

ORANGE AND ROCKLAND UTILITIES, INC.

CONSOLIDATED BILLING

AND

ASSIGNMENT AGREEMENT

TABLE OF CONTENTS

COMMON TERMS AND CONDITIONS	2
1.1 INCORPORATION BY REFERENCE.....	4
1.2 TERM.....	5
CONSOLIDATED BILLING ARRANGEMENTS	5
2.1 ASSIGNMENT OF ESCO'S ACCOUNTS RECEIVABLES.....	5
2.2 ESCO OBLIGATIONS.....	6
2.3 REPRESENTATIONS AND WARRANTIES.....	7
2.4 O&R BILLING SERVICE.....	9
2.5 CONSOLIDATED BILLING SERVICE FEE.....	18
MISCELLANEOUS	20
3.1 RESOLUTION OF DISPUTES.....	20
3.2 NOTICES.....	20
3.3 TERMINATION OF AGREEMENT.....	21
3.4 FORCE MAJEURE.....	22
3.5 AMENDMENTS.....	24
3.6 ASSIGNMENT.....	24
3.7 PRIOR AGREEMENTS SUPERSEDED.....	25
3.8 WAIVER AND MODIFICATION.....	25
3.9 APPLICABLE LAW AND FORUM.....	26
3.10 SEVERABILITY.....	26
3.11 AGENCY.....	27
3.12 NOT FOR THE BENEFIT OF THIRD PARTIES.....	27

**CONSOLIDATED BILLING AND ASSIGNMENT AGREEMENT
COMMON TERMS AND CONDITIONS**

This Consolidated Billing and Assignment Agreement (“Agreement”) is made and entered into this ____ day of _____, 200__, by and between Orange and Rockland Utilities, Inc., a New York corporation having its principal office at One Blue Hill Plaza, Pearl River, New York 10965 (“O&R”), and _____, a _____ corporation, having an office at _____ (“ESCO”), both O&R and the ESCO hereinafter sometimes referred to collectively as the “Parties” or individually as a “Party”.

WITNESSETH:

WHEREAS, O&R has implemented retail access programs, as described in its Schedule for Electricity Service, P.S.C. No. 2 – Electricity and Schedule for Natural Gas Service, P.S.C. No. 4 – Gas, (together “Tariff”) and in its Retail Access Implementation Plan and Operating Procedures and Gas Transportation

Operating Procedures (collectively, “Operating Procedures”), under which O&R’s retail customers may purchase natural gas and/or electricity from an energy services company or gas marketer (“energy services company”);

WHEREAS, ESCO has been deemed approved by the New York State Department of Public Service (“NYDPS”) to act as an energy services company and has met any requirements established by O&R to be an energy services company authorized to sell natural gas and/or electricity to O&R’s retail customers under the retail access programs;

WHEREAS, ESCO has requested that O&R render a consolidated single monthly bill to its retail access customers for both the ESCO’s commodity supply and O&R’s delivery services; and

WHEREAS, O&R agrees to provide such consolidated billing service on behalf of the ESCO subject to the terms and conditions of this Agreement, the ESCO Operating Agreement, the Operating Procedures and the Tariff; and

WHEREAS, ESCO desires that O&R accept assignment of all amounts billed by O&R on ESCO's behalf and make payments to ESCO relating to such assignment.

NOW, THEREFORE, in consideration of the premises and mutual promises set forth below, O&R and ESCO, intending to be legally bound, hereby covenant, promise and agree as follows:

ARTICLE I

TARIFF AND OPERATING PROCEDURES AND TERM OF AGREEMENT

1.1 Incorporation By Reference

The terms and conditions of the Tariff, Operating Agreements, Operating Procedures, and the New York Public Service Commission's ("NYPSC") Uniform Business Practices ("UBPs"), as applicable, are fully incorporated in this Agreement except as is otherwise expressly provided herein.

1.2 Term

This Agreement shall commence on the date set forth above (“Effective Date”) and will remain in effect until terminated (i) in accordance with its terms, (ii) by an order of the NYPSC, or (iii) if the ESCO Operating Agreement(s) between the Parties is (are) terminated.

