

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** (“**Agreement**”) is dated October 20, 2015 (“**Effective Date**”) and entered into between **Simple Energy, Inc.**, a Delaware corporation (“**Company**”) and **Orange and Rockland Utilities, Inc.**, a New York corporation (“**Customer**”). The Company and Customer are each sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.” The Parties agree as follows:

1. DEFINITIONS.

1.1 “Bankruptcy Event” means with respect to any Party, that the Party (a) files for bankruptcy or involuntary bankruptcy is filed against the Party and is not dismissed within sixty (60) days, or (b) the Party is subject to any other insolvency proceeding other than bankruptcy (e.g., receivership action or an assignment for the benefit of creditors) and such proceeding, if involuntary, is not dismissed within sixty (60) days.

1.2 “Customer Materials” means the resources, information, data, programs, and other materials of Customer reasonably required by Company to provide the Services, including, without limitation, energy usage data and all other data and information related to the customers of Customer, including Customer PII, and all “Confidential Information” of Customer (as such term is defined Section 10.1 of this Agreement).

1.3 “Customer Marks” means Customer’s trademarks, service marks, trade dress, trade names, domain names, corporate names, brand names, product names, proprietary logos, proprietary symbols, and all other indicia of origin.

1.4 “Customer PII” means (a) any information which identifies, or can be used to identify, any individual customer of Customer, including, without limitation, any individual person’s name, address, telephone number, email address, account number, Social Security number, credit card number, debit card number, banking information, or other financial information or financial account information, and (b) any energy consumption data of any customer of Customer.

1.5 “Deliverable” means any deliverable to be provided by Company to Customer or any User in connection with the Services.

1.6 “Documentation” means the user manuals and other documentation made available by Company to Customer for the Services.

1.7 “Implementation Services” means the provision of implementation, set-up and/or training services for the Software Service as listed and described in the applicable Statement of Work.

1.8 “Statement of Work” means any written document agreed to and executed by Company and Customer setting forth the specific terms and conditions relating to the Services requested by Customer. Each agreed upon Statement of Work will (a) reference this Agreement, (b) be incorporated by reference into this Agreement, and (c) be subject to the terms and conditions of this Agreement. The initial Statement of Work is attached hereto as **Exhibit B**.

1.9 “**Services**” means those services to be provided by Company pursuant to a Statement of Work, including, if applicable, the Implementation Services and the Software Service.

1.10 “**Software**” means Company’s proprietary computer software programs described in an applicable Statement of Work, including any updates and new releases thereto, which is made available by Company in connection with the Software Service.

1.11 “**Software Service**” means the provision of access to the functionality of the Software over the Internet through the access methods described in this Agreement and any Statement of Work applicable to the particular Software Service.

1.12 “**User**” means Customer’s employees, independent contractors, customers and any other parties that are authorized to use a Software Service.

2. SERVICES.

2.1 Provision of Services by Company. Subject to the terms and conditions of this Agreement, Company shall perform the Implementation Services and provide Customer with the Services and related Deliverables as described in the applicable Statement of Work.

2.2 Cooperation. Customer shall provide Company with the Customer Materials, resources and assistance as described in the Statement of Work, or as reasonably requested by Company in connection with the performance of the Services. Customer acknowledges and agrees that Company’s ability to successfully perform the Services in a timely manner is contingent upon its receipt from Customer of such Customer Materials, resources, and assistance. Company shall have no liability for deficiencies in the Services to the extent such deficiencies result from the acts or omissions of Customer that continue after Company has notified Customer in writing of such deficiencies, the likelihood that such deficiencies will arise, or Company’s performance of the Services in accordance with Customer’s instructions.

2.3 Resources. Customer shall be solely responsible for, at its own expense, acquiring, installing and maintaining all connectivity equipment, Internet and network connections, hardware, software and other equipment as may be necessary for its Users to connect to and utilize the Software Service, provided however, that Company represents and warrants that, prior to the date of each Statement of Work, Company has provided Customer with complete information about all connectivity equipment and other equipment that Customer will need so that its Users may connect to and utilize the Software Service described in the Statement of Work and, with the exception of updating the required versions of certain third party products such as operating systems and Internet browsers, Company shall not make changes to such equipment requirements during the term of the applicable Statement of Work without the Customer’s prior written consent.

3. THE SOFTWARE SERVICE.

3.1 Access and Use. Subject to the terms and conditions of this Agreement, Company grants to Customer, during the Term (as defined below), a non-exclusive, non-transferable right to remotely access and use the Software Service, solely in accordance with (a) this Agreement, (b) the Documentation, and (c) the Statement of Work (including any limitations on the number of

Users) and the other terms and conditions of this Agreement. Where access to the Software Service is limited to a specific subset of Users, each User will access the Software Service using a unique user identification name and password (“**User ID**”). Customer and each User shall be responsible for ensuring the security and confidentiality of its User IDs. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software Service, and notify Company promptly of any such unauthorized use.

3.2 Restrictions on Use. Customer will limit access to and use of the Software Service to authorized Users. Except as expressly permitted in this Agreement or as otherwise authorized by Company in writing, Customer will not, and will not permit any User to (a) modify, adapt, alter, translate, or create derivative works from the Software, (b) sublicense, lease, rent, loan, sell, distribute, make available or otherwise transfer the Software Service to any third party, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software, (d) interfere in any manner with the operation of the Software Service, (e) remove, alter, or obscure any proprietary notices (including copyright notices) of Company or its licensors contained within the Documentation or displayed in connection with the Software Service (including Software), or (f) otherwise use the Software Service except as expressly allowed under this Agreement.

4. PRICING; PAYMENT; TAXES.

4.1 Price. The fees for Services will be set forth in the applicable Statement of Work (“**Fees**”) and Customer agrees to pay Company all such Fees in accordance with the terms of this Agreement. Customer will be responsible for payment of all taxes (other than taxes based on Company’s income), fees, duties, and other governmental charges arising from the payment of any fees or any amounts owed to Company under this Agreement (excluding any taxes arising from Company’s income or any employment taxes). Prices for any Services requested by Customer that are not set forth in a Statement of Work shall be charged as mutually agreed to in advance by the parties in writing.

4.2 Payment. Fees for Services are paid according to the terms of the applicable Statement of Work. Unless the applicable Statement of Work provides otherwise, Customer will pay Fees and expenses within 30 days after Customer’s receipt of the applicable invoice for such Services. All payments received by Company are non-refundable except as otherwise expressly provided in this Agreement. All payments will be made in United States dollars. Each Statement of Work may include additional terms related to the payment of Fees and any required deposit or advanced payment.

5. TERM AND TERMINATION.

5.1 Term. The initial term of this Agreement will begin on the Effective Date and continue for a period of 3 years (the “**Initial Term**”). At least ninety (90) days prior to the expiration of the Initial Term and any subsequent one year renewal term (each, a “**Renewal Term**”), the Company shall provide the Customer with a written option to extend the Agreement for the period of the Renewal Term, and, at least 30 days’ prior to the end of the Initial Term or the then-current Renewal Term, as the case may be, the Customer shall notify the Company in writing as to whether it has opted to extend the Agreement for a subsequent Renewal Term. In

the event that Customer fails to notify the Company that it has opted to terminate the Agreement, this Agreement shall automatically extend for an additional Renewal Term. The Initial Term and each Renewal Term are collectively referred to as the “**Term.**” The term of each Statement of Work shall be set forth in such Statement of Work. Unless the Parties otherwise agree in writing or unless otherwise set forth elsewhere in this Agreement, the termination or expiration of this Agreement (a) shall not become effective until expiration of all outstanding Statements of Work, and (b) shall not terminate or affect Customer's obligation to make payments to Company for Services rendered by Company to Customer prior to termination or expiration.

5.2 Suspension. If Customer breaches Section 3.2 of this Agreement (Restrictions on Use) or fails to pay any amount due and payable within ninety (90) days after the payment due date, Company may suspend the Services, and Customer's and each User's access thereto, upon 10 days' prior written notice to Customer until such breach is cured.

5.3 Termination. (a) Either Party may terminate this Agreement if the other Party breaches any provision of this Agreement and does not cure such breach (provided that such breach is capable of cure) within thirty (30) days after being provided with written notice thereof. (b) For any type of breach not capable of cure within thirty (30) days, which will include, without limitation any of the following five specified “**For Cause Breaches,**” then the non-breaching Party shall have a right to terminate this Agreement and any and all Statements of Work then in effect immediately upon written notice to, and without liability to, the breaching Party: (i) a violation of the Gift Policy; Unlawful Conduct provision of this agreement, (ii) any mismanagement or misappropriation of funds being held for payment to Customer, for rebate payments to Customer's customers, for mutually agreed upon advertising payments, or for payment to a person other than the person holding the funds, (iii) the destruction, loss or improper use or access of Customer Materials (whether on account of the Company's Services or the services of subcontractors or third parties selected by the Company (e.g., hosting provider and providers described in Section 10.7 of this Agreement), (iv) a breach of the Virus or Malicious Technology warranties set forth in Section 7.3 of this Agreement, and (v) any breach of the confidentiality provisions of this Agreement set forth in Section 10 below; in addition, if any Bankruptcy Event or any merger, acquisition of a Party or the sale of all or substantially all of the assets of a Party occurs, the termination rights described at the outset of this clause (b) shall also apply. (c) In addition to the foregoing termination rights and Customer's right to termination set forth in Section 7.2 (Software Service) and Section 13.2(Subcontracting; Hosting Provider), Customer shall have the right, without any liability, to terminate an applicable Statement of Work immediately upon prior written notice to Company if (i) the New York State Public Service Commission or its Staff does not give sign-off to Customer regarding the Services described in the applicable Statement of Work. The termination rights described in this Section shall be in addition to any termination rights that are granted to a Party in a Statement of Work.

5.4 Effects of Termination; Survival of Provisions. Upon expiration or termination of this Agreement for any reason, other than a For Cause Breach committed by the Company, Customer shall be liable for fees incurred through the termination date and any amounts owed to Company under this Agreement before such termination or expiration will be immediately due and payable. Upon expiration or termination of this Agreement for any reason, other than a For Cause Breach by Customer or Customer's violation of Section 3.2 of this Agreement (Restrictions on Use), Customer shall be entitled to an immediate refund of any amounts prepaid

by Customer for the period after the termination date. In addition, upon any termination or expiration of this Agreement, (a) all rights granted in Section 3.1 of this Agreement will immediately cease, (b) Customer must promptly discontinue all access and use of the Software Service and return or destroy, all copies of the Documentation in Customer's possession or control and (c) Company will undertake the following post-termination cooperation: within sixty (60) days after any termination or expiration of this Agreement by Company or Customer, Company will do the following in connection with all Customer Materials: (i) truncate all the Company Materials in the Company's database, (ii) take a full back up of that database and then delete the database and backup file from the service, (iii) all Customer Material that is available for exporting purposes shall be returned to Customer in a similar manner in which it was originally consumed, (iv) Company will send Customer a written certification, signed by an authorized officer of the Company, that the foregoing measures have been properly completed with respect to all Customer Materials provided to the Company; and during the six (6) month period after Customer's receipt of the certificate described above, Customer shall have the right to conduct a final audit of Company's security controls for the purposes of verifying that all Customer Materials have been properly deleted and returned back to Customer. Sections 1, 3.2, 5.4, 6, 8, 9, 10, 11, 12.1.B, 13.3, 13.4, 13.6, 13.7, 13.8, 13.9, 13.11, 13.12, 13.13 and 13.14 will survive termination of this Agreement for any reason.

6. PROPRIETARY RIGHTS.

6.1 Customer; No Publicity.

6.2 As between the Parties, Customer owns all right, title and interest in Customer Materials, Customer Marks (including all goodwill associated therewith), and any and all Deliverables created specifically and exclusively for Customer and its Users. Subject to the terms and conditions of this Agreement, Customer hereby grants to Company, during the Term (or, if the applicable Statement of Work continues after the Term, for so long as such Statement of Work is in effect), a non-exclusive, non-transferable (except as permitted by Section 13.1 (Assignment)), non-sublicensable license to use the Customer Materials and Customer Marks for the limited purpose of performing the Services for Customer under this Agreement of the applicable Statement of Work. Any rights not expressly granted to Company hereunder in the Customer Materials, Customer Marks and all Deliverable created specifically and exclusively for Customer and its Users are reserved by Customer. Notwithstanding anything to the contrary stated in this Agreement, without Customer's prior written consent, Company shall not have the right to use Customer Marks (or to otherwise indirectly identify Customer) in any Company marketing or other materials.

6.3 Company. The Company Background Property (as defined in this Section), Software, Documentation, Services, all proprietary technology utilized by Company to perform its obligations under this Agreement, all updates, enhancements, or modifications to any of the foregoing, and all intellectual property rights thereto, are the exclusive property of Company, its licensors and suppliers. Any rights not expressly granted to Customer hereunder are reserved by Company, its licensors and suppliers. Customer's access and use of the Services is non-exclusive. Customer acknowledges that Company may collect, compile, synthesize, and modify certain non-personally identifiable data and content made available to it in the course of Customer's and Users' access to and use of the Services ("**Engagement Data**") and share such

data and content with Customer and Users. Provided such Engagement Data does not contain any information which can be used to identify Customer or any User, Customer hereby grants to Company a limited, perpetual, non-sublicenseable, license to use such Engagement Data for its own internal business purposes in improving its products and services, analyzing use of the Software Services, and understanding its customers and users. “**Company Background Property**” means all intellectual property rights: (a) belonging to Company as of the Effective Date, or (b) developed or acquired by Company after the Effective Date but independent of and unrelated to the activities contemplated under this Agreement, or (c) developed or acquired by Company in connection with this Agreement but independent and unrelated to any Jointly Owned Software (as defined in Section 6.4), Customer Materials, Customer Marks, Customer Confidential Information or other proprietary or confidential information of Customer. subject to the terms and conditions of this Agreement, Company grants Customer a non-exclusive, non-transferable license, without rights to sublicense, to use any Company Background Property that is incorporated in the Deliverables, solely for Customer’s own internal business purposes in connection with the use of the Deliverables.

6.4 Ownership of any Subsequently Developed Intellectual Property. In the provision of the Services contemplated under this Agreement or any related Statement of Work, there may result the development of new proprietary and secret concepts, methods, techniques, processes, adaptations, and ideas, including but not limited to software. If such ideas are developed jointly by Company and Customer and are specifically identified in the applicable Statement of Work as “**Jointly Owned Software**”, then such Jointly Owned Software shall be owned jointly by the Company and Customer without further obligation of one Party to the other; provided however, that the Parties shall be free to negotiate and agree upon terms and conditions and a purchase price or royalty fees, as applicable, for the transfer of or license of one Party’s ownership rights in the jointly owned property to the other Party.

7. WARRANTY; DISCLAIMERS.

7.1 Services. Company warrants to Customer that the Services (excluding the Software Service) will be performed in a professional manner by competent personnel consistent with high industry standards and shall meet specifications and performance requirements in this Agreement and the applicable Statement of Work. Company shall, as its sole obligation and Customer’s sole and exclusive remedy for any breach of this warranty set forth in this Section 6.1, re-perform the Services which gave rise to the breach at no cost to Customer or, if the foregoing is not accomplished within a reasonable period of time not to exceed 45 days from Customer’s notification to Company of the warranty breach (or longer as mutually agreed by the parties), Company shall accept return of all Deliverables associated with the defective Services and refund the fees paid by Customer for the Services which gave rise to the breach (and a full refund shall be due if the breach makes the Services (other than the Software Services) substantially inoperable); provided that Customer shall notify Company in writing of the breach within 90 days following performance of the defective Services, specifying the breach in reasonable detail. After any such services have been redone, they shall be subject anew to the foregoing warranties. Nothing in this paragraph shall negate or diminish any service level agreements or credits or other remedies available to the Customer upon any Company failure to meet any Service Level Agreements, as may be set forth in a Statement of Work.

7.2 Software Service. During the Term, Company warrants that the Software and the Software Service will be provided in accordance with the Statement of Work and the Documentation. Company does not warrant that the Software and the Software Service will be completely error-free or uninterrupted (the “**Software Service Warranty**”). The Company will address material programming errors and failures to operate in conformity with the applicable specifications in accordance with this Agreement or the applicable Statement of Work, including any Service Level Agreement set forth therein. Company will, at its own expense and as its sole obligation and Customer’s exclusive remedy for any breach of the Software Service Warranty, use commercially reasonable efforts to correct or provide a workaround (that provides substantially equivalent functionality) for any reproducible error in the Software or Software Service preventing its use, provided that such error is reported to Company by Customer in writing within 90 days after Customer experiences it (each, an “**Error**”). If, however, Company is unable to provide a mutually satisfactory correction or workaround for any such Error that prevents Users from using the Software within 60 days after receiving notice of an Error from Customer, Customer may terminate this Agreement upon prior written notice to Company and, as its sole obligation, Company shall refund the amounts prepaid by Customer for the Software Service for the period during which the Software Service was not usable by Customer and that period falling beyond the effective date of such termination. The Software Service Warranty does not cover or apply to (i) any Error caused by Customer or other parties within Customer’s control (which shall not be deemed to include Company), (ii) any Error or unavailability of the Software Service caused by use of the Software Service in any manner or in any environment inconsistent with its intended purpose, (iii) any of Customer’s hardware or software if modified or repaired in any manner which materially adversely affects the operation or reliability of the Software Service, or (iv) any equipment or software or other material utilized in connection with the Software Service used by Customer contrary to manufacturer’s instructions.

