

## PROGRAM ADMINISTRATOR AGREEMENT

This **Program Administrator Agreement (“Agreement”)** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2006, by and between \_\_\_\_\_ (“PA”), with its principal office located at \_\_\_\_\_, and Commonwealth Edison Company, with its principal office located at 440 South LaSalle Street, Suite 3300, Chicago, IL 60605 (“ComEd”).

### Recitals

**WHEREAS**, section 16-107 of the Illinois Public Utilities Act (“Act”) (220 ILCS 5/16-107) (the “RTP Provision”) requires ComEd to file a tariff or tariffs allowing residential retail customers in ComEd’s service territory to elect to receive real-time pricing service beginning January 2, 2007, which ComEd did file with the Illinois Commerce Commission (“ICC”) for approval on August 29, 2006 (the tariff finally approved by the ICC referred to as the “RTP Tariff”); and

**WHEREAS**, the RTP Provision further provides that if the ICC issues an order approving the RTP Tariff and makes certain findings in that order, ComEd shall contract with an entity to serve as program administrator to perform the services specified in subsection b-15 of the RTP Provision; and

**WHEREAS**, on December \_\_, 2006, the ICC did issue an order in Docket No. 06-0617, approving the RTP Tariff and making the findings specified in the RTP Provision (the “RTP Order”); and

**WHEREAS**, in the RTP Order, the ICC also gave its approval for ComEd to enter into this Agreement with PA.

**NOW, THEREFORE**, in consideration of the premises and mutual agreements contained herein, the parties hereto agree as follows:

1. Scope of Services.

1.1 PA shall provide the services specified in Appendix A (the “Services”), which is incorporated herein by reference. PA represents, warrants and covenants that the Services will be performed in accordance with all applicable laws, orders, rules, and regulations (including any applicable orders, rules and regulations of the ICC) and with promptness and diligence and executed in a professional manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the services procured under this Agreement.

1.2 In addition to the services specified in Appendix A, PA may also develop and implement risk management, energy efficiency, and other services related to energy use management; provided, however, that PA shall be compensated for such services

directly from the participants receiving such services, and ComEd shall have no obligation to compensate PA for such services or to reimburse PA for any costs related to such services.

1.3 The Program Administrator may also provide certain of the above-described services to residential retail customers who take real-time pricing service from a retail electric supplier (“RES”) upon request of a RES. The RES shall be responsible for all customer outreach, enrollment and education concerning the real-time pricing program offered by the RES. The Program Administrator shall provide information and electricity management services to the RES customer provided that the RES supplies the Program Administrator with all necessary customer and other information in a file format that the Program Administrator can import into its systems, processes and databases used to provide those services. If the provision of such services to customers of a RES requires the Program Administrator to undertake activities or incur costs that would not be undertaken or incurred if the customer took service from ComEd, the Program Administrator shall receive compensation for such services from the RES or its customer receiving the services. The Program Administrator may also provide additional or other services for the RES or its customer, provided that it seek compensation for such services from the RES or its customer.

2 Engagement Managers.

2.1 PA will assign an experienced manager (the “PA Engagement Manager”) who will: (i) oversee and manage the performance of PA’s obligations under this Agreement (which shall include the responsibility to see that all Services satisfy the requirements of this Agreement); (ii) serve as PA’s primary point of contact for operational matters pertaining to this Agreement; (iii) have the authority to make binding commitments on behalf of PA; and (iv) promptly answer ComEd’s queries and cooperate with ComEd to address issues relating to the Services deemed urgent by ComEd.

2.2 ComEd will assign an individual who will serve as ComEd’s primary point of contact with PA for all matters pertaining to this Agreement (the “ComEd Engagement Manager”). The ComEd Engagement Manager will be responsible and authorized to accommodate reasonable requests by the PA Engagement Manager for data, information and support related to the Services specified in Appendix A.

