Order Form for Smart Energy Water SaaS and Cloud Subscription

Between

Smart Energy Systems, Inc. dba Smart Energy Water

15495 Sand Canyon Avenue, STE 100

Irvine, CA 92618

("SEW")

And

Town of Apex
73 Hunter Street
Apex, NC 27502
("Customer")

1. Order Form

This Order Form, as issued by SEW, shall constitute an offer made by SEW to a Customer. When signed and returned to SEW by Customer, it shall become a binding agreement for the SEW Cloud Service(s) or other Services listed in this Order Form and effective on the date signed by Customer. This Order Form is governed by and incorporates the Terms and Conditions attached hereto.

2. SEW Platform Modules and Service(s)

The table below shows the purchased SEW Platform(s) and associated Service(s) thereof, purchased number of user licenses, initial subscription term, and fees, which shall be listed and selected by Customer below and subject to the Terms and Conditions which govern this Purchase Order.

✓	Product Code	Product Name
☒	Smart Customer Mobile (SCM®) – Mass Market Persona	
☒	SCM-10-Web	Customer Web Portal
☒	SCM-10-Mobile	Customer Mobile Apps (iOS & Android)
☐	SCM-10-WebX	Smart Web Experience
☒	SCM-10-1	SCM – My Account
☒	SCM-10-2	SCM – Billing
☒	SCM-10-3	SCM – Usage
☐	SCM-10-4	SCM – Compare
☒	SCM-10-5	SCM – Outages
☒	SCM-10-6	SCM – Notifications
☒	SCM-10-7	SCM – Service
☒	SCM-10-8	SCM - Connect Me
☐	SCM-10-9	SCM - Efficiency / Conservation
☐	SCM-10-10	SCM - Smart Home
☐	SCM-10-11	SCM - Electric Vehicle
☐	SCM-10-12	SCM – Footprint
☐	SCM-10-13	CSP – Dashboard
☐	SCM-10-14	CSP – Efficiency / Conservation
☒	SCM-10-15	CSP – Notifications
☒	SCM-10-16	CSP – CSR
☒	SCM-10-17	CSP – Administration
☒	SCM-10-18	CSP – Outages
☒	SCM-10-19	CSP – Customer AI / Analytics
☐	SCM-10-22	CSP – Smart Home
☐	SCM-10-24	CSP – Demand Response
☐	SCM-10-28	CSP – Smart CRM – Marketing & Campaign
☐	SCM-10-29	CSP – Smart CRM – Notifications
☐	SCM-10-30	CSP – Smart CRM – Case Management
☐	SCM-10-31	CSP – Smart BI
	Support & Maintenance	
☒	Sup-1	Standard Support Plan
☐	Sup-2	Max Support Plan

3. Subscriptions, Term, and Fees

The number of subscribers listed below represents the committed number of subscriptions authorized to utilize the SEW Cloud Service(s). Additional subscriptions may be purchased at an additional cost by contacting your local SEW representative or sending a request to contracts@sew.ai

✓	Product	Subscription Metric	# of Subscriptions	Annual Subscription Fee
☒	SCM® Mass Market Persona	Number of Meters / Active Services	51,000 (Inclusive of 10 Utility User subscriptions)	$63,525

The term of this Agreement commences on the date of signature of this Order Form and continues for the initial term set forth below, unless earlier terminated in accordance with this Agreement.

Term	Total Fee for Order Form	Payment Conditions for Term
Five Years	$317,625 ($63,525 annually)	Total fee due upon signing and invoiced in five (5) equal installments: • On August 1, 2023 • Upon the 1st anniversary of the Effective Date • Upon the 2nd anniversary of the Effective Date • Upon the 3rd anniversary of the Effective Date • Upon the 4th anniversary of the Effective Date
Implementation and Setup Fee	$77,500	One-time implementation and setup fee (Based on standard integrations – Deviations may affect pricing)

The fees for additional services purchased under Section 4 and 5 shall be invoiced separately under the respective terms of such service.

4.   Additional Services

The table below shall display the SEW Notification Service(s) selected to be purchased by Customer, subject to the SEW Notification Services Terms and Conditions (below). Applicable setup fees shall be invoiced on August 1, 2023. Fixed monthly and annual fees for the services below require a minimum of one year term and are invoiced annually upfront beginning on August 1, 2023, then upon each anniversary of the Effective Date.

☒ EMAIL MESSAGING SERVICE

Service Type		Price (USD)	Description
Number of Emails	☒	Included	Standard: Up to 150,000 Emails/Month
	☐	Premium: $1500 / Month	Premium: Up to 1,000,000 Emails/Month
	☐	Premium Pro: $2400 / Month	Premium Pro: Up to 4,000,000 Emails/Month
	☐	Elite: $3500/ Month	Elite: Exceeding 4,000,000 Emails/Month
Email Volume SLA	☒	Included	Standard: Up to 10 Emails/Sec
	☐	Premium: $125 / Month	Premium: Up to 50 Emails/Sec
	☐	Premium Pro: $187 / Month	Premium Pro: Up to 100 Emails/Sec
	☐	Elite: $245 / Month	Elite: Up to 200 Emails/Sec
	☐	Enterprise: $478 / Month	Enterprise: Up to 500 Emails/Sec
Setup fees		$4,500	
Annual Service Maintenance & Support		$2,900 Annually	

☒ TEXT MESSAGING SERVICE

	Service Type	Price (USD)	Description
☐	**Long Code**	$399 / Month per Long Code + $1,000 one-time setup fees	Number of codes: _____
☐	**Random Short Code**	$1900 / Month per Short Code + ~~$9500 one-time setup fees~~ (Waived)	Number of codes: _____

