

**Community Distributed Generation Net Crediting Agreement
for [CDG Project Name and Identification Number]**

This Agreement ("Agreement") is made this _____ day of _____, 20____, between Rochester Gas & Electric Corporation, (the "Utility" or "RG&E"), a New York Domestic Business Corporation a principal place of business at 180 South Clinton Avenue, Rochester, NY 14604 and _____, a community distributed generation ("CDG") sponsor (the "CDG Sponsor" or "Sponsor"), a [state] [type of legal entity] with a principal place of business at _____. The Utility and the CDG Sponsor are also individually referred to herein as a "Party" or collectively as "Parties."

Whereas, the CDG Sponsor is a Distributed Energy Resources ("DER") provider registered with the New York State Public Service Commission ("Commission"), with a CDG project located at _____, and identified by the Utility as _____ (the "CDG Project");

Whereas, the Commission first authorized CDGs in its July 17, 2015 *Order Establishing a Community Distributed Generation Program and Making Other Findings* in Case 15-E-0082 to enable a broader community participation in renewable programs;

Whereas, the Commission subsequently issued its March 9, 2017 *Order on Net Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters* ("VDER Transition Order") in Case 15-E-0751 which in part provided for modifications to the compensation of DERs by creating the Value Stack compensation mechanism for eligible DERs, including CDG projects;

Whereas, the Commission's September 14, 2017 *Order on Phase One Value of Distributed Energy Resources Implementation Proposals, Cost Mitigation Issues, and Related Matters* in Case 15-E-0751 directed electric utilities subject to the Commission's jurisdiction to submit tariffs based on the Value Stack compensation mechanism developed in the VDER Transition Order;

Whereas, under the original CDG construct, the CDG Sponsor enters into a contract with the Utility's participating electric customers to participate in a CDG project pursuant to which the participating customers ("Satellites") are billed monthly subscription fees by the CDG Sponsor for their participation in the CDG Sponsor's CDG project per the terms of the contractual arrangement and the Utility calculates and distributes the CDG credits to each Satellite on the Satellite's electric utility bill, allocated as directed by the CDG Sponsor for the CDG project;

Whereas, the Commission's December 12, 2019 *Order Regarding Consolidated Billing for Community Distributed Generation* ("CDG Net Crediting Order") in Case 19-M-0463 adopted a net crediting model whereby the Utility is to calculate the participating CDG Satellites' credits for the CDG Sponsor's CDG project, remit a percentage of the value of such credits to the CDG Sponsor, less the Utility Administrative Fee retained by the Utility, and provide the remaining credit value on the CDG Satellites' electric utility bills ("Net Crediting Program"), thus eliminating the need for the CDG Sponsor to separately bill the participating CDG Satellites for monthly subscription fees;

Whereas, the Commission's May 16, 2024 *Order Approving Multiple Savings Rates for Community Distributed Generation Subscribers* ("Multiple CDG Savings Rates Order") in Case 21- E-0629 approved up to three (3) distinct CDG Savings Rates per project, and authorizes CDG projects to exclude more than one (1) anchor customer from Net Crediting;

Whereas, the CDG Sponsor wishes to enroll the CDG Project in the Net Crediting Program of the Utility;

Whereas, the CDG Sponsor attests that it has entered into valid, fully executed contracts ("Net Crediting Subscription Contracts") with CDG Satellites who are the Utility's electric customers for participation in the Net Crediting Program;

Whereas, the Net Crediting Order directs electric utilities to offer the Net Crediting Model for all CDG projects, both new and existing, incorporating both those existing CDG projects receiving Value Stack compensation as well as those receiving Volumetric credits.

Whereas, the Utility has established a billing process to permit the Utility to calculate the total value of the CDG Satellites' Credits from the CDG Sponsor's project, remit a percentage of the value of such credits to the CDG Sponsor (less the Utility Administrative Fee retained by the Utility), and provide the remaining value of such credits on the CDG Satellites' electric utility bills, allocated as directed by the CDG Sponsor; and

Whereas, the Utility has filed tariff leaves with the Commission effectuating the Net Crediting Program per the CDG Net Crediting Order and is willing to implement the Net Crediting Program for the CDG Project, subject to the terms and conditions of this Agreement, and Commission orders.

