

**ELECTRIC DISTRIBUTION COMPANY AGGREGATION AGREEMENT**

**THIS ELECTRIC DISTRIBUTION COMPANY AGGREGATION**

**AGREEMENT**, (“Agreement”) made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between Rockland Electric Company (“Company”), a corporation and a public utility organized and existing under the laws of the State of New Jersey, and the \_\_\_\_\_, a municipality of the State of New Jersey (“Aggregator”). The Company and the Aggregator are hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”.

**WITNESSETH:**

**WHEREAS**, the Company is a public utility engaged, *inter alia*, in the transmission and distribution of electric energy within its service territory located in the State of New Jersey; and

**WHEREAS**, pursuant to Government Energy Aggregation Act, N.J.S.A. 48:3-93 et seq. (“Aggregation Act”), the Aggregator seeks to establish a Government Energy Aggregation Program for the provision of electricity (“Program”) within the Company’s Service Territory;

**WHEREAS**, pursuant to the Aggregation Act and in accordance with the Applicable Legal Authorities, the Aggregator has adopted an appropriate municipal ordinance or resolution, as applicable, authorizing the Aggregator to establish the Program and has provided a copy of that ordinance or resolution to the Company; and

**WHEREAS**, with respect to the Program, the Parties desire to enter into this Agreement setting forth their respective obligations concerning the Program:

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth below, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

## ARTICLE 1: DEFINITIONS

Any capitalized or abbreviated term not elsewhere defined in the Agreement shall have the definition set forth in this Article.

Applicable Legal Authorities – generally, those New Jersey statutes and administrative rules and regulations that govern the electric utility industry, Government Aggregators and Government Energy Aggregation Programs in New Jersey.

Billing Month – generally, that calendar month in which the majority of the Company’s meters are read for the purpose of establishing the electric service usage of Customers for their prior 26 to 34 day period.

BPU or Board – the New Jersey Board of Public Utilities or its successor.

Business Day – any day on which the Company’s corporate offices are open for business.

Charge – any fee, charge or other amount that is billable by the Company to the Aggregator for services performed by the Company under this Agreement, as set forth in Appendix A.

Customer – a person or entity taking service pursuant to the Company’s retail tariff, who may receive electricity from a Third Party Supplier in accordance with the Applicable Legal Authorities at a single, metered location.

Customer Information – for Customers located within the Aggregator’s jurisdictional territory, the Customer’s name, address, account number, and, for Non-Residential Customers, 12-Month Historical Usage.

Electric Related Service – service that is directly related to the consumption of electricity by an end user, including, but not limited to the installation of demand side management measures at the end user’s premises, the provision of energy consumption measurement, analysis, and information management, and billing services, as authorized by the Board pursuant to N.J.S.A. 48:3-94(4)(b).

General Customer Inquiry – an inquiry from a customer regarding electric distribution-related services provided by the Company.

Government Aggregator – an entity that meets both of the following criteria: (1) the entity is subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., or is the New Jersey School Boards Association and (2) the entity enters into a contract with another Government Aggregator, or with a Third Party Supplier, to purchase electric generation service and/or electric related service for one or more of the following purposes: (a) for the Government Aggregator’s own use, (b) for the use of other Government Aggregators, and/or (c) if the Government aggregator is a municipality or county, for use by Residential or Non-Residential Customers within its geographic boundaries.

Government Energy Aggregation Program – a program under which a Government Aggregator that is a municipality or county enters into a written contract for the provision of electric

generation service on behalf of Residential or Non-Residential Customers within its geographic boundaries.

Non-Residential Customer – a Customer that is not a government entity that is subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., or the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq. and who is being served under any one of the following of the Company's Service Classifications, SC2 General Service, SC4 Public Street lighting and SC7 Large General Time of Use.