3. Employees and Subcontractors

3.1 Competent Workers. PA shall employ and cause each subcontractor to employ competent, appropriately trained and experienced employees for the Services to performed. PA shall have full responsibility for the conduct of all employees employed on or in connection with the Services (including employees of any subcontractor) and will ensure that there is adequate, daily supervision of all Services. PA shall be familiar with and observe established and accepted labor practices, procedures, and project agreements.

3.2 Subcontracts. Any portion of the Services to be performed for PA by a subcontractor shall be performed pursuant to an appropriate written subcontract between PA and the subcontractor (“Subcontract”). PA may employ subcontractors in connection with the Services only upon prior written approval by ComEd. ComEd may withhold any such permission in its sole discretion. No Subcontract shall relieve PA of its obligations under this Agreement. PA shall cause any and all of its subcontractors to comply with all applicable laws, orders, rules, and regulations (including any applicable orders, rules, and regulations of the ICC) in the performance of the Services hereunder.

3.3 Background Investigations. PA will be required to conduct background investigations in accordance with ComEd’s security procedures for all of its personnel who will have access to (i) ComEd assets, including buildings/properties; (ii) Customer Information; and/or (iii) who will have customer contact. Such investigations must be completed within three (3) months of the Effective Date. Performance of background investigations is a material term and condition of this Agreement.

PA will be responsible for conducting the background investigations at its own expense and shall not be entitled to recover costs for conducting such.

In addition to the foregoing, if PA becomes aware that any individual performing Services hereunder is charged with or convicted of a felony or a misdemeanor, PA shall remove such individual from performing Services hereunder unless and until (i) the charge is resolved without a conviction, or (ii) PA informs ComEd of the circumstances and ComEd approves in writing such individual continuing to perform Services hereunder.

4. Fees, Expenses and Taxes.

4.1 In consideration for the performance of the Services provided by PA hereunder, ComEd shall pay to PA the annual fee set forth in Appendix B hereto, payable in twelve (12) monthly installments. This fee shall cover all costs incurred by PA in performing the Services, including labor and out-of-pocket expenses, and no other amounts shall be due to PA under this Agreement.

4.2 PA shall present monthly invoices to ComEd, as hereinafter provided. Each invoice shall include PA’s name, address, date, and total amount due (i.e. one-twelfth of the annual fee) for the time period covered by the invoice. Each invoice shall also include, for informational purposes, a detailed itemized list of the Services performed during the period covered by the invoice identifying the employees or subcontractor performing the Services and the number of hours worked on each of the Services performed. Each invoice shall also identify, once again for informational purposes only, the general category and amount of expenses incurred during the time period. Invoices that ComEd deems inaccurate or incomplete, in its reasonable discretion, may be returned to PA for correction and re-submittal.

4.3 Payment on PA's invoices shall be made within forty-five (45) days of receipt by ComEd. PA reserves the right to suspend its performance of the Services, on notice to ComEd, if payment of the full amount of the undisputed portion of each monthly invoice is not received within fifteen (15) days of notice by PA to the ComEd Engagement Manager of any failure to pay an invoice after such forty-five (45) day period.

5. Independent Contractor Status.

In connection with this Agreement, PA shall be an independent contractor and as such it acknowledges that it does not have any authority to bind or commit ComEd and none of PA's acts or omissions can or may be imputed to ComEd, including any acts or omissions related to the Commission's Standards of Conduct and Functional Separation rules as they might otherwise apply to ComEd as an Integrated Distribution Company ("IDC") under Part 452 of the Commission's rules (83 Ill. Adm. Code Part 452.200 *et seq.*). PA has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all Services to be provided by PA under this Agreement. Neither PA, nor any of its officers, directors, employees or subcontractors and their officers, directors and employees, shall, for any reason or purpose, be deemed to be an agent, partner, or employee of ComEd and in no case shall PA or its employees, agents and servants make any representation or act to the contrary. PA agrees to indemnify and hold harmless ComEd for any claim asserted against ComEd alleging that ComEd is an employer, co-employer, joint employer, or principal of PA or any PA personnel or subcontractor. PA shall have full responsibility for payment of all withholding, payroll, or other taxes of any kind arising out of the Services, excluding sales taxes, if any, applicable to the Services.