☐	**Vanity Short Code**	$2400/Month per Short Code + ~~$9500 one-time setup fees~~ (Waived)		Number of codes: _____
☐	**In/Outbound SMS Text Messaging**	$0.04 / Message		
SMS Volume SLA		☒	Included	Standard: Up to 5 Messages/Sec/Short Code
		☐	Premium: $286 / Month/ Code	Premium: Up to 25 Messages/Sec/Short Code
		☐	Premium Pro: $442 / Month/ Code	Premium Pro: Up to 50 Messages/Sec/Short Code
		☐	Elite: $689 / Month / Code	Elite: Up to 100 Messages/Sec/Short Code
		☐	Enterprise: $947 / Month / Code	Enterprise: Up to 200 Messages/Sec/Short Code
Annual Service Maintenance & Support		$4,900 Annually		

☒ **VOICE CALL SERVICE**				
Service Type		**Price (USD)**		**Description**
☐	**Toll-Free**			
	Lines	$15 / Month per Line		Number of Toll-free Lines: _____
	In/ Outbound Toll-Free Voice Call	$0.06 / Minute per Call (Duration <=59 seconds per call)		
☐	**Local Number**			
	Lines	$10 / Month per Line		Number of Local Lines: _____
	Voice Call	$0.06 / Minute per Call (Duration <=59 seconds per call)		
Voice Call Volume SLA		☒	Included	Standard: Up to 1 Call / Sec
		☐	Premium: $237 / Month	Premium: Up to 5 Calls / Sec
		☐	Premium Pro: $912 / Month	Premium Pro: Up to 10 Calls / Sec
		☐	Elite: $2941 / Month	Elite: Up to 25 Calls / Sec
		☐	Enterprise: $9702 / Month	Enterprise: Up to 50 Calls / Sec
One-time Initial Setup		$9,500		
Annual Service Maintenance & Support		$4,900 Annually		

☐ **TCPA PHONE VALIDATION SERVICE**			
Service	**Price (USD)**		**Description**
Phone number validation service to check Reassigned Numbers Database (RND) to determine whether a telephone number has been permanently disconnected after a date certain and therefore is no longer assigned to the party the caller wants to reach.	☐	Basic: $1499 / Month	Basic: Up to 100,000 phone number verifications in a month
	☐	Premium: $2799 / Month	Premium: Up to 200,000 phone number verifications in a month
	☐	Premium Pro: $4799 / Month	Premium Pro: Up to 400,000 phone number verifications in a month
	☐	Elite: $9700 / Month	Elite: Up to 1 million phone number verifications in a month
Annual Service Maintenance & Support	$8,550		

5. **Other Add-on Subscriptions**

SEW additionally offers the following add-on, a la carte, or individual Subscriptions, which can be selected by Customer below, subject to the Terms and Conditions which govern this Purchase Order.

Other Add-on Services			
	Description	**Price (USD)**	**Comments**
☐	**Onsite Training**	**$1,750** *Per Day*	**One (1) Day (8 Hours) Blocks of Onsite Training**

			Conducted in the "Train-the-Trainer" Format. Additional hours may be purchased as necessary. Expenses and materials incurred for training to be billed at actual costs
☐	**Additional Language Pack**	**$5,500** *Annually*	**Support and Deployment of Platform in Additional Languages** Translations to be provided and approved by Client. Pricing provided shall be per Language/Translation basis
☐	**Smart Citizen Engagement** (Includes 5 service requests for citizens + Smart CRM Subscription)	**$24,570 (35%)** *Annually*	Includes 10 Utility User Subscriptions for Smart CRM Additional implementation fee of $33,500 (50%) shall apply
☐	**SCM® Enterprise / Large C&I Persona**	**$27,500** *Annually*	Additional implementation fee of $49,000 shall apply
☐	**SCM® Landlord Persona**	**$27,500** *Annually*	Additional implementation fee of $49,000 shall apply
☐	**SCM® Property Manager Persona**	**$27,500** *Annually*	Additional implementation fee of $49,000 shall apply
☐	**SCM® Agency Persona**	**$27,500** *Annually*	Additional implementation fee of $49,000 shall apply
☐	**Chatbot**	**$12,500** *Annually*	Additional implementation fee of $14,000 shall apply
☐	**Chatbot: Live Agent Handoff**	**$49** *per agent Per Month*	Additional implementation fee of $10,000 shall apply
☐	**Smart CRM – Marketing & Campaign Module (SCM-10-28)** **Smart CRM – Notifications Module (SCM-10-29)**	**$10,000** *(annually)*	Additional implementation fee of $14,000 shall apply

Infor Citizen Engagement Platform Environment:

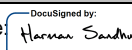|		
☐	**SEW Integration to Infor CRM Batch File Integration for Customer Account Changes**	**$9,500 (One time)**
☐	**SEW Integration to Infor CRM API Integration for Customer Account Changes**	**$14,000 (One-time)** ***Assumes Customer has API Available to SEW** ****SEW is not responsible for any fees from any third party**

SEW Enhanced Support Services for Level 1 and Level 2 Production Support – Core Support Structure

SEW will manage and respond to only the following types of technical support calls on behalf of the utility to both end customers of the utility and internal personnel of the utility.

- Web portal and Mobile Application (iOS and Android) login issues
- Account activation assistance including email correction and resending activation emails
- Login assistance including password reset, 2 factor authentication, username reset, temporary passwords, security question reset, change email address, unlock account, delete profile
- Set up paperless billing, remove paperless billing
- Web portal and mobile app navigation issues
- Basic browser assistance including changing browsers, autofill issues, locating the portal
- Error messages with web portal and mobile app

☒	**SEW Enhanced Support Services for Level 1 and Level 2 Production Support – Core Support Structure**	**$9,750 per month (business hours only)** Number of months selected: __3__ * Service initiates upon go-live.

6.   Acceptance and Authorization

Customer: Town of Apex	Smart Energy Water
Signature:	Signature: *Harman Sandhu*
Name:	Name: Harman Sandhu
Title:	Title: President
Effective Date:	Date: 4/6/2023

*This instrument has been preaudited in the manner required
by the Local Government Fiscal Control Act.*

_____
Antwan Morrison, Finance Director

Appendix A: SEW Software-as-a-Service Subscription Terms
Appendix B: SEW Notification Services Agreement
Appendix C: Data Retention Policy

Appendix A

SEW Software-as-a-Service Subscription Terms

Smart Energy Systems, Inc. dba Smart Energy Water ("Provider" or "SEW") has developed certain proprietary software applications, and the Parties have agreed that Provider will make the software-as-a-service platform(s) set forth on the Order Form attached hereto (the "Software") available via the Internet to the Customer hereunder. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or documents, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.

