

Billing Services Agreement for Consolidated Billing Service
Under Service Classification No. 19

BILLING SERVICES AGREEMENT (“Agreement”) entered into this ____ day of _____, 20____, by and between National Fuel Gas Distribution Corporation (“Company”) and _____ (“Marketer”) (the “Parties”).

WHEREAS Marketer is receiving service from Company as a “Supplier” under Service Classification No. 19, Supplier Transportation, Balancing and Aggregation (“STBA” or “STBA tariff”), such service classification being contained and subsumed in Company’s tariff, P.S.C. No. 8 – GAS (“Tariff”);

WHEREAS by means of such STBA service Marketer purchases natural gas commodity on behalf of STBA customers (“Customers”) on Company’s system and causes such natural gas commodity to be delivered to the Company for redelivery, or transportation, by the Company to Marketer’s Customers;

WHEREAS as a result, Marketer is interested in charging such Customers (“Customer Accounts”) for Marketer’s commodity service (“Marketer charges”), and Company is interested in charging the same Customers for Company’s transportation and other services (“Company charges”), on a single bill that includes Marketer charges and Company charges;

WHEREAS Marketer has elected to receive, and Company agrees to provide, a consolidated billing service (“CBS”), pursuant to the STBA tariff;

WHEREAS, with respect to Customer Accounts for Customers that consume less than 25,000 Mcf annually, Marketer has requested that Company purchase, free and clear of all liens, claims and encumbrances, without recourse except as described in this Agreement, all amounts billed by Company hereunder on Marketer’s behalf and make payments to Marketer relating to such purchases;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants, conditions and terms set forth below, Marketer and Company agree as follows:

A. Applicable Tariff and Operating Procedures

1. Tariff and Operating Procedures. The terms and conditions of the Tariff, STBA agreements, Gas Transportation Operating Procedures (“GTOP” or “Operating Procedures”) and the New York State Public Service Commission’s (“NYPSC”) Uniform Business Practices (“UBPs”), as applicable, are fully incorporated in this Agreement except as otherwise expressly stated herein.

2. Tariff Controls. If there is any inconsistency between this Agreement and the Tariff (including the STBA tariff contained within the Tariff), in its current form or as subsequently amended, then the provisions of the Tariff shall apply.

B. Consolidated Billing and Purchase of Accounts Receivable

1. Billing Service. Pursuant to the STBA tariff, Marketer hereby elects to receive CBS and authorizes Company to perform certain retail billing functions for Marketer's Customers, as defined in the STBA tariff and the UBPs, including invoicing, remittance processing and customer service activities. Marketer and Company shall comply in every respect with the provisions of CBS under the STBA tariff, Company's Tariff and, where applicable, the UBPs. Service hereunder is available only to Customers and not for retail customers under any other service classifications.

2. Purchase of Accounts Receivable.

a. For Customer Accounts with annual consumption less than 25,000 Mcf and subject to the other terms and conditions of this Agreement: Marketer hereby assigns, sells and conveys to Company free and clear of all liens, claims and encumbrances, and Company agrees to purchase without recourse except as described in sections B ¶11 and ¶12 below, Marketer's right, title and interest in all accounts receivable, being amounts due from all such Customers as shown on CBS bills issued by Company on and after the effective date of this Agreement ("Purchased Customer Accounts").

b. Title to Marketer's Purchased Customer Accounts shall pass to Company as of the date bills are issued by Company (the "Billing Date"), and as of such Billing Date Marketer shall have no rights in or to the Purchased Customer Accounts and shall not seek to collect in any manner such amounts from Customers or pledge or attempt to encumber such amounts as security.

3. Rate-Ready Service. CBS is a "rate ready" service, as defined in the UBPs. Marketer shall provide to Company all rates, charges and other information, including Customer Account information, necessary for billing purposes, in a form and manner determined by Company, at least four (4) business days prior to the Customers' Meter Read Date. Such information shall be deemed received for processing only upon Company's express confirmation of receipt. Company shall not be responsible for billing errors or delays caused by Marketer's failure to timely and properly provide accurate billing information to Company. Marketer agrees to indemnify Company against any and all actions, charges, complaints, proceedings, liabilities, damages, penalties and fines resulting from errors caused by untimely or inaccurate information provided by Marketer.

