

Data Protection Plan

For

Westchester Power

Community Choice Aggregation Program

August 29, 2018

Westchester Power Data Protection Plan

I. Introduction	3
II. CCA Program Data	4
A. Aggregated Data	4
B. Customer-Specific Contact Data	5
C. Customer-Specific Detailed Data	5
III. CCA Program Data Confidentiality and Uses	5
A. Confidentiality and Permissible Uses	5
B. Restriction from Non-CCA Program Use	7
C. Data Return/Destruction	7
IV. CCA Program Data Security	8
A. Overview	8
B. Uniform Security Approach	8
C. Staff Roles	9
D. Key Data Systems	9
E. File Transfers	9
F. Annual Data Security Policy and Procedures Review	10
G. Utility Audit	10
Exhibit A – Data Security Agreement	11

I. Introduction

The Westchester Power Community Choice Aggregation (“CCA”) program (the “CCA Program”), administered by Sustainable Westchester, was authorized with the issuance by the New York Public Service Commission (“PSC”) of the *Order Granting Petition in Part* (Case 14-M-0564, Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester) (“CCA Pilot Order”) on February 26, 2015. The subsequent *Order Authorizing Framework for Community Choice Aggregation Opt-Out Program* (Case 14-M-0224, Proceeding on Motion Confirm program customer participation number of the Commission to Enable Community Choice Aggregation) (“CCA Framework Order”) enabled CCAs state-wide, and effectively superseded the CCA Pilot Order as the primary source of authority for CCAs. Sustainable Westchester administers the CCA Program on behalf of participating municipal governments in Westchester County that have adopted appropriate authorizing legislation (the “Participating Municipalities”).

As administrator of the CCA Program (“CCA Administrator”), Sustainable Westchester is responsible for the secure and lawful custody, exchange, and treatment of both anonymized and customer-specific data (“CCA Program Data”) in connection with the CCA Program.

The CCA Framework Order requires that the CCA Administrator file a Data Protection Plan with the PSC that “must describe how the CCA Administrator will ensure that each entity that has access to personally identifiable information as part of the CCA program, including the municipality, contractors, and selected suppliers, provides the same level of consumer protections as currently provided by utilities and ESCOs. This includes data security protocols and restrictions to prevent the sale of that data or its use for inappropriate purposes, such as advertising.” CCA Framework Order, 24.

A Data Protection Plan must also be consistent with the Data Security Agreement filed with the PSC by the utilities subject to the CCA Framework Order, and the CCA Administrator must execute the Data Security Agreement prior to requesting any data from the applicable utility. *Id.* A copy of the Data Security Agreement is attached hereto as Exhibit A.

This Data Protection Plan sets out the CCA Administrator's approach to achieving the CCA Framework Order's requirements and ensuring compliance with other applicable laws and standards relating to the protection of personally identifiable information.

II. CCA Program Data

The CCA Framework Order directs the appropriate local distribution utility (the "Utility") to provide to the CCA Administrator information required to solicit for energy supply on behalf of Participating Municipalities and to administer the CCA Program, conditional on CCA Administrator's compliance with the procedures and requirements of the CCA Framework Order.

Pursuant to the above, the Utility will provide to the CCA Administrator the following three general categories of CCA Program Data regarding customers in Participating Municipalities that are eligible to participate in an opt-out CCA Program under the terms of the CCA Framework Order and the CCA Program ("Eligible Customers"). As low-income assistance program participants are not eligible for Sustainable Westchester's CCA Program, data concerning such customers will not be requested.

A. Aggregated Data

Aggregated Data includes aggregated and anonymized data needed to adequately service CCA Program customers and to solicit potential suppliers for the CCA Program ("Prospective CCA Suppliers") and to make a final selection of a supplier ("CCA Supplier").

This Aggregated Data shall include aggregated and anonymized data on the number of Eligible Customers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class. The Utility shall not provide data for any service class that contains so few customers, or in which one customer makes up such a large portion of the load, that the aggregated information could provide significant information about an individual customer's usage. The Utility shall follow its current internal policies in addressing the anonymity issue for ensuring that Aggregated Data is sufficiently anonymous.

Upon PSC approval of the CCA Program's Implementation Plan, Data Protection Plan, and Certifications of Local Approval, the CCA Administrator will request Aggregated

Data on behalf of the Participating Municipalities. The Utility shall then have twenty days to provide the Aggregated Data. When received, the Aggregated Data will be shared, consistent with the provisions of this Data Protection Plan, with Participating Municipalities and Prospective CCA Suppliers in the process for solicitation of a CCA Supplier for the CCA Program.

B. Customer-Specific Contact Data

Customer-Specific Contact Data includes account holder name, point of delivery identification or other Utility-assigned identification code/number, service address, primary language, if available, and alternate billing name and/or address.

After a contract has been executed with the selected CCA Supplier, the CCA Administrator will request Customer-Specific Contact Data from the Utility for Eligible Customers. This information will be used by the CCA Administrator, consistent with the provisions of this Data Protection Plan, to notify all Eligible Customers in writing by mail about the CCA Program and their individual options to participate or opt out, as well as pricing and sourcing information for available supply products.