7.3 Virus Warranty / Malicious Technology. Company warrants and covenants that the Software and the Software Service will be free from any viruses, worms, disabling programming codes, instructions or other such items that may threaten, infect, damage, disable or otherwise interfere with the permitted use of the Software or Software Service (“**Virus**”). Company will use commercially reasonable methods to test each element of the Software and Software Service, including any upgrades, before delivering it to or making it available to Customer, designed to ensure that the Software and Software Service is free of any Virus and any Malicious Technology. Company further warrants that the Software and the Software Service will not contain any Malicious Technology (as defined below) or alter, damage or erase any data or computer programs without control of a person operating the computing equipment on which it resides. “**Malicious Technology**” means any software, electronic, mechanical or other means, device or function that would allow Company or a third party to monitor or gain unauthorized access to any Customer computer system or restrict, disable, limit or impair the performance of any Customer computer system. Company further warrants and covenants that it shall develop, implement, maintain and monitor a written information security program and disaster recovery and business continuity plan that contain reasonable, industry standard safeguards to protect against anticipated threats or hazards to the security, confidentiality, integrity or availability of, or the unauthorized or accidental destruction, loss, alteration or use of or access to, the Customer Materials. Company has provided its current information security program and disaster recovery and business continuity plans to Customer in writing and during the Term Company shall not implement standards less stringent than those detailed in such programs and plans.

7.4 Right to Customer Materials and Third Party Survey Data; Right to Third Party Software. Customer represents and warrants that it has the right to use the Customer Materials and permit Company to use the Customer Materials as contemplated by this Agreement. Company represents and warrants and covenants that it has, and at all times during the Term, will have, all necessary rights and licenses to grant Customer and the Users the access and use rights set forth in this Agreement and in any Statement of Work, including with respect to any third party software. Company shall promptly notify Customer in writing of all third party software incorporated into the Software.

7.5 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7, THE SERVICES AND ANY DELIVERABLES ARE PROVIDED WITHOUT OTHER WARRANTIES OF ANY KIND AND COMPANY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. THE FOREGOING DISCLAIMER, HOWEVER, SHALL NOT DIMINISH OR NEGATE ANY SERVICE LEVEL AGREEMENTS THAT ARE MADE BY THE COMPANY IN A STATEMENT OF WORK.

8. INDEMNIFICATION.

8.1 Indemnification. TO THE FULLEST EXTENT ALLOWED BY LAW, THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CUSTOMER AND ITS AFFILIATED ENTITIES (INCLUDING, BUT NOT LIMITED TO CONSOLIDATED EDISON, INC. AND CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.) AND THEIR RESPECTIVE TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (EACH AN “INDEMNIFIED PARTY” AND COLLECTIVELY, THE “INDEMNIFIED PARTIES”) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES (LEGAL AND OTHERWISE), FINES, PENALTIES AND FORFEITURES INCURRED BY OR ASSERTED AGAINST AN INDEMNIFIED PARTY IN CONNECTION WITH A THIRD PARTY CLAIM, INCLUDING CLAIMS MADE BY THE INDEMNIFIED PARTY’S CUSTOMERS, REGULATORY BODIES, AND COMPANY’S VENDORS AND SERVICE PROVIDERS (EACH AN “INDEMNIFIED CLAIM” AND COLLECTIVELY, THE “INDEMNIFIED CLAIMS”), AS A RESULT OF, ARISING OUT OF OR CONNECTED WITH (A) THE WILLFUL MISCONDUCT, FRAUD, BREACH OF LAW, NEGLIGENCE OF THE COMPANY OR ANY OF ITS SUBCONTRACTORS, OR THEIR RESPECTIVE AGENTS, REPRESENTATIVES, EMPLOYEES OR THIRD PARTIES UNDER THEIR DIRECTION OR CONTROL IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY STATEMENT OF WORK, (B) ANY “FOR CAUSE BREACH” OF THIS AGREEMENT COMMITTED BY THE COMPANY, ITS SUBCONTRACTORS, OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, OR THIRD PARTIES UNDER THEIR DIRECTION OR CONTROL, (C) ANY BREACH BY COMPANY OF THIS AGREEMENT OR A STATEMENT OF WORK, (D) ANY BREACH BY COMPANY OF ANY CONTRACTUAL OBLIGATION TO ANY SUPPLIER OF GOODS OR SERVICES SOLD THROUGH THE SERVICES, OR (E) THE WILLFUL MISCONDUCT, FRAUD, BREACH OF LAW, OR NEGLIGENCE OF A SUPPLIER OF GOODS OR SERVICES ENGAGED BY COMPANY IN CONNECTION THE SERVICES (OTHER THAN SUBCONTRACTORS OR OTHER THIRD PARTIES ACTING UNDER COMPANY’S DIRECTION AND CONTROL), BUT ONLY TO THE EXTENT THAT COMPANY IS INDEMNIFIED BY

SUCH PARTY IN CONNECTION WITH THE SAME. THE FOREGOING INDEMNIFICATION OBLIGATION SHALL EXCLUDE ANY INDEMNIFIED CLAIM TO THE EXTENT IT RESULTS FROM THE WILLFUL MISCONDUCT, FRAUD, BREACH OF THIS AGREEMENT OR A STATEMENT OF WORK, BREACH OF LAW, OR NEGLIGENCE OF THE CUSTOMER. THE FOREGOING OBLIGATIONS ARE CONDITIONED ON CUSTOMER: (A) PROMPTLY NOTIFYING COMPANY IN WRITING OF AN INDEMNIFIED CLAIM, PROVIDED THAT, ANY DELAY IN SUCH NOTIFICATION SHALL NEGATE OR DIMINISH THE COMPANY'S INDEMNIFICATION OBLIGATION UNDER THIS SECTION ONLY TO THE EXTENT SUCH DELAY CAUSED ACTUAL PREJUDICE TO THE COMPANY'S ABILITY TO DEFEND AGAINST SUCH CLAIM (B) GIVING COMPANY SOLE CONTROL OF THE DEFENSE THEREOF AND ANY RELATED SETTLEMENT NEGOTIATIONS, PROVIDED THAT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE INDEMNIFIED PARTY, THE COMPANY SHALL NOT ENTER INTO ANY SETTLEMENT OR AGREE TO ANY DISPOSITION THAT IMPOSES ANY CONDITIONS OR OBLIGATIONS ON THE INDEMNIFIED PARTY OTHER THAN THE PAYMENT OF MONIES THAT ARE READILY MEASURABLE AND ARE PAYABLE BY THE COMPANY AS THE INDEMNIFYING PARTY AND (C) COOPERATING AND, AT COMPANY'S REQUEST AND EXPENSE, ASSISTING IN SUCH DEFENSE; PROVIDED HOWEVER, THAT, AN INDEMNIFIED PARTY SHALL AT ALL TIMES HAVE THE OPTION TO PARTICIPATE IN ANY CLAIM THROUGH COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE.

8.2 Infringement Claims Against Customer. To the fullest extent allowed by law, Company will defend, indemnify and hold harmless the Indemnified Parties, at Company's own expense, from any loss, liability, damage or expense arising out of or related to a claim, suit or action against Customer or another Indemnified Party brought by a third party to the extent that such claim, suit or action is based upon an allegation that the Software or the Documentation infringes any intellectual property rights of such third party ("**Customer Claim**"), and Company will provide for the defense of any such Customer Claim and shall pay all costs and expenses thereof, including compensation of experts and counsel and pay those costs and damages finally awarded against an Indemnified Party in any such Customer Claim or those costs and damages agreed to in a monetary settlement of such Customer Claim. The foregoing obligations are conditioned on Customer: (a) promptly notifying Company in writing of such Customer Claim, provided that, any delay in such notification shall negate or diminish the Company's indemnification obligation under this Section only to the extent such delay caused actual prejudice to the Company's ability to defend against such Customer Claim (b) giving Company sole control of the defense thereof and any related settlement negotiations, provided that, without the prior written consent of the Indemnified Party, the Company shall not enter into any settlement or agree to any disposition that imposes any conditions or obligations on the Indemnified Party other than the payment of monies that are readily measurable and are payable by the Company as the indemnifying party and (c) cooperating and, at Company's request and expense, assisting in such defense; provided however, that, an Indemnified Party shall at all times have the option to participate in any claim through counsel of its own selection and at its own expense. In the event that the use of the Software or the Software Service is enjoined, Company shall, at its option and at its own expense either (i) procure for Customer the right to continue using the Software or the Software Service, (ii) replace the Software or the Software Service with a non-infringing but functionally equivalent product, (iii) modify the Software or the Software Service so it becomes non-infringing while retaining functional equivalence or (iv) terminate this Agreement and refund the amounts paid by Customer for the Software or the Software Service that relate to the period during which the Software or the Software Service was

not usable by Customer. Notwithstanding the foregoing, Company's obligation under this Section or otherwise with respect to any infringement claim shall be reduced to the extent the Customer Claim is based upon: (x) any use of the Software or Software Services not in accordance with this Agreement, (y) any use of the Software or the Software Services in combination with products, equipment, software, or data not supplied or approved by Company if such infringement would have been avoided without the combination with such other products, equipment, software or data, or (z) any modification of the Software of the Software Services by any person other than Company or its authorized agents or subcontractors. This Section states Company's entire liability and Customer's sole and exclusive remedy for infringement claims or actions.

8.3 Claims Against Company. Customer will defend, at its own expense, any claim, suit or action against Company brought by a third party to the extent that such claim, suit or action is based upon the content of the Customer's Materials or Company's use of any Customer Materials in accordance with this Agreement ("**Company Claim**"), and Customer will pay those costs and damages finally awarded against Company in any such action that are specifically attributable to such Company Claim or those costs and damages agreed to in a monetary settlement of such Company Claim. The foregoing obligations are conditioned on Company: (a) promptly notifying Customer in writing of such Company Claim, provided that, any delay in such notification shall negate or diminish the Customer's indemnification obligation under this Section only to the extent such delay caused actual prejudice to the Customer's ability to defend against such Company Claim (b) giving Customer sole control of the defense thereof and any related settlement negotiations, provided that, without the prior written consent of the Company, the Customer shall not enter into any settlement or agree to any disposition that imposes any conditions or obligations on the Company other than the payment of monies that are readily measurable and are payable by the Customer as the indemnifying party and (c) cooperating and, at Customer's request and expense, assisting in such defense provided however, that, the Company shall at all times have the option to participate in any claim through counsel of its own selection and at its own expense. Notwithstanding the foregoing, Customer will have no obligation under this Section 8.3 or otherwise with respect to any Company Claim to the extent based upon any use of the Customer Materials by Company in violation of this Agreement.

9. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF THE APPLICABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, PROVIDED HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO (A) ANY THIRD PARTY CLAIM FOR PROPERTY DAMAGE OR PERSONAL INJURY (INCLUDING DEATH) THAT IS SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.1 OF THIS AGREEMENT (INDEMNIFICATION), (B) A PARTY'S BREACH OF ARTICLE 10 OF THIS AGREEMENT (CONFIDENTIALITY), (C) A PARTY'S BREACH OF SECTION 13.10 OF THIS AGREEMENT (COMPLIANCE WITH LAWS), (D) INFRINGEMENT CLAIMS SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.2 OF THIS AGREEMENT (INFRINGEMENT CLAIMS AGAINST CUSTOMER), (E) INDEMNIFIED CLAIMS

BROUGHT OR ASSERTED AGAINST CUSTOMER BY A THIRD PARTY OR A REGULATORY OR GOVERNMENTAL AGENCY THAT IS SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.1 OF THIS AGREEMENT (INDEMNIFICATION), (F) A COMPANY CLAIM THAT IS SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.3 OF THIS AGREEMENT (CLAIMS AGAINST COMPANY), OR (G) DAMAGES OR LIABILITIES TO THE EXTENT ARISING FROM A PARTY'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT. COMPANY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THE SERVICES TO BE PROVIDED UNDER EACH STATEMENT OF WORK, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AGGREGATE VALUE OF THE CONTRACT DURING THE INITIAL TERM (WHICH, FOR PURPOSES OF CLARITY, SHALL BE THE SUM OF THE FEES PAID AND THE FEES AUTHORIZED TO BE PAID BY CUSTOMER TO COMPANY UNDER SUCH STATEMENT OF WORK DURING THE INITIAL TERM, AS SUCH AMOUNT IS SET FORTH ON THE BLANKET PURCHASE AGREEMENT OR PURCHASE ORDER ISSUED BY CUSTOMER IN CONNECTION WITH SUCH STATEMENT OF WORK); PROVIDED HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO (A) ANY THIRD PARTY CLAIMS FOR PROPERTY DAMAGE OR PERSONAL INJURY (INCLUDING DEATH) THAT IS SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.1 OF THIS AGREEMENT (INDEMNIFICATION), (B) A PARTY'S BREACH OF ARTICLE 10 OF THIS AGREEMENT (CONFIDENTIALITY), (C) A PARTY'S BREACH OF SECTION 13.10 OF THIS AGREEMENT (COMPLIANCE WITH LAWS), (D) INFRINGEMENT CLAIMS SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.2 OF THIS AGREEMENT (INFRINGEMENT CLAIMS AGAINST CUSTOMER), (E) INDEMNIFIED CLAIMS BROUGHT OR ASSERTED AGAINST CUSTOMER BY A THIRD PARTY OR A REGULATORY OR GOVERNMENTAL AGENCY THAT IS SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.1 OF THIS AGREEMENT (INDEMNIFICATION), (F) A COMPANY CLAIM THAT IS SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.3 OF THIS AGREEMENT (CLAIMS AGAINST COMPANY), OR (G) DAMAGES OR LIABILITIES TO THE EXTENT ARISING FROM A PARTY'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT..

10. CONFIDENTIALITY.

10.1 Definition. "Confidential Information," when used in connection with Customer, means any proprietary, sensitive or confidential data, information, records, reports, analysis, plans, drawings, specifications, code, intellectual property or documents pertaining to the current, future or proposed business (financial or otherwise), business plans, programs (including any energy efficiency and demand management programs), technologies, infrastructure, assets, equipment and systems and non-public pricing or billing information, and customer information (including names, addresses, account numbers, billing and usage information, energy consumption data, service classifications, detail regarding participation or non-participation in energy efficiency or demand management programs, and for businesses, North American Industry Classification System (NAICS) codes) of customers of Customer or any of its affiliated entities (including Customer PII), in each case whether such confidential information is written, electronic, oral, or visual and whether or not marked or identified as confidential. "Confidential Information," when use in connection with Company, means any proprietary, sensitive or

confidential data, information, records, reports, analysis, plans, drawings, specifications, code, intellectual property and documents, whether in written, electronic or oral form regarding Company's proprietary analytics software, Company's proprietary methodologies for analyzing data to make energy efficiency recommendations, any confidential pricing information of Company, and any other written or electronic information of Company that is marked as confidential or proprietary, or which Customer should reasonably know is confidential or proprietary to Company based on the nature of the information or the circumstances of its disclosure. Confidential Information shall also include any and all copies of a Party's Confidential Information, and any notes, extracts, compilations, studies or other documents based upon, derived from or containing a Party's Confidential Information.