Notice – the form of notice provided by the Aggregator to Customers as required pursuant to N.J.A.C. 14:4-6.6 (q) through (s) (1) notifying them that the Aggregator is establishing a Government Energy Aggregation Program; (2) informing Residential Customers that they have the right to Opt-Out, but if no Opt-Out is submitted, that the Residential Customer will be included in the Program; (3) if applicable, informing Non-Residential Customers that they have the right to Opt-In, but, if no Opt-In response is submitted, that the Non-Residential Customer will be excluded from the Program; (4) informing them that any Opt-Out must be submitted to the Option Administrator within 30 calendar days after the postmark on the Notice; (5) advising them of the specific cost of participation in the Program, and any other information necessary to enable customers to compare the Program to other alternatives; (6) notifying them of the approximate start date of the Program and the Program's duration; and (7) providing a contract name, phone number and e-mail address for Specific Customer Inquiries.

Option Administrator – means the Party responsible for receiving and recording customer's submittals indicating that the Customer wishes to Opt-In or Opt-Out of the Government Energy Aggregation Program.

Opt-In – the process by which a Customer affirmatively indicates a choice to participate in a Government Energy Aggregation Program from which the Customer would otherwise be automatically excluded.

Opt-Out - the process by which a Customer affirmatively indicates a choice not to participate in a Government Energy Aggregation Program from which the Customer would otherwise be automatically included.

Program Change Notice – the form of notice provided by the Aggregator to Residential Customers participating in the Program as required pursuant to N.J.A.C. 14:4-6 et seq. (1) notifying them that (a) there has been a change in Third Party Supplier to the Program or (b) there has been a change in pricing structure for the Program and (2) informing them of their right to decline to continue to participate in the Program.

Residential Customer – a Customer who is being served under any one of the following of the Company’s Service Classifications: SC1 Residential Service, SC3 Residential Time-of-Day Service and SC5 Residential Space Heating Service.

Service Territory – the geographic areas of the State of New Jersey in which the Company serves electric Customers.

Specific Customer Inquiry – an inquiry from a customer regarding the Government Energy Aggregation Program.

Third Party Supplier or “TPS” – a person or entity that is duly licensed by the Board to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers located in the State of New Jersey pursuant to retail open access programs approved by the Board.

12-Month Historical Usage – the amount of electricity used by a Customer or group of Customers during the most recent 12-month period for which data are available, including electric interval data, if available and requested.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 Parties’ Obligations**

#### **(a) Obligations of Aggregator**

Aggregator hereby agrees to meet the following obligations:

(i) to cooperate with the Company in any regulatory compliance efforts that may be required to maintain the on-going legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory and Company reporting requirements associated with the Program, before the BPU, with a copy to the Company on a concurrent basis;

(ii) to send the completed form of Notice to Residential Customers in accordance with N.J.A.C. 14:4-6.6 (q) through (s), and, if the Program is open to Non-Residential Customers, to issue a public notice advising Non-Residential Customers located within the Aggregator’s geographic boundaries that they are eligible to participate in the Program if they submit an Opt-In response to the Option Administrator within 30 calendar days after the ordinance or resolution authorizing the Program;

(iii) to act, either directly or through a designated agent, as Option Administrator and to keep a record of all of the Residential Customers who Opt-Out of the Program, and, if applicable, to keep a record of all of the Non-Residential Customers who Opt-In to the Program;

(iv) to pay to the Company all Charges associated with those obligations assumed by the Company with respect to the Program as set forth in Appendix A;

(v) to respond to all Specific Customer Inquiries;

(vi) to provide the Company with supplemental information reasonably available to the Aggregator to assist the Company in defining the boundaries of the municipal jurisdiction for purposes of the Company's query of its customer system to develop a list of Residential Customers located in the Aggregator's geographic boundaries;

(vii) to keep all Customer Information supplied by the Company confidential and exempt from public disclosure, as required by the Applicable Legal Authorities, unless otherwise required by court order or pursuant to an Open Public Records Act ("OPRA") request, and to limit any use or dissemination of Customer Information to facilitation of the Program. Notwithstanding the foregoing, the Parties agree that Customer Information is not subject to OPRA disclosure, and if an OPRA request is submitted to the Aggregator it will not voluntarily disclose such information;

(viii) upon selecting a TPS, or TPSs, to supply electricity and/or electric related service to the Program, to promptly notify the Company in writing of the identity of the selected TPS(s); and

(ix) to comply in a timely manner with any applicable rules in effect pursuant to the Applicable Legal Authorities and with all obligations under this Aggregator Agreement imposed upon the Aggregator.