4. Bills based on Meter Reads. Bills issued by Company shall be based on actual or estimated meter readings retrieved by Company in the manner, and according to procedures, utilized for Company's general billing practices. Meter readings are

recorded for billing purposes on the Meter Read Date or on such other special reading date as the Company may determine appropriate. Marketer will not be responsible for billing errors resulting from meter reading inaccuracies or errors. Consumption adjustments shall be reflected on subsequent Customer bills in the ordinary course of billing. Company reserves the right; however, to re-bill Customers or issue corrected bills if justified by the circumstances and as permitted by the UBPs and Company's Tariff.

5. Bill Content. CBS bills will display Marketer's charges. The Company will calculate the Customer's total Marketer charge(s) by multiplying the commodity rate(s), provided by Marketer, by the consumption determined by Company. CBS bills will also identify Marketer as the Customer's natural gas Marketer, and will set forth a phone number at which Marketer can be reached for Customer inquiries. Company's charges will also be displayed on the bill in the manner prescribed by the Tariff and NYPSC directives, orders, rules and regulations.

6. Taxes. Company is not responsible for the paying or remitting to the applicable taxing authorities, on behalf of Marketer, of any federal, state or local taxes as a result of this Agreement. Company will calculate and identify the sales and use tax applicable to Marketer's charges and will provide such calculations to Marketer. Marketer shall be liable for and pay all such taxes and shall indemnify, defend and hold harmless Company from and against any and all liability for such taxes and any interest, penalties and attorney fees.

7. Late Payment Charges. Late payment charges ("LPC") shall be assessed on Customers by Company for untimely payment of amounts billed. The LPC for unpaid Company charges shall be 1.5% per month (also assessed on unpaid LPCs), or as otherwise directed by the NYPSC. The LPC for unpaid Marketer charges shall be 1.5% per month. Provided, however, that for Customer Accounts that are not Purchased Customer Accounts, the LPC shall be designated by Marketer (subject to Company's billing capabilities) pursuant to Marketer's agreement with the Customer. The LPC, if assessed, shall be inclusive of all billed charges. To the extent necessary, Marketer hereby grants, assigns and delegates to Company all of Marketer's rights to assess and collect a LPC on the Marketer's charges included in the CBS bill. LPC proceeds collected on Purchased Customer Accounts shall be retained by the Company. LPC proceeds collected on Customer Accounts that are not Purchased Customer Accounts shall be remitted to Marketer.

8. Budget Billing. Company offers budget billing (also known as balanced billing) through CBS for the entire bill as a Customer option, and will provide such service according to Company procedures for Budget Billing.

9. Authorized Payment Agencies. Customers may pay CBS bills at authorized payment agencies in the same manner as is permitted for Company bills.

10. Billing and Collection Procedures; Security Interest; Setoff.

a. Company charges and Marketer charges will be shown on CBS bills and collected by Company. Company shall have the exclusive right to receive and process Customer payments, and will perform for itself and on behalf of Marketer required billing and collection activities on Customer Accounts in conformance 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.

b. Marketer hereby grants, assigns and delegates to Company all of Marketer’s rights under New York law and regulations to terminate and suspend Marketer’s service to a Customer who fails to make full payment of all amounts due for such service on the CBS bill.

c. Company agrees to indemnify Marketer against any and all actions, charges, complaints, proceedings, liabilities, damages, penalties and fines resulting from Company’s failure to properly apply HEFPA procedures for billing and collection activities as provided in this Agreement.

d. For non-residential Customers, Company shall terminate its transportation service and the Marketer’s commodity service where: (i) the Customer fails to make full payment of all amounts due on the CBS bill; (ii) the Customer Account is a Purchased Customer Account; and (iii) the Marketer has executed and furnished Company with an affidavit from an officer of Marketer attesting to the representation and warranty set forth below at section C ¶5. The Company’s receipt of such properly executed affidavit shall be condition of service under this Agreement. Marketer will indemnify Company for any cost, expense, or penalty incurred if any of Marketer’s Customer’s service is terminated for non-payment and the Customer establishes that it did not receive such notification.

e. Any Customer payment or portion thereof that is billed by Company and received by Marketer shall be held by Marketer in trust as the property of Company and shall be remitted in full to Company within three (3) business days without any deduction or set-off by Marketer.

f. For Customer Accounts that are not Purchased Customer Accounts, Marketer agrees to permit Company to set-off any unsatisfied Marketer obligations to Company with proceeds received from Customers’ payments of Marketer charges, with the remainder, if any, remitted to Marketer in the ordinary course. Marketer hereby grants a security interest in such Customer Accounts and Company may in its discretion perfect a security interest in such Customer Accounts to the extent necessary in order to give effect to this Agreement.

