M. Eastern Time, no less than five (5) days prior to the start of the month in which such rates and rate pricing options shall become effective. Such pricing should be submitted by electronic mail to [NEgassupplierservices@us.ngrid.com](mailto:NEgassupplierservices@us.ngrid.com).
  - (f) Prior to Customer Enrollment, Supplier shall successfully complete testing of the business-transaction communication protocols established by the Company, which

03/16/2011

may include communication by fax or telephone, electronic transactions as specified by the Company, or any other applicable communication requirements set forth by the Company.

## **5. SUPPLIER CERTIFICATION**

5.1 In addition to the requirements listed in Section 4 of this Agreement, and pursuant to Section 24.3.2 of the Company's Terms and Conditions, the Supplier hereby affirms the following:

- (a) Supplier is not operating under any chapter of bankruptcy laws and is not subject to liquidation or debt reduction procedures under state laws, such as an assignment for the benefit of creditors, or any information creditors' committee agreement.
- (b) Supplier is not aware of any change in business conditions that would cause a substantial deterioration in its financial conditions, a condition of insolvency, or the inability to exist as an ongoing business entity.
- (c) Supplier has no delinquent balances outstanding for services previously provided by the Company, and Supplier has paid its account according to the established terms and not made deductions or withheld payment for claims not authorized by contract.
- (d) No significant collection lawsuits or judgments are outstanding that would materially affect Supplier's ability to remain solvent as a business entity.
- (e) Supplier's Massachusetts business advertising and marketing materials conform to all applicable Massachusetts state and federal laws and regulations.

5.2 Supplier shall promptly notify the Company of any material change in its financial condition as it relates to Supplier's creditworthiness or solvency as a business enterprise.

5.3 Supplier shall notify the Company within twenty-four (24) hours in writing in the event that its certification to act as a Competitive Supplier, as provided in 220 C.M.R. 14.04, is acted upon by the MDPU in such a way that it materially affects Supplier's performance under the Agreement, including but not limited to suspension, revocation, modification, or non-renewal. Consistent with Section 24.2.2 of the Company's Terms and Conditions, revocation or non-renewal of Supplier's registration shall be grounds for immediate termination of this Agreement by Company.

## **6. NOMINATIONS AND SCHEDULING**

6.1 The Company and Supplier, pursuant to the Terms and Conditions on file with the MDPU and the terms of the Agreement, agree to exchange and act on information regarding the nomination and scheduling of gas for transportation on behalf of Supplier's customers.

- 6.2 Supplier acknowledges and agrees that its transportation rights under the Agreement are solely those that have been assigned to it by the Customer pursuant to the Terms and Conditions. Supplier further agrees that the Company shall have no obligation to honor any nomination or scheduling request from Supplier that, in the Company's sole judgment, exceeds the scope of Supplier's assigned rights or where such nominations or requests could be reasonably refused, directly or indirectly, based on the terms of the Agreement or the Terms and Conditions.
- 6.3 Pursuant to Sections 11.3.2 and 12.3.3 of the Company's Terms and Conditions, nominations will be communicated to the Company in accordance with the terms of the Agreement as set forth in Exhibit A.
- 6.4 Pursuant to Sections 11.3.6 and 12.3.6 of the Company's Terms and Conditions, in the event of a discrepancy between the volume nominated to the Company by Supplier and the volume confirmed by the Company, the discrepancy shall be allocated between and among Supplier's Aggregation Pools and/or customers in accordance with the predetermined allocation method set forth in Exhibit B, attached hereto. In the event that the Supplier has not provided the Company with a predetermined allocation method, the discrepancy will be allocated consistent with the provisions of the Company's Terms and Conditions.

## **7. CAPACITY ASSIGNMENTS**

- 7.1 The Supplier's Maximum Daily Peaking Quantity ("MDPQ") may be modified during the calendar year in accordance with the provisions of Sections 13.0 and 16.0 of the Company's Terms and Conditions.
- 7.2 Pursuant to Section 13.9.2 of the Company's Terms and Conditions, the quantity of each Company-Managed Supply assigned to Supplier may be modified during the calendar year in accordance with Sections 13.4 and 13.8 of the Company's Terms and Conditions.
- 7.3 In accordance with Sections 13.0 and 16.0 of the Company's Terms and Conditions, the quantity of Capacity assigned to Supplier may be modified during the calendar year. In addition, the Company shall have the right to adjust a Customer's total capacity quantity ("TCQ") if the Company determines that the TCQ calculation is in error or is otherwise not calculated in accordance with the provisions of Section 13.3.2.