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

- 1. Definitions.** Any capitalized terms used in this Agreement shall be defined as set forth

below:

- 1.1. CDG Credits** are the credits generated from the CDG Project pursuant to P.S.C. 19 Rule 23 & Rule 26 of the Electricity Tariff.
- 1.2. CDG Sponsor** is the entity that organizes, owns, and/or operates a CDG project and may be identified as the “CDG Host” in some Utility tariffs. A CDG Sponsor may be involved in one or more CDG projects and be otherwise engaged in soliciting customers, members, or subscribers for a CDG project or CDG projects, through its own employees or agents, on its own behalf; however, each CDG project participating in Net Crediting will have a unique Net Crediting Agreement. A CDG Sponsor must be registered with the Commission consistent with the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS).
- 1.3. CDG Sponsor Payment** is the payment from the Utility to the CDG Sponsor representing the sum of the CDG Subscription Fees from the CDG Project, less the sum of the Utility Administrative Fees retained by the Utility.
- 1.4. CDG Satellite** is an electric customer of the Utility who is participating in the CDG Project.
- 1.5. CDG Savings Rate** is the rate used to calculate the value of the CDG Project's monthly CDG Credits (to a one decimal place percentage) that will be provided by the Utility on CDG Satellites' electric utility accounts, allocated as directed by the CDG Sponsor, where such rate shall not be less than five (5) percent. For CDG Host Bill Periods ending prior to June 1, 2025, the same CDG Savings Rate must be used for all CDG Satellites subscribed to the CDG Project, except for the Excluded Anchor Customers, if applicable. For CDG Host Bill Periods ending on or after June 1st, 2025, a CDG Project may have up to three (3) CDG Savings Rates per CDG project, as described in the Net Crediting Manual.
- 1.6. CDG Subscription Fee** is the value of the CDG Project's monthly CDG Credits calculated pursuant to P.S.C. 19 Rule 23 of the Electricity Tariff by the Utility and provided to the CDG Sponsor.
- 1.7. Commission** is the New York State Public Service Commission.
- 1.8. Confidential Information** is as defined in Sections 9.1 and 9.2 of this Agreement.
- 1.9. Electricity Tariff** is the Utility's effective P.S.C. No. 18 & 19, Schedules for Electricity Service approved by the Commission which may be amended or succeeded from time to time.

1.10. Excluded Anchor Customer is a demand-billed, non-mass market Utility electric customer with demand greater than or equal to 25kW that enters into a contract to participate as an enrolled Satellite in the CDG Project that the CDG Sponsor identifies as being excluded from the Net Crediting Program. If the CDG Sponsor notifies the Utility that the CDG Project has an Excluded Anchor Customer, the Utility will not apply the CDG Savings Rate to the calculation of credits to the Excluded Anchor Customer. For CDG Host Bill Periods ending prior to June 1, 2025, only one Excluded Anchor Customer may be excluded from the Net Crediting Program per CDG Project. For CDG Host Bill Periods ending on or after June 1, 2025, multiple Excluded Anchor Customers, limited to up to 40% of the total monthly allocations, may be excluded from the Net Crediting Program per CDG Project.

1.11. Net Crediting Program is the Utility's CDG program as implemented pursuant to the Net Crediting Order where the Utility applies a portion of the CDG Credits to the CDG Satellites' electric utility accounts and remits the remainder to the CDG Sponsor, less the Utility Administrative Fee.

1.12. Net Crediting Manual is the Utility's detailed guide for implementing the Net Crediting Program. The Net Crediting Manual is maintained by the Utility.

1.13. Net Crediting Subscription Contract is the agreement between the CDG Sponsor and each CDG Satellite participating in the Net Crediting Model.

1.14. Net Member Credits are the resulting credits on the CDG Satellite's electric utility account calculated pursuant to P.S.C. 19 Rule 23 of the Electricity Tariff, based on the CDG Credits, the applicable CDG Savings Rate, the CDG Satellite's Allocation Percentages, the CDG Satellite's monthly retail charges, and the CDG Satellite's banked credits, including any banked credits allocated from the CDG Sponsor.

1.15. Representative means any contractor, subcontractor, CDG Satellite, or other entity to which Confidential Information may be transferred under this Agreement.

1.16. Utility Administrative Fee is the amount of the monthly value of the CDG Credits that the Utility will retain, as approved by the Commission.