6. Work Product.

6.1 Any and all products of the work performed by PA specifically for ComEd under this Agreement or in connection with the Services (collectively, "Work Product") shall be the sole and exclusive property of ComEd, and from the moment it is first embodied in any perceptible form, any such Work Product qualifying for protections under the copyright laws of the United States of America shall be considered "works made for hire" and shall be the sole and exclusive property of ComEd. PA shall fully, freely, and immediately disclose all Work Product to ComEd. PA hereby assigns, transfers, and conveys to ComEd all of PA's now existing and hereafter arising right, title, and interest in, to, and under all Work Product. ComEd acknowledges that PA provides services to other clients, and agrees that nothing in this Agreement shall be deemed or construed to prevent PA from carrying on such business. PA shall promptly provide to ComEd all such information and other materials relating to the Services that ComEd may request in connection with any filing or other submission ComEd is making with any regulatory or other governmental authority, and PA may disclose all such information to such regulatory and other governmental authority as ComEd deems to be necessary or appropriate. In addition, PA shall cooperate with ComEd as requested by ComEd with respect to such filings or submissions. ComEd agrees that, notwithstanding anything set forth herein to the contrary, PA's generalized ideas, concepts, know-how, tools, models, methodologies and techniques utilized or developed prior to the effective

date of the Agreement, including any improvements thereto developed in the course of the work performed by PA under this Agreement, or developed in the course of this Agreement for services being provided to an entity other than ComEd (except as otherwise provided in this Agreement or scope of work) are not deemed “Work Product” and belong to PA (“PA’s Proprietary Information”). Except as provided in Section 7.2 ComEd shall receive no right or interest in and to PA’s Proprietary Information or any proprietary information of a third-party used by PA to perform the Services under this Agreement.

6.2 Unless otherwise agreed to in writing by ComEd, in the event and to the extent that any of the Work Product produced by PA hereunder contains any PA Proprietary Information, PA hereby grants to ComEd an irrevocable, perpetual, paid-up, non-exclusive, royalty-free, world-wide license to use, produce, reproduce, perform, distribute copies of, execute, publish, transmit and prepare derivative works based upon PA Proprietary Information as embodied in the Work Product, and to authorize others to do any of the foregoing.

7. Confidential Information.

7.1 To the extent required by the RTP Provision, ComEd will provide PA with all information that is reasonably necessary for PA to perform the Services, including, but not limited to, customer, account and energy use data (“Customer Information”).

7.2 Neither PA nor any of its subcontractors will:

(a) disclose any Customer Information or other information of ComEd that is specifically identified as confidential (i.e., stamped or otherwise clearly marked or identified as “confidential” or “protected”) (such information, together with any notes, memoranda, analysis or other documents of PA or any subcontractor reflecting such information, being collectively herein referred to as the (“Information”)); or

(b) use any Customer Information for any purpose other than in furtherance of the Services to be rendered by PA hereunder. The PA may use the Customer Information to offer or to provide other services to a customer only with the written permission of that customer.

PA shall be responsible for the compliance of its subcontractors with respect to Information and will take all steps reasonably necessary so that the confidentiality of the Information in its or a subcontractor’s possession shall be maintained. Upon termination of PA’s engagement, all documents and records in PA’s possession containing the Information shall be returned to ComEd and all electronic forms of Information deleted.

7.3 Notwithstanding anything to the contrary contained herein, the provisions of this Section 7 shall not apply to any Information: (i) which at the time disclosed to, or

obtained by, PA is in the public domain; (ii) which becomes part of the public domain through no fault of PA; (iii) which is communicated to PA by a third party who is not, to PA's knowledge, subject to any confidentiality obligations with respect thereto; (iv) which is independently developed by PA without reference to any information disclosed to or obtained by PA hereunder; or (v) which is required to be disclosed by law, including, without limitation, pursuant to the terms of a subpoena or other similar process or in connection with a litigation, arbitration or other proceeding; provided, however, that PA shall give prior timely notice of such disclosure to ComEd to enable it to challenge any such legal process, and shall at ComEd's expense take such actions as directed by ComEd to challenge any such legal process.