(x) Aggregator may subcontract or delegate performance of certain of its obligations under this Agreement in accordance with the requirements of N.J.A.C. 14:4-6.3(b).

However, no such subcontract or delegation shall relieve Aggregator of any of its obligations and/or liabilities under this Agreement.

**(b) Obligations of the Company**

The Company hereby agrees as follows:

(i) within ten calendar days after the later of the Effective Date of this Aggregation Agreement or the satisfaction by the Aggregator of all conditions precedent including payment of all Charges then due (as provided for in Article 6 of this Agreement and to the extent any such Charges are established in Appendix A hereto), provision of the supplemental information pertaining to defining municipal jurisdiction boundaries as described in the paragraph 2.1(a)(vi) above and provision of the names and account numbers those Non-Residential Customers who have submitted an Opt-In response to the Option Administrator, the Company will use reasonable care to prepare and will provide to the Aggregator (1) the number of Residential Customers and aggregate monthly usage, by rate class, who are located within the Aggregator's geographic boundaries and are not already being serviced by a TPS; (2) 12-Month Historical Usage for each Non-Residential Customer that the Aggregator has indicated has submitted an Opt-In response, through Electronic Data Interchange ("EDI"); and (3) 12-Month Historical Usage for each government facility that Aggregator has indicated will be included in the Program through EDI. Pursuant to N.J.S.A. 48:3-92.3, the Company will exercise reasonable care in the disclosure of Customer Information to the Aggregator, but shall not be responsible for errors or omissions in the preparation or the content of the Customer Information.

(ii) within ten calendar days after the postmark on the written notice of selection of a TPS (as required by Section 2.1(a)(viii) of this Agreement and with the assistance of the supplemental information pertaining to defining the boundaries of municipal jurisdiction as described in the paragraph 2.1(a)(vi) above) the Company will use reasonable care to prepare and will provide to the Aggregator Customer Information for Residential Customers who are located within the Aggregator's geographic boundaries and are not already being served by a TPS.

Pursuant to N.J.S.A. 48:3-92.3, the Company will exercise reasonable care in the disclosure of Customer Information to the Aggregator, but shall not be responsible for errors or omissions in the preparation or the content of the Customer Information.

(iii) to comply in a timely manner with any applicable rules in effect pursuant to the Applicable Legal Authorities and with all obligations under the Aggregation Agreement imposed upon the Company;

(iv) to respond to all General Customer Inquiries; and

(v) to direct all Customers to the Aggregator or its designated agent for the answers to any Specific Customer Inquiries.

## **2.2 Communications and Data Exchange**

Aggregator and the Company will supply to each other all data, materials or other information that is specified in this Aggregation Agreement, or that may otherwise reasonably be required by the Aggregator or by the Company in connection with the Program in a timely manner. Aggregator requests for 12-Month Historical Usage must utilize EDI. The Company's fulfillment of these requests will utilize EDI protocols for providing historical monthly summary usage. The Company utilizes New York EDI rules and protocols.

## **2.3 Record Retention**

The Aggregator shall retain for a period of six months following the expiration of the term of this Agreement, necessary records so as to permit the Company to confirm the participation of Customers in the Program.