2. Effective Date. This Agreement shall be effective upon execution by the last Party to sign with the Utility's date to commence the Net Crediting Program to be as specified in the Net Crediting Manual.

3. Term/Termination

- 3.1.** This Agreement shall remain in effect until terminated (i) in accordance with its terms or (ii) by an order of the Commission, whichever shall occur first.
- 3.2.** Notwithstanding anything to the contrary elsewhere in this Agreement or in the Electricity Tariff, the Utility, by written notice to the CDG Sponsor, may if permitted in a proceeding, terminate this Agreement in whole or in part with respect to the CDG Project or suspend further performance without terminating this Agreement upon the occurrence of any of the following: (a) the CDG Sponsor or CDG Project terminates or suspends doing business, except where such suspension is caused by Force Majeure; (b) the CDG Sponsor or CDG Project becomes subject to any bankruptcy or insolvency proceeding under federal or state law (and which proceeding is not removed or dismissed within sixty (60) days from the filing thereof), or becomes insolvent, becomes subject to the direct control of a transferee, receiver or similar authority in relation to a bankruptcy or insolvency proceeding, or (except as otherwise provided in Section 15.7) makes an assignment for the benefit of creditors; (c) the CDG Sponsor commits a material breach of any of its obligations under this Agreement with respect to the Net Crediting Program and has not cured such breach within thirty (30) days after receipt of a written notice from the other Party specifying the nature of the breach (provided, however, that if such breach cannot be cured within thirty (30) days, the cure period will be extended as long as CDG Sponsor is pursuing diligent efforts to cure, such extended cure period not to exceed an additional thirty (30) days); or (d) the CDG Project is in material violation of the Utility's electric standards, including but not limited to provisions related to interconnection and safety and has not cured such violation within thirty (30) days after receipt of a written notice from the other Party specifying the nature of the violation (provided, however, that if such breach cannot be cured within thirty (30) days, the cure period will be extended as long as CDG Sponsor is pursuing diligent efforts to cure, such extended cure period not to exceed an additional thirty (30) days). Notwithstanding the aforementioned cure provisions or any other provision of this Agreement, the Utility may take immediate actions with respect to the CDG Project interconnection if deemed necessary by the Utility, in its sole discretion, to protect the safety of the public, customers, or employees, or the operation of the electric system.
- 3.3.** The foregoing notwithstanding, the CDG Sponsor may upon written notice to Utility remove the CDG Project from the Net Crediting Program. The CDG Sponsor and the Utility shall follow the process detailed in the Net Crediting Manual for removal of the CDG Project from the Net Crediting Program. The CDG Sponsor shall notify the affected CDG Satellites of the removal of the CDG Project from the Net Crediting Program.

4. Representations.

- 4.1.** The CDG Sponsor represents that it is and shall remain in compliance with all applicable laws, tariffs, regulations, and the Utility's electric standards, safety, and cybersecurity standards with respect to the CDG Project during the term of this Agreement including the Electricity Tariff.
- 4.2.** Each person executing this Agreement for the respective Parties represents and warrants that he or she has authority to bind that Party.
- 4.3.** Each Party represents that (a) it has the full power and authority to execute, deliver, and perform its obligations under 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) this Agreement constitutes that Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 4.4.** The Utility and the CDG Sponsor shall exercise all reasonable care, diligence and good faith in the performance of their duties pursuant to this Agreement and carry out their duties in accordance with applicable recognized professional standards.
- 4.5.** The CDG Sponsor represents that it is registered with the Commission as provided for in the Uniform Business Practices for DER Suppliers ("UBP-DERS") and will abide by all applicable requirements in the UBP-DERS as it may be amended from time to time by the Commission.

5. CDG Sponsor Rights and Responsibilities

- 5.1.** The CDG Sponsor will enroll the CDG Project and CDG Satellites in the Net Crediting Program pursuant to the Net Crediting Manual. When enrolling a CDG project in the Net Crediting Program, a CDG Sponsor may designate up to three (3) CDG Savings Rates on or after June 1, 2025 and only one (1) CDG Savings Rate before June 1, 2025 which will be applicable to all CDG Satellites for the CDG Project, with the exception of the Excluded Anchor Customers.
- 5.2.** The CDG Sponsor shall provide the Utility with all information required in the Net Crediting Manual. The CDG Sponsor shall respond within no more than two (2) business days to the Utility's requests for Net Crediting Program-related data to the extent that the Utility requests such data to perform hereunder.