## **8. STANDARD COMPLETE BILLING SERVICE**

- 8.1 Pursuant to Section 14.2.1 of the Company's Terms and Conditions, Supplier may elect to take Standard Complete Billing Service from the Company. Customers receiving Daily-Metered Distribution Service with accounts that are balanced on a daily basis shall not be considered for this option and will receive Standard Pass through Billing Service. Notwithstanding the foregoing, a Supplier that has elected Standard Complete Billing Service may request Standard Passthrough Billing Service for their Customers. Which

Company may allow at its sole discretion. Standard Complete Billing Service will be provided to Supplier subject to the Company's system requirements. In such an event, the Customer shall receive a combined bill from the Company for both gas supply and related distribution service. Such combined bill shall be calculated and produced by the Company.

- 8.2 The Company shall calculate, print, insert and mail combined invoices to the Customer in accordance with the Company's normal practices for cycle billing, off-cycle billing and budget billing, as well as the applicable provisions of the Company's Terms and Conditions. The Company will consider reasonable requests from Supplier for rate pricing options, where such requests are provided in writing. Supplier will be responsible for any additional processing, printing and/or programming expenses incurred by Company that result from the implementation of such a request. The Company will provide Supplier with electronic files that report relevant account activity.
- 8.3 Supplier shall provide the Company with a telephone number where sales and supplier switching inquiries as well as billing inquiries may be directed (set forth in Exhibit B). Supplier is responsible for handling customer requests to switch suppliers and such calls will not be handled by the Company, unless the Customer is returning to Default Service.
- 8.4 The Company shall respond to Customer telephone inquiries related to billing and payments and contact Customers as required to resolve/correct billing or payment disputes. The Company will process transactions to resolve/correct billing problems and generate correspondence as required to communicate billing information. The Company will re-bill a Customer if so requested by Supplier by written notice, received by Company no more than twenty (20) calendar days after the original billing date, which notice shall include Company's bill account number for each account to be re-billed. Supplier shall pay Company a processing fee in the amount of five dollars (\$5.00) for each time a Customer is re-billed. Notwithstanding any provision of this Agreement to the contrary, the Company is not offering Supplier and shall not provide or be responsible for any type of collection activities including, but not limited to, activities normally undertaken by a collection agency, debt collector or credit bureau as those terms are defined under applicable federal and state law. Acting on behalf of Supplier, Company shall have the right to invoice Supplier's Customers upon the rendering of gas service. Supplier shall not transfer to Company for collection any overdue or aged accounts and Company has no obligation to accept such accounts, or to present overdue or aged balances to Customers on behalf of Supplier.
- 8.5 The Company shall provide payment processing and lock boxes for mailed payments. The Company reserves the right to offer payment options consistent with existing practices and procedures. Partial payments will be applied first to any outstanding charges relating to Company Distribution Service, and second to the most overdue supplier charges associated with the Customer. If a Customer pays the Company more than the full amount billed, the Company shall apply any overpayment to the Distribution Service account. The Company reserves the right to enter into payment arrangements with

Customers, which may or may not include Supplier charges. Collection of Supplier charges remains the sole responsibility of the Supplier.

- 8.6 Supplier shall provide timely and accurate information to the Company regarding Customers, rates and any other information necessary for the Company to perform hereunder, including but not limited to information concerning a Customer's filing of bankruptcy or the Supplier's pursuit of collection activities. Additional processing runs caused by Supplier's failure to provide adequate information will be performed at Supplier's sole expense. Supplier agrees that services rendered by the Company shall not relieve Supplier from any obligation to maintain records or otherwise comply with applicable laws. Supplier agrees that it will maintain backup data and files for all information provided to the Company as protection against any loss of such information.
- 8.7 In the event Supplier receives a Customer payment directly, in error, Supplier shall immediately forward such payment to Company.