    1.1. "Agreement" means these SEW Software-as-a-Service Subscription Terms & Conditions, including any applicable Order Form.
    1.2. "Customer Data" means the data uploaded or otherwise input by Customer and/or Subscribers into the Software.
    1.3. "Documentation" means the Software's standard user manuals and any other accompanying documents related to the Software, in each case, that are delivered by SEW to Customer during Implementation.
    1.4. "Feedback" means any suggestions, comments for enhancements or functionality or other feedback regarding SEW's products and/or services that are communicated by Customer to SEW.
    1.5. "Implementation" means the process for gathering requirements, configuring, testing, training, and integrating the Software for Customer's use, as set forth in a Statement of Work.
    1.6. "Maintenance and Support" means, unless Customer is subscribing to SEW's Max Support Plan, SEW's maintenance and support performed in accordance with SEW's then-current Standard Support Plan (a copy of which will be provided to Customer upon request).
    1.7. "Order Form" means an Order Form for Smart Energy Water Cloud Services executed between SEW and Customer.
    1.8. "Software" means the SEW software that Customer has subscribed to as identified in an applicable Order Form.
    1.9. "Specifications" means SEW's specifications for the Software.
    1.10. "Statement of Work" means a statement of work that (a) expressly references, and is governed by, this Agreement, (b) is executed by an authorized representative of each party and (c) sets forth, at a minimum, the Services to be performed by SEW and the related fees to be paid by Customer in consideration thereof.
    1.11. "Subscribers" means an active account registered with the Customer to use the Software, either from a preexisting account of Customer or as associated with an active utility meter, as set forth in an applicable Order Form.

2. **SOFTWARE DELIVERY.**

    2.1. Right to Access and Use Software. Subject to the terms and conditions of this Agreement, SEW hereby grants Customer a non-exclusive, non-sublicensable, non-transferable, limited right to access and use the Software for Customer's business purposes.
    2.2. Restrictions on Software Use. Customer will not permit any third parties to access and use the Software other than Subscribers. Customer will not permit Subscribers in excess of the cap set forth in the applicable Order Form to access or use the Software. Customer will be responsible and liable for all Subscribers' compliance with the terms and conditions of this Agreement. Customer will not: (a) modify, translate or create derivative works from the Software; (b) allow third parties to exploit the Software; (c) reverse engineer, decompile, or attempt to derive any of the Software's source code, object code or underlying structure, ideas or algorithms of the Software; (d) remove or modify any program markings or any notice of SEW's proprietary rights; (e) copy, rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on the Software; (f) use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or (g) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to the Software or its related systems, hardware or networks or any content or technology incorporated in any of the foregoing. Customer will (i) use commercially reasonable efforts to prevent unauthorized access to or use of the Software and notify SEW promptly of any such unauthorized access or use, and (ii) use the Software only in accordance with the Documentation and all applicable laws, rules and regulations.

3. **UPDATES AND SERVICE LEVELS.**

    3.1. Provision of Updates and Maintenance SEW will provide regular Maintenance and Support, including by making available to Customer any modifications, bug-fixes, or security updates to the Software that SEW generally makes available to its customers, for no additional fee ("Updates"). "Software" as defined herein will incorporate any Updates, as well as any custom upgrades provided to Customer pursuant to a Statement of Work as contemplated herein.
    3.2. Service Level Availability: SEW will use commercially reasonable efforts to make the Software available in accordance with the Availability Service Level Agreement ("SLA") stated hereunder. SEW will provide Availability (as defined below) of at least 99.5% each month as calculated below. "Availability" is calculated as follows:

$$\text{Availability} = ([\text{\# of minutes in month}] - [\text{\# of minutes per month the Software is Unavailable}]) / [\text{\# of minutes in month}]$$

    "Unavailable" means the Software is not available for access and use through Customer's Internet connection, excluding any performance issues: (i) caused by factors outside of SEW's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of SEW; (ii) that result from any actions or inactions of Customer or any third party; (iii) that result from Customer's equipment, software or other technology and/or third-party equipment, software or other technology (other than third-party equipment within SEW's direct control); (iv) that result from any planned maintenance as described in this Agreement or (v) arising from SEW's suspension or termination of Customer's right to use the Software.

4. **FEES.**

    4.1. Fees. Fees shall be based upon the SEW Platform(s), modules, number of Subscribers, and Services selected from the Order Form and the pricing stated therein. Customer agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Customer's account is sixty (60) days or more overdue, SEW reserves the right with prior written notice to withhold performance of its obligations under this Agreement, without liability, until such payments are paid in full, or to terminate for cause. Fees under this Agreement shall additionally be exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for all applicable taxes, levies, or duties hereunder. In the event this Agreement is renewed as contemplated by Section 11.1, in each Renewal Term, the fees (including, without limitation, annual and subscriptions, one-time, and/or volume-based fees) shall increase by a percentage equal to the change in the Consumer Price Index published by the U.S. Bureau of Labor; provided that, in no event will the fees decrease.