C. Customer-Specific Detailed Data

Customer-Specific Detailed Data includes the name, address, utility account number (or Point of Delivery Identifier), and account-level power consumption information for all Eligible Customers that did not opt out within the 30-day opt-out period provided for in the CCA Framework Order and in CCA Administrator's Implementation Plan. The CCA Administrator will not collect any customer financial information in the processing and/or storage of Customer-Specific Detailed Data. The Customer-Specific Detailed Data will be used by the CCA Administrator to implement and administer the CCA Program, consistent with the provisions of this Data Protection Plan.

III. CCA Program Data Confidentiality and Uses

A. Confidentiality and Permissible Uses

Consistent with the CCA Framework Order and the Data Security Agreement, the CCA Administrator may share CCA Program Data with the Participating Municipalities and the CCA Supplier ("CCA Program Stakeholders") as needed to implement and administer the CCA Program. Prior to any such sharing, the CCA Administrator will advise the CCA Program Stakeholders of the sensitive and confidential nature of such

data and CCA Program Stakeholders must agree in writing to comply with applicable provisions of this Data Protection Plan and the Data Security Agreement.

Consistent with the CCA Framework Order and the Data Security Agreement, the CCA Program Stakeholders will be required to hold the CCA Program Data in confidence and will not be permitted to disclose it to any other person or entity, except when required to implement the CCA Program or otherwise as required by law.

CCA Program Stakeholders will agree to notify the Utility in writing as soon as practicable upon receipt of any request or notice that CCA Program Stakeholders disclose CCA Program Data, pursuant to applicable law or regulation or legal process. The Utility and CCA Program Stakeholders may collaborate in taking lawfully-permissible steps to avoid and/or minimize the extent of CCA Program Data that must be disclosed.

After consulting with legal counsel, CCA Program Stakeholders will only disclose Program Data which they are legally required to disclose in order to comply with applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by the Utility). CCA Program Stakeholders and their representatives will use all reasonable efforts to ensure that any Customer-Specific Contact Data and Customer-Specific Detailed Data that must be disclosed will be accorded confidential treatment.

CCA Administrator will not create or maintain data derivative of CCA Program Data except for the purpose of performing its administrative obligations. Data collected by Administrator from customers regarding the Program or related services through a CCA Program website, through a web-based customer management portal, through customer-initiated communications, or through other interactions based on customers' voluntary request for information or CCA Program updates from CCA Program Stakeholders is not considered CCA Program Data or a derivative of CCA Program Data for the purpose of this Data Protection Plan.

CCA Administrator will not take ownership interest in CCA Program Data; and all CCA Program Data will remain the intellectual property of the Utility. Except as provided herein, this Data Protection Plan shall not constitute the granting of any rights, by license or otherwise, under any patents, copyrights, trade secrets or other intellectual property rights of the Utility.

The CCA Program Stakeholders' use of the CCA Program Data to implement the CCA Program shall include:

Customer service: CCA Administrator and the CCA Supplier will provide customer service support, which includes explaining the CCA Program, helping customers to understand their bill, advising when CCA service will start or end, troubleshooting and facilitating opt-ins with the CCA Supplier. To perform these duties, staff access individual customer account data through a secure application interface with individual logins. CCA Administrator and CCA Supplier staff will be familiarized with provisions of the UBP that are applicable to this customer service activity, including initial identification of the speaker and making sure that the customer knows their right to opt out with no fee.

Program Reporting: CCA Administrator is responsible for reporting CCA Program results to Participating Municipalities, the PSC, and the public. Such reports will include periodic updates of CCA Program participation rates, customer counts, opt in/out/ups and savings, disaggregated by municipality and customer type. Such reports will not include any customer-specific data.

B. Restriction from Non-CCA Program Use

The CCA Program Stakeholders will be required to agree not to use or process CCA Program Data for any reason other than in connection with the CCA Program, or for non-CCA Program related marketing purposes. The CCA Program Stakeholders will limit reproduction of CCA Program Data and will take care to avoid publication or dissemination.

C. Data Return/Destruction

CCA Program Stakeholders will agree to, within ten (10) days of CCA Program termination, or within ten (10) days of receiving a written request from the Utility, cease to process CCA Program Data and will return Customer-Specific Contact Data and Customer-Specific Detailed Data to the Utility, destroy copies, extracts, compilations, studies, or other documents based upon, derived from or containing CCA Program Data from their systems and records.

Notwithstanding the foregoing, CCA Program Stakeholders and their representatives will not be required to erase CCA Program Data contained in an archived backup maintained in accordance with their respective security or disaster recovery procedures. CCA Program Stakeholders will not be required to provide access to or recovery of CCA Program Data from backup and will keep data confidential in accordance with this Data Protection Plan.