7.4 PA acknowledges that the breach of any of the covenants contained in this Section 7 will result in irreparable harm and continuing damages to ComEd and ComEd's business and customers, and that ComEd's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to ComEd at law or in equity in the event of any such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant, including, but not limited to, an injunction restraining PA from disclosing, in whole or in part, any Information. PA shall pay all of ComEd's costs and expenses, including reasonable attorneys' fees and accountants' fees, incurred in enforcing such covenants, to the extent ComEd is the prevailing party in an action to enforce such covenants.

8. Term. This Agreement shall be effective as of the later of 1) January 2, 2007, or 2) the date it is approved by a final order of the ICC ("Effective Date"), and shall terminate on December 31, 2010, without notice, unless the term hereof is extended pursuant to express written agreement of the parties or terminated earlier in accordance with Section 9 hereunder. The rights and obligations of the parties under this Agreement that by their nature continue beyond the expiration of this Agreement shall survive any termination or cancellation of this Agreement including, without limitation, all rights and obligations under Sections 6, 8, 11, 12, 13, 16-21, and 23-29 and all rights and licenses granted by PA under Section 7.

9. Termination.

9.1 Either ComEd or PA may, upon giving at least thirty (30) days' prior written notice identifying specifically the basis for such notice ("Notice"), terminate this Agreement for breach of a material term or condition of this Agreement, provided the breaching party shall not have cured such breach within the thirty (30) day period after being requested in writing to do so. In the event of such termination by PA, PA shall be entitled to payment of all fees, on a prorated basis, for work performed by PA as provided in Section 4 through the effective date of such termination.

9.2 This Agreement will terminate automatically and immediately in the event that (a) the RTP Provision, the RTP Order or the RTP Tariff is stayed, reversed, repealed or

otherwise rendered inoperable, ineffective or void; or (b) ComEd, for any reason, is prohibited from or is otherwise unable to collect any and all of the costs it incurs under this Agreement from its retail customers. In the event of such termination, PA shall be entitled to payment of all fees, as provided in Section 4 due and payable up to the effective date of such termination.

9.3 Upon termination of this Agreement for any reason, PA will cease all work and shall promptly provide to ComEd all materials provided to PA by ComEd in connection with this Agreement and all Work Product and files developed by PA under this Agreement.

10. Cooperation.

10.1 To the extent required by the RTP Provision, ComEd shall provide all reasonably necessary cooperation and assistance to enable PA to provide the Services pursuant to this Agreement.

10.2 PA shall provide all reasonably necessary cooperation and information to assist ComEd in any regulatory proceedings, audit, examination or query in connection with the Services performed under this Agreement. To that end and without limiting the foregoing, PA hereby agrees to keep and maintain until so directed by ComEd, detailed records of and to fully document the Services provided hereunder and to make all such records and documents available to ComEd or the ICC upon request.

11. Liability. No party hereto, except for PA's indemnification obligations, will be liable to any other party hereto in connection with the Services or any matter relating to the Services for any indirect, special, punitive, consequential or incidental damages, including loss of profits incurred by such other party hereto. In addition, notwithstanding anything to the contrary, except for PA's indemnification obligations hereunder, PA will not be liable to ComEd for any claim or claims (and/or associated damages, fees or costs) which individually or in the aggregate exceed an amount equal to the total professional fees paid or payable to PA for the Services under this Agreement.