5. **INTELLECTUAL PROPERTY RIGHTS.**

    5.1. Customer Data. As between SEW and Customer, Customer owns the Customer Data. Customer hereby grants to SEW: (a) a non-exclusive, worldwide, royalty-free, fully paid up, non-sublicensable (except to contractors and service SEWs providing services on behalf of SEW), non-transferable (subject to Section 12.3) right and license to copy, distribute, display, create derivative works of and otherwise use the Customer Data (i) to perform its obligations under this Agreement, (ii) to internally improve its products and services and (iii) to create aggregated and/or anonymized data from such Customer Data (the "Aggregated Data"); and (b) a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid up, sublicensable (through multiple tiers), transferable right and license to copy, distribute, display, create derivative works of and otherwise use the Aggregated Data. Customer reserves any and all right, title and interest in and to the Customer Data other than the rights and licenses expressly granted to SEW in this Section 5.1.
    5.2. Software. SEW retains all right, title, and interest in and to the Documentation and Software, as well as any related modifications, improvements, methodologies, techniques, processes, and instruction developed by SEW and used in the course of performing the Services (collectively "SEW IP"). Nothing in this Agreement will be construed to grant Customer any ownership in the SEW IP. Customer recognizes that the Software and its components are protected by copyright and other laws. SEW grants no, and reserves any and all, rights other than the rights expressly granted to Customer under this Agreement with respect to the Software.
    5.3. Feedback. Customer hereby grants SEW a perpetual, irrevocable, unrestricted, worldwide license to use any Feedback, without compensation or any obligation to report on such use, and without any other restriction. Such rights will include, without limitation, the right to exploit Feedback in any way and the right to grant sublicenses (through multiple tiers). Notwithstanding the provisions of Article 6 (*Confidential Information*) below, Feedback will not be considered Customer's Confidential Information.

6. **CONFIDENTIAL INFORMATION.**

6.1. Confidential Information Defined. "Confidential Information" refers to the following types of material or content one party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any information Discloser marks or designates as "Confidential" at the time of disclosure; and (b) any other nonpublic, sensitive information disclosed by Discloser including, but not limited to code, inventions, know-how, business, technical, and financial information, or other information which should reasonably be known by the Recipient to be confidential at the time it is disclosed, due to the nature of the information and the circumstances surrounding such disclosure. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction; or (iv) is rightfully obtained by Recipient from a third party without breach of any confidentiality obligations; or (v) is a public record as defined by Chapter 132 of the North Carolina General Statutes.

6.2. Nondisclosure. Recipient will not use Confidential Information of the Discloser for any purpose other than to exercise its rights or perform its obligations under this Agreement (the "Purpose"). Recipient: (a) will not disclose Confidential Information of the Discloser to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a written agreement with Recipient with terms no less restrictive than those of this Article 6; and (b) will not disclose Confidential Information of the Discloser to any other third party without Discloser's prior written consent. Recipient will protect Confidential Information of the Discloser with the same degree of care it uses to protect its own confidential information of a similar nature, but with no less than reasonable care. Recipient will promptly notify Discloser of any misuse or misappropriation of Confidential Information of the Discloser that comes to Recipient's attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information of the Discloser as required by applicable law or by proper legal or governmental authority. Recipient will give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser's expense.

6.3. Injunction. Recipient agrees that breach of this Article 6 may cause Discloser irreparable injury, for which monetary damages may be inadequate, and in addition to any other remedy, Discloser will be entitled to seek injunctive relief against such breach or threatened breach, without proving actual damage.

6.4. Termination & Return. Upon expiration or termination of this Agreement, Recipient will return to the Discloser all copies (excepting one (1) copy archived for purposes of Recipient's back-up processes) of Confidential Information of the Discloser or certify, in writing, the destruction thereof.

6.5. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license or any other right thereto. Discloser will retain all right, title, and interest in and to all of its Confidential Information.

7. **DATA PRIVACY & SECURITY.**

7.1. Data Security. Each party will be responsible for establishing and maintaining its own data privacy and information security policies, including physical, technical, administrative, and organizational safeguards to ensure the security and confidentiality of Customer Data; protect against any anticipated threats or hazards to the security of Customer Data; protect against unauthorized disclosure, access to, or use of Customer Data; ensure the proper disposal of Customer Data; and ensure that all employees, agents, and subcontractors, if any, comply with the above.

8. **REPRESENTATIONS & WARRANTIES.**

8.1. From SEW.

(a) Re: Function. SEW represents and warrants that, during the Term, the Software will perform materially in accordance with the Software Specifications.

(b) Re: Intellectual Property Rights in the Software. SEW represents and warrants that it owns the Software, and has the power and authority to grant the rights in this Agreement without the further consent of any third party. In the event of a breach of the warranty in this Section 8.1(b), SEW, at its own expense and election, will promptly take the following actions: (i) secure for Customer the right to continue using the Software; (ii) replace or modify the Software to make it non-infringing, provided such modification or replacement will not materially degrade any functionality listed in the Specifications; or (iii) refund the prorated SaaS subscription fee paid for the Software for every month remaining in the Term, following the date after which Customer is required to cease use of the Software. In conjunction with Customer's right to terminate for breach where applicable and the provisions of Section 9.1 below (Indemnified Claims), the preceding sentence states SEW's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Section 8.1(b) and for potential or actual infringement by the Software. SEW's representations and warranties herein will not apply to the extent any infringement arises out of any conditions listed in Section 9.1 (a) -9.1(f) below.

8.2. From Both Parties. Each party represents and warrants that (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement, (b) no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required hereunder, (c) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party; and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both Parties.

8.3. Warranty Disclaimers. Except for the express warranties in Sections 8.1 and 8.2 above, SEW MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE. SEW does not warrant that the Software will perform without error or that it will run without immaterial interruption. SEW provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the Software made by anyone other than SEW, unless SEW approves such modification in writing; or (b) use of the Software in combination with any operating system, hardware, software or other third-party materials not authorized or specifically forbidden in the Specifications or Documentation.

9. **INDEMNIFICATION.**

9.1. Indemnification by SEW. SEW will defend and indemnify Customer and its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns against any settlement amounts, damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively, "Liabilities") that are payable to any third party or incurred by Customer arising from any third-party claim, suit, or proceeding arising out of an allegation that Customer's authorized use of the Software infringes or misappropriates a third party's intellectual property rights. SEW's obligations set forth in this Section 9.1 do not apply to the extent that any claim arises out of: (a) Customer's breach of this Agreement; (b) revisions to the Software made without SEW's written consent; (c) Customer's failure to incorporate Upgrades that would have avoided the alleged infringement, provided SEW offered such Upgrades without charges not otherwise required pursuant to this Agreement; (d) SEW's modification of Software in compliance with Customer's specifications; (e) unauthorized use of the software by third parties; or (f) use of the Software with hardware or software not provided by or approved of by SEW.