IV. CCA Program Data Security

A. Overview

The CCA Administrator will ensure that CCA Program Data is treated with the same level of protection as currently provided by utilities and ESCOs. Pursuant to the Data Security Agreement, CCA Program Stakeholders will comply with all applicable privacy and security laws, cooperate with the Utility in the implementation of this Data Protection Plan and comply with the Data Security Agreement. CCA Program Stakeholders will be responsible for utilizing industry standard controls and procedures to safeguard against inappropriate use, unauthorized or accidental access, destruction, loss, alteration, or disclosure of CCA Program Data, as well as to protect against anticipated threats or hazards. CCA Program Stakeholders shall safely secure or encrypt all CCA Program Data during storage or transmission.

Consistent with the Data Security Agreement, CCA Program Stakeholders will apply appropriate and reasonable processes and systems to protect the security of CCA Program Data and prevent any compromise of the security of CCA Program Data (a "Data Security Incident"). CCA Administrator shall notify the Utility of any Data Security Incident involving CCA Program Data in writing within twenty-four (24) hours of detection. CCA Administrator will investigate the Data Security Incident and take necessary steps to eliminate or contain exposure of the CCA Program Data.

CCA Administrator will cooperate, at the request of the Utility or law enforcement agency, in investigation, remediation, and/or mitigation of incident, including any required notification to those impacted or potentially impacted. Unless required by law, CCA Administrator will not notify any individual or any third party other than law enforcement of any potential Data Security Incident involving CCA Program Data without the Utility's permission. Within 30 days of identifying or being informed of a Data Security Incident, CCA Administrator will develop and execute a plan designed to prevent future incidents.

B. Uniform Security Approach

CCA Administrator will apply the same policies and procedures to all personally identifiable information ("PII"), regardless of source and regardless of whether it constitutes CCA Program Data as defined above. Managing all PII with a single framework, rather than asking staff to shift gears with context, is more conducive to consistent adherence to good practice. Accordingly, PII obtained by CCA Administrator

directly through its own interactions with customers or through other programs than the CCA Program will be treated with the same policies and procedures as CCA Program Data obtained from the Utility.

C. Staff Roles

CCA Administrator’s Information Security Team is comprised of a Program Director with overall responsibility for data security and a staff security officer who is responsible for the implementation of policy, training/coaching of staff and assessing compliance.

D. Key Data Systems

CCA Administrator’s data systems are managed by professional service providers. This reduces the need for internal expertise and complex networking management in CCA Administrator’s physical office and provides a reliable medium for security management. Below are the three main systems and how they are managed:

System	Function	Data Security Arrangement
Office computing systems	IT service company - managing security and maintenance remotely.	Provider is contractually prohibited from using CCA Administrator information or providing access to 3rd parties.
Customer service and program reporting system	Data service company - receives data from ESCO as secure FTP transfer, loads to data storage, presents through secure interface for customer service.	Provider has executed security agreement which commits them to compliance with the requirements of the Data Security Agreement.
Customer Relationship Management (“CRM”)	Hosted, secure application - recording customer services cases, extended program management, stakeholders, partners, suppliers, and other contacts, managing mailings and events. Does not include utility data.	Service contract forbids use of information for provider or 3rd party benefit or disclosure to any 3rd party.

E. File Transfers

All transfers of files among or between CCA Administrator and/or CCA Program Stakeholders for the purposes of implementing or administering the CCA Program that contain CCA Program Data will be performed using secure methods, either secure FTP, secure download portal, or via file encryption.

F. Annual Data Security Policy and Procedures Review

CCA Administrator will conduct, at minimum, an annual review of its data security policies and procedures to ensure their consistency with the Data Security Agreement, the CCA Framework Order, and all applicable law. The CCA Administrator has recently contracted with a specialist consultant, NYSTEC, for this purpose. The engagement includes a comprehensive review of our policies and systems, including risk assessment, procedure gap analysis and review of systems for compliance with policy.

G. Utility Audit

Upon reasonable notice to CCA Administrator, CCA Administrator shall, and shall require CCA Program Stakeholders to, permit the Utility, its auditors, designated audit representatives, and regulators to audit and inspect, at the Utility's sole expense (except as otherwise provided in the Data Security Agreement), and no more often than once per year (unless otherwise required by the Utility's regulators): (a) the facilities of the CCA Administrator and CCA Program Stakeholders where CCA Program Data is processed by, or on behalf of, CCA Administrator; (b) any computerized or paper systems used to process CCA Program Data; and (c) CCA Administrator's security practices and procedures, facilities, resources, plans, procedures and books and records relating to the privacy and security of CCA Program Data. Such audit and inspection rights shall be, at a minimum, for the purpose of verifying CCA Administrator's compliance with the Data Security Agreement, including all applicable data protection laws. Notwithstanding anything herein, in the event of a Data Security Incident, CCA Administrator shall and shall cause the CCA Program Stakeholders to permit an audit hereunder more frequently than once per year, as may be requested by the Utility. CCA Administrator shall take immediate steps to correct any deficiencies identified by the Utility as soon as practicable.