- 5.3.** The CDG Sponsor shall handle customer inquiries and complaints from CDG Satellites related to the CDG Project and such calls will not be handled by the Utility. The Utility will remain responsible for resolving Utility billing-related customer inquiries and complaints.
- 5.4.** The CDG Sponsor shall cooperate with and provide the Utility with necessary documentation relating to any transactions resulting hereunder.
- 5.5.** The CDG Sponsor shall provide timely and accurate information to the Utility regarding participating CDG Satellites and any other information necessary for the Utility to perform hereunder.
- 5.6.** The CDG Sponsor agrees that services rendered by the Utility shall not relieve the CDG Sponsor from any obligation to maintain records or otherwise comply with applicable laws. The CDG Sponsor agrees that it will maintain backup data and files for all information provided to the Utility as protection against loss of such information.
- 5.7.** In the event that the CDG Sponsor receives a CDG Satellite subscription payment directly from the CDG Satellite, in error, the CDG Sponsor shall return such payment to the CDG Satellite.
- 5.8.** The CDG Sponsor is responsible for notifying the Utility of any changes to CDG Satellite allocations in accordance with the rules and guidelines of the CDG Net Crediting Manual.

6. Utility Rights and Responsibilities

- 6.1.** The Utility shall remit the CDG Sponsor Payment to the CDG Sponsor in accordance with the procedures established in the Net Crediting Manual. The CDG Sponsor Payment shall be remitted to CDG Sponsor via Automated Clearing House (ACH), check, or other payment form provided for in the Net Crediting Manual. Such remittance shall be performed at least monthly and shall be completed in a commercially reasonable time frame, and in any event, no later than seventy (70) days after the Utility has applied the CDG Subscription Fee to a CDG Satellite's electric utility bill.
- 6.2.** The Utility shall provide Net Member Credits on CDG Satellite electric utility bills, allocated pursuant to the CDG Sponsor's directive, consistent with the Net Crediting Subscription Contract with each CDG Satellite.

- 6.3.** In no event shall the aggregate value of applied net credits, CDG Subscription Fee and Utility Administrative Fee for a given billing cycle exceed the sum of CDG credits and available banked credits for that cycle.
- 6.4.** In the event the Utility is required to cancel and rebill from the CDG Sponsor or CDG Satellites, the CDG Sponsor Payment will reflect the effect of those adjustments. If the CDG Project unenrolls from Net Crediting and the resultant CDG Subscription Fees differ from the amount originally paid to the CDG Sponsor, the Utility will invoice and refund the CDG Sponsor for the difference. In no event will the Utility be responsible for executing retroactive changes for allocations that have already been billed by the Utility where the change is due to CDG Sponsor error or omission, including but not limited to inaccurate CDG savings rates listed on the allocation form.
- 6.5.** The Utility will provide information to the CDG Sponsor utilizing the format, methods, and timeframes defined in the Net Crediting Manual.
- 6.6.** If the CDG Sponsor identifies an Excluded Anchor Customer in the manner set out in the Net Crediting Manual, the Utility will not apply the CDG Savings Rate to the calculation of the Excluded Anchor Customer's Net Member Credit, and will provide the Excluded Anchor Customer with 100 percent of its allocation of the CDG Credits in accordance with the Net Crediting Manual procedures and Electricity Tariff.
- 6.7.** The Utility shall be responsible for resolving Utility billing-related customer inquiries and complaints. In the case of customer inquiries to the Utility related to the CDG Sponsor, the Utility will promptly provide customers the CDG Sponsor's contact information.
- 6.8.** For CDG Satellites subscribed to budget billing plans, the Utility is responsible for ensuring their Net Member Credits are subtracted from the current amount due rather than the underlying balance.
- 6.9.** The Utility is responsible for updating and implementing CDG Satellite allocation lists as directed by the CDG Sponsor, in accordance with relevant rules and guidelines of the CDG program.
- 6.10.** The Utility shall provide Net Member Credits to the CDG Satellites within two (2) months after the CDG Sponsor's billing cycle except in the case bi-monthly billed accounts in which case the appropriate time period would be three (3) months.
- 6.11.** The Utility is not required to provide customer information to CDG Hosts or other to determine if a subscriber meets income eligibility for a particular CDG savings rate

such as low-income.