9.2. Indemnification by Customer. Customer will indemnify, defend and hold SEW and its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns against any Liabilities that are payable to any third party or incurred by SEW arising from any third-party claim, suit, or proceeding arising out of (a) SEW's authorized use of the Customer Data or (b) any use of the Software by Customer and/or its Subscribers in violation of this Agreement.

9.3. Indemnification Procedure. If an indemnified party becomes aware of any matter it believes it should be indemnified under Section 9.1 or Section 9.2, as applicable, involving any claim, action, suit, investigation, arbitration or other proceeding against the indemnified party by any third party (each an "Action"), the indemnified party will give the other party prompt written notice of such Action. The indemnified party will cooperate, at the expense of the indemnifying party, with the indemnifying party and its counsel in the defense and the indemnified party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed.

10. **LIMITATION OF LIABILITY.**

10.1. Liability Cap. UNDER NO CIRCUMSTANCES WILL SEW'S LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS) EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO SEW UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY.

10.2. Exclusion of Consequential Damages. IN NO EVENT WILL SEW BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING LOST PROFITS OR LOST REVENUE, ARISING OUT OF OR RELATED TO THIS AGREEMENT.

10.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 9 APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; EVEN IF SEW IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 10, SEW's liability will be limited to the maximum extent permissible by law. For the avoidance of doubt, SEW's liability limits apply to SEW's affiliates,

SEWs, agents, sponsors, directors, officers, employees, consultants, and other representatives.

10.4. <u>Exceptions to Limitation of Liability</u>. The foregoing limitations do not apply to any liability arising from SEW's indemnification obligations under Section 9.1 above.

11. **TERM & TERMINATION.**

11.1. <u>Term</u>. The Initial Term of this Agreement shall begin on the Effective Date and continue for the Term as stated in the applicable Order Form. Thereafter, unless this Agreement is earlier terminated in accordance with its terms, this Agreement will automatically renew for additional one (1) year terms (each, a "Renewal Term", and together with the Initial Term, the "Term"), unless either party delivers to the other party written notice of non-renewal at least ninety (90) days' prior to the end of the then-current term.

11.2. <u>Termination</u>. Either party may terminate this Agreement: (a) upon written notice to the other party if such other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of written notice thereof; or (b) upon written notice to the other party if such other party becomes the subject of a petition in bankruptcy or any other proceeding related to insolvency, receivership, liquidation or assignment for the benefit of creditors (which, if involuntary, is not dismissed within sixty (60) days of its institution).

11.3. <u>Effects of Termination</u>. Upon expiration or termination of this Agreement, Customer will immediately cease all use of the Software and delete, destroy, or return all copies of the Documentation in its possession or control. SEW shall similarly delete, destroy, or return all relevant copies of Customer data which may be entitled to preservation based on state or federal data retention requirements. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination (in addition to any fees owed under Section 11.3 above, if applicable) and (b) Sections 1, 4, 5, 6, 8.3, 9, 10, 11 and 12.

12. **MISCELLANEOUS.**

12.1. <u>Independent Contractors</u>. The Parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.

12.2. <u>Force Majeure</u>. No delay, failure, or default, other than a failure to pay fees, will constitute a breach of this Agreement to the extent caused by causes beyond the performing party's reasonable control or acts of war, terrorism, earthquakes, other acts]of nature, strikes or labor disputes, embargoes.

12.3. <u>Assignment & Successors</u>. Customer may not assign this Agreement or any of its rights or obligations hereunder without SEW's written consent. SEW may freely assign this Agreement. Except to the extent forbidden herein, this Agreement will be binding upon and inure to the benefit of the Parties' respective successors and assigns.

12.4. <u>Severability</u>. To the extent permitted by law, the Parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of this Agreement will continue in full force and effect.

12.5. <u>No Waiver</u>. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach hereof will constitute a waiver of any other breach of this Agreement.

12.6. <u>Choice of Law & Jurisdiction</u>: This Agreement will be governed by the laws of the State of North Carolina, without reference to any conflicts of law principles. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of Wake County, North Carolina.

12.7. <u>Conflicts</u>. Should this Agreement conflict with any other agreements, this Agreement will govern.

12.8. <u>Construction</u>. The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

12.9. <u>Entire Agreement</u>. This Agreement sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

12.10. <u>Execution in Counterparts</u>. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

12.11. <u>Modification</u>. This Agreement may be modified from time to time by SEW, with Customer to be provided notice of no less than thirty (30) days prior to such Terms and Conditions taking effect.

12.12. <u>E-Verify</u>. SEW shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). SEW shall require all of SEW's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

12.13. <u>Anti-Human Trafficking</u>. SEW warrants and agrees that no labor supplied by SEW or SEW's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

12.14. <u>Nondiscrimination</u>. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, SEW hereby warrants and agrees that SEW will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

12.15. <u>Non-appropriation</u>. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Customer are from appropriations and monies form the Town of Apex Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Customer.