Exhibit A – Data Security Agreement

**DATA SECURITY
AGREEMENT**

THIS DATA SECURITY AGREEMENT, including Exhibits attached hereto and made a part hereof (this “Agreement”) which are incorporated by reference herein, is made as of this _____ day of _____, 20____ by and between _____, a New York corporation with offices at _____ (“Utility”) and _____ a _____ with offices at _____ (“Aggregator”); and together with Utility, the “Parties” and each, individually, a “Party.”

RECITALS

WHEREAS, Aggregator desires to have access to certain utility customer information in order to administer a community choice aggregation program (the “CCA Program”) for the benefit of its members in accordance with the New York State Public Service Commission’s (“PSC” or the “Commission”) *Order Authorizing Framework for Community Choice Aggregation Opt-Out Program* (the “Order”) in Case 14- M-0224 (effective April 21, 2016); and

WHEREAS, (i) the Order directs Utility to provide to Aggregator certain aggregated and anonymized information of Utility’s residential and small commercial customers that do not currently take service from an energy services company (“ESCO”) and are located within Aggregator’s service area, including, without limitation, aggregated usage and capacity tag information as well as certain Customer-Specific Information applicable to such customers, including, without limitation, all customer specific information such as, but not limited to, name, address and utility account number (or Point of Delivery Identifier) for the sole and limited purpose of facilitating the CCA Program and (ii) Utility may assess a reasonable fee in connection with its provision of such information as set forth in the Utility’s tariff or as otherwise approved by the Commission; and

WHEREAS, Utility and Aggregator also desire to enter into this Agreement to establish, among other things, the obligations of the Aggregator with respect to such Confidential Utility Information and the price at which the Aggregator may acquire access to the Confidential Utility Information; and

Whereas, Utility and Aggregator also desire to enter into this Agreement to establish, among other things, the full scope of Aggregator’s obligations of confidentiality with respect to the Confidential Utility Information in a manner consistent with the rules and regulations of the Commission; and

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

- a. “Customer-Specific Information” shall have the meaning attributed to it in the Recitals.

- b. “CCA” shall have the meaning attributed to it in the Recitals.
- c. “Confidential Utility Information” means, collectively, information provided by Utility to Aggregator including, without limitation, all aggregated and anonymized information, Customer-Specific Information, Personal Data and Utility Data.
- d. “Data Protection Requirements” means, collectively, (i) all national, state and local laws, regulations or other government standards relating to the protection of information that identifies or can be used to identify an individual that apply with respect to Aggregator or its Representative’s Processing of Confidential Utility Information; (ii) the Utility’s internal requirements and procedures relating to the protection of information that identifies or can be used to identify an individual that apply with respect to Aggregator or its Representative’s Processing of Confidential Utility Information; and (iii) the Order and Commission rules, regulations and guidelines relating to confidential data.
- e. “Data Security Incident” means a situation where Aggregator reasonably believes that there has been: (A) the loss or misuse (by any means) of Confidential Utility Information; (B) the inadvertent, unauthorized and/or unlawful Processing, corruption, modification, transfer, sale or rental of Confidential Utility Information; (C) any other act or omission that compromises the security, confidentiality, or integrity of Confidential Utility Information or (D) any breach of any Data Protection Requirements in relation to the Processing of Confidential Utility Information by Aggregator or any current or former Representatives.
- f. “Destroy” means (a) shredding; (b) permanently erasing and deleting; (c) degaussing; or (d) otherwise modifying Confidential Utility Information in paper, electronic or other means so as to make it unreadable, unreconstructible, and indecipherable. All Confidential Utility Information containing Personal Data and other information, as may be specifically requested by Utility, must be disposed of in a manner described in (a) through (c).
- g. “ESCO” shall have the meaning set forth in the Recitals.
- h. “Personal Data” means any information that can be used to identify, locate, or contact an individual, including an employee, customer, or potential customer of Utility, including, without limitation: (A) first and last name; (B) home or other physical address; (C) telephone number; (D) email address or online identifier associated with an individual; (E) “Sensitive Data” as defined below; (F) ZIP codes; (G) employment, financial or health information; or (H) any other information relating to an individual, including cookie information and usage and traffic data or profiles, that is combined with any of the foregoing.
- i. “PSC” or “Commission” shall have the meaning attributed to it in the Recitals.
- j. “Processing” (including its cognate, “process”) means any operation, action, error, omission, negligent act, or set of operations, actions, errors, omissions, or negligent acts that is performed using or upon Personal Data or Utility Data, whether it be by

physical, automatic or electronic means, including, without limitation, collection, recording, organization, storage, access, adaptation, alteration, retrieval, use, transfer, hosting, maintenance, handling, retrieval, consultation, use, disclosure, dissemination, exfiltration, taking, removing, copying, processing, making available, alignment, combination, blocking, deletion, erasure, or destruction.

- k. "Sensitive Data" is that subset of Personal Data, including Social Security number, passport number, driver's license number, Utility customer account number, or similar identifier.
- l. "Third Party Representatives" means those Representatives of Aggregator that are contractors or subcontractors, including without limitation, ESCOs.
- m. "Utility Data" means data held by Utility, whether produced in the normal course of business or at the request of Aggregator or a third party and whether or not it is provided to Aggregator.