## **9. BILLING AND PAYMENT**

- 9.1 Pursuant to Section 24.8 of the Company's Terms and Conditions, bills, fees and charges for services provided by the Company, including but not limited to, monthly cashouts, monthly imbalance charges, daily imbalance charges, and any other applicable charges set forth in the Terms and Conditions or in the Agreement, shall be rendered to Supplier on a monthly basis by the tenth (10th) of the calendar month. In addition to any other right or remedy available to the Company, Supplier's failure to make payment within ten (10) days of the posting date on the bill shall result in the addition of interest on any unpaid balance calculated at the maximum monthly rate allowable by 220 C.M.R § 26.10. Interest shall accrue commencing from the date said bill was posted. The posting date is the date the bill is transmitted to Supplier. The bill may also be transmitted electronically if agreed to between the Parties as per Exhibit A.
- 9.2 The Company shall have the right to deduct any amounts owed by Supplier to the Company for such services, which are thirty (30) days or more past due, from any amounts collected in the normal course of business by the Company on the Supplier's behalf. Amounts subject to a good faith dispute will not be subject to deduction.
- 9.3 The Parties agree to cooperate and provide each other with necessary documentation relating to any transactions resulting hereunder, including but not limited to, applicable sales or other tax exemptions. The Parties agree that Supplier's failure to comply with the provisions of this Section 9 shall constitute default of payment under Section 24.3.8 of the Company's Terms and Conditions and expose Supplier to liability thereunder as well as under this Agreement.
- 9.4 Consistent with the provisions of Sections 24.3.1 and 24.3.3 of the Company's Terms and Conditions, Supplier shall satisfy the creditworthiness standards established by the Company. In the event the Supplier has not demonstrated satisfaction of the Company's

creditworthiness standards, the Supplier shall provide, upon ten (10) days written notice from the Company, financial assurance in the form of an advance deposit, letter of credit, surety bond or financial guaranty from a parent company, as reasonably determined by the Company. The amount of any such financial assurance required by the Company shall be calculated in accordance with the provisions of Section 24.3.3 of the Company's Terms and Conditions. The Company shall review Supplier's satisfaction of the Company's creditworthiness standards quarterly during the term of the Agreement giving consideration to Supplier's payment history in the preceding twelve-month period. Upon the request of Supplier, the Company shall exercise its sole reasonable discretion to determine whether a change in the form of financial assurance is warranted. In the event that the Company requires financial assurances in the form of a deposit, such deposits shall accrue interest in accordance with 220 C.M.R 26.09. Such deposit shall be returned to Supplier within thirty (30) days of the expiration or termination of the Agreement, provided that Supplier is not in default under the Agreement. The Company may deduct from the deposit any amount payable to the Company by Supplier under the Agreement, which has not been paid by the Supplier when due, unless such non-payment relates to a documented billing dispute between Supplier and the Company. Such deduction may be taken by the Company without notice or demand of any kind and the Company may, in its sole discretion, apply such deposit against any amount then due and payable. In the event that the Company applies all or any portion of such deposit, Supplier shall deposit such sums as are necessary to replenish the security deposit to its maximum amount, within ten (10) days' notice of such deduction and application.

## **10. REPRESENTATIONS**

- 10.1 Each Party represents that it is and shall remain in compliance with all applicable laws, tariffs, and MDPU regulations during the term of the Agreement.
- 10.2 Each person executing the Agreement for the respective Parties represents and warrants that he or she has authority to bind that Party.
- 10.3 Each Party represents that (a) it has the full power and authority to execute, deliver, and perform this Agreement; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) the Agreement constitutes that Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 10.4 Each Party shall exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to the Agreement, and carry out its duties in accordance with applicable recognized professional standards.

## **11. NONDISCLOSURE**

- 11.1 Neither Party may disclose any Confidential Information obtained pursuant to this Agreement to any third Party, including affiliates of such Party, without the express prior



written consent of the other Party. As used herein, the term “Confidential Information” shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party; any trade secrets; and other information of a similar nature; whether written or in intangible form that is marked proprietary or confidential with the appropriate owner’s name.