10.2 Nondisclosure; No Export. Each party, in its capacity as a recipient of Confidential Information of the other Party (in such capacity, a "**Recipient**"), shall, with respect to the discloser of the Confidential Information (in such capacity, the "**Discloser**"): (a) hold such Confidential Information in strict confidence, (b) not disclose such Confidential Information to any other person, firm or entity, except as expressly permitted in this Agreement, (c) not use such Confidential Information other than in connection with the Purpose (as defined below), (d) limit reproduction of such Confidential Information to the extent required to fulfill the Services and any purpose permitted by this Agreement or a Statement of Work (the "**Purpose**"), (e) store and transmit such Confidential Information (whether in hard copy or electronic format or some other format) (i) in a secure location that is not accessible to any person or entity not authorized to receive the Confidential Information under the provisions hereof and (ii) in a manner that otherwise complies with applicable law, (f) otherwise use at least the same degree of care to avoid publication or dissemination of Confidential Information as it employs (or would employ) with respect to its own confidential information which it does not (or would not) desire to have published or disseminated, which shall not be less than commercially reasonable care and (g) with respect to Customer PII, such Confidential Information will be safeguarded from unauthorized disclosure with all reasonable care, and if Customer PII or other Confidential Information is subject to legal requirements mandating encryption, then the applicable Confidential Information shall be stored and transferred using commercially reasonable encryption methods that meet applicable legal requirements. In addition, neither Party shall transmit or store outside of the United States any Confidential Information of the other Party without the written permission from that other Party. In addition, if Company is affiliated with or doing work for any retail energy business interest, then Company shall maintain internal security arrangements that will keep all data, information and documents related to the customers of Customer and its affiliated entities secure from any of the employees of Company or its affiliates involved in unregulated retail energy business related activities in the service territory from which the data was extracted, and, if requested by Customer, shall provide Customer with specific details on Company's internal security arrangements that will keep Customer's customer data secure from such employees involved in unregulated retail energy business related activities in the service territory from which the data was extracted. Promptly upon Discloser's written request, the Recipient shall provide documentation reasonably detailing its confidentiality and security practices.

10.3 Exceptions. Recipient's obligations under Section 10.2 above with respect to any Confidential Information of Discloser will terminate if and when Recipient can document that such information: (a) was already lawfully known to Recipient at the time of disclosure by

Discloser, (b) is disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions, (c) is, or through no fault of Recipient or its subcontractors, agents or representatives has become, generally available to the public, or (d) is independently developed by Recipient without access to or use of the Confidential Information. In addition, Recipient may disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure in writing prior to making such disclosure and cooperates with Discloser, at Discloser's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure. Company agrees, however, that the exceptions listed in (a) and (b) of this paragraph shall not apply to Customer PII.

10.4 Permitted Disclosure to Agents, Representatives, and Regulatory Authorities. A Recipient may disclose Confidential Information of the Discloser to the directors, officers, employees, agents, and independent contractors of the Recipient and its affiliated entities (collectively, "Agents") who have a legitimate "need to know" such Confidential Information in connection with the Purpose, provided that each such Agent first: (i) is advised by the Recipient of the sensitive/confidential nature of the Confidential Information; and (ii) is caused by the Recipient to fully comply with the terms of this Confidentiality Agreement. In addition, a Recipient may disclose Confidential Information of the Discloser to the vendors, subcontractors and consultants of the Recipient (each a "Representative" and collectively the "Representatives") who have a legitimate "need to know" such Confidential Information in connection with the Purpose, provided that, that each such Representative first: (i) is advised by the Recipient of the sensitive/confidential nature of the Confidential Information; and (ii) is caused by the Recipient to be bound by and observe confidentiality terms at least as protective of the Confidential Information as is required by this Section 10. In addition to the requirements listed in the immediately preceding sentence, if Company desires to disclose any Customer PII to a Representative, Company must first obtain Customer's prior written approval of the proposed Representative; provided, however, that no such prior written approval is required with respect to a Representative of the type described in Section 10.7 if such Representative's privacy and security practices with respect to Customer PII are at least as protective of the Customer PII as the privacy and security practices of the corresponding Representative set forth in Schedule 10.7. Without limiting any direct rights that a Discloser may have against a Recipient's Agents and Representatives, the Recipient shall be responsible to the Discloser for any act or omission of the Recipient's Agents and Representatives which, if committed by the Recipient, would constitute a breach of this Section 10. In addition, nothing in this Section 10 shall prohibit Customer from providing information regarding the Purpose and the services and work being undertaken in connection therewith to a regulatory authority with jurisdiction over Customer (e.g., New York State Public Service Commission) to the extent Customer deems such disclosure necessary or advisable, and to the extent any such disclosure includes the Confidential Information of the Company, the Customer shall request that such Confidential Information be afforded confidential treatment by the relevant government agency.

10.5 Breach Notification. In the event that a Recipient or its Agents or Representatives (a) loses or improperly discloses any Confidential Information of the Discloser (or reasonably believes such a loss or disclosure has occurred) or (b) suffers a data breach or a breach in security (or a data breach or breach in security is reasonably suspected), and such breach has

affected or may affect the Discloser's Confidential Information, the Recipient agrees to notify the Discloser promptly (i.e., if the breach or suspected breach involves Customer PII, not more than forty-eight (48) hours after the Party becomes aware of the breach or suspected breach, and in any event and in all cases, not more than any legally mandated notification period) and to reasonably cooperate and coordinate with (or, if applicable, cause the Representative to reasonably cooperate and coordinate with) the Discloser concerning the Discloser's investigation, monitoring, notification requirements, retrieval efforts, prevention and mitigation, and reporting obligations in connection with the actual or possible breach, loss or improper disclosure.

10.6 Return of Information. Within thirty (30) days after the written request of a Discloser, the Recipient will return (or, with respect to its Representatives, cause the return) of a Discloser's Confidential Information to the Discloser, or, at the Recipient's option, destroy (or, with respect to the Representatives, cause the destruction of) all of the Confidential Information of such Discloser that was received by, or is in the possession of, the Recipient and its Agents and Representatives and, in the case of destruction, such destruction shall be completed in a manner that is commercially reasonable and complies with all applicable laws, and the Recipient shall promptly provide the Discloser with a duly executed certificate, certifying that the Recipient and its Representatives have complied with the requirements of this provision. Notwithstanding the foregoing, but subject to the post-termination cooperation requirements set forth in Section 5.4 of this Agreement, the Recipient may retain electronic copies of the Discloser's Confidential Information solely for archival purposes; provided, that: (a) such copies were created prior to the receipt of a request for a return of information under this paragraph as part of the Recipient's ordinary course system backup procedures, (b) such copies are not readily accessible by the Recipient's agents, employees, contractors, professional advisors or other third parties (other than the party's information technology specialists) and (c) any Confidential Information so retained remains subject to the terms of this Section 10 for so long as such Confidential Information remains in the possession of the Recipient notwithstanding any termination or expiration of the Agreement. The terms of this provision shall survive the termination of this Agreement.

10.7 Disclosure of Customer PII. Customer acknowledges that, subject to the terms and conditions of this Section 10, including the requirement set forth in Section 10.4 above that Customer provides its prior written approval of a Representative to whom Company will disclose Customer PII, Company may disclose Customer PII as follows:

Category/Function of third party	Type of Customer PII disclosed
Email Provider	Customer first and last name, email address
Rewards Provider	Customer first and last name, email address
Printed Reports Provider	Customer first and last name, service address, mailing address,

	actual and comparative usage
Product Vendors	Customer first and last name, email address and shipping address provided by customer
Third Party Service Providers	Customer first and last name, email address and service address provided by customer

Customer hereby consents to the use of the Representatives set forth on *Schedule 10.7* attached to this Agreement. Company shall be responsible for the acts and omissions of its Representatives, service providers and subcontractors in connection with this Agreement and the applicable Statement of Work.

10.8 Liabilities and Remedies. Each Party, in its capacity as a Recipient, acknowledges and agrees that unauthorized disclosure or improper use of the Confidential Information of the Discloser would cause the Discloser irreparable harm, the amount of which may be difficult to ascertain and which could not be adequately compensated by monetary damages. Accordingly, each Party, in its capacity as a Discloser, shall have the right to seek specific performance and/or injunctive relief to enforce compliance by the Recipient (and by its Agents and Representatives) with the terms of this Section 10, in addition to any other rights and remedies that such Discloser may have at law and in equity, including monetary damages, without the need to post a bond.

11. ADDITIONAL POLICIES AND REQUIREMENTS.

11.1 Gift Policy; Unlawful Conduct.

(a) Company is advised that it is a strict Customer policy that neither employees of Customer nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively “**Gift**”), from contractors, sellers, or others transacting or seeking to transact any business with Customer. Accordingly, Company, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Customer or any employee’s family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the Services to be performed under the Agreement. Furthermore, Company is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Customer and the Company or any work performed for or on behalf of Customer, or in any other dealings relating to Customer. Company’s breach of any obligation of this paragraph shall be a material breach of contract entitling Customer to, in its sole discretion, cancel all contracts between Customer and Company, remove Company from its list of qualified bidders, and invoke and enforce all other rights or remedies that Customer may have under contract or applicable law. For the purposes of this paragraph, the term “**Customer**” shall include all of Customer’s

affiliates, (including, but not limited to, Consolidated Edison Company of New York, Inc. (“Con Edison”). Company shall promptly report any alleged violation of this policy to the Customer’s Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

(b) In accordance with Section 15 of the New York State Public Service Law, Customer and Con Edison employees (and contractors working for Customer or Con Edison) are prohibited from offering any present, gift or gratuity (including, but not limited to, meals, refreshments and transportation), of any kind or any monetary amount, to any commissioner of the New York State Public Service Commission or to any employee of the New York State Department of Public Service.

(c) Many other federal, state, and local government agencies have restrictions on the value of gifts, meals and refreshments that their employees may accept. There is no uniform policy or rule applicable to employees of all government agencies. Giving or offering to give presents, gifts or gratuities in violation of applicable rules or laws could create the false impression that an entity or its employees or contractors are trying to improperly influence a government employee. It could also lead to civil or criminal penalties. Therefore, contractors and their employees, agents and subcontractors working on Customer or Con Edison projects shall not offer any presents, gift or gratuities to government employees in the course of their work for Customer or Con Edison.

(d) The Gift Policy and Unlawful Conduct provisions set forth in this Section 11 are in addition to, and not in lieu of, any other provisions governing the contractual relationship between Customer (or Con Edison) and the Company (including any other provisions pertaining to similar subjects) and are intended to be applied together with such other provisions.

11.2 Requirements of Federal Contractors. To the extent applicable to Company and the Services, the terms set forth in *Exhibit A* apply, provided that all reference to “Contractor” therein shall be deemed a reference to “Company”.

12. INSURANCE.

12.1 Insurance. The Company shall procure and maintain the following insurance, at its own expense, until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with not less than the monetary limits specified. The insurance shall be placed with insurance companies acceptable to Customer.

A. Employment related insurance

- (i) Workers' Compensation Insurance as required by law.
- (ii) Employers' Liability Insurance, including accidents (with a limit of not less than \$1,000,000 per accident) and occupational diseases (with a limit of not less than \$1,000,000 per employee).

B. Commercial General Liability Insurance, including Contractual Liability, with limits of not less than \$5,000,000 per occurrence for bodily injury or death and

not less than \$1,000,000 per occurrence for property damage or a combined single limit of not less than \$5,000,000 per occurrence and, for at least three (3) years after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The required limits may be met with a combination of primary and excess liability policies. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without Customer's prior written approval.

The insurance policy or policies shall name Consolidated Edison Company of New York, Inc. ("**Con Edison**"), Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. as additional insured with respect to the services furnished hereunder and completed operations. There shall be no exclusion for claims by Company's employees against Con Edison or Customer based on injury to Company's or any subcontractor's employees.

- C. Commercial Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the Company or any of its subcontractors, with a combined single limit of not less than \$1,000,000 per accident for bodily injury or death and property damage.
- D. Cyber Liability Insurance covering third party financial losses including, defense costs, notification costs, data breach response costs, settlements, judgments and forensic expenses incurred by an insured as a result of breach of privacy due to data theft from debit and credit cards or confidential information from an insured; or for transmission from a computer virus, Phishing attack or similar malicious code use that causes third-party loss including the failure of network systems that are essential to an insured or to third parties; with limits of not less than \$5 million per occurrence and annual aggregate.
- E. All Risk insurance for the loss, damage or destruction of property, that includes coverage for theft, with limits of not less than \$1 million per loss. The insurance should include employee theft coverage, theft by sole proprietor, partners or directors, loss inside the premises coverage, loss outside the premises coverage, depositor forgery coverage and computer theft. The crime insurance should include coverage for third parties and clients and include a Loss Payee endorsement payable to Orange and Rockland Utilities, Inc.
- F. Professional Liability Insurance in the amount of not less than \$3,000,000 per occurrence for the Term of the Agreement and for at least three years following final completion and acceptance of the services to be furnished under the Agreement.

The Company shall furnish Customer with written notice at least ten (10) days' prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds required hereunder shall be primary coverage and

non-contributory as to the additional insureds. All insurance required hereunder shall contain a waiver of subrogation in favor of the additional insureds.

At Customer's request, Company shall furnish Customer with copies of the policies specified in paragraph B above and Certificate(s) of Insurance covering all required insurance, signed by the insurer or its authorized representative. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and Consolidated Edison, Inc. are additional insureds with respect to all coverages enumerated in paragraph B of this Article with respect to the services and completed operations. Customer shall have the right, upon reasonable request (i.e., a claim that may be covered by the applicable insurance policy has arisen), to require the Company to furnish Customer, with a copy of the insurance policy or policies required under paragraphs A, C, D, E and F of this Section.

Certificates of insurance identifying this Agreement shall be sent to:

Consolidated Edison Company of New York, Inc.
4 Irving Place, 17th Floor
New York, NY 10003
Attention: Purchasing Department
Supplier Management Group (SMG)

To the fullest extent allowed by law, the Company agrees that this is an insured contract and that the insurance required herein is intended to cover Customer for its own liability for any cause of action in any claim or lawsuit for bodily injury or property damage arising out of the Services, except to the extent such liability arises from the negligence of Customer or any non-parties to the Agreement who are not acting as a subcontractor of the Company or an agent, servant, representative or employee of the Company or any of its subcontractors.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, the Company shall be deemed to have assumed tort liability for any injury to any employee of Company or Customer arising out of the performance of the Services, except to the extent such injury is caused by the negligence of Customer, and notwithstanding any statutory prohibition or limitation of the Company's contractual obligations hereunder.

13. GENERAL PROVISIONS.

13.1 Assignment. Neither Party may assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement to any third party without the other Party's prior written consent, such consent shall not be unreasonably withheld or delayed; except that either Party may assign this Agreement by operation of law or otherwise to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and shall not confer any rights or remedies upon any person or entity not a party hereto.

13.2 Subcontracting; Hosting Provider.

(a) Company shall not subcontract all or any portion of the performance of the Services to be provided under any Statement of Work without the express written approval of Customer as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies, services (but this approval requirement shall apply to all service providers who will receive or have access to Customer PII or other Confidential Information of Customer except to the extent such approval is not required pursuant to the terms of Section 10.4 of this Agreement), or raw materials; and provided further, that the Contractor shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Should any approved subcontractor fail to perform to the satisfaction of Customer, Customer shall have the right to rescind its approval. Nothing contained herein shall create any contractual rights in any subcontractor against the Customer. If work to be performed under this Agreement or a related Statement of Work is on a cost-plus or T&M (time and material) basis and is in an amount exceeding \$100,000 and Company enters into a subcontract with a subcontractor to whom Company is subcontracting all or any portion of the performance to be rendered under this Agreement or a related Statement of Work on a cost-plus or T&M basis in an amount exceeding \$5,000, immediately after Company enters into such subcontract, Company shall send a copy of such subcontract to:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Attention: Purchasing Department
Section Manager,
Technology and Strategic Initiatives

(b) The Company represents, warrants and covenants that Amazon Web Services, Inc. and/or ViaWest, Inc. shall act as its initial hosting service provider and that the Company shall not permit its hosting service provider (i) to possess or have access to unencrypted Customer Materials or (ii) to transmit or store Customer Materials outside of the United States of America. The Company shall use commercially reasonable efforts to provide at least thirty (30) days prior written notice before replacing the hosting service provider with a different hosting service provider (“**Substitute Provider**”). Company shall reasonably cooperate with Customer in conducting due diligence to ensure that the Substitute Provider meets Customer’s then current data protection and cybersecurity requirements. If Customer makes a good faith determination that the Substitute Provider does not meet such requirements, Customer will promptly notify Company in writing with a summary of Customer’s concerns and if these concerns cannot be addressed to Customer’s reasonable satisfaction and Company proceeds with the Substitute Provider, Customer shall have the right to terminate this Agreement without liability to Company upon thirty (30) days prior written notice to the Company and all pre-paid fees for the period after such early termination shall be promptly refunded to the Customer.

13.3 Set-Off. Customer shall have the right to set off against any sums due the Company under this Agreement or any related Statement of Work any amounts owed by Company to Customer under this Agreement or any Statement of Work without prejudice to the rights of the parties in respect of such claims.