# **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

## **3.1 Aggregator's Representations and Warranties**

The Aggregator hereby represents, warrants and covenants as follows:

a) it is a municipality or county within the State of New Jersey;

b) it has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

c) the execution and delivery of this Agreement and the performance of the Aggregator's obligations hereunder have been duly authorized by ordinance or resolution, as applicable;

d) all necessary and appropriate action that is required on the Aggregator's part to execute this Agreement has been completed; and

e) this Agreement is the legal, valid and binding obligation of such Aggregator, enforceable in accordance with its terms.

### **3.2 Company's Representations and Warranties**

The Company hereby represents, warrants and covenants as follows:

a) the Company is an electric public utility corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey;

b) the Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

c) the execution and delivery of this Agreement and the performance of the Company's obligations hereunder have been duly authorized by all necessary action on the part of the Company;

d) all necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed; and

e) this Agreement is the legal, valid and binding obligation of such Company, enforceable in accordance with its terms.



### **3.3 Survival of Obligations**

All representations and warranties contained in this Article are of a continuing nature and shall be maintained during the term of this Agreement. If a Party learns that any of the representations, warranties, or covenants in this Agreement are no longer true during the term of this Agreement, the Party shall notify the other Party within three Business Days, via facsimile, with a hard copy of the notice delivered by overnight mail.

### **ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT**

The term of this Aggregation Agreement shall commence upon the date first written above (“Effective Date”) and terminate with the satisfaction of each of the Parties’ obligations under this Aggregation Agreement, and, in no event, will extend more than 30 calendar days beyond the Program’s termination.

### **ARTICLE 5: BREACH AND DEFAULT**

#### **5.1 Event of Default**

An Event of Default under this Agreement shall occur if a Party (the “Defaulting Party”) after written notice and a reasonable opportunity to cure:

- (i) fails to pay the other Party when payment is due;
- (ii) violates any federal, state or local code, regulation or statute applicable to Governmental Energy Aggregation Programs including, in the case of the Aggregator, by failing to obtain or maintain any governmental approvals required to implement a Government Energy Aggregation Program; or
- (iii) fails to satisfy any other material obligation under this Agreement not listed above, and fails to remedy such condition, event or violation, within three Business Days of receipt of written notice thereof from the Non-Defaulting Party.

## **5.2 Rights Upon Default**

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to:

- (i) pursue any and all available legal and equitable remedies; and
- (ii) declare an early termination date of this Agreement with respect to the obligations of the Defaulting Party without any liability or responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice to the Defaulting Party.

## **ARTICLE 6: BILLING AND PAYMENT**

(a) No later than ten calendar days after the Effective Date of this Agreement, the Aggregator will pay the Company an amount equal to the total Charges expected to be incurred by the Aggregator over the term of this Agreement, based upon the services to be performed by the Company as set forth in Appendix A hereto.

(b) Within 15 calendar days after the conclusion of each Billing Month, the Company will remit an invoice to the Aggregator for any Charges incurred by the Aggregator during the Billing Month, and not included in the payment provided pursuant to Section 6(a), above.

(c) Invoices for Charges incurred by the Aggregator during the Billing Month will be due and owing to the Company within ten calendar days after the date of the invoice.

(d) Within 15 calendar days after the conclusion of the term of this Aggregation Agreement, the Company will refund any Charges previously paid by the Aggregator for services not rendered by the Company during the term of this Agreement, or will issue a final invoice for all Charges incurred by the Aggregator.

## **ARTICLE 7: INDEMNIFICATION**

With respect to claims and/or liabilities related to the provision, use, misuse or unauthorized disclosure of Customer Information by the Aggregator or its agents, or by third parties subsequent to the provision of such Customer Information by the Company to the Aggregator pursuant to this Aggregation Agreement, the Aggregator agrees to defend, indemnify and hold harmless the Company, its shareholders, board members, directors, officers and employees, from and against any and all third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Company. Without limiting the foregoing, the Aggregator will indemnify the Company for all claims by Customers relating to the Program regarding services not provided by the Company.