Appendix B

SEW Notification Services Agreement

Smart Energy Systems, Inc. dba Smart Energy Water ("Provider" or "SEW") has developed certain proprietary software applications and services for a Customer, and the Parties have agreed that Provider will make the Services described in the Order Form available to the Customer hereunder. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below and in any relevant exhibits or documents, the adequacy of which is hereby acknowledged, the Parties agree as follows

1. **Definitions**
   1.1. "**Monthly Uptime Percentage**" shall refer to the difference between 100% and the percentage of time during which the Services are unavailable.
   1.2. "**Services**" shall refer to notification services for the SCM® Cloud Services platform utilized to establish form(s) of contact between the Customer and end user of the SEW Cloud Services Platform, which include, but are not limited to, SMS text messaging, email, and interactive voice response (IVR) services.
   1.3. "**SEW Cloud Services Platform**" shall refer to Customer's deployment of the SCM® platform, or other applicable software of SEW sold through an authorized reseller.
   1.4. "**Term**" shall mean the Term set forth in the applicable license agreement, SaaS subscription agreement, cloud services agreement, or if not defined in an applicable signed writing, one (1) year from the Effective Date.
2. **Scope and General Terms**
   2.1. SEW shall provide the following Services selected within the Order Form in accordance with the following terms and conditions.
   2.2. Customer may use the Services solely to:
   a) Use and make the Services available to end users in connection with the use of SEW Cloud Services Platform.
   b) Use the Services in connection with and as necessary for Customer's activities pursuant to these terms or the terms set forth in an applicable license agreement, SaaS subscription agreement, or cloud services agreement.
   c) Allow any affiliates to use the Services, subject to the terms hereunder.
   2.3. In relation to the Services provided under this Agreement, Customer agrees that:
   a) Customer shall not transfer, resell, lease, license, or otherwise make available the Services or SEW Cloud Services Platform to third parties or offer it on a standalone basis, or make any representation, warranty, or guarantee to any end user or third party on behalf of SEW concerning the Services.
   b) SEW shall be entitled to use any Customer data that is necessary to provide the Services.
   c) Customer's use of the Services does not violate the terms of this Agreement.
   d) Customer shall not use the Services or SEW Cloud Services Platform to create, train, or improve (director or indirectly) a substantially similar product or service.
   e) Customer shall not reverse engineer, decompile, disassemble, or otherwise create, attempt to create or derive, or permit or assist anyone else to create or derive the source code of any Services or SEW Cloud Services Platform provided in connection with this Agreement.
   2.4. SEW shall make the Services available and guarantee a Monthly Uptime Percentage of 99.5%, notwithstanding any unavailability or performance issues of the Services caused by or as a result of the following (collectively, the "Exclusions"):
   a) Factors that are outside of SEW's reasonable control, including, without limitation, any force majeure event, telecommunications provider-related problems or issues, internet access or related problems occurring beyond the point in the network where SEW maintains access and control of the Services.
   b) Any actions or inactions of Customer or any third party.
   c) Any Customer application(s), equipment, software, or other technology, third party equipment, software, etc. not authorized for use with the Services.
   d) Routine or scheduled maintenance for which SEW will provide at least twenty-four (24) hours of advanced notice.
   e) Problems or issues related to alpha, beta, or not otherwise generally available in SEW features or products.
   2.5. Notification Services shall commence at the rates and volumes selected by Customer in the Order Form.
   a) In the event that Customer exceeds the number of emails per month selected, SEW shall automatically escalate Customer to the next service tier and corresponding rates. Customer shall thereafter be invoiced according to the rates set forth for the escalated tier for the remaining Term for such Order Form.
   b) At any time during the Term of the Order Form, Customer can contact SEW to request to be change their service to a lower tier. Such changes to revert to a lower tier and corresponding rates can be made only once during a twelve-month period. Customer shall not be entitled to any credits for unused volumes when reverting to a lower service tier after having been escalated to a higher tier as a result of having exceeded notification volume limits.
   c) In the event Customer requires a higher notification Volume SLA tier in order to meet increased demand or to ensure timely delivery of the Services for Customer's end users, Customer shall contact SEW detailing the Email Volume SLA or SMS Volume SLA tier customer wishes to upgrade to.
3. **Term**
   3.1. The Initial Term of this Agreement shall begin on the Effective Date and continue for the Term as stated in the applicable Order Form.
4. **Renewals**
   4.1. This Agreement shall automatically renew upon the expiration of the Initial Term as stated in the Order Form for one (1) year intervals ("Renewal Term"), unless terminated by Customer by providing written notice to SEW ninety (90) days prior to the expiration of the Term. For the avoidance of doubt, SEW shall not be required to refund any previously paid fees, regardless of when termination occurs during the Term or Renewal Term.
5. **Fees**
   5.1. Fees for the Services shall be set forth in the Order Form. Customer shall be invoiced for applicable one-time initial setup fees, maintenance and support fees, and monthly service type fees upfront upon signing of this Agreement and annually thereafter if applicable. The usage fees applicable to inbound and outbound SMS messaging or voice call messages that are selected by the Customer shall be invoiced based on monthly intervals. Customer agrees to make all payments to SEW within thirty (30) calendar days after receipt of invoice. Late invoices will incur a late payment fee of 1.5% or the maximum allowable under the law, whichever is less. If Customer's account is sixty (60) days or more overdue, SEW reserves the right with prior written notice to withhold performance of its obligations under this Agreement, without liability, until such payments are paid in full, or to terminate for cause. Fees under this Agreement shall additionally be exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for all applicable taxes, levies, or duties hereunder. In the event this Agreement is renewed as contemplated by Section 4.1, in each Renewal Term, the fees (including, without limitation, annual and subscriptions, one-time, and/or volume-based fees) shall increase by a percentage equal to the change in the Consumer Price Index published by the U.S. Bureau of Labor; provided that, in no event will the fees decrease.
6. **Warranty and Liability**
   6.1. **DISCLAIMER OF WARRANTY**. WITH THE EXCEPTION OF THE SERVICE LEVEL COMMITMENT SET FORTH IN SECTION 2.4, THE SERVICES UNDER THIS AGREEMENT ARE PROVIDED "AS-IS," EXCLUSIVE OF ANY WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. SEW DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE ERROR-FREE OR MEET ALL CUSTOMER REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, SERVICES MAY BE SUBJECT TO LIMITATIONS OF THE TELECOMMUNICATIONS PROVIDER, HOSTING ENVIRONMENT, DELAYS, INTERNET SERVICE PROVIDER, THIRD PARTIES, ACTIONS OR INACTIONS OF THE CUSTOMER, AND OTHER PROBLEMS INHERENT TO THE USE OF MASS-MARKET NOTIFICATION SERVICES AND ELECTRONIC COMMUNICATIONS. SEW IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, DELETIONS, LOSS OF DATA, DATA CORRUPTION, THIRD-PARTY PUBLICATION, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS NOT CAUSED BY SEW OR OUTSIDE OF SEW'S REASONABLE CONTROL. TO THE EXTENT SUCH DISCLAIMER CONFLICTS WITH APPLICABLE LAW, THE SCOPE AND DURATION OF ANY APPLICABLE WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. SEW SHALL NOT BE LIABILE AND WILL HAVE NO OBLIGATION TO INDEMNIFY CUSTOMER FOR END USER DATA OR ANY OTHER PERSONALLY IDENTIFIABLE INFORMATION SENT TO SEW.
   6.2. **LIMITATION OF LIABILITY**. IN NO EVENT WILL SEW'S AND ITS LICENSORS' TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT PAID FOR THE NOTIFICATION SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY BEFORE SUCH CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL SEW OR ITS LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY

FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS, OPPORTUNITIES, DATA, OR USE, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, EVEN IF SEW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

6.3. **Recordings and Communications Monitoring**. In the event Customer records or monitors any SMS messages, IVR communications, or other communications using the Services, then Customer represents and warrants that it shall comply with all applicable laws prior to doing so at all times. SEW makes no representations or warranties with respect to recording or monitoring telephone calls/IVR communications, SMS messages, or other communications, and recommends that Customer always secure prior consent to record or monitor communications using the Services. Customer acknowledges that these representations, warranties, and obligations are essential to SEW's ability to provide the Services and further agrees to indemnify SEW and its affiliates or providers in the event of any acts or omissions in connection with recording or monitoring IVR communications, SMS messages, or other communications, whether such claims arise under contract, tort, statute, or other legal theory.

7. Additional Terms

7.1. **Short Codes**. If Customer utilizes a short code with SEW as a part of the Services, Customer:
   a) Shall not change the short code use case without first having such new use case approved by SEW or the applicable provider.
   b) Shall stop sending additional messages to any party that replies by texting "STOP" (or the equivalent) to the short code, except for a single text message confirming that such party has been successfully opted out of the short code.
   c) Shall follow all applicable rules, regulations, laws, statutes, or guidelines set by state, local, or federal legal authorities, or as imposed by SEW or its affiliates, providers, etc. pertaining to the use of short codes or voice recordings.

7.2. **Compliance with Laws**. Both Customer and SEW agree to comply with the applicable laws relating to each Party's respective activities pursuant to this Agreement.

7.3. **No Waiver**. Our failure to enforce at any time, any provision of this Agreement, or any other applicable policy or signed writing in connection hereto shall not waive our right to do so later. Any waiver must be in writing and signed by both Parties to be legally binding.

7.4. **Independent Contractors**. The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.

7.5. **Force Majeure**. No delay, failure, or default, other than a failure to pay fees, will constitute a breach of this Agreement to the extent that such delay, failure, or default, or any other breach is caused by acts of war, terrorism, earthquakes, other acts of nature, strikes or labor disputes, embargoes, or other causes beyond the performing Party's reasonable control.

7.6. **Assignment & Successors**. Customer may not assign this Agreement or any of its rights or obligations hereunder without Provider's prior written consent. Except to the extent forbidden herein, this Agreement will be binding upon and inure to the benefit of the Parties' respective successors and assigns. Any attempt to assign, transfer, or delegate the terms under this Agreement shall be null and void.

7.7. **Notices**. Any notice required or permitted to be given under this Agreement will be given in writing to the receiving Party by personal delivery, certified mail, return receipt requested, overnight delivery recognized by a nationally recognized carrier, or by email upon confirmation of receipt. Notices to SEW shall be copied to contracts@sew.ai.

7.8. **Modification**. Modifications to the Services and associated fees thereof may be made from time to time, and any modifications made to the Services, or associated fees, shall be noticed to the Customer thirty (30) days prior to such modifications taking effect.

7.9. **Severability**. To the extent permitted by law, the Parties waive any provision of law that would render any clause of this Agreement invalid or unenforceable. In the event that a provision herein is held to be invalid or unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by law, and the remaining provisions of this Agreement will continue in full force and effect.

7.10. **Choice of Law & Jurisdiction**: This Agreement will be governed by the laws of the State of North Carolina, without reference to any conflicts of law principles. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of Wake County, North Carolina.

7.11. **Conflicts**. Should this Agreement conflict with any other agreements, this Agreement will govern.

7.12. **Construction**. The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

7.13. **Entire Agreement**. This Agreement sets forth the entire agreement of the Parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter, with the exception of an applicable license agreement, SaaS subscription agreement, or statement of work. Neither Party has relied upon any such prior or contemporaneous communications except those expressly referenced and named herein.

7.14. **Execution in Counterparts**. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

7.15. **Amendment**. This Agreement may only be amended in writing by authorized representatives of each Party.

7.16. Е-Verify. SEW shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). SEW shall require all of SEW's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

7.17. Anti-Human Trafficking. SEW warrants and agrees that no labor supplied by SEW or SEW's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

7.18. Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, SEW hereby warrants and agrees that SEW will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

7.19. Non-appropriation. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Customer are from appropriations and monies form the Town of Apex Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Customer.