13.4 Investigation and Audit; Cybersecurity Audits. (a) Company hereby agrees, during regular business hours, to cooperate fully with any investigation, audit, or inquiry conducted by Customer (or its outside auditor) or any federal, state or local government agency or authority relating to any aspect of this Agreement, any Statement of Work or any services furnished thereunder, and the Company shall make all of its books, records, and accounts available for inspection and audit in connection therewith. Moreover, in the event this Agreement or any Statement of Work now provides or in the future is revised to provide for performance, or any part thereof, on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or provides for Customer to share in net earnings collected by the Company or requires Contractor to collect money from Customer (e.g., advertising payments) that is payable to specified third parties, the Company shall maintain detailed books, records and accounts covering costs incurred or, as applicable, time and materials used in connection therewith, and shall make said books, records and accounts available for inspection and audit by Customer, the investigating governmental agency or authority (and their respective authorized representatives during the term of the Agreement and any Statements of Work and for a period of six (6) years after final payment under the this Agreement and Statements of Work. The cost of any audit initiated by the Customer under this provision shall be at Customer's expense, provided however, that if an investigation, audit, or inquiry discloses that Customer has paid the Company for any costs which were not in fact incurred or for any time spent or materials used which were not in fact spent or used, or for any other costs that were improperly charged, or if such investigation, audit or inquiry discloses that Company has not disbursed the correct amount of net earnings to Customer or has not properly paid out Customer money that was provided to Company for payment to specified third parties, the Company shall be liable for any amounts owed to Customer or the specified third party, as the case may be, plus the reasonable costs and expenses incurred by the Customer in connection with such investigation, audit or inquiry.

(b) The Company will also ensure that all Customer Materials that are in transit from Company or at rest will be encrypted and that all personnel of Company or of an approved subcontractor who handle Customer Materials or funds held by Company for the payment to Customer, its customers or other third parties have undergone appropriate background security checks. Once every twelve (12) months during the Term and upon ten (10) days prior written notice to Company (i) Customer shall have a right, at Customer's expense, to audit Company's security controls and Company shall reasonably cooperate with Customer in the performance of any such audit, and (ii) Customer shall receive the Company's most recent annual SSAE 16/SOC II audit report (which shall not be dated more than twelve (12) months after the prior SSAE 16/SOC II audit report delivered hereunder).

13.5 Force Majeure. Except for any payment obligations, neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder to the extent resulting from any cause which is beyond the reasonable control of such Party and for which a workaround cannot be achieved without substantial effort or expense. The time for performance in any instance of delay caused by force majeure shall be extended by a period equal to the time lost by reason of the excusable delay.

13.6 Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, nationally recognized overnight courier, facsimile, or certified or

registered mail, (postage prepaid and return receipt requested) to the other Party at the address for each Party first set forth on the signature page, and will be effective upon receipt, except that notices sent by nationally recognized overnight courier shall be deemed effective on the next business day and notices sent by certified or registered mail (postage prepaid and return receipt requested) shall be deemed effective on the fifth business day after mailing. Additionally, electronic mail and facsimile may not be used for providing legal notices, but may be used to distribute routine communications and to obtain approvals and consents.

13.7 Governing Law; Submission to Jurisdiction. This Agreement will be governed by and interpreted in accordance with the laws of the State of New York without reference to its choice of law rules. **THE PARTIES EACH HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK COUNTY, NEW YORK WITH REGARD TO ANY DISPUTE OR CONTROVERSY ARISING OUT OF THIS AGREEMENT, A STATEMENT OF WORK OR THE PARTIES' DEALINGS WITH ONE ANOTHER IN CONNECTION WITH THE FOREGOING AND THE PARTIES EACH CONSENT TO THE SELECTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK COUNTY, NEW YORK AS THE EXCLUSIVE FORUMS FOR ANY LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT, A STATEMENT OF WORK OR THE PARTIES' DEALINGS WITH ONE ANOTHER IN CONNECTION WITH THE FOREGOING.**

13.8 Remedies. Except as otherwise expressly provided in this Agreement, the Parties' rights and remedies under this Agreement are cumulative. Each Party acknowledges and agrees that any actual or threatened breach of Sections 3 or 10 will constitute immediate, irreparable harm to the non-breaching Party for which monetary damages would be an inadequate remedy, that injunctive relief is an appropriate remedy for such breach, and that if granted, the breaching Party agrees to waive any bond that would otherwise be required. If any legal action is brought by a Party to enforce this Agreement, the prevailing Party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive from the non-prevailing Party.

13.9 Relationship of the Parties. The Parties acknowledge that Company is an independent contractor of Customer, and its employees are not employees of Customer. Nothing in this Agreement or any Statement of Work will be construed as creating a partnership, joint venture, or agency relationship between the Parties, or as authorizing either party to act as an agent for the other or to enter contracts on behalf of the other. Nothing in this Agreement is intended to confer any rights or remedies on any other person or entity, which is not a Party to this Agreement.

13.10 Compliance with Laws. Each Party shall comply with those laws and regulations in jurisdictions within the United States that are specifically applicable to the applicable Party notwithstanding this Agreement.

13.11 Waivers. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Any waiver must be in writing and signed by the Party entitled to the benefit of the right being waived. Unless otherwise stated in the waiver, any waiver applies only to the specific

circumstance for which the waiver is given and not to any subsequent circumstance involving the same or any other right.

13.12 Severability. If any provision of this Agreement or a Statement of Work is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

13.13 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. Signatures exchanged by facsimile or electronic mail shall have the same effect as original signatures.

13.14 Entire Agreement; Amendment. This Agreement, including any Statement of Work and any exhibits or attachments thereto, constitute the entire agreement between the Parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement sets forth the general terms and conditions applicable to all Services provided by Company to Customer under the specific terms and conditions set forth in the applicable Statement of Work. No terms and conditions proposed by either Party shall be binding on the other Party unless accepted in writing by both Parties, and each Party hereby objects to and rejects all terms and conditions not so accepted. To the extent of any conflict between the provisions of this Agreement and the provisions of any Statement of Work, the provisions of the Statement of Work shall govern, unless the term of this Agreement states that it shall govern notwithstanding anything to the contrary stated in the Statement of Work. This Agreement will not be modified except by a subsequently dated written amendment signed on behalf of Company and Customer by their duly authorized representatives.

[Signature page follows]

The Parties by their authorized representatives have entered into this Master Services Agreement as of the Effective Date.

ORANGE AND ROCKLAND UTILITIES, INC.

Signature: 

Printed: William Sonnemann

Title: Sr. Procurement Specialist

SIMPLE ENERGY, INC.

Signature: 

Printed: Justin Segall

Title: President

Address for Notice:

One Blue Hill Plaza
Pearl River, NY 10965-9006
Attention: Donald Kennedy, Director

Address for Notice:

1215 Spruce St, Suite 301
Boulder, CO 80302
Attention: Legal

With a copy to:

Consolidated Edison Company of New York,
Inc.
4 Irving Place
New York, NY 10003
Attn: General Counsel

SCHEDULE 10.7

PROVIDERS

Category/Function of third party	Provider Name
Email Provider	[REDACTED] [REDACTED]
Rewards Provider	[REDACTED]
Printed Reports Provider	[REDACTED]
Product Vendors	[REDACTED] [REDACTED]
Third Party Service Providers	[REDACTED] [REDACTED]

EXHIBIT A

REQUIRED CLAUSES AND CERTIFICATIONS

(In this document, the other party to the contract with Customer is referred to as the "Contractor")

Dated: April 2015

As a Federal Government contractor, Customer must require the Contractor to agree to be bound by and comply with the following clauses and make the following certifications. Where clauses or certifications require the Contractor to be bound by and/or comply with a referenced clause or regulation or to make a referenced certification, such referenced provisions are incorporated by reference herein and have the same force and effect as if they were set forth herein in full text.

Some general guidance as to the applicability of clauses or certifications incorporating such referenced provisions may be provided below. However, the referenced provisions, together with any relevant law or regulation, should also be consulted to determine applicability to the Contractor and/or the contract.

1. **RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT**

(this clause is applicable to contracts exceeding \$150,000)

The Contractor agrees to be bound by and comply with the clause entitled "Restrictions On Subcontractor Sales To the Government (SEP 2006)," which is contained in Section 52.203-6 of the Federal Acquisition Regulation (section 52.203-6 of title 48 of the Code of Federal Regulations), including the requirement therein to incorporate the substance of the clause in subcontracts under this contract which exceed \$150,000.

2. **ANTI-KICKBACK PROCEDURES**

(this clause is applicable to contracts exceeding \$150,000)

The Contractor agrees to be bound by and comply with the clause entitled "Anti-Kickback Procedures (OCT 2010)" except for subparagraph (c)(1) thereof, which clause is contained in Section 52.203-7 of the Federal Acquisition Regulation (section 52.203-7 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause (except for subparagraph (c)(1) thereof) in subcontracts under this contract which exceed \$150,000.

3. **CONTRACTORS THAT ARE DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE FEDERAL GOVERNMENT**

(this clause is applicable to contracts exceeding \$30,000)

The Contractor agrees to be bound by and comply with the clause entitled "Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (DEC 2010)" which clause is contained in Section 52.209-6 of the Federal Acquisition Regulation (section 52.209-6 of title 48 of the Code of Federal Regulations), including the requirement to incorporate the substance of the clause in subcontracts under this contract which exceed \$30,000 and are not for commercially available off-the-shelf items and the requirement to notify Customer if the Contractor or its subcontractors are debarred, suspended, or proposed for debarment by the Federal Government. The Contractor shall submit in writing to Customer, with any bid, offer or proposal for a contract that is not for a commercially available off-the-shelf item and will exceed \$30,000 and again at the time of the award of any contract that will exceed such amount, a statement as to whether or not the Contractor or any of its principals is debarred, suspended, or proposed for debarment by the Federal Government. The Contractor agrees that any action that Customer is required by the Federal Government to take with respect to the contract as a consequence of the Contractor's being so debarred, suspended, or proposed for debarment shall not result in any liability of Customer to the Contractor.

4. **UTILIZATION OF SMALL BUSINESS CONCERNS**

(this clause is applicable to contracts that offer subcontracting opportunities - see the Small Business Act and regulations implementing same)

The Contractor agrees to be bound by and comply with the clause entitled "Utilization of Small Business Concerns (JAN 2011)," which is contained in Section 52.219-8 of the Federal Acquisition Regulation (section 52.219-8 of title 48 of the Code of Federal Regulations).

5. **SMALL BUSINESS SUBCONTRACTING PLAN**

(this clause is applicable to contracts in excess of \$650,000 [\$1,500,000 in the case of contracts for construction of a public facility], except for contracts awarded to small business concerns as defined by section 3 of the Small Business Act, 15 U.S.C. § 632, and the applicable regulations in Part 121 of Title 13 of the Code of Federal Regulations)

The Contractor shall adopt a subcontracting plan that complies with the requirements set forth in the Small Business Act and in the clause entitled "Small Business Subcontracting Plan (JAN 2011)," which clause is contained in Section 52.219-9 of the Federal Acquisition Regulation (section 52.219-9 of title 48 of the Code of Federal Regulations). (Subparagraphs (d) and (e) of such clause are the primary portions of the clause that concern the contents and effective implementation of subcontracting plans.) The Contractor shall insert the clause entitled "Utilization of Small Business Concerns" (see above) in subcontracts that offer further

subcontracting opportunities and shall comply with the requirements for record keeping and reporting to the Federal Government.

6. **EQUAL OPPORTUNITY**

(this clause is applicable to all contracts unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity (MAR 2007)," which is contained in Section 52.222-26 of the Federal Acquisition Regulation (section 52.222-26 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor acknowledges that Customer is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Equal Opportunity clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Customer shall not result in any liability of Customer to the Contractor.

The Contractor further agrees to be bound by and comply with the applicable regulations contained in Chapter 60 of Title 41 of the Code of Federal Regulations which implement Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and set forth the Contractor's obligations, including its affirmative action obligations. **Specifically, the Contractor and its subcontractors shall abide by the requirements of Sections 60-1.4(a), 60-300.5(a) and 60-741-5(a) of Title 41 of the Code of Federal Regulations. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

7. **EQUAL OPPORTUNITY FOR VETERANS**

(this clause is applicable to all contracts of or exceeding \$100,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Equal Opportunity for Veterans (SEP 2010)," which is contained in Section 52.222-35 of the Federal Acquisition Regulation (section 52.222-35 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

8. **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES**

(this clause is applicable to all contracts of or exceeding \$15,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Affirmative Action for Workers with Disabilities (OCT 2010)," which is contained in Section 52.222-36 of the Federal Acquisition Regulation (section 52.222-36 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts.

The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued under the Rehabilitation Act of 1973 (29 U.S.C. 793, as amended).

9. **EMPLOYMENT REPORTS ON VETERANS**

(this clause is applicable to all contracts of or exceeding \$100,000 unless exempted by the rules, regulations or orders of the Secretary of Labor)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Employment Reports on Veterans (SEP 2010)," which is contained in Section 52.222-37 of the Federal Acquisition Regulation (section 52.222-37 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in nonexempt subcontracts and to comply with the reporting to the Federal Government (including the submission of VETS-100A Report).

10. **COMBATING TRAFFICKING IN PERSONS**

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Combating Trafficking in Persons (FEB 2009)," which is contained in Section 52.222-50 of the Federal Acquisition Regulation (section 52.222-50 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

11. **PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL**

(this clause is applicable to all contracts requiring access to a Federal facility)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Personal Identity Verification of Contractor Personnel (JAN 2011)," which is contained in Section 52.204-9 of the Federal Acquisition Regulation (section 52.204-9 of title 48

of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

12. PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS

(this clause is applicable to contracts which incorporate or refer to Section 52.232-27 of the Federal Acquisition Regulation)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Prompt Payment for Construction Contracts (OCT 2008)," which is contained in Section 52.232-27 of the Federal Acquisition Regulation (section 52.232-27 of title 48 of the Code of Federal Regulations), including the requirements set forth in subsection (c) "Subcontract clause requirements".

13. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS

(this clause is applicable to all contracts for goods and services to be used or performed at a Federal facility)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Energy Efficiency in Energy-Consuming Products (DEC 2007)," which is contained in Section 52.223-15 of the Federal Acquisition Regulation (section 52.223-15 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

14. PROHIBITION OF SEGREGATED FACILITIES

(this clause is applicable to all contracts to which the Equal Opportunity clause, described above, is applicable)

The Contractor agrees to be bound by and comply with the clause entitled "Prohibition of Segregated Facilities (FEB 1999)," which is contained in Section 52.222-21 of the Federal Acquisition Regulations (section 52.222-21 of title 48 of the Code of Federal Regulations), including the requirement to include such clause in non-exempt subcontracts.

15. NOTICE OF EMPLOYEE RIGHTS

(this clause is applicable to all contracts exceeding \$10,000 unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 13496, as amended)

The Contractor agrees to be bound by and to comply with the terms and conditions of the clause entitled "Notification of Employee Rights under the National Labor Relations Act (DEC

2010),” which is contained in Section 52.222-40 of the Federal Acquisition Regulation (section 52.222-40 of title 48 of the Code of Federal Regulations), including the requirement to include such terms and conditions in all subcontracts.

The Contractor agrees to comply with the requirements of Chapter 471 of Title 29 of the Code of Federal Regulations, which implement Executive Order 13496, including the posting of the notice required by Section 471.2 of Title 29 of the Code of Federal Regulations.

The Contractor acknowledges that Customer is required to take such action against the Contractor with respect to the contract as may be directed by the Federal Government as a means of enforcing the terms and conditions of the Notice of Employee Rights clause, including the imposition of sanctions for noncompliance, and the Contractor agrees that any such action by Customer shall not result in any liability of Customer to the Contractor.

16. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(this certification is applicable to contracts exceeding \$150,000)

The Contractor hereby makes the certifications contained in Section 52.203-11 of the Federal Acquisition Regulation (section 52.203-11 of title 48 of the Code of Federal Regulations) relating to the nonuse and nonpayment of Federal appropriated funds to influence or attempt to influence the Federal transactions specified in such certification and to the completion and submission of any documentation that may be required by such certification, and agrees to include such certifications in subcontracts under this contract.