11. Purchase Amount. Subject to the other terms and conditions of this Agreement: For Purchased Customer Accounts, Company shall pay Marketer an amount equal to 96.69% for residential amounts billed (inclusive of taxes pursuant to above section B ¶6), and 99.43% of non-residential amounts billed (also inclusive of taxes) hereunder. The above payment percentages are subject to changes as approved by the NYPSC. For current balances on Purchased Customer Accounts, Company will remit payment twenty-three (23) days (plus two (2) business days for processing) following the Billing Date (or the next following business day if the 23rd day falls on a bank holiday or a Company holiday) of all Marketer charges billed to Customers in the previous month. For Budget Billing CBS bills, the amount purchased shall be based on the total billed amount without regard to current debit or credit balances, provided, however, that the amount remitted shall be equal to the Budget Bill amount as stated on the CBS bill. Upon termination of the Customer's commodity service with Marketer, Budget Billed Customer debits or credits shall be treated as follows: debit amounts shall be charged to the Customer in a final bill, and shall be redeemed to Marketer according to the procedure described herein. Credit amounts shall be credited to the Customer and deducted from future Purchased Customer Account amounts redeemed to Marketer.

12. Other Deductions.

a. Company's payment obligation to Marketer in accordance with above section B ¶11 shall be subject to netting of all amounts owed to Company by the Marketer for STBA services and/or other charges under the Tariff or GTOP, including (but not limited to):

- Special meter read fees;
- Customer usage history fees;
- Gas imbalance charges;
- Billing and payment processing charges;
- Amounts due under other Marketer accounts;
- Amounts disputed by Marketer's Customers as described below; and
- At the time the amount is written off by the Company or when Customer's service is restored with a different marketer, billed amounts in excess of the amount necessary to restore Customer service pursuant to Public Service Law §32(5)(d).

Such amounts deducted from Company's payment to Marketer in accordance with section B ¶11 shall be itemized and described by Company at the time of payment. At Marketer's request, Company agrees to provide Marketer with calculations and other documentation supporting such deductions.

b. Disputed Amounts. An amount is deemed disputed if a Customer initiates a bill complaint under Part 12 of the NYPSC's Rules of Procedure (16

NYCRR Part 12) questioning the validity of Marketer's bill, charges or services. A Customer's claim of inability to pay or inaccurate meter reading shall not constitute a dispute for purposes of Company's obligation to pay Marketer amounts billed.

13. Bill Format. Company shall determine CBS bill format, subject to changes at Company's discretion and to accommodate bill content requirements under the UBPs and applicable directives of the NYPSC. At Marketer's option, Marketer's logo will be printed (according to the capabilities of CBS) so long as Marketer's logo is provided in an acceptable electronic format at least thirty (30) days before it is to be used. Both Parties' bill message spacing shall be governed by the Parties' agreement and CBS capabilities but shall not be less than four hundred eighty (480) characters for either Party. Information required by statute, regulation or order shall be printed on or inserted into CBS bills without additional charge so long as inserts do not exceed one-half ounce in weight. Additional bill inserts may be provided at negotiated rates. Company reserves the right to reject bill message or bill insert content requested by Marketer if Company in its sole judgment finds such content inappropriate or otherwise offensive.

14. Customer Inquiries. Company will receive and endeavor to process Customer inquiries relating to the CBS bill. Provided, however, that Customer inquiries relating to Marketer's rates or services shall be directed to Marketer's phone number shown on the bill. Marketer shall remain obligated to maintain a system capable of handling Customer complaints.

15. Security Deposits. Marketer hereby grants, assigns and delegates to Company Marketer's complete right to obtain security deposits and other forms of security. Existing deposits held on Customer Accounts shall be refunded to Customer or transferred to Company within five (5) days of commencement of service hereunder.