12. Indemnification. PA shall indemnify, defend and hold harmless ComEd and its affiliates, officers, directors, employees, successors, and assigns from any and all Losses and threatened Losses to the extent arising from, in connection with, or based on allegations of, any of the following:

- any claim resulting from the negligent acts or omissions or willful misconduct of PA or its subcontractors;
- any claim arising out of or related to PA's non-performance of its obligations hereunder;
- any claim that any act of PA, its officers, directors, employees and subcontractors violates any law, rule, order, or regulation of any governmental body, or causes ComEd to be in violation of any law, rule, order, or regulation of any governmental body;



Prior to the start of the Services, PA shall furnish an insurance certificate to ComEd evidencing to the foregoing coverages. If a certificate has an expiration date, PA shall furnish an updated insurance certificate to ComEd within fifteen (15) days prior to expiration of the then current insurance certificate. Each certificate shall include:

- a. Name of insurance company, policy number and expiration date;
- b. The coverages required whether for claims made or occurrence, and the limits on each;
- c. A statement that ComEd shall receive thirty (30) days prior written notice of cancellation or material modification of any of the policies; and
- d. A statement that PA has caused ComEd and its officers, directors, employees, agents, subsidiaries, successors and assigns to have been named additional insureds, as required by this Agreement.

PA shall not commence the Services unless its obligations under this Section are met.

14. Force Majeure. PA shall not be liable for any delays or failures in performance due to circumstances beyond its reasonable control or that of any of its subcontractors. For the purpose of this Agreement, “circumstances beyond its reasonable control” are occurrences such as acts of God, acts of civil or military authorities, governmental priorities, fires, floods, epidemics, war or riots.

15. Entire Agreement. This Agreement, including the Appendices attached hereto, constitutes the full and complete understanding between the parties hereto about its subject.

16. Amendment. This Agreement may be amended or supplemented only in writing signed by all parties.

17. Assignability. Except as hereinafter provided, no party hereto may assign any of the rights or obligations created by this Agreement except with the express written consent of the other party hereto, provided that PA may, subject to the provisions of Sections 3 and 4 hereof, utilize the services of subcontractors to perform the Services as specified in Appendix A hereto, provided that PA shall remain liable for performance by such subcontractors of its obligations under this Agreement.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to any conflict of laws provisions thereof.

19. Jurisdiction. Any legal claim, suit, proceeding or action brought against any party arising out of, connected with or related to this Agreement shall be brought in the courts of the State of Illinois or in the United States District Court for the Northern District of Illinois, other than claims that are subject to the jurisdiction of the ICC.

20. Audit and Reports.

20.1 The ICC, its staff or a public accounting firm designated to represent the ICC or its staff shall be afforded free and unrestricted access, at all reasonable times following reasonable prior notice, to PA's personnel, books, records, correspondence, receipts, vouchers, memoranda and other writings relating to this Agreement or the Services, including: (i) to verify the accuracy of the Services that PA claims to have performed; (ii) to perform any audit necessary to meet applicable regulatory requirements or to respond to any regulatory examination or query and (iii) to perform any audit required by applicable law. The ICC's auditors and other representatives will comply with PA's reasonable security requirements and the ICC shall use reasonable efforts to cause such audit firm(s) to agree in writing to protect the confidentiality of PA's confidential and proprietary information. PA shall preserve all records required hereunder for a period of five (5) years after the final payment under this Agreement. PA shall also provide, in a timely manner, such reports as the ICC or its staff may reasonably require from time to time. PA represents that it shall require all of its subcontractors to be bound to the provisions of this Section.

20.2 Subject to the requirements of Section 3 above, the PA shall contract with an outside, independent public accounting firm to perform a financial audit of the PA's operations pursuant to this Agreement. The audit shall seek to verify that the funds received by the PA pursuant to this Agreement were used solely to provide the Services described in this Agreement and in the monthly invoices that the PA submits to ComEd. The audit shall be conducted annually, shall include written reports of conclusions and associated workpapers, and shall be submitted with and as a part of the annual report that the PA must submit by April 1 of each year, as provided in Appendix A.

20.3 The PA shall host a telephone conference with interested members of the public 45 days after the publication of the annual report on the Commission's web site. The PA shall participate in the discussion of the PA's annual report, annual audit and public comments posted on the Commission's website. The PA is not obligated to implement any changes as a result of these discussions but may implement those suggestions that are practical and pragmatic to achieve the success of the program.

21. Delay or Failure to Exercise Rights. No delay or failure on the part of any party in exercising any rights under this Agreement and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.