2. Scope of the Agreement. This Agreement shall govern and apply to all Confidential Utility Information disclosed to Aggregator or to which Aggregator is given access by Utility in support of the CCA Program, including all archival or back-up copies of the Confidential Utility Information held or maintained by Aggregator (or its Representatives). All Confidential Utility Information, in whatever form, media or medium provided or held, and all extracts, compilations, studies or other documents based on, derived from or containing Confidential Utility Information, and all correspondence between or among the Parties or their respective Representatives pertaining to the same, shall constitute confidential information hereunder. No financial information is to be provided pursuant to this Agreement. If any information outside the scope of the Order is sent to Aggregator, the Aggregator will immediately notify the Utility and destroy any such information in the appropriate manner.

3. Provision of Information. Utility agrees to provide to Aggregator or its Representatives, certain Confidential Utility Information, as requested, provided that (i) Aggregator and its Representatives are in compliance with the term of this Agreement; (ii) Aggregator has provided and has caused its Representatives to provide, to the satisfaction of Utility any Vendor Product/Service Security Assessments, attached hereto as Exhibit A or such other risk assessment forms as Utility may require from time to time ("The Assessment") and Aggregator will comply with the utility _____ program; (iii) Aggregator (and its Representatives, as applicable) shall have and maintain throughout the term systems and processes in place and as detailed in the assessment acceptable to Utility to protect Confidential Utility Information; (iv) Aggregator complies and shall cause its third party representatives to comply with Utility's data protection programs; and (v) Utility receives written confirmation from New York State Department of Public Service Staff that certain prerequisites identified in the Order have been satisfied. Provided the foregoing prerequisites have been satisfied, Utility shall within twenty (20) days of receipt of Aggregator's written request for such Confidential Utility Information, provide such Confidential Utility Information as required by the Order. Specifically, Utility shall provide, as requested by the Aggregator, aggregated data, including the number of

customers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months, by service class to the extent possible, and the aggregated energy (kWh) for electricity or volumetric consumption for gas by month for the past 12 months by service class and customer-specific data, including the customer of record's name, mailing address, account number, and primary language and any customer-specific alternate billing name and address, to the extent available. Unless the Parties otherwise agree, the provision of Confidential Utility Information by Utility shall be effectuated electronically, as a file transfer made via encrypted FTP or other secure process acceptable to Utility.

4. Confidentiality.

Aggregator shall: (a) hold all Confidential Utility Information in strict confidence; (b) except as otherwise expressly permitted by Section 4 hereof, not disclose Confidential Utility Information to any other person or entity (including but not limited to ESCOs, subcontractors, affiliates or members of Aggregator); (c) not Process Confidential Utility Information outside of the United States; (d) not Process Confidential Utility Information other than in connection with the CCA Program or otherwise as authorized by this Agreement; (e) not Process Confidential Utility Information for any marketing purposes other than in connection with the CCA Program; (f) limit reproduction of Confidential Utility Information to the extent required for the CCA Program; (g) store Confidential Utility Information in a secure fashion at a secure location in the United States that is not accessible to any person or entity not authorized to receive the Confidential Utility Information under the provisions hereof; (h) otherwise use at least the same degree of care to avoid publication or dissemination of the Confidential Utility Information as Aggregator employs (or would employ) with respect to its own confidential information that it does not (or would not) desire to have published or disseminated, but in no event less than reasonable care; and (i) to the extent required by the utility, each person with a need to know the Confidential Information shall sign the Representative Agreement set forth as Exhibit B to this Agreement. At all times, Utility shall have the right to request further assurances that the foregoing restrictions and protections concerning Confidential Utility Information are being observed and Aggregator shall be obligated to promptly provide Utility with the requested assurances.

5. Exceptions Allowing Aggregator To Disclose Confidential Utility Information.

(a) **Disclosure to Representatives.** Notwithstanding the provisions of Section 4 hereof, Aggregator may disclose Confidential Utility Information to those of its municipal members and contractors, including without limitation, ESCOs as well as its and their respective officers, directors and employees (collectively, "Representatives") who have a legitimate need to know or use such Confidential Utility Information for the sole and limited purposes of administering and/or conducting the CCA Program, provided that each such Representative first (i) is advised by Aggregator of the sensitive and confidential nature of such Confidential Utility Information; (ii) agrees to comply with the provisions of this Agreement, provided that with respect to Third Party Representatives and this subsection (ii), such Third Party Representatives must agree in writing to be bound by and observe the provisions of this Agreement as though such Third Party Representatives were Aggregator; and (iii) signs the Representative Agreement. All such written agreements with Third Party Representatives shall include direct liability for the Third Party Representatives towards Utility for breach thereof by the Third Party

Representatives, and a copy of such agreement and each Representative Agreement and Aggregator agreement shall be made available to Utility upon request. Notwithstanding the foregoing, Aggregator shall be liable to Utility for any act or omission of a Representative, including without limitation, Third Party Representatives that would constitute a breach of this Agreement if committed by Aggregator.

