

**AGREEMENT APPLICABLE TO DATA ACCESS
FOR RETAIL ACCESS PROGRAM
("DATA ACCESS AGREEMENT")**

NYSEG General Retail Access Program

**New York State Electric & Gas Corporation
P.O. Box 5224
Binghamton, NY 13902-5224
(607) 762-7052**

Date: _____

WHEREAS, New York State Electric & Gas Corporation ("NYSEG") has implemented a retail access program (the "Program") as set forth in NYSEG's PSC approved tariff P.S.C. No. 115 - Electricity and NYSEG's PSC approved tariff P.S.C. No. 88 – Gas (the "Program Tariff");

WHEREAS, _____ ("ESCO") has entered into a Supplier Operating Agreement (the "Agreement") with NYSEG applicable to the Program;

WHEREAS, ESCO will be provided access to customer billing data (the "Data") as specified in the applicable tariff and the Agreement, which Data may include, without limitation, billing determinants, metering data, bill cancellation history and term of supplier contract; and

WHEREAS, such access will be through the Internet and will require the use of a password which will be supplied by NYSEG to ESCO upon execution of this Data Access Agreement.

NOW THEREFORE, in consideration of the promises and agreements contained herein, ESCO, intending to be legally bound, agrees on the following terms and conditions:

1. The terms used herein shall have the meanings defined in the Program Tariff, unless otherwise specifically defined herein.
2. ESCO acknowledges that the Data is and will be a proprietary development of NYSEG in which NYSEG has made and will make a substantial investment of both money and man-hours and constitutes valuable work product in the form of trade secrets, know-how and confidential information.
3. ESCO shall hold the Data in trust and confidence, shall use the Data solely for the purpose of billing the Eligible Customer to whom the Data applies, and shall take all reasonable steps to prevent any unauthorized possession, use, transfer, or disclosure thereof. ESCO shall not engage in any use or disclosure of the Data in any manner or for any reason to any entity, other than the customer for whom the Data has been supplied to the ESCO, or for any purpose inconsistent with the Program, the Agreement or this Data Access Agreement.

4. ESCO shall be entitled to provide the password or Data only to those employees of ESCO who have a need to know and who have been given this Agreement, have been made aware of its confidentiality obligations, and have executed Attachment B.

5. ESCO agrees to defend at its own expense, and indemnify and hold harmless, NYSEG and its affiliates (collectively "NYSEG Indemnitees"), from and against any claims, suits, damages and expenses asserted against or incurred by any of the NYSEG Indemnitees arising out of or relating to (a) ESCO's acts, omissions and/or breach of its obligations hereunder; and (b) ESCO's use or misuse of its password, any Data, or related documentation provided to ESCO hereunder, including without limitation, damages resulting from unauthorized use of, or access to, its password or the Data. Notwithstanding any other provision of this Data Access Agreement, ESCO shall pay all damages, settlements, expenses and costs, including costs of investigation, court costs and reasonable attorneys' fees and costs incurred by NYSEG Indemnitees as set forth in this Section, including, without limitation, reasonable attorneys' fees and costs incurred in enforcing the terms and conditions of this Data Access Agreement.

6. NYSEG retains the full, complete and exclusive ownership of all right, title and interest in and to the Data (including, without limitation, copyright with respect thereto).

7. The rights of ESCO with respect to the Data are those of a permittee only and shall be subject to revocation by NYSEG upon the violation of the terms of the Program, the Agreement, any other applicable NYSEG tariff or the terms of this Data Access Agreement.

8. ESCO understands that NYSEG will provide ESCO with a unique password providing access to the Data via the Internet and agrees to keep records regarding the distribution and use of this password secure and accepts the responsibility of keeping the password secure.

9. Any notice required to be given under this Agreement will be in writing and transmitted via facsimile, overnight courier, hand delivery or certified or registered mail, postage prepaid and return receipt requested, to the parties at the addresses below or such other addresses as may be specified by written notice. Notice sent in accordance with this Section shall be deemed effective when received.

If to NYSEG:

New York State Electric & Gas Corporation
Corporate Drive, Kirkwood Industrial Park
P.O. Box 5224
Binghamton, NY 13902-5224
Attn: Supplier Services
FAX: (607) 762-7102

With a copy to:

Amy A. Davis, Esq.
LeBoeuf, Lamb, Greene & McCrae, L.L.P.
125 West 55th St.
New York, NY 10019
FAX (212) 424-8000

If to ESCO:

Attn: _____

10. This Agreement shall be governed by and construed in accordance with the law of the State of New York without regard to its choice of law principles. The parties hereby consent to the exclusive jurisdiction of the State of New York for the purpose of hearing and determining any action not preempted by Federal law or not within the jurisdiction of any regulatory body.

Signature of Authorization and Confidentiality: ESCO agrees to be bound by the terms and conditions of this Data Access Agreement as evidenced by the signature of its authorized representative below. ESCO represents and warrants that the signatory identified beneath its name below has full authority to execute this Data Access Agreement on its behalf.

I have been given a copy of and have reviewed the confidentiality provisions of the “Agreement Applicable to Data Access for Retail Access Program” (the “Data Access Agreement”), dated _____ and understand its terms and conditions. Moreover, I understand that the Data and other confidential information, as defined therein, is being provided to me pursuant to the terms and restrictions of the Data Access Agreement. I hereby agree to maintain the confidentiality of all Data and confidential information in accordance with the terms of the Data Access Agreement.

[ESCO NAME]

By: _____

Name _____

Title: _____

Date: _____

Please sign and return this Data Access Agreement as soon as possible to the address listed below. You will then be issued a password.

Supplier Services Department
New York State Electric & Gas Corporation
Corporate Drive, Kirkwood Industrial Park
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Binghamton, NY 13902-5224
FAX (607) 762-7102