7. **Utility Compensation.** To compensate the Utility for the provision of the Net Crediting Program, the Utility will retain the Utility Administrative Fee, deducted from the CDG Sponsor Payment, as described in the Net Crediting Tariff. The Utility may not retain any Utility Administrative Fee in connection with the Excluded Anchor Customer.
8. **Taxes.** The Utility is not responsible for assessing or collecting any taxes on payments made to the CDG Sponsor. Nothing in this Agreement shall be construed as imposing upon the Utility the obligation of remitting to any federal, state, or local taxing authority those taxes that are the collection and remittance responsibility of the CDG Sponsor.

9. Confidential Information

- 9.1. Except as otherwise provided herein, the Parties agree not to disclose to any third party and to keep confidential, and to cause their affiliates, officers, directors, members, employees and Representatives not to disclose to any third party and to keep confidential, any and all customer information obtained by either Party from the other relating to this Agreement (including but not limited to, all business-sensitive and competitive information disclosed by either Party to the other Party, including billing information, issues, or data associated with any customer). Information described in this paragraph 9.1 and described in paragraph 9.2 of this Section 9 is collectively referred to as “Confidential Information.” Each Party will require its affiliates, officers, directors, members, employees, and Representatives to comply with this Agreement and any other agreement regarding the exchange of Confidential Information, including but not limited to the terms and conditions of an applicable Interconnection Agreement, Data Security Agreement, Professional Services Contract, General Contract Conditions, or Non-Disclosure Agreement.
- 9.2. In addition, each Party acknowledges that all information furnished and identified by the other Party as being confidential or proprietary information, trade secret, confidential commercial information, critical infrastructure, or other information that is confidential pursuant to state, federal or local law, regulation or rule, is and shall remain the sole and exclusive property of such other Party.
- 9.3. Information and data provided to the Utility by the CDG Sponsor under this Agreement shall be used by the Utility for the purposes of billing, receiving, depositing, posting, processing and remittance of CDG Satellite utility bill credits or for determining the amounts due the CDG Sponsor. Confidential Information may be disclosed by the receiving Party to its employees, agents, consultants and Representatives on a need-to-know basis only.

- 9.4.** The receiving Party is required to destroy Confidential Information within six (6) years from the date received or the date when the information is no longer required for the operation of the Net Crediting Program, whichever occurs last, and thereafter, to destroy such Confidential Information or, at the request of the disclosing Party, return such Confidential Information.
- 9.5.** The confidentiality obligations of this Article do not apply to information which: (i) is already known to the Party free of any restriction at the time it is obtained from the other Party; (ii) is subsequently learned by one Party from an independent third party free of any restriction and without breach of this Agreement; (iii) is or becomes publicly available through no wrongful act of either Party; (iv) is independently developed by one Party without reference to any Confidential Information of the other; (v) is disclosed by one Party to a third party, with the express written permission of the other Party; (vi) is disclosed to the extent required by applicable laws and regulations or by any subpoena or similar legal process (where the disclosing Party must seek confidential treatment from the appropriate court of law or regulator of competent jurisdiction and must inform the non-disclosing Party as soon as practicable to allow the non-disclosing Party to intervene and seek protection of the Confidential Information); or (vii) is disclosed pursuant to the lawful requirement or formal request of a governmental agency or a party in any regulatory proceeding, provided that if one Party is requested or, in the written opinion of its counsel, legally compelled by a governmental agency or a party in any regulatory proceeding to disclose any Confidential Information of the other Party, such party, to the extent permitted by law, agrees to provide the other Party with prompt written notice of such request so that the other Party has the opportunity to pursue its legal and equitable remedies regarding such potential disclosure. The receiving Party further agrees that if the disclosing Party is not successful in precluding the requesting legal or governmental body from requiring disclosure of the Confidential information, the receiving Party will furnish only that portion of the Confidential Information which, in the written opinion of its counsel, it is legally required to disclose, and will exercise all reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.
- 9.6.** Each Party acknowledges and agrees that its breach or threatened breach of this Article may cause the other Party irreparable harm which may not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach by either Party, such Party agrees to the granting of equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in addition to any legal remedies to which the other Party may be entitled, without proof of actual damages.
- 9.7.** The provisions of this Article shall survive the expiration or termination of this Agreement.