17. SUBCONTRACTS FOR COMMERCIAL ITEMS

(this clause is applicable to all contracts)

The Contractor agrees to be bound by and to comply with the clause entitled “Subcontracts For Commercial Items (DEC 2010),” which is contained in Section 52.244-6 of the Federal Acquisition Regulations (section 52.244-6 of the Code of Federal Regulations) and which also requires the Contractor to be bound by and to comply with: **(i)** the clause entitled “Contractor Code of Business Ethics and Conduct (APR 2010)” contained in Section 52.203-13 of the Federal Acquisition Regulations (section 52.203-13 of title 48 of the Code of Federal Regulations); **(ii)** the clause entitled “Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010)” contained in Section 52.203-15 of the Federal Acquisition Regulations (section 52.203-15 of title 48 of the Code of Federal Regulations); **(iii)** the clause entitled “Utilization of Small Business Concerns (DEC 2010)” contained in Section 52.219-8 of the Federal Acquisition Regulations (section 52.219-8 of title 48 of the Code of Federal Regulations); **(iv)** the clause entitled “Equal Opportunity (MAR 2007)” contained in Section 52.222-26 of the Federal Acquisition Regulations (section 52.222-26 of title 48 of the

Code of Federal Regulations); (v) the clause entitled “Equal Opportunity for Veterans (SEP 2010)” contained in Section 52.222-35 of the Federal Acquisition Regulations (section 52.222-35 of title 48 of the Code of Federal Regulations); (vi) the clause entitled “Affirmative Action for Workers with Disabilities (OCT 2010)” contained in Section 52.222-36 of the Federal Acquisition Regulations (section 52.222-36 of title 48 of the Code of Federal Regulations); (vii) the clause entitled “Notification of Employee Rights under the National Labor Relations Act (DEC 2010)” contained in Section 52.222-40 of the Federal Acquisition Regulations (section 52.222-40 of title 48 of the Code of Federal Regulations); (viii) the clause entitled “Combatting Trafficking in Persons (FEB 2009)” contained in Section 52.222-50 of the Federal Acquisition Regulations (section 52.222-50 of title 48 of the Code of Federal Regulations); and (ix) the clause entitled “Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)” Contained in Section 52.247-64 of the Federal Acquisition Regulations (section 52.247-64 of title 48 of the Code of Federal Regulations. In addition, Contractor shall be bound by and comply with Section 13, above, Prohibition of Segregated Facilities, which is applicable to all contracts to which the Equal Opportunity clause (see subsection (iv) above) is applicable. If the contract between Con Edison and the Contractor is for the supply of Commercial Items (as such term is defined in Section 2.101 of the Federal Acquisition Regulation (section 2.101 of title 48 of the Code of Federal Regulations)), then, to the extent that the clause entitled “Subcontracts For Commercial Items (DEC 2010)” lawfully requires only that the Contractor be bound by and comply with the text of such clause and the other clauses referenced therein rather than all of the provisions referenced in this Appendix A, the Contractor shall, with respect to the provisions in this Appendix A, only be required to (a) be bound by and comply with the clause entitled “Subcontracts For Commercial Items (DEC 2010)” and the clauses referenced in such clause and in this Section 17, (b) include the terms and conditions of “Subcontracts for Commercial Items (DEC 2010)” in all subcontracts, and (c) to make and comply with the provisions of the certifications that are referenced in the clause entitled “Subcontracts For Commercial Items (DEC 2010)” or otherwise required by this Section 17. Additionally, with respect to **clause (iv)**, above, the Contractor agrees to be bound by and comply with the applicable regulations contained in Chapter 60 of Title 41 of the Code of Federal Regulations which implement Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, as amended, and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and set forth the Contractor's obligations, including its affirmative action obligations. **Specifically, the Contractor and its subcontractors shall abide by the requirements of Sections 60-1.4(a), 60-300.5(a) and 60-741-5(a) of Title 41 of the Code of Federal Regulations. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

EXHIBIT B
STATEMENT OF WORK

[Insert initial Statement of Work]

STATEMENT OF WORK FOR SERVICES

New York REV Demonstration Project Customer Engagement and Marketplace Platform

with

Simple Energy, Inc.

for

Orange and Rockland Utilities, Inc.

October 20, 2015

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1. Introduction

The purpose of this Statement of Work (“SOW”) is to detail the tasks and responsibilities of Simple Energy, Inc. (“Contractor”) and Orange and Rockland Utilities, Inc. (“Company”) in relation to the Master Services Agreement (“Agreement”) for the initial setup and ongoing operations of the Simple Energy Customer Engagement Platform and Marketplace (“Program” or “CEMP”). Contractor and Company are sometimes individually referred to as a “Party” and collectively as the “Parties.”

2. Background

As part of the New York Reforming the Energy Vision initiative (“REV”), Company is partnering with Contractor and its network of third party product and service partners to provide a CEMP to (1) increase customer awareness and education of energy consumption issues; (2) motivate customers to participate in Company programs; (3) increase distribution and adoption of distributed energy resources (“DERs”); and (4) develop new revenue streams for Company and its partners.

Notwithstanding anything to the contrary contained in this SOW, the development, implementation, and on-going operations of the CEMP must comply with all applicable laws, rules, regulations and any orders, guidance or feedback from the New York State Public Service Commission (the “PSC”) and/or its Staff (“PSC Staff”) that relate to REV, and Contractor and Company shall cooperate to make any changes that may be needed to the terms of this SOW, the CEMP and any agreements between the Contractor and Company related to the CEMP to ensure that such compliance is attained. In the event that, after diligently pursuing implementation of such changes with Company, Contractor or Company determines that such changes are not commercially reasonable or practical, then Contractor or Company may terminate this SOW upon at least thirty (30) days prior written notice to other Party pursuant to Section 5.3(c) of the Agreement.

Company and Contractor, through the Program, will seek to increase energy conservation and the purchase of DERs across the entire Company New York service territory. Subject to all applicable marketing laws and consumer protection rights and the terms of the Company’s Privacy Policy, marketing for the Marketplace will target all customers, while the other specific customer engagements described in this SOW will be targeted to a Treatment Group as defined in Glossary of Terms Section of this SOW. The customer engagement and direct consumer marketing for targeted energy saving behavioral change will be provided for approximately 80,000 Company customers designated by Company (“Designated Customers”) by utilizing industry leading behavioral science, gaming mechanics, rewards and ecommerce marketing. Of the 80,000 customers, approximately 40,000 customers will be digitally engaged through opt-out email communications, in which they are automatically enrolled in the program and approximately 40,000 customers will

receive opt-out mailed paper reports as their primary form of pushed messaging. Contractor and Company will ensure that all marketing and messaging described in this SOW will be performed in compliance with Company's then-current Privacy Policy and all applicable state and federal marketing and consumer protection laws as well as any PSC requirements regarding customer privacy protections. Company shall provide contractor thirty (30) days notice prior to any changes in the Privacy Policy. Should changes in the Privacy Policy materially impact the ability to deliver the program, Company and Contractor shall partner on agreeable solutions and update the SOW as necessary.

The Program will be delivered via multiple digital channels – web, email, and mailed paper Energy Insight Reports – to engage and motivate Designated Customers in the places where they already spend their time. Contractor will design, configure, host and operate the Simple Energy platform, including:

- Energy Insight Reports delivered via postal mail and email
- Energy Insights
- Energy Challenges
- Rewards
- Marketplace

The Program will initially launch as a standalone Marketplace with integrated marketing encouraging all O&R customers to purchase energy saving products and services. In a subsequent phase, the Customer Engagement Platform will launch to support the marketplace by providing Designated Customers with Energy Insights Reports, Gamification and Rewards with the goal of driving behavioral energy efficiency.

Contractor shall set up and operate the CEMP on behalf of the Company within the timeframe described in Section 3.7 below.

3. Scope of Work

Contractor shall configure and operate its Software as a Service (“SaaS”) online platform on behalf of the Company in accordance with the Responsibilities detailed below in Section 4. Contractor will configure the SaaS platform for the Company's Program and will add any features that are needed to achieve the specifications described in this SOW.

3.1 Contractor Activities All specified numbers of customers in this SOW are approximate and are subject to variation based on a number of factors not within the control of Contractor or the Company, including, without limitation, the number of Company customers who agree to receive the messaging or reports or other communications being described.



Notwithstanding anything to the contrary contained in this SOW or any related agreements between the Company and Contractor, Contractor and Company shall establish a process to review the content of communications, including emails and digital and paper reports, that will be sent to Company customers in connection with the Program. Contractor shall develop the content of such communications but Company's written approval shall be required before any such communications are distributed to Company customers.

Services	Number of Designated Customers	Service Functionality Description
Customer Onboarding Email Series	A series of up to five emails for up to 80,000 Designated Customers	<p>Initial email communications to Designated Customers that outlines the Program, invites active participation, provides opt-out ability and advises regarding EM&V (as defined in Glossary) consents.</p> <p>The onboard series will initially be sent to 40,000 digital Designated Customers with email addresses. When non-digital Designated Customers activate on the web platform, they will also receive the Customer Onboarding Email Series.</p>
Digital Energy Insight Reports	1-5 per month for up to 80,000 Designated Customers during the demonstration project	<p>Personalized energy reports for each Designated Customer to be emailed on a weekly basis (unless otherwise agreed to by both parties in writing) to Designated Customers. The messaging is designed to leverage social comparison, social proof, and targeted insights to motivate action and further engagement. It will include normative energy use comparisons, energy savings tips that include seasonal energy reduction suggestions, options to view energy usage, tips, and challenges on the Web Portal and the ability to purchase DERs and earn rewards for energy savings performance.</p> <p>At the start of the Program, 40,000 Designated Customers will receive Digital Energy Report emails. Paper reporting encourages users to sign up for web accounts. As users activate web accounts, the number of Digital Energy Insight Report recipients will increase.</p>
Paper Energy Insight Reports	6 per year for up to 40,000 Designated	Personalized, mailed, paper energy insights reports will be sent to each Designated Customer in the paper-based group. The reports contain

	Customers during the demonstration project	<p>messaging designed to leverage social comparison, social proof, and targeted insights to motivate action and further engagement. Paper reports encourage users to move to receive Digital Energy Insight Reports and to visit the digital channel the CEMP to improve engagement.</p> <p>As customers move to the digital channel and begin to receive digital reports, they will no longer receive paper reports.</p>
Simple Energy Engagement Platform Web Portal	Access for 80,000 Designated Customers	<p>All Designated Customers have the ability to create a user profile and access their energy usage information and rewards activity via the Simple Energy Engagement Platform Web Portal. There are a number of features available to Designated Customers who establish an online account via the Web Portal, including:</p> <ul style="list-style-type: none"> • Normative energy comparison, in which customers usage is compared to other, similar customers • Energy usage and home profiling presentment • Gamification and rewards • Energy savings tips, recommendations, and integration to Marketplace for DER product and service purchases
Rewards (part of Web Portal)	Access for up to 80,000 Designated Customers	<p>Contractor's points system uses an algorithm-based normalization of energy consumption based on user-generated data, public data, and utility data. Customers earn points redeemable for rewards from national merchants or the Marketplace. The list of national merchants is limited to those provided by Contractor's rewards provider.</p>
Marketplace	Access for all Company Customers	<p>All Company customers, whether a Designated Customer in the customer engagement program or not, will be eligible to transact in the Marketplace.</p> <p>The online Marketplace will provide for the sale of energy-related products and services to Company's customers on behalf of the Company in accordance with this SOW. The online Marketplace will operate as a direct purchase model (i.e., customers may purchase products and services directly through the Marketplace) that will (i) present products approved by Company</p>

		through a cohesive customer experience and (ii) facilitate the integration of instant rebates on qualified products. Some products or services – particularly those that require professional installation, may also be purchased via referral to a third party site or service provider. All services (and the corresponding service providers) offered through the Marketplace must be pre-approved in writing by the Company.
Customer Service Interface and Training	Selected Company Customer Service Representatives	<p>At mutually scheduled times, Contractor will train Company staff for customer service support including:</p> <ul style="list-style-type: none"> • Minimum of two (4 hours each) Live Training sessions to assist Company staff in understanding the Program, managing the customer experience and support first-call-resolution and short average call times. Any additional Live Training will be mutually agreed upon by the Company and Contractor. • User guides and video documentation about the CEMP • Customer service interface that allows staff to “see what customer sees” and respond to Designated Customers questions • A dedicated email address for support requests sent by Designated Customers • Customer support processes to assess level of response needed • Providing Contractor employee resources to respond to phone and email support requests. <p>Contractor will act as second-tier support and assist Designated Customers with issues that cannot be resolved using the above listed tools. See section 3.6 for more detail on first and second tier support.</p>
Marketplace Customer Support	N/A	Contractor will provide first tier customer support for all Marketplace customer requests as defined in Section 3.6 of this SOW.
Program Reporting	Company Stakeholders	<p>Contractor will provide the following reporting to the Company as part of the Program:</p> <ul style="list-style-type: none"> • No less than monthly Periodic Marketing Reports highlighting key email metrics, such as emails delivered, open rates and

		<p>click-through rates.</p> <ul style="list-style-type: none"> Quarterly Executive Status and regulatory reports, including: <ul style="list-style-type: none"> Executive summary Program performance versus agreed to KPIs, including steps being taken to address any discrepancies between actual and target KPIs Key action items, issues and risks to the Program Customer related feedback A final report, including <ul style="list-style-type: none"> Program Overview and Highlights Executive Summary Program Description including participant breakdown and platform users Results and Conclusions regarding program performance vs. KPIs Company and Contractor will mutually agree upon the format of all reports described in this SOW and the type of information to be provided in such reports.
Marketing	Marketplace Customers during the demonstration project	<p>Email Communication Blasts 1-5 times per month to all Marketplace customers, with quantity and timing of emails to be mutually agreed upon by Contractor and Company. The messaging is designed to motivate action and engagement with the Marketplace. Messaging will provide clear Call to Action providing the ability to purchase Products and/or Services on the web portal. Additional marketing channels (public relations, online advertisements, Company marketing channels, etc) may be utilized based on deemed effectiveness and will be determined as part of the ongoing marketing plans mutually agreed upon by Contractor and Company.</p>

3.2 Technical Specification/Requirements

Contractor shall configure and operate its SaaS Platform so as to provide an online Customer Engagement Platform focused on behavioral energy savings and

Marketplace for the sale of energy-related products on behalf of the Company and in accordance with this SOW.

Upon launch, the online Marketplace will operate as a direct purchase model (i.e., customers may purchase products and services directly through the Marketplace) that will (i) present products approved by Company through a cohesive customer experience and (ii) facilitate the integration of instant rebates on qualified products. Some products or services – particularly those that require professional installation, may also be purchased via referral to a third party site or service provider. See the timeline below for a detailed rollout schedule.

3.2.1. Data Sharing

Contractor will configure the CEMP in coordination with Company based upon Contractor's data intake requirements and Company's data output requirements and Company's computer and data security requirements. Contractor and Company will work together to establish communication protocols, including through the use of application programming interfaces ("API") and flat file exchanges, if applicable, for data exchange and reporting. All data exchanges shall be subject to the terms of the Agreement, including its provisions regarding confidentiality. Company shall share customer account data, usage and billing data, and rebate eligibility. Users will sign in to the platform with a login id specific to the platform, as opposed to Single Sign On. For more details on data requirements, please refer to the Simple Energy Integration Guide, a copy of which shall be mutually agreed upon by the parties and attached hereto at Exhibit A. Contractor shall not revise the Simple Energy Integration Guide without Company's prior written consent. All Company Data in Contractor's possession will be used in the delivery of the program as defined in the Master Services Agreement and Customer Terms of Service, a copy of which shall be mutually agreed upon by the parties and attached hereto at Exhibit B. Contractor shall not revise the Simple Energy Customer Terms of Service without Company's prior written consent. Notwithstanding anything to the contrary in this SOW or the Agreement, all configuration and data sharing must comply with the Company's then-current requirements regarding data security and cybersecurity, which, if changes to these occur after the effective date of the Master Services Agreement, the Company shall notify Contractor in writing of such changes, and all applicable laws and regulations to which Contractor is subject. Should Company changes to the Privacy Policy require changes to the program that incur additional cost, Company and Contractor shall partner on a joint solution that may result in a modification to the scope, cost or timeline of this SOW.

Phase II, which will be triggered based on mutual agreement between O&R and Simple Energy, will include a deeper integration of customer data and authentication as mutually agreed by Company and Contractor. This may include additional customer data transfer and integration of Single Sign On ("SSO") with Company's existing online customer experience.

3.2.2 CEMP Design

While the CEMP will take on a Company look and feel, it will be clear to the customer that the CEMP is operated, and any purchases are executed by



Contractor. Contractor will review Company style guide and will configure the CEMP to match Company's desired color scheme and logo. All such configurations require Company's written pre-approval.

The Marketplace is designed to easily configure new products and services onto the CEMP, allowing more energy-wise products and services for customers. This capability allows constant enhancement, testing and evolution directly aligning with the REV initiative.

3.2.4 Order Fulfillment

(a) Billing invoices, financing, and credit card charges will come from and bear the Branding of Contractor, as opposed to Company.

(b) Contractor shall charge customers upon verification of shipment from the fulfillment agent or upon Contractor's shipment of goods purchased, as applicable.

(c) The Contractor or third party subcontractor or vendor utilized to process customer payments, shall adhere to Payment Card Industry Data Security Standard (PCI DSS) requirements and such other standards as the Company may require.