ARTICLE II

CONSOLIDATED BILLING ARRANGEMENTS

2.1 Assignment of ESCO’s Accounts Receivables

ESCO hereby assigns to O&R its rights in all amounts due from all of its retail access, single-billed customers (“Customers”) on consolidated bills issued by O&R on and after the Effective Date of this Agreement and any amounts due from its Customers on consolidated bills issued previously under any prior consolidated billing services agreement with O&R (“Customers’ Accounts”).

ESCO hereby grants O&R a security interest in said Customers’ Accounts and

authorizes O&R to file, on behalf of ESCO, all financing statements and other documents necessary to perfect said security interest.

2.2 ESCO Obligations

A. ESCO will provide O&R a single rate (\$/kWh and/or \$/ccf) to be charged each Customer for each unit of electricity and/or gas supply consumed by that Customer. Rates may differ from Customer to Customer. The rate provided by ESCO will be used by O&R for billing purposes for the next bill issued to the Customer and every bill thereafter until changed by ESCO no later than 4 business days prior to the Customer's next scheduled meter read date.

B. ESCO will submit the monthly billing information to O&R in an Electronic Data Interchange ("EDI") format prescribed by O&R identifying the name, O&R account number and unit rate(s) for each Customer.

C. ESCO will satisfy all other obligations set forth in the Operating Procedures.

D. ESCO will furnish O&R with an affidavit from an officer of ESCO representing that ESCO has notified its current non-residential Customers and will notify its future non-residential Customers that O&R is permitted to disconnect the non-residential Customer for nonpayment of the ESCO charges. ESCO will indemnify O&R for any cost, expense, or penalty if any Customer's service is discontinued for nonpayment and the Customer establishes that it did not receive such notification.

E. ESCO hereby assigns to O&R its rights, subject to all applicable laws and regulations, to require deposits from all of its Customers on and after the effective date of this Agreement.

2.3 Representations and Warranties

ESCO makes the following representations and warranties to O&R:

A. The information provided in the O&R Application Form for Qualified Seller Service under Gas Service Classification No. 11 and/or the Electric

ESCO Operating Agreement is correct as of the Effective Date, and ESCO will promptly inform O&R of any changes in such information.

B. ESCO is in compliance with all of the requirements set forth in Appendix B of NYPSC Opinion 97-5 and such requirements as have been adopted in and/or superseded by the UBPs and will continue to be in compliance with such requirements and all subsequently adopted regulatory requirements throughout the term of this Agreement.

C. No material changes in the data contained in ESCO's initial eligibility application filing with the NYDPS have occurred or will occur, except such changes as have been or will be reported to the NYDPS.

D. Throughout the term of this Agreement, ESCO will adhere to its own policies and procedures as set forth in its retail access application form filed with the NYDPS, as updated from time to time.

E. ESCO will not, either directly or indirectly, engage in, participate in or encourage or assist others to engage or participate in the practice of

transferring customers without authorization, commonly referred to as “slamming.

F. No third party has any right, title or interest to any Customers’ Accounts (as defined in Section 2.1 above) assigned by ESCO hereunder to O&R, and ESCO undertakes that it shall not grant any interest or permit any third party to assert a claim of right, title or interest on those Accounts or any new Customers’ Accounts opened during the term of this Agreement.

2.4 O&R Billing Service

A. O&R will render ESCO’s Customers a consolidated bill for both ESCO’s commodity supply (electricity and/or natural gas) and O&R’s energy delivery services on a monthly basis. O&R will calculate the Customer’s ESCO commodity charges for billing purposes by multiplying the Customer’s monthly consumption by the rate provided by ESCO pursuant to Section 2.2 (A) of this Agreement. O&R will not bill for any ESCO charges other than the commodity supply charges for volumes consumed by Customers.

B. The consolidated bill will display the amount and price of the commodity sold by ESCO and the ESCO's identity. O&R's charges will be reflected in the manner prescribed in the Tariff.