(b) **Disclosure if Legally Compelled.** Notwithstanding anything herein, in the event that Aggregator or any of its Representatives receives notice that it has, will or may become compelled, pursuant to applicable law or regulation or legal process to disclose any Confidential Information (whether by receipt of oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands, other similar processes or otherwise), Aggregator shall, except to the extent prohibited by law, immediately notify Utility, orally and in writing, of the pending or threatened compulsion. To the extent lawfully allowable, Utility shall have the right to consult with Aggregator and the Parties will cooperate, in advance of any disclosure, to undertake any lawfully permissible steps to reduce and/or minimize the extent of Confidential Utility Information that must be disclosed. Utility shall also have the right to seek an appropriate protective order or other remedy reducing and/or minimizing the extent of Confidential Utility Information that must be disclosed. In any event, Aggregator and its Representatives shall disclose only such Confidential Utility Information which they are advised by legal counsel that they are legally required to disclose in order to comply with such applicable law or regulation or legal process (as such may be affected by any protective order or other remedy obtained by Utility) and Aggregator and its Representatives shall use all reasonable efforts to ensure that all Confidential Utility Information that is so disclosed will be accorded confidential treatment.

6. Return/Destruction of Information. Within ten (10) days after Utility's written demand, Aggregator shall (and shall cause its Representatives to) cease to Process Confidential Utility Information and shall at the Utility's option: (a) return such Confidential Utility Information to Utility in such manner, format and timeframe as reasonably requested by Utility or, if not so directed by Utility, (b) Destroy all copies of all Confidential Utility Information (including any and all extracts, compilations, studies or other documents based upon, derived from or containing Confidential Utility Information) that has come into Aggregator's or its Representatives' possession, including destroying Confidential Utility Information from all systems, records, archives and backups of Aggregator and its Representatives, and all subsequent use and Processing of the Confidential Utility Information by Aggregator and its Representatives shall cease. Notwithstanding the foregoing, Aggregator and its Representatives shall not be obligated to erase Confidential Utility Information contained in an archived computer system backup maintained in accordance with their respective security or disaster recovery procedures, provided that Aggregator and its Representatives shall (i) not have experienced a Data Security Incident, (ii) not permit access to or recovery of Confidential Utility Information from such computer backup system and (iii) keep all such Confidential Utility Information confidential in accordance with this Agreement. Aggregator shall, upon request, certify to Utility that the destruction by Aggregator and its Representatives required by this Section has occurred by (a) having a duly authorized officer of Aggregator complete, execute and deliver to Utility a certification and (b) obtaining substantially similar certifications from its Representatives and maintaining them on file. Compliance with this Section 5 shall not relieve Aggregator from compliance with the other

provisions of this Agreement. The obligations under this Section shall survive any expiration of termination of this Agreement.

7. Audit. Upon reasonable notice to Aggregator, Aggregator shall, and shall require its third-party representatives to, permit Utility, its auditors, designated audit representatives, and regulators to audit and inspect, at Utility's sole expense (except as otherwise provided in this Agreement), and no more often than once per year (unless otherwise required by Utility's regulators): (a) the facilities of Aggregator and Aggregator's Third Party Representatives where Confidential Utility Information containing Personal Data is Processed by, or on behalf of, Aggregator; (b) any computerized or paper systems used to Process Utility Confidential Information containing Personal Data; and (c) Aggregator's security practices and procedures, facilities, resources, plans, procedures and books and records relating to the privacy and security of Confidential Utility Information containing Personal Data. Such audit and inspection rights shall be, at a minimum, for the purpose of verifying Aggregator's compliance with this Agreement, including all applicable Data Protection Requirements. Notwithstanding anything herein, in the event of a Data Security Incident Aggregator shall and shall cause its Third Party Representatives to permit an audit hereunder more frequently than once per year, as may be requested by Utility. Aggregator shall immediately correct any deficiencies identified by Utility.

8. Investigation. Upon notice to Aggregator, Aggregator shall assist and support Utility in the event of an investigation by any regulator or similar authority, if and to the extent that such investigation relates to Confidential Utility Information containing Personal Data Processed by Aggregator on behalf of Utility. Such assistance shall be at Utility's sole expense, except where such investigation was required due to the acts or omissions of Aggregator or its Representatives, in which case such assistance shall be at Aggregator's sole expense.