C. Representation and Warranties

1. Agreement Not for the Benefit of Third Parties. Marketer warrants and hereby agrees that it is not entitled to and shall not pledge Company's credit for any purpose whatsoever. This Agreement is for the benefit of the Parties hereto and not for the benefit of third parties, except to the extent of any amounts payable to Marketer under this Agreement to the extent Marketer grants a security interest to its bona fide lender in amounts due to Marketer pursuant to this Agreement.

2. Marketer Eligibility. Marketer represents and warrants, and shall demonstrate at Company's request, that it has satisfied all requirements to qualify as an eligible gas marketer in New York State for service to the class of Customers served under this Agreement, and will continue to be in compliance with such requirements and subsequently adopted laws and regulatory requirements throughout the term of this Agreement.

3. No Encumbrances. Marketer warrants and shall demonstrate to Company that Purchased Customer Accounts are unencumbered and not subject to a security interest or lien held by a third party. Marketer further warrants that it will not allow any interest or permit any third party to assert a claim of any type on those Purchased Customer Accounts or any new Purchased Customer Accounts opened during the term of this Agreement.

4. Late Payment Charge. Marketer represents and warrants that Marketer's Customers billed under this Agreement have received notice that a LPC of 1.5% per month shall be assessed as described in this Agreement and any and all Customer Accounts or portions thereof are subject to a LPC at such rate.

5. Non-residential Service Termination. Marketer represents and warrants and shall demonstrate at Company's request that it has notified its current non-residential Customers and will notify its future non-residential Customers that Company is permitted to terminate the non-residential Customer for non-payment of Marketer charges.

6. Marketer charges. Marketer represents and warrants that Marketer charges reflect and are limited exclusively to charges for Marketer's gas commodity service or other authorized charges as provided under the STBA tariff or Commission regulations, orders or directives.

7. Security Deposits. Marketer represents and warrants that deposits previously held on Customer Accounts will be returned to Customers or refunded to Company within five (5) business days of commencement of service hereunder.

D. Term of Agreement

Service shall commence under this Agreement on the date an executed copy of this Agreement is received or the date set forth on the signature page attached hereto and continues on a month-to-month basis unless terminated as follows: Either Party shall have the right to terminate this Agreement on thirty (30) days written notice; provided, however, that this Agreement may be terminated by Company (i) on one (1) day's written notice if the STBA agreement is terminated for any reason or if Marketer or a creditor commences a proceeding or any other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to Company or any creditor, or seeking to adjudicate Marketer as bankrupt or insolvent, or seeking reorganization, dissolution, winding up, liquidation or other relief with respect to Marketer or Marketer's debts, or seeking appointment of a receiver, trustee, custodian or other similar official for Marketer, or Marketer makes a general assignment for the benefit of Marketer's creditors; (ii) on not less than fifteen (15) days written notice if Marketer breaches any provision hereof and does not cure said breach within the fifteen (15) day period, such fifteen (15) day periods to run concurrently; 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. Termination of this Agreement shall not suspend or discontinue Marketer's right to offer single-retailer billing or dual billing.

E. Miscellaneous

1. Liability. Company shall not be liable for any damages arising from CBS bills rendered based on untimely or inaccurate rate information provided by Marketer. Company's total cumulative liability to Marketer for all claims of any kind associated with Company's performance under this Agreement shall in no case exceed the payment or remittance amounts otherwise due under this Agreement. In no event, shall Company be liable for special, punitive, indirect or consequential damages, nor shall any action or inaction on Marketer's part, constitute a waiver by Company of any cause of action or defense. Company shall have no obligation to pursue, or assist Marketer in pursuing, any claim Marketer may have against any third party.

2. Further Indemnification. Marketer, to the fullest extent allowed by law, shall indemnify, defend and hold harmless and shall reimburse Company, 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 Company by third parties (including Customers) that are directly or indirectly caused by, arise out of or under, associated with, incident to or in connection with this Agreement, including, but not limited to any of the following: (i) Marketer's acts or omissions regarding Customer Accounts or Marketer charges; (ii) any claim, demand, cause of action, litigation, suit, proceeding, hearing or investigation (collectively, "Claims") by any persons for payments based upon any agreement or understanding alleged to have been made by such person, directly or indirectly, with Marketer 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 Marketer 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 Marketer in this Agreement; (v) any failure by Marketer 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 attorneys' fees associated with all Damages incurred by Company in connection with any Claims subject to indemnification rights as provided herein.