22. Execution by Duly Authorized Representative. Each party represents and warrants that the person executing this Agreement on its behalf is fully authorized to do so and by so doing binds the party.

23. Non-Affiliate. PA represents and warrants that it is not an affiliate of ComEd, as "affiliate" is defined in Appendix C.

24. Counterparts. This Agreement is being executed in several counterparts, each of which is an original and all of which together constitute but one and the same Agreement.

25. Headings. Section Headings are for convenience only and shall not affect the interpretation of this Agreement.

26. Cumulative Remedies. Each party's rights and remedies under this Agreement shall be cumulative and additional to any other or further rights or remedies provided in law or equity or otherwise. ComEd shall specifically retain all rights of legal action in tort under this Agreement on all issues relating to contribution, insurance coverage, and contractual indemnity.

27. Publicity. With the sole exception of publication of such information within each party's corporate entity and subject to the confidentiality provisions of this Agreement, each party shall not refer to the other party or any company affiliated with the other party in any advertising or other publication in connection with goods or services rendered by the party that is not within the scope of the Services performed pursuant to the Agreement, without the prior written approval of the other party.

28. Notices. Any notice pertaining to this Agreement or the Services performed hereunder shall be in writing and sent via facsimile transmittal with confirmation of receipt, registered or certified mail, postage prepaid, or by commercial overnight courier, to the ComEd Engagement Manager or the PA Engagement Manager as appropriate, at their respective addresses appearing below. Notices shall be effective only when received.

To PA:

Attn:

To ComEd: Commonwealth Edison Company  
440 South LaSalle Street, Suite 3300  
Chicago, IL 60605  
Attn: Janet Bieniak

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

PA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH EDISON COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix A

### SCOPE OF SERVICES

The Services are those required by the RTP Provision and break down into four components:

1. The development and implementation of a program to provide consumer outreach, enrollment, and education to residential retail customers concerning real-time pricing of electricity;
2. The establishment and administration of an information system and technical and other customer assistance that is necessary to enable residential retail customers to manage electricity use; the information system must, at a minimum, include a website where customers can access online their monthly bills, their hourly energy usage for each month and the amount of savings they achieved for that month through their enrollment in the RTP Tariff;
3. The development and submission of an annual report to ComEd no later than April 1 of each year describing the operation and results of the program, including information concerning the number and types of residential retail customers using real-time pricing, changes in residential retail customers' energy use patterns, an assessment of the value of the program to both participants and non-participants, and recommendations concerning modifications of the program and RTP Tariff. The annual report may include aggregated customer information, but may not include any customer-specific information. Various parties may submit comments on the annual report and propose additional modifications to the program. ComEd will convene a meeting of the Program Administrator and the other parties to discuss the proposed modifications, after which the Program Administrator shall implement those modifications which, in its judgment, will improve the program. The PA shall not receive any additional compensation for the implementation of the modifications; and
4. The participation in any ICC proceeding, investigation or inquiry to consider the effectiveness of this program in providing net benefits to residential retail customers, including the development of any reports, testimony or information requested by the ICC or its staff.

**Appendix B**

**Annual Fees**

2007 – \$

2008 - \$

2009 - \$

2010 - \$

### Appendix C

“Affiliate” has the same meaning as set forth in section 7-101 of the Act (220 ILCS 5/7-101). That definition is reproduced below:

- (a) Every corporation and person owning or holding, directly or indirectly, 10% or more of the voting capital stock of such public utility;
- (b) Every corporation and person in any chain of successive ownership of 10% or more of voting capital stock;
- (c) Every corporation, 10% or more of whose voting capital stock is owned by any person or corporation owning 10% or more of the voting capital stock of such public utility, or by any person or corporation in any such chain of successive ownership of 10% or more of voting capital stock;
- (d) Every corporation, 10% or more of whose voting securities is owned, directly or indirectly by such public utility;
- (e) Every person who an elective officer or director of such public utility or of any corporation in any chain of successive ownership of 10% or more of voting capital stock; and
- (f) Every corporation which has one or more elective officers or one or more directors in common with such public utility.