- 11.2 Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to the Agreement or from a Party who was under an obligation of confidentiality to the other Party to the Agreement, or information developed by either Party independent of any Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own Confidential Information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving Party shall, upon termination of the Agreement or at any time upon the request of the disclosing Party, promptly return or destroy all Confidential Information of the disclosing Party then in its possession.
- 11.3 Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.
- 11.4 No provision of the Agreement shall prohibit the Company from communicating to its Customers and prospective customers, information regarding Supplier’s eligibility to conduct business on the Company’s distribution system. In addition, obligations under this Section 11 shall survive the termination or expiration of the Agreement.

## **12. LIABILITY AND INDEMNIFICATION**

- 12.1 The Parties acknowledge and agree that the Force Majeure provisions set forth in Section 20 of the Company’s Terms and Conditions are incorporated by reference as if set forth herein.
- 12.2 The Parties acknowledge and agree that the liability and indemnification provisions in Section 20 of the Company’s Terms and Conditions are incorporated by reference as if set forth herein.
- 12.3 For purposes of such liability and indemnification, however, the Parties acknowledge and agree that nothing in such Terms and Conditions prohibits one Party from impleading the

other Party as a third-party defendant, whether or not one or both Parties are named as defendants in the initial claim of a third party. The third-party claim shall be stayed pending resolution of any dispute regarding liability and indemnification under the Agreement. Such resolution shall be final and binding upon the Parties only after agreement between the Parties or after entry of a final judgment, after any further appeals of a court of competent jurisdiction to which any appeal may have been taken from the determination of the arbitrator(s).

- 12.4 The Parties acknowledge and agree that for purposes of Section 20 of the Company's Terms and Conditions, a Party seeking recovery from the other Party in connection with the performance of its obligations of the Terms and Conditions shall not be entitled to recovery where its own negligent acts or omissions contribute to or cause such damages, costs, fines, penalties or liabilities.
- 12.5 The Parties expressly acknowledge and agree that the dispute resolution provision in Section 12 of the Agreement shall apply to any and all disputes arising under this Section, including, without limitation, those disputes that arise as a result of either of the Parties being named as a defendant in the primary action or being named as a third-party defendant by a defendant in the primary action.
- 12.6 Notwithstanding anything in the Agreement or the Terms and Conditions to the contrary, in no event shall any Party hereto be liable to any other Party hereto for indirect, consequential, punitive, special, or exemplary damages under any theory of law that is now or may in the future be in effect, including without limitation: contract, tort, M.G.L. c. 93A, strict liability, or negligence.
- 12.7 Notwithstanding the availability of other remedies at law or in equity, either Party hereto shall be entitled to specific performance to remedy a breach of the Agreement by the other Party.
- 12.8 Supplier further agrees that it shall indemnify, defend and hold harmless the Company with respect to any claim, suit, damages or costs of any kind arising from any action or inaction of the Company in reliance upon the nominations, scheduling instructions or other communications from Supplier. The Parties agree that reliance on such instructions and communications shall be deemed reasonable and shall not constitute negligence.
- 12.9 The provisions of this Section 12 shall survive the termination of the Agreement.

### **13. DISPUTE RESOLUTION**

- 13.1 Disputes hereunder shall be reduced to writing and referred to the Parties' representatives for resolution. The Parties' representatives shall meet and make all reasonable efforts to resolve the dispute. Pending resolution, the Parties shall continue to fulfill their obligations under the Agreement in good faith, unless this Agreement has been suspended

or terminated. If the Parties fail to resolve the dispute within thirty (30) days, they may mutually agree to pursue mediation or arbitration to resolve such issues.

- 13.2 The interpretation and performance of the Agreement shall be in accordance with and controlled by the laws of the Commonwealth of Massachusetts, without regard to the doctrines governing choice of law. All disputes arising hereunder shall be brought either before the MDPU or the state courts of the Commonwealth of Massachusetts.