3. Force Majeure. Any delays in or failure of performance by the Parties shall not constitute a default and shall be excused under this Agreement, if and to the extent such delays or failures of performance are caused by occurrences that are both: (1) beyond the reasonable control of the Parties, including, but not limited to, acts of God, compliance with any order or request of any governmental or judicial authority, compliance with Company's public service obligations, riots or strikes or other concerted acts of workers, storms, fires, floods, and accidents; and (2) beyond the ability of the Parties to prevent, by the exercise of reasonable diligence.

4. Additional Personnel. Marketer agrees that Company shall have no obligation to Marketer to add personnel, equipment or facilities in order to perform any activities under this Agreement.

5. Notice. Any notice to be provided under this Agreement will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (a) delivered by hand, (b) deposited for next business day delivery (fee prepaid) with an established overnight delivery service, or (c) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that Party (or at some other address as that Party may from time-to-time designate by giving written notice thereof).

Notice to: National Fuel Gas Distribution Corporation
Rates and Regulatory Affairs Department
6363 Main Street
Williamsville, NY 14221
Fax no. (716) 857-7254
Attention:
Michael Reville
Beverly Hogan

Marketer: _____

6. Financing Statements. At Company's request, Marketer shall execute and deliver to Company all financing statements, and amendments thereof, and other documents and instruments that Company may request to perfect, protect or establish the security interests granted hereunder or to provide notice of Company's purchase of Marketer's Purchased Customer Accounts, or Company may execute and file any financing statements and amendments without Marketer's signature which Marketer hereby authorizes. Marketer hereby ratifies and consents to the filing of any such financing statements by Company prior to the date this Agreement is executed.

7. Complete Agreement. This Agreement is the complete agreement between the Parties as to the subject matter hereof, all prior contracts, commitments, proposals, negotiations concerning the subject matter hereof are superseded and merged herein.

8. Amendments. Notwithstanding any provision of this Agreement, Company may at any time propose and file with the NYPSC changes to the rates, terms and conditions of the Tariff, and/or Operating Procedures. Such amendment or modification shall be effective with respect to service pursuant to this Agreement on the date specified by the NYPSC.

9. Assignment. Neither Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, except that Marketer, upon ten (10) days' prior written notice to Company, may assign all or any part of the monies payable by Company under this Agreement without the consent of Company, to any party, lender, or financial institution. Marketer shall at all times remain liable for the repayment on demand to Company of all obligations owed Company. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations are expressly assumed by the assignee in writing.

10. 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. No such waiver shall apply prospectively to subsequent events unless expressly stated. No delay or failure on Company's part in exercising any right, privilege or option hereunder shall operate as a waiver of such or of any other right, privilege or option.

11. Dispute Resolution. Dispute resolution procedures, if utilized, shall be governed by the UBPs.

12. Applicable Law. This Agreement is made in the State of New York and shall be governed by and construed in accordance with the laws of New York State, without regard to conflict of law principles.

13. Venue. At Company's option, all actions and proceedings based on, arising from or relating to this Agreement shall be litigated in the Supreme Court of the State of New York, County of Erie. Marketer consents to the jurisdiction of such court and waives any and all rights to transfer or change the venue of any such action or proceeding to any other court.

14. Waiver of Jury Trial. MUTUAL WAIVER OF RIGHT TO JURY TRIAL. MARKETER AND COMPANY EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION BASED UPON, ARISING FROM, OR IN ANY WAY RELATING TO: (I) THIS AGREEMENT, OR ANY SUPPLEMENT OR AMENDMENT HERETO; OR (II) ANY OTHER PRIOR, PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN COMPANY AND MARKETER; OR (III) ANY CONDUCT, ACTS OR OMISSIONS BY COMPANY OR MARKETER OR ANY OF COMPANY'S OR MARKETER'S RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH COMPANY OR MARKETER; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

15. Captions and Headings. The captions and headings herein are for convenience only and are not to be construed as a part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