3.2.5. Instant Rebate Authorization and Funding

Company agrees to establish and provide funding to Contractor for applied instant rebates in the amount of \$25,000, or as mutually agreed upon between Company and Contractor. When instant rebate redemptions have reduced this amount to 50% of the original amount, Contractor will invoice Company for the amount to refill the instant rebate funding. At the termination of this SOW, Contractor will provide Company with a credit or final invoice for instant rebate funds. Rebate amounts by product will be determined by the Company as identified in the Company's Energy Efficiency program filed with the PSC. The Company has the right to change rebate amounts over time upon written notice to Contractor to coincide with its energy efficiency program funding.

Rebates will be applied to the cost of products purchased on the marketplace at checkout, provided the customer is eligible for such rebate and agrees to the terms and conditions of the rebate. For rebates requiring confirmed installation or service enrollment, Simple Energy will recognize and apply the rebate at checkout, provided the customer is eligible and agrees to installation and/or service enrollment within 30 days, and place a hold on the customer's credit card for the rebate amount. Once Contractor receives service enrollment or installation confirmation, the hold on the customers credit card will be released; otherwise, if customer does not comply with rebate terms and conditions, customers credit card will be charged for rebate amount plus applicable taxes. Rebate amounts will be debited from joint rebate account at time of sale, any subsequent returns or non-compliance of rebate terms which results in a credit to Contractor, will be credited back to joint account when Contractor receives funds.

Contractor will submit a validated instant rebate report to Company, or its designee on a monthly basis. The methodology will check customer credentials against some or all of the following qualifying criteria as agreed between Company and Contractor:

- Rebate eligibility data;
- Customer zip code and/or Customer address;
- Customer account number; or
- Integration with Company's Rebate data feed.

The company and contractor will agree to the CSV format for transferring this data prior to launch.

In addition, the purchased product must be on the Company's list of rebate-eligible products. Contractor will submit monthly batched rebate reports detailing customer, product and rebated amount.

Contractor shall provide a report to Company on a monthly basis, deliverable within five business days of the subsequent month, that will contain the data necessary to verify rebate eligibility with respect to all rebates credited through the Marketplace. The report will contain the current balance of the account housing instant rebate funding.

3.3. Product Pricing on Marketplace

The total cost of the devices offered on the Marketplace shall be set by Contractor based on mutually agreed upon pricing by Contractor and Company and shall not exceed the highest total cost from the highest of the four comparison sites: Amazon.com, Bestbuy.com, Lowes.com, and HomeDepot.com. In coordination with Company, Contractor shall review pricing on products and services on at least a monthly basis and update it as necessary. With respect to devices offered on the Marketplace, total cost shall be calculated as the pre-rebate cost of the device plus the minimum cost of shipping offered on the Marketplace. With respect to the comparison sites listed in this Section, Total Cost shall be calculated as the cost of the device after available sales or promotions are applied plus the minimum cost of shipping offered on the applicable comparison site.

Contractor will identify and manage shipping providers to ensure products are shipped in a timely manner at the lowest cost possible.

3.4 Marketplace Details

3.4.1 Vendors

Contractor shall secure participating retail vendors that qualify for Company rebates at Marketplace launch, and manage a process for adding and removing vendors post-launch. Company must review and approve, in writing and at its sole discretion, participating retail vendors and all publicly facing materials and information prior to the initial Marketplace launch and thereafter when any

changes to a vendor or publicly facing material and information are proposed. Either party can propose changes to vendors and publicly facing materials and any such changes must be mutually agreed upon. The Contractor will give Company a minimum of ten business days (based on Company's business days) to consider, comment on, and approve (in writing) publicly facing materials and information before they are made public. If mitigating circumstances make it impossible or impractical to adhere to this ten day commenting period, Contractor will work with Company so that Company has a chance to consider, comment on, and approve (in writing) changes within a faster timeline. In any event, Contractor shall not publish such materials until the time that Company approves such materials in writing.

Contractor will manage the retail vendor relationships including all necessary contracting, systems integration, and data feed management as it relates solely to order fulfillment and the use of retail vendor branding on the Marketplace.

3.4.2 Merchandising

Contractor will work with Company to determine product merchandising for the Marketplace and the selection of products offered in the Marketplace, which Company must pre-approve. Contractor shall source and manage the product merchandising for the Marketplace, including the selection of products offered in the Marketplace, and how those products and services are presented to customers. Available products and services will be limited to those that Contractor has established with vendors.

Company will support merchandising efforts including but not limited to managing the recruitment and interactions with the Third Party Installer ("TPI") network of contractors. TPI vendors will be selected by Company in cooperation with Contractor.

3.4.3 Fulfillment

Contractor shall secure fulfillment vendor(s) for approved direct-purchase products, may act as an affiliate referrer for certain product categories or services, or may purchase inventory and act as a fulfillment vendor for selected products itself. Contractor shall operate a checkout process within the Marketplace that enables customer purchases with instant rebates on qualifying products. As between the parties, Simple Energy will be responsible for managing and maintaining all inventory and the Company will not be responsible for any inventory purchased and not sold.

3.5 Consumer Marketing for Marketplace

Contractor and Company shall partner in marketing efforts and mutually agree on marketing strategy and budget. This mutually agreed marketing commitment will be documented.



Contractor shall be responsible to abide by all required Internet communication protocols, customer rights and privacy protections (as provided by Company policies presented to Contractor in writing and as provided by applicable law) for email consumer marketing efforts to increase customer awareness of and visits to the Platform in coordination with Company. All email templates shall be subject to Company approval.

Contractor will ensure that branding is within Company guidelines to the extent possible within the limits of existing product functionality. Contractor will coordinate with Company to ensure compliance with all consumer protection requirements and third party copyright/trademark rights and ensure that marketing requirements agreed upon by Company and Contractor are met with each marketing effort.

With Company's prior written approval, Contractor shall have the right to perform online (e.g., search engine, social) advertising/marketing, social media, third party/channel, media outreach, abandoned cart retargeting, and other marketing outreach to encourage additional purchases in the Marketplace.

In addition, at the times and in the manner chosen by the Company, Company shall use its existing customer touch-points to increase customer awareness of and visits to the CEMP. Contractor shall work with Company to identify existing Company customer touch points via which customers can be made aware of the CEMP. Potential venues include but are not limited to:

- Bill in/onserts (print and digital);
- Targeted emails;
- Customer newsletters;
- Social media;
- Direct links from Company website to Marketplace;
- Community relationships and public relations;
- Scripting for call center customer service representatives ("CSRs"); and
- Other Company advertising and/or promotional materials or events.

3.6 Customer Support

3.6.1 Customer Inquiries

(a) Customer inquiries via email, chat or call support will be directed by Contractor in the following manner to appropriate service representatives:

- Contractor service team shall handle customer inquiries relating to the Company branded Marketplace and/or Engagement Platform unless specified otherwise below.
- Company service team shall handle inquiries that relate to the rebate, rebate qualification, other specific Company programs, or general inquiries not related to the scope of this SOW;

- Customer inquiries that relate to installation or particular device features shall be handled by the Contractor services team when they are general inquiries and otherwise directed to the appropriate device manufacturer for support on their product;
- Inquiries related to marketing materials sent by Company and/or referencing topics outside the Platform shall be redirected to Company service team; and
- All other inquiries shall start with the Contractor. Company and Contractor will cooperate to resolve other customer inquiries.

(b) For customer inquiries referred by Contractor to Company or other Third Party, Contractor shall provide customer with adequate and appropriate customer service contact information, as applicable.

(c) Contractor shall operate its call center from 9 am - 5 pm Eastern Time, Monday through Friday ("Business Hours"). These hours may be amended by written agreement of Contractor and Company based on call volumes or other relevant factors.

(d) Contractor shall have follow-up contact with the purchasing customer over email, providing two emails to the customer after purchase. One email will include a purchase confirmation and a second email will include a shipping confirmation. Contractor will work with Company on a third possible email (not to be sent without Company's prior written consent) to gather input and feedback from purchasing customers. In the event that there are stocking delays that extend the time until shipment, Contractor shall notify affected customers within the forty-eight (48) hour period following purchase, provide affected customers with a conservative estimate of time until shipment, and offer affected customers an opportunity to change their orders. All such changed orders and shipping delays will be tracked and reported to Company as part of the regular reporting required of Contractor in connection with the Program. Company shall review and approve email content to verify proper branding guidelines, work with Contractor to leverage email and customer communications to the fullest effect (e.g., could emails be used to direct customers to take additional actions), and will review and approve email templates before they are in use.

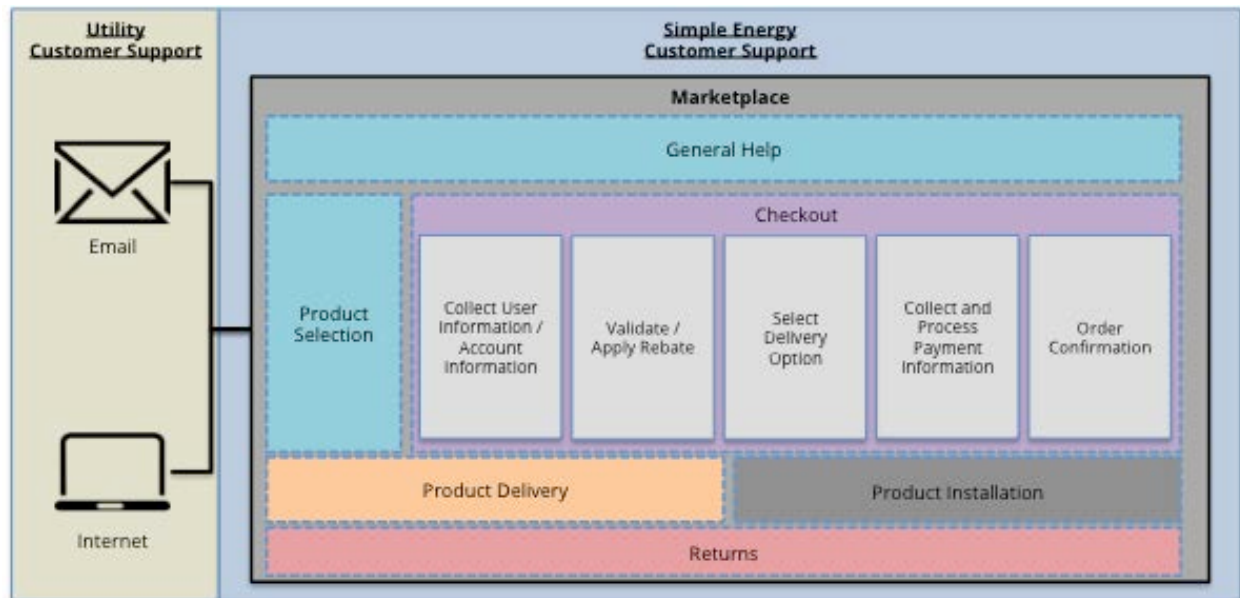
(e) Contractor and Company will coordinate, develop, and update as necessary a combined Marketing Strategy as it relates to the CEMP outlining at a minimum Customer Engagement methods, frequency, targeted audience, themes, and separation of Company and Contractor responsibilities. Company will allow Contractor to review any marketing messaging to be executed by Company in relation to the Marketplace, however the Company will have final approval of those customer communications.

(f) Contractor shall not use customer email or other customer information (including Personal Data) for any purposes other than in connection with the Program as expressly permitted in the this Statement of Work and subject to the confidentiality provisions of the Agreement. Contractor may not send communications other than those in this Statement of Work to Company customers without the Company's prior

written consent. As agreed upon with the Company, Simple Energy will provide periodic customer emails and notifications providing customers with information about their energy usage and providing information on what products and services offered on the marketplace will help to reduce customer consumption.

3.6.2 Customer Support – Division of Responsibility

The below chart illustrates Company and Contractor responsibilities as it relates to Marketplace communication flow with customer. Company is responsible for providing customer support for marketing communications Company generates and releases. Contractor is responsible for customer communications generated and supported within Marketplace.



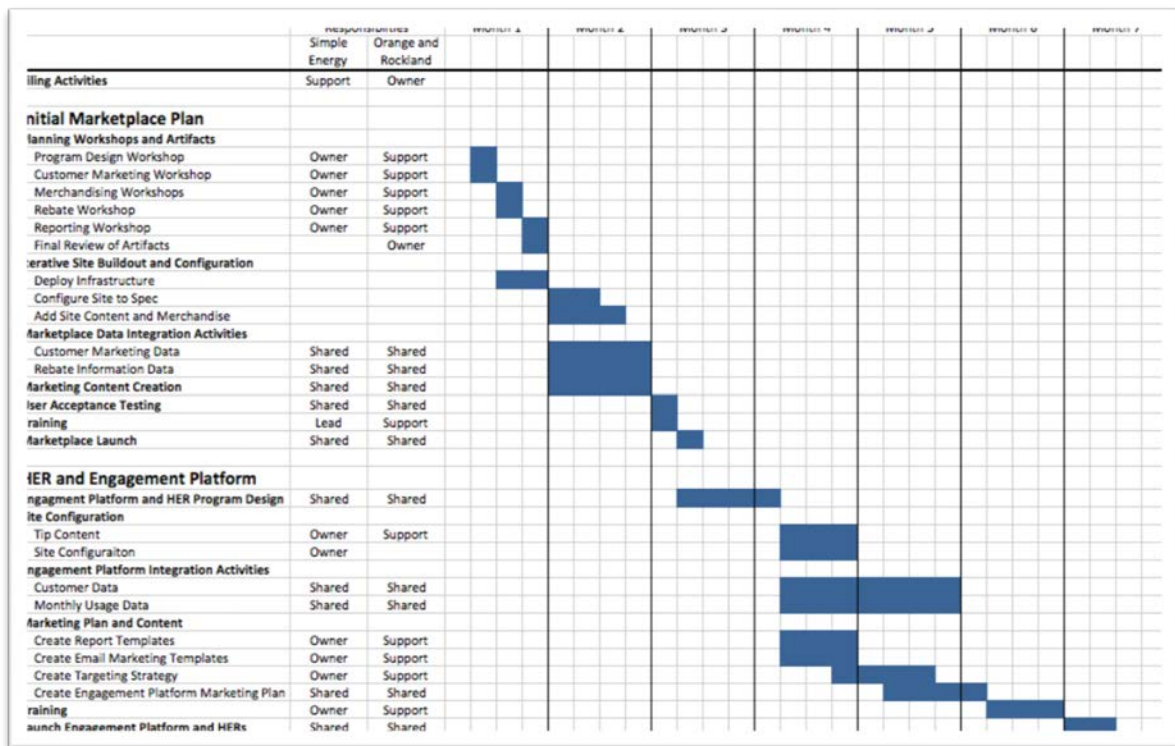
3.6.3 Customer Support Key Assumptions

- E-mail Marketing: Company will keep Contractor informed of email campaign timing, including confirmation of email campaigns implemented, enabling Contractor to reasonably prepare for call volume related to Company's outbound customer communications.
 - Contractor Customer Support Service Level Achievements (“SLAs”) set forth in Section 13 of this SOW assume coordination on all e-mail marketing efforts, including but not limited to distributed delivery to avoid large spikes in call volume (i.e., avoid blanket marketing to a sizeable, meaning beyond 500,000, residential customers in a condensed period of time).
 - First line of support on e-mail marketing will be channeled through Company's Customer Support – “Reply to” and “support” contact information on the e-mail will direct traffic accordingly
- Internet Marketing
 - Questions regarding Internet marketing sponsored by Company will be routed through the Company's Customer Support team.

3.7 Program Timeline

Company and Contractor will both make diligent efforts for a Program Launch to occur in an expeditious and timely manner. Contractor and Company will strive to complete Phase I Marketplace launch eight weeks after the Effective Date of the Agreement and complete Phase II Engagement Platform launch six months after Effective Date.

Program implementation and delivery schedule is outlined below. Company understands and agrees that Company engagement is required in order to successfully design, develop, and launch CEMP. Contractor shall have no liability for any failure to meet the project schedule to the extent any such delays are caused solely by the acts or omissions of Company. If applicable, the Program implementation and delivery schedule will be modified by the parties to meet any PSC or PSC Staff timing requirements applicable to this REV project.



4. Responsibilities

4.1 Contractor Responsibilities

The Contractor shall configure, host and operate the CEMP, per the scope described in Section 3. The CEMP shall be accessible to all Designated Customers.

The Contractor shall assign, for the project, the following resource:

- Engagement Manager, Aaron Baney: Primary point of contact, overall Pilot Project responsibility, general communication, marketing decisions, Pilot Project scope, customer service training, Pilot Project and optimization, and strategic planning. Any replacement of Mr. Baney shall be reasonably satisfactory to the Company and if the Company is dissatisfied with its assigned Engagement Manager, the Contractor will use commercially reasonable efforts to provide a satisfactory replacement within a reasonable amount of time (not to exceed 30 days from Company's request for a replacement).