10. Resolution of Disputes between Utility and CDG Sponsor

- 10.1.** Each Party agrees to attempt to resolve all disputes arising under this Agreement promptly, equitably, and in a good faith manner.
- 10.2.** If the Parties fail to resolve any dispute under this Agreement within ten (10) days after written notice of the dispute, the Parties agree to submit the dispute to mediation by a mutually acceptable mediator, in a mutually convenient location in New York State, in accordance with the then current International Institute for Conflict Prevention & Resolution Procedure, or to mediation by a mediator approved by the Commission. The Parties agree to participate in good faith in the mediation for a period of up to ninety (90) days. If the Parties are not successful in resolving their disputes through mediation, the Parties may then refer the dispute for resolution to the Commission, which shall maintain continuing jurisdiction over this Agreement.

11. Resolution of Disputes between CDG Sponsor and CDG Satellite. The CDG Sponsor will be responsible for resolution of all inquiries and complaints related to the CDG Project in accordance with its Net Crediting Subscription Contract with CDG Satellites. The Utility will refer to the CDG Sponsor all inquiries and complaints initiated by CDG Satellites arising from or relating to the CDG Project or the Net Crediting Subscription Contract.

12. Indemnification

- 12.1.** The CDG Sponsor shall indemnify, defend, and hold the Utility and its corporate affiliates and their respective officers, directors, trustees, employees, agents, successors, Representatives and assigns harmless from and against any and all loss, liability, damage or expense (including reasonable attorneys' fees), statutory or administrative fines or penalties or claims for injury or damages arising out of the performance of this Agreement or breach thereof by CDG Sponsor, including any claims, demands, causes of action, litigation, suits, proceedings, hearings or investigations (collectively "Claims") by a third party for payments based upon any agreement or understanding alleged to have been made by the third party, directly or indirectly, with CDG Sponsor in connection with any of the transactions contemplated by this Agreement, except to the extent caused by the gross negligence or willful misconduct of Utility.
- 12.2.** The obligations of this Article 12 will survive the expiration, suspension or termination of this Agreement or the Net Crediting Program.

13. Force Majeure

- 13.1.** Neither Party shall be considered in default under this Agreement or responsible in

tort, strict liability, contract or other legal theory to the other Party for damages of any description for any interruption or failure of service or deficiency in the quality or quantity of service, or any failure to perform if such failure is caused by factors beyond the Party's reasonable control that by exercise of reasonable diligence the Party is unable to prevent or overcome, including without limitation, storm, flood, lightning, earthquake, explosion, civil disturbance, labor dispute, sabotage, war, insurrection, act of God or the public enemy, action of a court, or public authority ("Force Majeure").

13.2. If any Force Majeure occurs, the Party delayed or unable to perform shall give immediate written notice to the other Party. During the pendency of the Force Majeure, the duties of the Party affected by the Force Majeure conditions shall be abated and shall resume without liability thereafter, provided that an obligation to make payments under this Agreement shall not be excused by the occurrence of an event of Force Majeure.

14. Security Interest. The CDG Sponsor shall, without further consideration and at the CDG Sponsor's expense, use all commercially reasonable efforts to take or cause to be taken, any action, including the execution and delivery of instruments and documents, reasonably requested by the Utility to establish a first priority perfected security interest in favor of the Utility in the amounts included in CDG Credits related to the CDG Sponsor's provision of subscription services to CDG Satellites from the CDG Project. The failure by the CDG Sponsor to fulfill any obligation of the CDG Sponsor pursuant to this paragraph shall specifically be deemed a breach of a material term or condition of this Agreement. Nothing in this Section 14 will be deemed to provide Utility with any rights to the CDG Sponsor Payment to CDG Sponsor. If an entity providing material financing to a CDG Sponsor requires the Utility to take a subordinate security interest before it will provide financing to the CDG Sponsor, the CDG Sponsor may request the Utility to take a subordinate interest. The Utility's agreement to take a subordinate security interest to the entity providing financing to the CDG Sponsor will not be unreasonably withheld, delayed, or conditioned. No subordination agreement by the Utility will be effective unless it is in writing and signed by both Parties.

15. Miscellaneous

15.1. Entire Agreement. This 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 this Agreement.

15.2. Amendment. Unless otherwise provided herein, no modification of, or supplement to, the terms and provision stated in this Agreement shall be or

become effective without the written consent of both Parties. If the Net Crediting Program is suspended by statute or Commission order, this Agreement will be modified in accordance with such statute or order.