C. O&R will perform cycled meter readings in accordance with its business practices. In the event an actual meter reading cannot be obtained, O&R shall estimate the Customer's consumption for billing purposes in accordance with applicable PSC regulations. The consolidated bill will be issued in accordance with the established meter reading cycles for the applicable account. If the meter read date for a particular Customer changes, O&R will notify ESCO of same.

D. O&R will receive and process Customers' payments. O&R will perform collection activities on Customers' accounts in conformity with the Home Energy Fair Practices Act ("HEFPA") with respect to residential customers and in accordance with Part 13 of 16 NYCRR with respect to non-residential customers. For non-residential Customers, O&R shall disconnect its delivery service and the ESCO commodity service where: (i) the Customer fails

to make full payment of all amounts due on the consolidated billing; (ii) O&R purchased the ESCO receivable; and (iii) the ESCO furnishes O&R an affidavit as described in Section 2.2 (D) herein.

Any Customer payment or portion thereof that is billed by O&R under this Agreement and received by ESCO from Customer shall be held by ESCO in trust as the property of O&R and shall be immediately remitted in full to O&R within five (5) business days without any deduction or set-off by ESCO.

E. Within five (5) business days, O&R will notify ESCO if (i) O&R terminates a Customer for non-payment; or (ii) Customer voluntarily closes its O&R account.

F. O&R will treat information received from ESCO pursuant to this Agreement as confidential and will not share the information with any third party. In the event that disclosure of confidential information is required by a governmental body, court or applicable law, O&R may disclose such information to the extent so required, but shall promptly notify ESCO prior to disclosure and shall cooperate (consistent with its legal obligations) with ESCO's efforts to

obtain protective orders or similar restraints with respect to such disclosure at the expense of ESCO. Notwithstanding the foregoing, retail access data, including migration data, shall be reported to the Commission consistent with procedures outlined by the New York Department of Public Service.

G. Beginning in the second (2nd) calendar month following commencement of consolidated billing under this Agreement, O&R will remit payment to ESCO (reflecting the Purchase Discount as described below), via wire transfer to a bank (or other mutually agreed to depository or payee) designated in writing by ESCO, on the 20th calendar day of the month (or the next following business day if the 20th falls on a Saturday, Sunday, or public holiday) of all undisputed ESCO charges billed to Customers in the previous calendar month. An amount is deemed disputed if the Customer contacts O&R questioning the validity of ESCO's unit commodity rate or ESCO's service to the Customer. A Customer's claim of either inability to pay or inaccurate meter reading shall not constitute a dispute for purposes of O&R's obligation to pay ESCO amounts billed for its commodity supply.

In consideration for O&R agreeing to the payment arrangement described in the preceding paragraph, commencing on November 1, 2006, O&R will apply a discount rate (the "Purchase Discount") to the face value of the amounts billed on behalf of ESCO for gas supply. The Purchase Discount, which includes an uncollectibles component and a risk factor, will be set at 0.416 percent as of November 1, 2006. The uncollectibles component of the Purchase Discount will be reset annually effective November 1 based on O&R's actual uncollectibles experience applicable to all gas and electric "purchase of receivable"-eligible customers for the thirty-six month period ended the previous June 30. The risk factor also will be reset annually effective November 1 and shall be equal to 20% of the uncollectible rate. O&R will notify ESCOs as soon as practicable after the new rate is calculated.

O&R will notify ESCO within 24 hours of its receipt of notification by a Customer of the latter's refusal to pay the ESCO charges billed due to an unresolved dispute between ESCO and the Customer. O&R will pay ESCO for resolved disputed ESCO charges in accordance with this Section 2.4(G).

H. Subject to the NYPSC UBPs, O&R may, at its option, reject requests for or discontinue consolidated billing for any Customers' Accounts that are at least 38 calendar days past due, unless the past due amount is subject to a Deferred Payment Agreement and the customer is fulfilling its Deferred Payment Agreement obligations.

I. O&R will provide a budget billing option to Customers for the combined ESCO and O&R charges using O&R's budget billing protocol for Full-Service Customers.