The Contractor shall design the CEMP and related marketing materials to match the Customer's brand. Custom branding shall be limited to Company's logo and brand colors.

The Contractor shall have permission to use Company's branding for the CEMP, including on web, mobile, and email interfaces, marketing and printed materials. All materials used by Contractor with Company's branding shall be in accordance with Company's branding guidelines. Contractor will be allowed to identify the CEMP with its trademarks, copyright information, and "Energized by Simple Energy". Such phrasing shall be reviewed and approved by Company.

Contractor will, at its expense, bear sole responsibility for the design, development, hosting, operation, maintenance and management of the CEMP, including, without limitation, development of its features, functions and technology, and any adaptation and/or reconfiguration thereof as may be necessary for purposes of providing access to, and use of, the CEMP.

Contractor shall send all electronic marketing communications from its platform. Communications will be designed to match the Company brand and subject to mutual review as previously outlined in this Agreement. All communications templates shall be approved by a Company representative.

4.2 Company Responsibilities

Company shall provide the following resources:

- **Project Manager and Key Point of Contact:** Serve as the interface between Contractor and Customer.
 - Schedule meetings with stakeholders and arrange for stakeholder availability.
 - Obtain and provide information, data, decisions and approvals, within five business days of Contractor's request, unless both parties agree to an extended response time. Coordinate and consolidate all of the project team comments on draft document

- deliverables to provide a single redline for Contractor to make updates to the final document deliverables.
 - Manage schedule, issues and risks from the Customer perspective.
 - Participate in periodic status meetings with Contractor.
- **Marketing Representative:** Serve as key point of contact and approvals for marketing-related activities
 - Provide a style guide or branding requirements for the web portal and communications.
 - Approve designs for web portal, email and paper communications
 - Approve marketing content two weeks prior to the scheduled communications.
 - Meet weekly or bi-weekly to review marketing reporting and communications.

The Company shall have the right to obtain a replacement Marketing Representative if the then-current Marketing Representative is not satisfactory to the Company.

Contractor shall provide Company with suggested content to facilitate this marketing, but Company may modify the proposed promotional content for specific applications. As part of the provision of the Program, Contractor will need to communicate with Designated and Eligible Customers. Subject to Company approval of messaging themes and formats, Company hereby grants Contractor the right to communicate with Designated and Eligible Customers as may be necessary as part of the provision of the Program.

Subject to the Agreement's confidentiality provisions, the Company shall provide customer account, and billing or meter data to Contractor per the Simple Energy Integration Guide.

All data transferred as part of this agreement shall be subject to the security and confidentiality requirements defined in the Master Services Agreement between Company and Contractor.

Company agrees to be included in press materials developed for the launch event. Company reserves the right to approve all such materials prior to media release, and to provide such approval with any requested edits within five-days of requested approval. Company may, but is not required to, send a representative to the launch event at Company expense.

Company agrees to designate and train necessary CSRs to provide Tier 1 customer support for the Program.

Company shall use the CEMP in accordance with all applicable laws.

4.3 Measurement and Verification

Company is responsible for measurement and verification analysis for the purpose of claiming energy efficiency or demand reduction savings as part of its Energy Efficiency, or Demand Response programs.

Company or a Company-selected third party evaluator will collaborate with Contractor for the program design of the Treatment Group and Control Group.

If Company elects to use a third party evaluator, or perform an evaluation using in-house Company resources in accordance with the Public Service Commission required measurement and verification methodologies:

- Contractor will coordinate with the third party evaluator and Company for the evaluation, measurement, and verification.
- Company will set up at least a kickoff meeting and quarterly meetings between Contractor, Company and the third party evaluator to review program design, interim evaluations, and agree upon reasonable performance improvements in the Program.
- Contractor will be provided a copy of all draft study plans, studies, surveys, evaluations and the actual deliverables within two weeks of their completion. Contractor shall have the right to use the anonymous results with third parties.

Regardless of whether or not a third party evaluator is hired by Company or its regulators, Contractor will have the right, but not the obligation, to perform its own independent evaluation. If Contractor requests to contact customers that participated in the Program, Company approval is required. Contractor shall provide Company with a copy of any such evaluation at no cost to Company.

5. Service Level Agreement

5.1 Software Service Level

Contractor will configure the CEMP in coordination with Company based upon Contractor's data in-take and Company's data output requirements and Company's computer and data security requirements. Contractor and Company will work together to establish communication protocols, including through the use of APIs and flat files, if applicable, for data exchange and reporting.

Contractor shall use reasonable efforts so that the CEMP is available over the Internet at least 99.5% of each calendar month (calculated as (24 hours times # of days in the month) minus total outage time for the month divided by (24 hours times # of days in the month)); provided that scheduled maintenance times for which Company has received reasonable prior notification and which do not, in the aggregate, total more than 216 minutes per month, and any other downtime occurring as a result of circumstances beyond Contractor's reasonable control, including, without limitation: (i) Company's or any designated customers' data or security breach; (ii) incompatibility of Company's or any designated customer's

equipment or software with the CEMP if such Company equipment or software in the same configuration was not previously approved by Contractor; or (iii) any Force Majeure Event shall not be considered toward any calculation of availability. Recurring maintenance windows will be scheduled periodically, for example twice per month. Should more than five minutes of down-time be expected, Contractor will notify customer with at least 48 hours notice.

Company may report any unscheduled downtime by email at info@SimpleEnergy.com.

Contractor will exercise commercially reasonable efforts to respond to reports of downtime by telephone or email acknowledgement within: (a) two business hours for major or critical issues (e.g., the CEMP is not available or significant portions of the CEMP are not available) and (b) four business hours for minor issues. In addition, Contractor will respond to major or critical issues within eight hours if such major issue is reported outside of Business Hours (as defined in the Glossary of Terms). In the event that the availability of the CEMP is under 99.5% in any calendar month, the Access Term will be extended by the length of time it was unavailable (but not less than a 1 week extension) at no additional charge to Company. O&R and Simple Energy will jointly review the CEMP before going live, and mutually agree on a go live date.

5.2 Customer Support Service Levels

a) Contractor shall use commercially reasonable efforts to meet SLAs that relate to customer engagement, as listed below. SLAs are specific to (i) the issue type and (ii) the issue management channel within the Marketplace:

There are five issue types:

1. General Help and Product Selection;
2. Checkout;
3. Product Delivery;
4. Product Installation; and
5. Returns.

There are three issue management channels within the Marketplace:

1. E-mail;
2. Telephone Call; and
3. Live Chat.

Issues routed through calls will be applied to one of two SLAs - Answer response times reflect when a live agent picks up the phone whereas voicemail response times apply only after a voicemail is recorded with the appropriate information requested in the recording.

Calls will be routed to voicemail during Business Hours only if all agents are helping other customers.

Product Installation:



Customer issues related to Product Installation will be routed to the manufacturer and tickets will be closed upon providing the appropriate contact information. In other words, for customer issues related to product installation, Contractor's responsibility to provide customer support is limited to providing customer with the appropriate contact information for the applicable manufacturer; and Contractor will track and report call volumes associated with product installation.

Checkout:

Customer support metrics will be captured for 100% of checkout issues; however, SLAs will exclude issues that rank in the top 5% of resolution times.

Product Delivery:

Customer support metrics will be captured for 100% of product delivery issues; however, SLAs will exclude issues that rank in the top 10% of resolution times.

Returns:

Customer support metrics will be captured for 100% of returns; however, SLAs will exclude issues that rank in the top 15% of resolution times.

Score Card Reporting Example:

	Response Channel	Answer Response Time	Voice Mail Response Time	First Touch Resolution
General Inquiries	Email	9 Hours	N/A	90%
	Call	20 Seconds	18 Hours	95%
	Chat	1 Minute	N/A	80%
Checkout SLAs	Email	6 Hours	N/A	80%
	Call	20 Seconds	9 Hours	85%
	Chat	1 Minute	N/A	70%
Product Delivery SLAs	Email	3 Hours	N/A	60%
	Call	20 Seconds	3 Hours	65%
	Chat	1 Minute	N/A	50%
Product Installation SLAs	Email	9 Hours	N/A	90%
	Call	20 Seconds	9 Hours	95%
	Chat	1 Minute	N/A	80%
Returns SLAs	Email	6 Hours	N/A	60%
	Call	20 Seconds	6 Hours	65%
	Chat	1 Minute	N/A	50%

Contractor will track Customer Support SLAs each month and will submit a written report detailing Contractor's results to Company in the above Scorecard reporting format within 15 calendar days of the completion of the month. Contractor and Company may amend this timing should they mutually agree that a change is necessary;

Company's customer support scope (e.g., email marketing, internet marketing, portal marketing) will not impact Contractor's SLAs; and

Contractor's customer support SLA measurement will commence upon acknowledgment of issue receipt through automated response generated at the point of inquiry delivery.

(b) Contractor shall utilize a standard process for addressing complaints that relate to its interaction with customers. Should a complaint be logged directly with Contractor, Contractor shall carry out the following steps:
Contractor shall research the complaint case (e.g., review the recorded call, product order, system information) within one business day of complaint;
Contractor shall contact the customer with a resolution and/or apology, as appropriate, within two business days of complaint; and
Contractor shall record the incident, the reason for incident, and resolution of the incident using the Company's two-page resolution form or a substantially similar Contractor form with at minimum the fields contained in Company's form. Contractor shall notify Company about this category of complaints as well and keep Company copied on all communications between customer and Contractor. Notwithstanding anything to the contrary set forth in this SOW, the Company shall, at all times, have the right to formulate a resolution of a customer complaint and, upon written notice from Company to Contractor about such resolution, the Contractor shall implement the Company directed resolution.

(c) Should a complaint about customer service related to the Contractor's interaction with the customer be logged with Company, then Company and Contractor shall carry out the following steps:

- Company shall send an escalation email to Contractor Project Lead within one business day of customer complaint receipt;
- Contractor will send email receipt to Company within four Business Hours (i.e., the clock starts ticking at the time of receipt if that is within Business Hours; if it falls outside of Business Hours, the clock starts ticking at the start of Business Hours on the next business day);
- Contractor shall research the complaint case (review the recorded call, product order, system information, etc.) within one business day of receiving email from Company;
- Contractor shall contact the customer with a resolution and/or apology, as appropriate, within two business days of email receipt from Company; and
- Contractor shall record the incident, reason for the incidents, and resolution of the incident using the Company's two-page resolution form or a substantially similar Contractor form with at minimum the fields contained in the Company's form.
- Contractor shall keep Company apprised on all communications between customer and Contractor and provided copies of communication upon request. For methods of communication where copies of communication can not be provided, such as phone calls, a synopsis of the communication will be provided. Notwithstanding anything to the contrary set forth in this SOW, the Company shall, at all times, have the right to formulate a resolution of a

customer complaint and, upon written notice from Company to Contractor about such resolution, the Contractor shall implement the Company directed resolution. If the resolution incurs an out of pocket cost to Contractor, such cost shall be as mutually agreed by Contractor and Company.

(d) Contractor shall provide a monthly report on the number of customer complaints and the percentage of complaints resolved within the two business day target.

6. Period of Performance

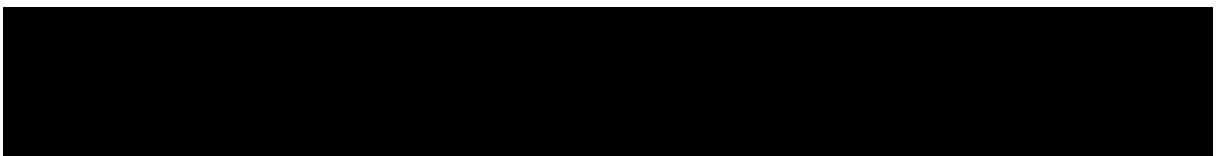
This Statement of Work will commence upon the Effective Date of the Agreement and continue through the expiration of the Access Term. At least ninety (90) days prior to the expiration of the Initial Term and any subsequent one year renewal term (each, a “**Renewal Term**”), the Company shall provide the Customer with a written option to extend the Statement of Work for the period of the Renewal Term, and, at least 30 days’ prior to the end of the Initial Term or the then-current Renewal Term, as the case may be, the Company shall notify the Contractor in writing as to whether it has opted to extend the Statement of Work for a subsequent Renewal Term. In the event that Company fails to notify the Contractor that it has opted to terminate the Agreement, this Statement of Work shall automatically extend for an additional Renewal Term.

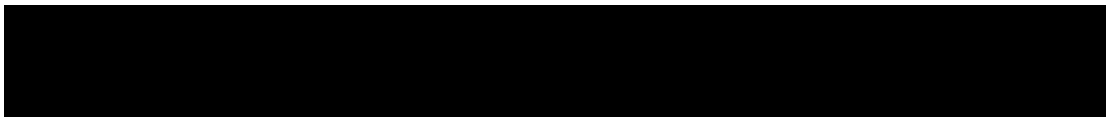
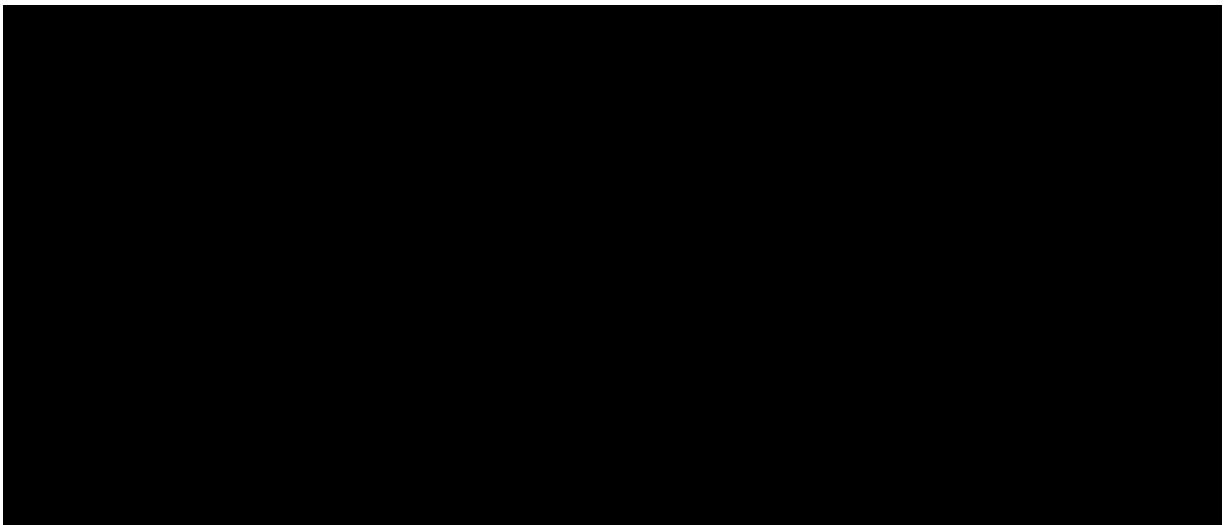
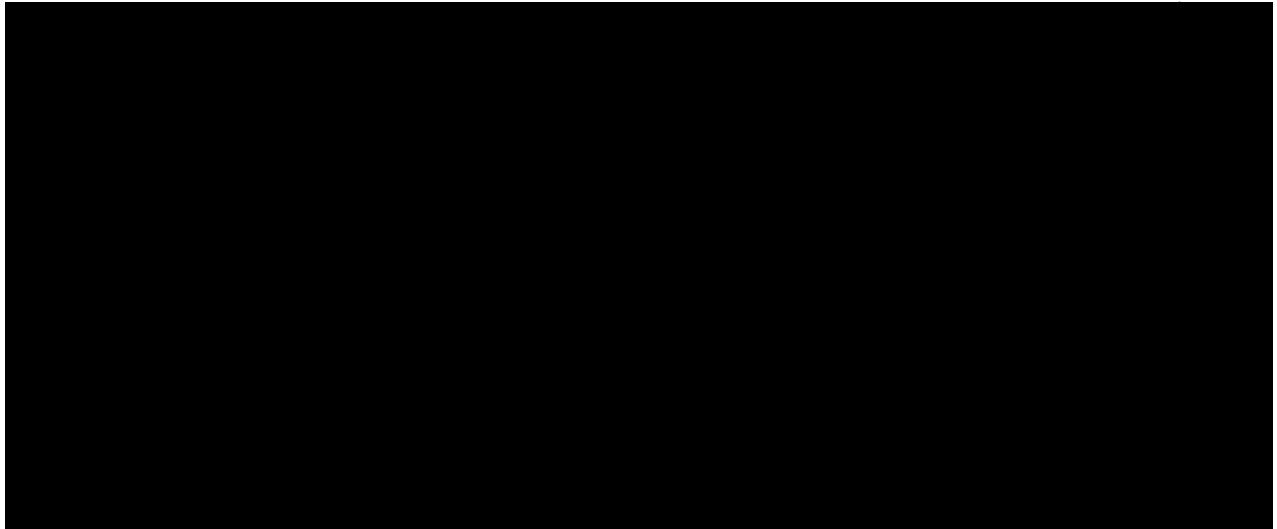
The cost for each Renewal Period will be as detailed in Section 7.