9. Data Security Incidents. Aggregator is responsible for any and all Data Security Incidents involving Confidential Utility Information containing Personal Data that is Processed by, or on behalf of, Aggregator. Aggregator shall notify Utility in writing immediately (and in any event within twenty-four (24) hours) whenever Aggregator reasonably believes that there has been a Data Security Incident. After providing such notice, Aggregator will investigate the Data Security Incident, and immediately take all necessary steps to eliminate or contain any exposure of Confidential Utility Information containing Personal Data and keep Utility advised of the status of such Data Security Incident and all matters related thereto. Aggregator further agrees to provide, at Aggregator's sole cost, reasonable assistance and cooperation requested by Utility and/or Utility's designated representatives, in the furtherance of any correction, remediation, or investigation of any such Data Security Incident and/or the mitigation of any damage, including any notification required by law or that Utility may determine appropriate to send to individuals impacted or potentially impacted by the Data Security Incident, and/or the provision of any credit reporting service required by law or that Utility deems appropriate to provide to such individuals. Unless required by law, Aggregator shall not notify any individual or any third party other than law enforcement of any potential Data Security Incident involving Confidential Utility Information containing Personal Data without first consulting with, and obtaining the permission of, Utility. In addition, within 30 days of identifying or being informed of a Data Security Incident, Aggregator shall develop and execute a plan, subject to Utility's approval, that reduces the likelihood of a recurrence of such Data Security Incident. Aggregator agrees that

Utility may at its discretion and without penalty immediately suspend performance hereunder and/or terminate the Agreement if a Data Security Incident occurs.

10. No Intellectual Property Rights Granted. Nothing in this Agreement shall be construed as granting or conferring any rights, by license or otherwise, expressly, implicitly or otherwise, under any patents, copyrights, trade secrets or other intellectual property rights of Utility, and Aggregator shall acquire no ownership interest in the Confidential Utility Information (which, as between Aggregator and Utility, shall be and remain the proprietary and confidential information of Utility). No rights or obligations other than those expressly stated herein shall be implied from this Agreement.

11. Additional Obligations.

- a. Aggregator shall not create or maintain data which are derivative of Confidential Utility Information except for the purpose of performing its obligations under this Agreement or as authorized by Utility. Data collected by Aggregator from customers through its website or other interactions based on those customers' interest in receiving information from or otherwise engaging with Aggregator or its partners shall not be considered Confidential Utility Information or a derivative of Confidential Utility Information for the purpose of this Agreement. Aggregator shall not collect or retain customer account numbers through such interactions associated with its CCA Program.
- b. Aggregator shall comply with all applicable privacy and security laws to which it is subject, including without limitation all applicable Data Protection Requirements and not, by act or omission, place Utility in violation of any privacy or security law known by Aggregator to be applicable to Utility.
- c. Aggregator shall have in place appropriate and reasonable processes and systems, including an Information Security Program to protect the security of Confidential Utility Information containing Personal Data and prevent a Data Security Incident, including, without limitation, a breach resulting from or arising out of Aggregator's internal use, Processing or other transmission of Confidential Utility Information containing Personal Data, whether between or among Aggregator's Representatives, subsidiaries and affiliates or any other person or entity acting on behalf of Aggregator, including without limitation Third Party Representatives.
- d. Aggregator shall safely secure or encrypt all Confidential Utility Information during storage or transmission.
- e. Aggregator shall establish policies and procedures to provide reasonable and prompt assistance to Utility in responding to any and all requests, complaints, or other communications received from any individual who is or may be the subject of a Data Security Incident involving Confidential Utility Information Processed by Aggregator to the extent such request, complaint or other communication relates to Aggregator's Processing of such individual's Personal Data.

- f. Aggregator shall establish policies and procedures to provide all reasonable and prompt assistance to Utility in responding to any and all requests, complaints, or other communications received from any individual, government, government agency, regulatory authority, or other entity that is or may have an interest in the Personal Data, data theft or other unauthorized release of Personal Data , disclosure of Personal Data, or misuse of Personal Data to the extent such request, complaint or other communication relates to Aggregator's Processing of such Personal Data.

12. Payment. In consideration of Utility's agreement to provide Confidential Utility Information in accordance with Section 2, Aggregator shall pay to Utility fees pursuant to its tariffs.

13. Specific Performance. The Parties acknowledge that disclosure or misuse of Confidential Utility Information in violation of this Agreement may result in irreparable harm to Utility, the amount of which may be difficult to ascertain and which may not be adequately compensated by monetary damages, and that therefore Utility shall be entitled to specific performance and/or injunctive relief to enforce compliance with the provisions of this Agreement. Utility's right to such relief shall be in addition to and not to the exclusion of any remedies otherwise available under this Agreement, at law or in equity, including monetary damages, the right to terminate this Agreement for breach and the right to suspend the provision or Processing of Confidential Utility Information hereunder. Aggregator agrees to waive any requirement for the securing or posting of any bond or other security in connection with Utility obtaining any such injunctive or other equitable relief and hereby authorizes, to the extent lawfully possible, any court of competent jurisdiction to dispense with any requirement for such bond or other security which might otherwise be judicially imposed.

14. Indemnification. To the fullest extent permitted by law, Aggregator shall indemnify and hold Utility, its affiliates and their respective officers, directors, trustees, shareholders, employees and agents, harmless from and against any and all loss, cost, damage or expense of every kind and nature (including, without limitation, penalties imposed by the Commission or other regulatory authority or under any Data Protection Requirements, court costs, expenses and reasonable attorneys' fees) arising out of, relating to, or resulting from, in whole or in part, the breach or non-compliance with this Agreement by Aggregator or any of its Representatives.