J. O&R's remittance to ESCO in accordance with Section 2.4 (G) shall be net of all amounts owed to O&R by the ESCO for retail access program services and/or other charges in accordance with the applicable provisions of the Tariff or the ESCO Operating Agreements, such as:

- Special meter reading fees
- Customer energy history fees
- Account separation fees
- Profile information fees
- Consolidated Billing Service fees
- Gas imbalance charges
- Capacity Release charges

- Winter Bundled Sales Service charges
- Other PSC-approved Tariff fees and charges
- Delta amounts not paid by a customer to restore Service pursuant to Public Service Law § 32(5)(d).

K. O&R will provide to the ESCO customer bill information including the commodity usage, the billed amount, and tax information pursuant to Section 2.4 (L) below, for each of the ESCO's Customers with the monthly remittance identified in Section 2.4 (G). O&R shall use EDI standards for transmittal of customer information and may transmit data, in addition to the minimum information required, via EDI or by means of an alternative system.

ESCO shall notify O&R in writing of any error(s) alleged to be made by O&R in the billed amount for ESCO's customers, including all such errors related to the rate provided by ESCO pursuant to Section 2.2 (A) of this Agreement, within thirty (30) days of the posting of such statement on O&R's electronic bulletin board. In the event ESCO fails to notify O&R in writing of any such error(s) alleged to be made by O&R within thirty (30) days of receiving such billed information from O&R, ESCO waives any claims to loss, injury or

damage resulting from such error and O&R shall be relieved of all liability resulting from such error, whether based in contract or tort (including negligence or strict liability). O&R has no responsibilities under this Agreement for errors made by ESCO in the rate information provided to O&R pursuant to Section 2.2(A) herein.

L. O&R is not responsible for the paying or remitting to the applicable taxing authorities, on behalf of ESCO, any federal, state or local taxes as a result of this Agreement. Based on information regarding each Customer's tax status supplied by ESCO, O&R will calculate and identify the sales and use tax associated with ESCO's charges and will provide such calculations to ESCO at the same time as the remittance payment is made pursuant to Section 2.4 (G) above. The remittance payment shall reflect the Purchase Discount provided for in Section 2.4(G). ESCO shall be liable for and pay all such taxes and shall indemnify, defend, and hold harmless O&R from and against any and all liability for such taxes, and any interest and penalties thereon.

M. ESCO, to the fullest extent allowed by law, shall indemnify, defend and hold harmless and shall reimburse O&R, from and against any and all damages, losses, liabilities, obligations judgments, orders, writs, injunctions, decrees, fines, penalties, taxes, costs, suits, charges, expenses (including attorneys' fees), claims, investigations, proceedings, or causes of action (collectively "Damages") which may at any time be imposed on, incurred by, or asserted against O&R 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 ESCO's performance under this Agreement, including, but not limited to any of the following: (i) ESCO's acts or omissions regarding Customer Accounts or billing rates; (ii) 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; (iii) any Claims with respect to the action or inaction of ESCO or its

representatives, which is contrary to the requirements of this Agreement; (iv) any inaccuracy in or other breach of any representation or warranty made by ESCO in this Agreement; (v) any failure by ESCO to perform or comply, in whole or in part, with any covenant, agreement or provision of this Agreement; and (vi) any costs and expenses, including reasonable fees and attorney's fees associated with all Damages incurred by O&R in connection with any Claims subject to indemnification rights as provided herein.

2.5 Consolidated Billing Service Fee

A. O&R will charge ESCO a Consolidated Billing Service fee per bill rendered on behalf of ESCO in accordance with Section 2.5 (B) below. As of the Effective Date of this Agreement, the fee is \$0.62 per bill, plus any applicable government surcharges. The fee will be adjusted, as necessary, to comply with any changes approved by the NYPSC.

B. ESCO's payment of the Consolidated Billing Service fee will be effectuated by a recoupment from remittances due ESCO as provided in Section 2.4 (J).

