

# **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 Rochester Gas and Electric Corporation, a New York corporation with offices at James A Carrigg Center, 18 Link Dr., PO Box 5224 Binghamton, NY 13902 \_\_\_\_\_ (“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:	Rochester Gas and Electric Corporation
Name of Contact:	Supplier Relations
Address:	James A Carrigg Center, 18 Link Dr.
Phone:	PO Box 5224
Email:	Binghamton NY 13902
	supplier_relations@rge.com

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 Monroe 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: \_\_\_\_\_

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

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

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

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

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