15. Notices. With the exception of notices or correspondence relating to potential or pending disclosure under legal compulsion, all notices and other correspondence hereunder shall be sent by first class mail, by personal delivery, or by a nationally recognized courier service. Notices or correspondences relating to potential or pending disclosure under legal compulsion shall be sent by means of Express Mail through the U.S. Postal service or other nationally recognized courier service which provides for scheduled delivery no later than the business day following the transmittal of the notice or correspondence and which provides for confirmation of delivery. All notices and correspondence shall be in writing and addressed as follows:

If to Aggregator, to:

Aggregator Name:

Name of Contact:

Address:

Phone:

Email:

If to Utility, to:

Utility Name:

Name of Contact:

Address:

Phone:

Email:

A Party may change the address or addressee for notices and other correspondence to it hereunder by notifying the other Party by written notice given pursuant hereto.

16. Term. This Agreement shall be effective as of the date first set forth above and shall remain in effect until terminated by Utility upon not less than 10 days' prior written notice specifying the effective date of termination, or on _____, 20__, whichever occurs first; provided, however, that any expiration or termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination; and provided, further, that Utility may terminate this Agreement immediately upon notice to Aggregator in the event of a material breach hereof by Aggregator or its Representatives. For the purpose of clarity, a breach of Sections 4-10, 12-14, 17, and 25 shall be a material breach hereof. Upon the expiration or termination hereof, neither Aggregator nor its Representatives shall have any further right to Process Confidential Utility Information and shall immediately comply with its obligations under Section 6.

17. Consent to Jurisdiction; Selection of Forum. Aggregator irrevocably submits to the jurisdiction of the courts located within the State of New York with regard to any dispute or controversy arising out of or relating to this Agreement. Aggregator agrees that service of process on it in relation to such jurisdiction may be made by certified or registered mail addressed to Aggregator at the address for Aggregator pursuant to Section 10 hereof and that such service shall be deemed sufficient even under circumstances where, apart from this Section, there would be no jurisdictional basis for such service. Aggregator agrees that service of process on it may also be made in any manner permitted by law. Aggregator consents to the selection of the New York State and United States courts within _____ County, New York as the exclusive forums for any legal or equitable action or proceeding arising out of or relating to this Agreement.

18. Governing Law. This Agreement shall be interpreted and the rights and obligations of the Parties determined in accordance with the laws of the State of New York, without recourse to such state's choice of law rules.

19. Survival. The obligations of Aggregator under this Agreement shall continue for so long as Aggregator and/or Aggregator's Representatives continue to have access to, are in possession of or acquire Confidential Utility Information even if all agreements between Aggregator and Utility have expired or been terminated.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Copies of this Agreement and copies of signatures on this Agreement, including any such copies delivered electronically as a .pdf file, shall be treated for all purposes as originals.

21. Amendments; Waivers. This Agreement may not be amended or modified except if set forth in writing signed by the Party against whom enforcement is sought to be effective. No forbearance by any Party to require performance of any provisions of this Agreement shall constitute or be deemed a waiver of such provision or the right thereafter to enforce it. Any waiver shall be effective only if in writing and signed by an authorized representative of the Party making such waiver and only with respect to the particular event to which it specifically refers.

22. Assignment. This Agreement (and Aggregator's obligations hereunder) may not be assigned by Aggregator or Representatives without the prior written consent of Utility, and any purported assignment without such consent shall be void.

23. Severability. Any provision of this Agreement which is determined by any court or regulatory body having jurisdiction over this Agreement to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

24. Entire Agreement. This Agreement (including any Exhibits hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof and any prior or contemporaneous oral or written agreements or understandings with respect to such subject matter are merged herein. This Agreement may not be amended without the written agreement of the Parties.

25. No Third Party Beneficiaries. This Agreement is solely for the benefit of, and shall be binding solely upon, the Parties and their respective agents, successors and permitted assigns. This Agreement is not intended to benefit and shall not be for the benefit of any party other than the Parties and the indemnified parties named herein, and no other party shall have any right, claim or action as a result of this Agreement.

26. Force Majeure. No Party shall be liable for any failure to perform its obligations in connection with this Agreement, where such failure results from any act of God or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such Party from performing under this Agreement and which such Party is unable to prevent or overcome after the exercise of reasonable diligence.

27. Relationship of the Parties. Utility and Aggregator expressly agree they are acting as independent contractors and under no circumstances shall any of the employees of one Party be deemed the employees of the other for any purpose. Except as expressly authorized herein, this

Agreement shall not be construed as authority for either Party to act for the other Party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other.

28. Construction. This Agreement shall be construed as to its fair meaning and not strictly for or against any party.

29. Binding Effect. No portion of this Agreement is binding upon a Party until it is executed on behalf of that Party in the space provided below and delivered to the other Party. Prior to such execution and delivery, neither the submission, exchange, return, discussion, nor the negotiation of this document, whether or not this document is then designated as a “draft” document, shall have any binding effect on a Party.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first above written.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____