C. In the event of termination of this Agreement, O&R shall have the right to retain all Customer payments associated with bills rendered to ESCO's Customers (pursuant to Section 2.4 above) prior to the date of termination, and O&R shall make the appropriate remittance payments to ESCO associated with those bills in accordance with Section 2.4 (G) and (J). To the extent that amounts owed to O&R by the ESCO for retail access program services and/or other charges in accordance with the applicable provisions of the Tariff or the ESCO Operating Agreements exceed Customer payments, either upon termination of this Agreement or at any time during the course of the Agreement, O&R shall invoice ESCO for any and all amounts due to O&R and ESCO shall pay such invoice pursuant to the terms and conditions set forth in Section 7 of the NYPSC UBPs as incorporated in the Operating Procedures.

ARTICLE III

MISCELLANEOUS

3.1 Resolution of Disputes

If a dispute arises between Parties, including those issues requiring NYPSC action, the dispute resolution process set forth in the NYPSC UBPs will be followed.

3.2 Notices

Any notice to be provided pursuant to the terms of this Agreement will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (i) delivered by hand, (ii) deposited for next-business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by 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 by giving notice thereof).

Notice to:

Orange and Rockland Utilities, Inc.
Manager - Retail Access
390 W. Route 59
Spring Valley, NY 10977
Telephone #: 845-577-3121
Fax # 845-577-3628
E-Mail: ciglianoc@oru.com

and to:

ESCO -

Attn: _____

Telephone #: _____

Fax # _____

E-Mail: _____

3.3 Termination of Agreement

O&R shall have the right to terminate this Agreement on thirty (30) days'

written notice to ESCO; provided, however, that this Agreement may be

terminated: (i) on one (1) day's written notice if the ESCO Operating

Agreement(s) is terminated for any reason; (ii) on not less than fifteen (15) days' written notice if ESCO breaches any of the representations and warranties set forth in Section 2.3 above or any of the other provisions of this Agreement and does not cure said breach within the fifteen-day period; or (iii) on one (1) day's written notice following issuance of an order or ruling by the NYPSC materially impacting any of the terms or conditions herein. In the latter instance, O&R will offer ESCO an alternative consolidated billing arrangement to replace the one provided for in this Agreement, to the extent that the NYPSC requires utilities to provide consolidated billing services. O&R will render ESCO's Customers a consolidated bill for ESCO's commodity supply provided to Customers through the date of termination or expiration of this Agreement.

3.4 Force Majeure

Any delay in the performance of any of the duties or obligations of either Party hereto shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of

such delay, provided that such delay has been caused by or is the result of any occurrence beyond the reasonable control of a Party which causes such Party to be delayed in or prevented from performing or carrying out any of its obligations under this Agreement and which, by the exercise of due diligence, that Party is unable to prevent, avoid, mitigate, or overcome, including any of the following: any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, ice, explosion, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, provided that a Force Majeure Event shall not include lack of finances or change in market conditions. The Party so affected shall give prompt written notice to the other Party of such cause and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible.

3.5 Amendments

Notwithstanding any provision of this Agreement, O&R may at any time propose and file with the NYPSC changes to the rates, terms, and conditions of the Tariff, and/or the Operating Procedures. Such amendment or modification will become effective with respect to service pursuant to this Agreement on the date specified by the NYPSC.

3.6 Assignment

Except for the assignment of ESCO's right to receive payment under Section 2.4(G) and 2.4(J) of this Agreement for which written notice shall be provided to O&R, neither Party shall assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this

Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Section shall be void.

3.7 Prior Agreements Superseded

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, supersedes any and all previous understandings between the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties, their successors and permitted assigns.

3.8 Waiver and Modification

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

3.9 Applicable Law and Forum

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

3.10 Severability

If one or more provisions herein are held to be invalid, illegal or unenforceable in any respect it will be given effect to the extent permitted by

applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

3.11 Agency

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

3.12 Not for the Benefit of Third Parties

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

IN WITNESS WHEREOF, the Parties hereto have caused this

Agreement to be executed, as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By _____

Name _____

Title _____

ESCO -

By _____

Name _____

Title _____