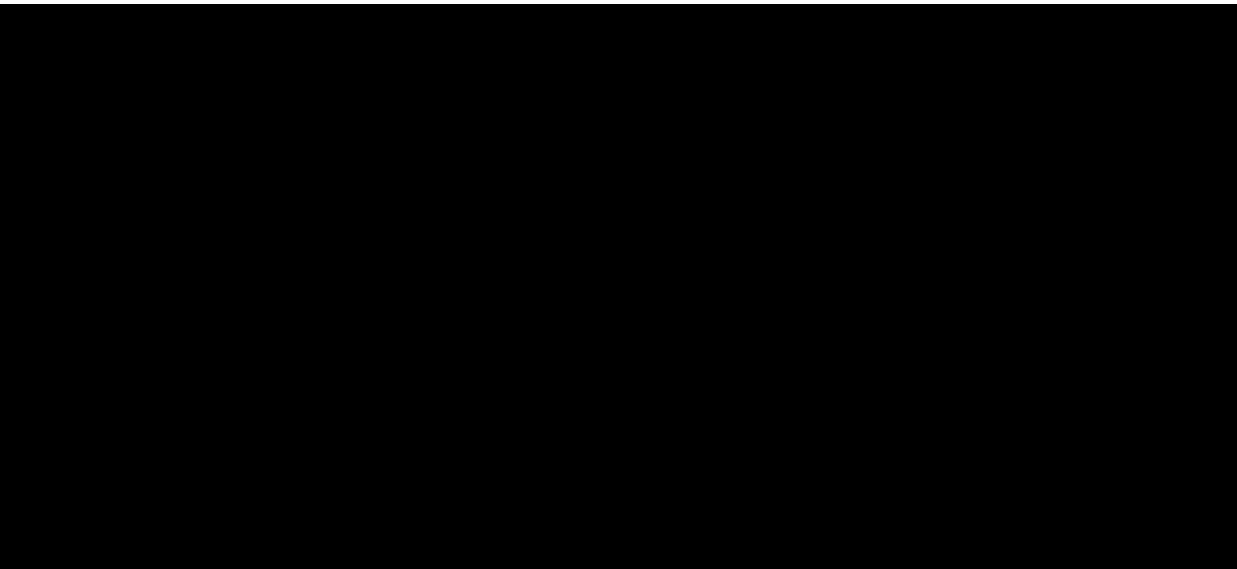
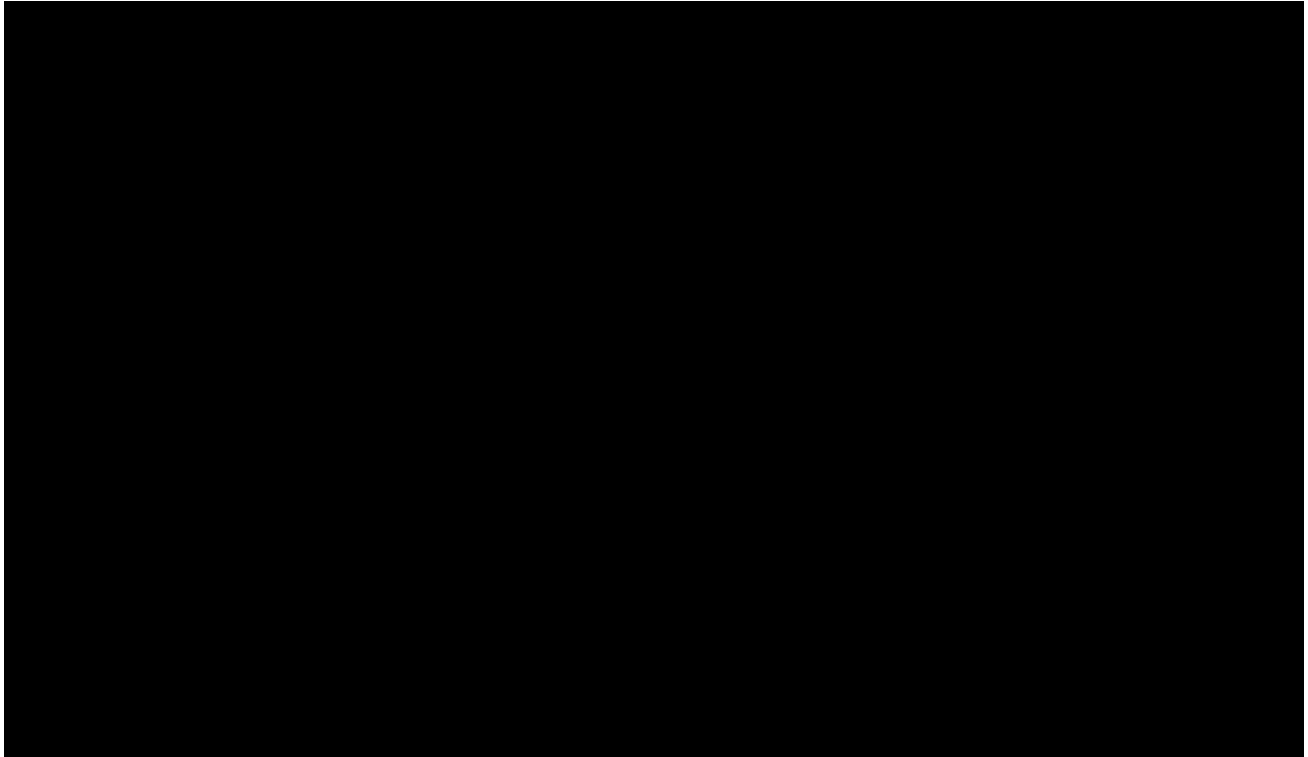
If the Access Term extends beyond the Term set forth in the Master Service Agreement, the Master Service Agreement shall remain in effect until the Access Term (and any Renewal Period) has ended.

Any and all changes and extensions to this SOW (other than Renewal Periods) need to be part of a documented Program Change Request duly executed between Company and Contractor, in accordance with the Agreement. At the start of the project, Contractor and Company will mutually agree on a format to document program changes.

7. Pricing







7.4 Sharing of Net Earnings

All Net Earnings (as defined in glossary), collected from the Marketplace will be shared between Company and Contractor as follows:

Sharing of Net Earnings

50% of Net Earnings collected by Contractor from Marketplace product sales and 75% of service sales are payable to the Company. The Company's portion of Net Earnings will be calculated and paid net-30 from the end of each quarter (March 30, June 30, September 30, and December 31) by Contractor to Company. Each payment of Company's portion of Net Earnings shall be accompanied by a statement that details the calculation of Net Earnings for the applicable quarter, and such statement shall be reasonably satisfactory to Company, in both form and substance. In addition to any other rights or remedies available to Company under the Agreement, at law or in equity, any late payments or underpayments of Net Earnings due to Company shall accrue interest at a rate equal to the lesser of 1.5% per month or the maximum rate of interest permitted by law from the date due until paid. In no event shall Company's portion of Net Earnings be reduced by any penalties, fines or similar assessments by any taxing authority due to failure to timely pay the correct amount of any taxes or duties contemplated by the definition of "Net Earnings" or any refunds, credits, price adjustments or billing errors contemplated by the definition of "Net Earnings" that are paid to a customer more than 6 months after the date customer remitted payment to Contractor for the applicable product or service, unless such price adjustment is the result of a Company-directed customer resolution.

No less than monthly, Contractor shall deposit and maintain the Company's portion of Net Earnings funds in a dedicated bank account for these Net Earnings funds and this bank account will be in the name of Contractor but explicitly held for the benefit of Company. The funds will be deposited in an interest bearing account and Company shall be entitled to interest earned on this account. Contractor shall provide Company with monthly statements on the balance of the account in the reporting described in section 3.2.5.

Should Company not conduct marketing activities, as agreed in Section 3.5 and subsequently documented, the Company's Margin Share shall decrease to 25% for product sales and 50% for service sales. This is to ensure that the Company participates in marketing and promotion of the marketplace and that all incentives are aligned.

8. Assumptions

As this is a Software-as-a-Service contract, notwithstanding anything to the contrary in this SOW, Contractor will not provide any software to Company hereunder, and Company does not require or receive a license to any software under this SOW.

Continuous Development. Contractor may continually develop, deliver and provide ongoing innovation to the technology used in the CEMP in the form of new features, functionality, capabilities and services. Accordingly, Contractor reserves the right to modify the CEMP from time to time to align product to enhanced version and product functionality. Releases that impact the end user experience or Company's

Integration with the CEMP will be reviewed and approved by the Company prior to being deployed to the production environment. Minor changes that do not impact the end user experience or Company's integration points to CEMP can be deployed by the Vendor at any time.

Some modifications will be provided to Company at no additional charge. In the event Contractor adds additional functionality to the CEMP, Contractor may condition the implementation of such modifications on Company's payment of additional fees, and Company will not be entitled to such new functionality unless Company pays such fees. In the event that implementation of such modifications is conditional upon Company's payment of additional fees, Company will have the option to avoid implementation of such modifications and pay no fees. Pricing for added modifications and functionality will be negotiated on a case-by-case basis between Contractor and Company.

In no event shall Contractor be responsible for any delays resulting from Company's failure to promptly provide the consents or approvals required hereunder. In the event of any such delay, Contractor's time for performance shall be extended one day for each day that Company fails to provide the required consent or approval.

Third-Party Service Providers. Subject to the requirements of the Agreement regarding subcontracting, Contractor shall be permitted to enter into an arrangement with one or more third party service providers to fulfill Contractor's obligations hereunder. Contractor will provide reasonable notification to Company of any changes in responsibilities to be handled by third parties in advance.

Contractor's pricing to implement the Program is based on a timely start and completion of tasks and subtasks. Contractor and Company project team will work cooperatively so that tasks/subtasks are completed successfully on time. The parties shall each be excused for any delay in performance hereunder arising from a cause beyond its control which it could not by the exercise of due diligence have avoided, including force majeure events (as described in the Agreement), actions taken or feedback issued by the Public Service Commission or its staff or the party's inability to perform caused solely by the other party's act or failure to act in breach of the Agreement. In the foregoing instances, the excused party's time of performance shall be extended by a period equal to the time lost by reason of the excusable delay. Such extension shall be a party's sole and exclusive remedy for such excused delay.

Project schedules, tasks, costs and deliverables are based on Company and Contractor's mutual understanding of the Program scope and objectives.

Company's technical staff will be familiar with existing systems, software tools, and components of technical architecture.

Company will commit adequate subject matter experts to the team to support Program timelines and provide the level of detail required to complete the Program, as mutually determined by Contractor and Company. Contractor will escalate any subject matter resource availability issues to Company for immediate resolution. Subject Matter experts from the following categories will participate in the project:



- Measurement & Verification
- Energy Efficiency and Rebate Program Management
- Information Technology
- Customer Service
- Marketing and Public Relations

Company will be available to provide inputs and review of the Program. In addition, Company stakeholders, as referenced above, will actively participate and make decisions, as required within five business days unless both parties mutually agree upon a different timeline.

Company management will actively participate in planning and execution activities as required (i.e., working sessions/meetings and deliverable reviews) and in defined steering committee meetings.

Company-provided customer information (for example, name, account number, address, and phone) will be maintained in the proper Company system of record system and any updates will be made on the Company system of record and not in the Contractor platform. For example, if a customer updates an email address in the CEMP, that email address will not be automatically updated in Company's Billing System.

Since the Company does not have AMI rolled out to the customer base, the CEMP will present monthly usage data to customer. Once AMI is deployed, the Company and Contractor will agree on how the AMI data will be used to further enhance the CEMP.

10. Confidentiality & Non-Disclosure Agreement

This SOW incorporates the confidentiality provisions of the Agreement.

11. Travel

All travel and meal expenses shall be the responsibility of the Contractor. Whenever possible, conference calls and video conferencing (when available and cost effective) should be used.

GLOSSARY OF TERMS

Certain capitalized terms used in this SOW shall have the meanings set forth or cross-referenced below.

- 1 **“Access Term”** means the period of time that Designated Customers will have access to the Platform.
- 2 **“Activation”** shall mean the process by which a Designated Customer logs in to the Platform for the first time
- 3 **“Brand”** means any one or more of the trademarks, service marks, trade names, domain names, logos, business and product names, slogans, and registrations and applications for registration thereof owned by the respective party as of the effective date and provided hereunder.
- 4 **“Business Days”** refers to any day of the week, Monday through Friday, that is not New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving Day, and Christmas Day as observed by the US Federal Government.
- 5 **“Business Hours”** refers to 9am to 5pm Eastern Time Monday through Friday. Business hours are not in effect during the New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving Day, and Christmas Day
- 6 **“Customers”** refers to any residential customer of the Company in its New York service territory who shall have access to the Marketplace component of the CEMP.
- 7 **“Content”** means any data, results, ideas, plans, sketches, texts, files, links, images, photos, video, sound, inventions (whether or not patentable), notes, works of authorship, articles, feedback, or other materials, including, without limitation, statistics, analyses and forecasts, and any similar information that is either owned or licensed by Contractor and that Contractor makes available through the Services.
- 8 **“Control Group”** shall mean a statistically relevant portion of Eligible Customers selected in coordination with the Company’s independent measurement and verification provider for the purposes of measurement and verification, as mutually agreed by Company and Contractor. Company and Contractor will mutually agree to a statistically relevant number of customers to be included outside of the Designated Customers to ensure the ability to measure comparative results between targeted and non-targeted customer groups.
- 9 **“Designated Customer”** means an eligible Company customer for whom messaging is generated and who shall have access to the CEMP and be a participant in the Treatment Group.
- 10 **“Documentation”** means text and/or graphical materials, whether in print or electronic form, that describe the features, functions and use of those Services accessed through the Platform, which materials are designed to facilitate use of the Platform.

- 11 “**Energy Insight Report**” means the emailed reports prepared by Contractor and delivered to the Designated Customers describing those customers’ energy consumption including normative and social comparison information, targeted tips and advice, program offerings, and competitive results.
- 12 “**Evaluation, Measurement & Verification**” or “**EM&V**” shall mean the method used to determine and validate energy savings delivered by the Program.
- 13 “**Force Majeure**” refers to an event outside of the Contractor and Company’s control that could not be evaded through the exercise of due care, that prevents the parties from fulfilling a segment of the contract.
- 14 “**Marketplace**” shall mean the specific Software product offering known as Simple Energy Marketplace in which Company customers can purchase energy-saving related products and services.
- 15 “**Net Earnings**” shall mean the actual amount of revenue received by Contractor from a customer’s purchase of products or services through Marketplace, less payments made from such received revenue by Contractor prior to the time when disbursement of Company’s share of Net Earnings is required under Section 7.4 of this SOW, for (a) any refunds due to a customer, credits due to a customer, customer service price adjustments and billing errors that resulted in monies owed to a customer, (b) sales taxes, value added taxes and other taxes collected by Contractor in connection with the sale of the applicable products and services and that have been paid by Contractor (or, if not yet payable, have been set aside and reserved by Contractor for payment to the appropriate governmental taxing authority, (c) any payments for the purchase of the product or service that have been paid by Contractor (or, if not yet payable, have been set aside and reserved by Contractor for payment to the appropriate supplier) to the supplying manufacturer, distributor, or other provider of the product or service, and (d) shipping expenses, import and export duties, and similar costs applied to the sale of products and services.
- 16 “**Platform**” or “**Software**” shall mean the computer software listed in the Agreement, which Contractor uses to provide the hosted Software Services. The Software includes all related Documentation and any modified, updated or enhanced versions of the Software.
- 17 “**Program**” shall mean the use of the Software to encourage energy savings and program participation for Company Customers.
- 18 “**Services**” shall mean the work performed by Contractor for Company as defined in this Statement of Work.
- 19 “**Treatment Group**” shall mean the number of customers initially targeted with Energy Insight Report communications on an opt-out basis.
- 20 “**Web Portal**” shall mean all components of Contractor’s hosted Software Service and including Energy Insights, Energy Challenges, and Rewards.

Exhibits

Exhibit A
Simple Energy Integration Guide

Exhibit B
Simple Energy Terms of Service