15.3. Counterparts. This 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.

15.4. Severability. In the event that any portion or part of this 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.

15.5. Change in Law. To the extent that new mandatory regulatory, legislative or accounting changes, tax law changes, other regulatory policy changes, or other events materially affect the ability of either Party to comply with the provisions of this Agreement, including but not limited to material financial consequence, managerial, mechanical or technical compliance, the Parties agree to meet and use best efforts to renegotiate the terms and conditions of this Agreement to restore the position of the detrimentally affected Party to a financially neutral position or to be able to meet the managerial, mechanism and technical requirements of compliance. Methods that the Parties may consider to restore the detrimentally affected Party's ability to comply with this Agreement shall include, but not be limited to cost recovery through rates, payment for service by the unaffected Party, technical assistance, or other assistance as may be agreed upon. Renegotiated terms and conditions shall be effective when reduced to writing and signed by both Parties. If the Parties are unable to renegotiate acceptable changes, they may avail themselves of the dispute resolution mechanism set forth in Section 10 of this Agreement, and the existing terms and conditions of this Agreement shall continue to be effective through the conclusion of such dispute resolution mechanism.

15.6. Waiver. No waiver by any Party of any one or more defaults by the other Party in the performance of any provision of this 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.

15.7. Assignment.

15.7.1. Neither Party may 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, delayed

or conditioned, provided however that the CDG Sponsor has a right to assign (and/or collaterally assign, in connection with a financing transaction) its right to payments to be made by the Utility hereunder. The CDG Sponsor shall provide the Utility with a copy of the document in which the assignment is made or so much of the document as may be necessary to make clear the identity of the parties thereto and the terms of the assignment. The CDG Sponsor hereby waives any claim against the Utility for making payments pursuant to the assignment.

- 15.7.2.** An assignment, transfer or other disposition of the Utility's rights and obligations under this Agreement resulting from or associated with (i) any restructuring of the assets of the Utility or (ii) any acquisition, consolidation, merger or other form of combination of the Utility by, into, or with any person or entity shall not be subject to the prior notice and consent requirements of this sub- article.
- 15.7.3.** No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement. Any assignment, transfer or other disposition of this Agreement, or any rights, duties or obligations hereunder by either Party, except as specifically permitted herein, is in violation of this sub-article and void.

15.8. Subcontracting. Each Party may subcontract all or any portion of the performance to be rendered hereunder without the express approval of the other as to the tasks to be subcontracted and the subcontractor, provided, however that each Party shall be fully responsible for the acts and omissions of its subcontractors and their agents as it is for its own acts and omissions.

15.9. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. Nothing contained herein shall be deemed to confer any rights or grant any remedies or give any benefit to any third party.

15.10. Relationship of the Parties. This Agreement is not intended, and shall not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind the other Party.

15.11. Governing Law. This Agreement is governed by the laws of the State of New York without regard to the doctrines governing choice of law. All disputes arising hereunder shall be brought either before the Commission, the state courts of the

State of New York, or a federal court located in the State of New York.

15.12. Construction. In the event of any conflict between the provisions of this Agreement and the provisions of the Electricity Tariff, the applicable provisions of the Electricity Tariff shall apply.

15.13. Notices. Except as otherwise provided herein, any notices given under this Agreement shall be in writing and shall be delivered to the recipient Party at the address set forth in Exhibit A, by hand or sent by (a) certified mail, return receipt requested, first class postage prepaid, or (b) nationally recognized courier service. Notices given hereunder shall be deemed to have been given upon receipt or refusal to receive. The address to which such notices shall be given by either Party may be changed by written notice given by such Party to the other Party pursuant to this sub-article.

15.14. Other Remedies. Nothing contained herein shall be construed as a limitation on the right of either Party to pursue any remedy it may have at law or in equity.

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

CDG SPONSOR_____

Name (Print):_____

Signature:_____

Title:_____

Date_____

UTILITY_____

Name (Print):_____

Signature:_____

Title:_____

Date_____

EXHIBIT A

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

*In addition to hand-written notification, please send an email to:
RGE_CDG@RGE.COM

RG&E
ATTN: Supplier Relations
18 Link Dr.
Binghamton NY, 13904

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