## **ARTICLE 8: MISCELLANEOUS**

### **8.1 Use of the Word "Including"**

The word "including", when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or terms to refer to all other items or matters that could reasonably fall within its broadest possible scope.

## **8.2 Binding Terms**

This Agreement and the Charges, terms and conditions herein shall remain in effect for the entire term hereof.

## **8.3 Amendment**

This Aggregation Agreement may not be amended without the approval of the Board, and requests for such approval by one Party may be initiated only upon written notice to the other Party, except that the Company may amend the Charges set forth in Appendix A upon 30 days prior written notice to the Aggregator.

## **8.4 Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which shall constitute one instrument.

## **8.5 Notices**

Unless otherwise stated herein, all notices, demand or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the Company:

Orange and Rockland Utilities, Inc.  
390 West Route 59  
Spring Valley, New York 10977  
Attention: Retail Access Manager  
Fax: 845-577-3628

If to the Aggregator:

[MUNICIPALITY]  
[ADDRESS]  
[TOWN, New Jersey ZIP CODE]  
[ATTN: DESIGNATED RECIPIENT]  
[Facsimile number]

## **8.6 Regulatory Changes**

If the Applicable Legal Authorities in effect as of the date hereof governing this Agreement and the Program, are amended or suspended or are otherwise no longer in force and effect (collectively, a “Change” in the Applicable Legal Authorities), such that the obligations of Company are substantially increased and it does not make economic sense for Company to proceed under the Program as determined by Company, Company shall have the right, upon 30 days prior written notice to Aggregator and CUC, to terminate this Agreement and no party shall have any further liability or obligation hereunder except with respect to any amounts due prior to the date of such termination.

## **8.7 Waiver**

The failure of any Party to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition or of any breach of any term of the Agreement shall be construed as a further or continuing waiver of any such condition or breach or as a waiver of any other condition or any breach of any other term.

## **8.8 Entire Agreement**

This Agreement represents the entire agreement amongst the parties hereto with respect to the subject matter hereof and all prior agreement with respect thereto are superseded hereby. Each party confirms that it is not relying on any oral representations or warranties of the other party except as specifically set forth herein.

## **8.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey (without giving effect to principles of conflicts of law).

## **8.10 Severability**

If any provision of this Agreement or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or

the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

**8.11 Assignment**

No Party shall assign its rights or delegate its performance under this Agreement without the prior written consent of the other Parties, and any attempted assignment or delegation without such consent shall be void.

**8.12 Captions**

The headings and captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of its provisions.

**8.13 Binding Effect**

This Agreement, as it may be amended from time to time pursuant to the provisions hereto, shall be binding upon and inure to the benefit of the Parties and their respective successors in interest, legal representatives and permitted assigns.

**8.14 Further Assurances.**

From time to time after the Effective Date and without further consideration, the Parties shall take such other actions, and execute such other documents and instruments as any Party may reasonably request to more effectively carry out the transactions contemplated by this Agreement.

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

ATTEST:

ROCKLAND ELECTRIC COMPANY

By \_\_\_\_\_

By \_\_\_\_\_

ATTEST:

[MUNICIPALITY]

By \_\_\_\_\_

By \_\_\_\_\_

[NAME – TITLE]

[NAME – TITLE]

## Appendix A

### Schedule of Fees and Charges

1. **General Administrative Fee: \$100 per hour. This fee represents recovery of costs incurred by the Company, and not recovered through base rates or any other fees or charges, in the course of rendering necessary support and assistance to the Government Aggregator.**
2. **Computer Programming Charges: \$137 per hour. This fee represents the incremental cost of programming required in the preparation or content of customer information exclusive of the standard EDI business practices and protocols.**
3. **Technical Support and Assistance Charges: \$150 per hour. This fee represents any incremental costs incurred by the Company in providing technical support and assistance to the Government Aggregator that is in addition to the business interactions and processing of customer data outlined in the Aggregation Agreement.**