#### **14. COMMUNICATIONS**

- 14.1 Except as otherwise provided herein, any notices given under the Agreement shall be in writing and shall be delivered to the Company as set forth in Exhibit A, by hand or sent by (a) certified mail, return receipt requested, first class postage prepaid, (b) telecopy, or (c) a nationally recognized courier service. Notices and other communications to Supplier shall also be addressed as shown on Exhibit A. Notices given hereunder shall be deemed to have been given upon receipt or any refusal to accept; telecopied notices shall be deemed to have been given upon confirmation of their receipt.
- 14.2 All communications required by the Terms and Conditions shall be made in accordance with the schedule listed in Exhibit A. Information on active Company fax numbers and e-mail addresses shall be posted on the Company's Internet Website at <http://www.nationgrid.com>

#### **15. ENFORCEABILITY**

- 15.1 In the event that any portion or part of the Agreement is deemed invalid, against public policy, void or otherwise unenforceable by a court of law, the validity and enforceability of the remaining portions thereof shall otherwise be fully enforceable.
- 15.2 No waiver by any Party of any one or more defaults by the other Party in the performance of any provision of the Agreement shall operate or be construed as a waiver of any other present or future default, whether of a like or different character. No delay by either Party in enforcing any of its rights hereunder shall be deemed a waiver of such rights.

#### **16. ASSIGNMENT AND DELEGATION**

- 16.1 Any entity that shall succeed by purchase, merger or consolidation to the assets and properties, substantially or as an entity, of either Party hereto shall be entitled to the rights and shall be subject to the obligations of its predecessor in interest under the Agreement.
- 16.2 Either Party may, without relieving itself of its obligations under the Agreement, assign any of its rights or obligations hereunder to an affiliated entity, but otherwise no assignment of the Agreement or any of the rights or obligations hereunder shall be made unless there first shall have been obtained the written consent of the other Party. No assignment by Supplier shall take effect until the assignee has met the requirements of Section 4 hereunder. No assignment of the Agreement shall relieve the assigning Party of

any of its obligations under the Agreement until such obligations have been assumed by the assignee.

- 16.3 The restrictions on assignment contained herein shall not in any way prevent either Party from pledging or mortgaging its rights as security for its indebtedness.
- 16.4 In addition, either Party may subcontract its duties under the Agreement to a subcontractor provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, and shall serve as the point of contact between its subcontractor and the other Party, and the subcontractor shall meet the requirements of any applicable laws, rules, regulations, and Terms and Conditions. The assigning or subcontracting Party shall provide the other Party with thirty (30) calendar days' prior written notice of any such subcontracting or assignment, which notice shall include such information about the subcontractor as the other Party shall reasonably require.

**17. MISCELLANEOUS**

- 17.1 The Agreement, all Exhibits and attachments hereto and all documents referenced herein, constitute the entire agreement between the Parties and supersedes all other agreements, communications, and representations. Paragraph headings are for convenience only and are not to be construed as part of the Agreement.
- 17.2 Unless otherwise provided herein, no modification of, or supplement to, the terms and provisions stated in the Agreement shall be or become effective without the written consent of both Parties.
- 17.3 The Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date above.

ESCO \_\_\_\_\_

National Grid

Name (Print): \_\_\_\_\_

Name (Print) Terrence Kain

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Director, Customer Choice

Date: \_\_\_\_\_

Date: \_\_\_\_\_

03/16/2011

**EXHIBIT A**

**COMPANY SPECIFIC PROVISIONS**

**CONDITIONS PRECEDENT:**

Completed Supplier Application

**NOMINATIONS AND SCHEDULING:**

All nominations should be forwarded to the Company via the following means:

Nominations should be forwarded to the following individual(s):

\_\_\_\_\_  
\_\_\_\_\_

**BILLING AND PAYMENT:**

All payments should be submitted to the Company via the following means:

Wire or ACH Transfer  
and addressed as follows:

As indicated on Monthly Supplier Invoices

**COMMUNICATIONS:**

All notices and information addressed to the Company shall be addressed as follows:

Supplier Services, National Grid

175 East Old Country Road Hicksville, NY 11801

All notices and information addressed to the Supplier shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT B**

**COMPETITIVE SUPPLIER INFORMATION**

**PREDETERMINED ALLOCATION METHOD**

In accordance with Section 6.4 of the Supplier Service Agreement the Supplier instructs Company to allocate any discrepancies in confirmed nominations as follows:

---

---

---

**CAPACITY MITIGATION SERVICE**

In accordance with Section 13.11 of the Company's Terms and Conditions Supplier elects to designate the following contracts to be managed by the Company for cost mitigation purposes:

---

---

---

**COMMUNICATIONS**

Inquiries to the Supplier maybe made in the following means:

---

Inquiries to the Supplier shall be made to the following individuals:

---

---