<center>**Appendix C**</center>

<center>**Data Retention Policy**</center>

1) **Data Retention Policy**
    a) **Introduction**
        i) It shall be the policy of Smart Energy Water to maintain complete and accurate records for the usage, billing, behavior, or any of the specified types of data ("Data") of Client and its Users, for the duration described for historical reference, contractual or legal requirements, or for any other purposes as set forth in this Data Retention Policy ("Policy"). The types of Data stored and subsequent durations for each type, described in the Retention Summary set forth in Section 1(h) below, shall be the recommended and standard retention periods based on legal requirements and practical considerations. In the event that Client wishes to have such Data retained for an extended period, such additional retention periods shall be agreed upon in a separate writing.
        ii) Data Retention shall include, but is not limited to, paper and electronic records, documentary materials, Customer Data, personally identifiable information, billing records, usage information, etc. Such information shall be managed and maintained in a manner that protects the integrity of the Data, while ensuring appropriate access for the durations described above.
        iii) Upon expiration of the above retention periods, such data shall be destroyed, deleted, returned or otherwise disposed of according to standard industry guidelines and in compliance with legal requirements, EXCEPT for those records pertaining to (1) matters under investigation or those matters that are the subject of any claim or litigation, and (2) matters that are anticipated to be the subject of reasonably foreseeable investigation, claim, or litigation.
    b) **Definitions**
        i) "**Audit Logs**" shall refer to recordings of key system events, timestamps, and other records that otherwise maintain evidence of any processes or activities.
        ii) "**Billing Data**" shall refer to any information regarding the billing information of customers, which may include, but is not limited to, credit card information, security codes, expiration dates, billing addresses, names of customers, etc.
        iii) "**Billing Summaries**" shall refer to any information regarding the costs or charges relating to a customer's usage of utilities maintained over monthly billing periods.
        iv) "**Customer Data**" shall refer to any personally identifiable information of a Client's users, which may include, but is not limited to, name, address, personal Usage information, etc.
        v) "**Investigation**" shall refer to any business or legal process which requires the retention, examination, or review of any Data.
        vi) "**Notifications**" shall refer to logs of the information events (email, IVR, SMS text messaging) sent by a utility and received by a customer.
        vii) "**Outages**" shall refer to logs of outage events reported via OMS to the Services, by either the customer, if approved, or the Client.
        viii) "**Retention**" shall refer to storage of Data on either local, cloud-based, or archive storage or servers.
        ix) "**Usage**" shall refer to any customer's use of a utility as tracked and maintained by the Services.
        x) "**User Behavior**" shall refer to the interaction of Client's customers on the portal or mobile application, which may include, but is not limited to, log-on periods, active periods, interactions with particular modules, clicks, etc.
    c) **General**
        i) SEW shall be bound in its obligations regarding the Data it processes and controls. These obligations shall include how long SEW retains Data, and when and how SEW can destroy such Data. These obligations may arise from industry standards, local laws or regulations, or arising out of agreements between the Parties.
        ii) SEW shall ensure that necessary records, documents, or Data are adequately protected and maintained, and additionally, that such records, documents, or Data are properly disposed of.
        iii) SEW shall not use Client or Customer Data except as necessary to provide the Services, or as necessary to comply with the law or binding order of a governmental body.
    d) **Cloud-Based Storage**
        i) In maintaining the Data, SEW shall utilize its cloud-based scalable storage solutions which shall allow Client to store and display historical usage data, billing information, payment history, etc. SEW shall utilize industry standard methodologies, which shall ensure business continuity, continuous retention for the periods described, data recovery, and availability for its Users.
    e) **Archiving and Backups**
        i) SEW shall utilize similar industry standard solutions for archiving, restoring, and backing up Data. Incremental Data (daily usage, user behavior, notifications, outages) shall be recorded nightly, and full Data backups shall be executed over the weekend. Data shall be retained in both Cloud-based local storage form, as well as Array-based replication form offsite to be utilized as back-ups or archives in the event of system failure of the local Cloud-based storage.
        ii) SEW shall be notified via email confirmation of backups of Data being saved successfully or such backups failing to be saved. Backups shall be tested periodically by restoring such Data to a staging database to ensure that Data is not corrupted and are in proper usage compliance in its application configuration.
    f) **Destruction and Purging of Data**
        i) Data that is personal or confidential in nature shall be disposed of according to methodologies agreed upon by and between the parties in a signed writing.
        ii) Electronic Data shall be subject to secure electronic deletion.
        iii) Physical or paper documents shall be shredded using secure consoles through which waste shall be properly screened for disposal.
        iv) Specific deletion or destruction processes shall be carried out by an employee of SEW or by an internal or external service provider employed for the purposes of such proper and compliant disposal of Data.
        v) Data of Users or Clients who have been inactive for a period of twenty-four (24) months shall be deleted. Clients, if such Client or User account(s) are inactive for a period of eighteen (18) months, shall be notified of such inactivity via email.
    g) **Litigation or Investigation**
        i) In the event that SEW becomes involved in any unforeseen litigation or business event that requires access to Client and Customer Data, such Data may need to be archived beyond its active use or as required by law.
        ii) Documents shall be retained in the event that they are subject to matters under investigation or those that are subject to any claim or litigation, or those matters that are anticipated to be the subject of reasonably foreseeable investigation, claim, or litigation.
        iii) Prior to the disclosure of any Client and Customer Data, SEW shall first disclose to Client of such requirement, so that Client may inform its users and allow users the opportunity to seek protection from such disclosure.
    h) **Retention Summary**
        i) SEW, for the purposes of historical reference, contractual or legal requirements, or other requirements as a part of its delivery and maintenance of Services or Software to Client, shall retain the following types of Data for the durations set forth, and pursuant to the terms set forth in this Data Retention Policy.

Data Type	Description	Duration
Usage	Monthly Read	24 months
	Daily Read	12 months
	Hourly Read	6 months
	15-minute Read	3 months
Billing Data/Summary	Overview of Past Bills	24 months
User Behavior	User Interactions with Portal	12 months
Notifications	Text Message, IVR, Email Logs	6 months
Audit Logs	Timestamps, Recordings of Key Events	6 months
Bill PDF Storage	* Add-on Feature	12 months
Outages	History of Reported Outages	12 months

DocuSign

Certificate Of Completion

Envelope Id: 9C73A670F46B4879929D9742F628447B

Subject: Complete with DocuSign: SEW OFM for SCM Subscription_23.04.06 (Clean).pdf

Source Envelope:

Document Pages: 11	Signatures: 1	Envelope Originator:
Certificate Pages: 1	Initials: 0	Joseph
AutoNav: Enabled		15495 Sand Canyon Ave suite 100
EnvelopeId Stamping: Enabled		Irvine, CA 92618
Time Zone: (UTC-08:00) Pacific Time (US & Canada)		joseph.chaparo@sew.ai
		IP Address: 64.147.23.106

Status: Completed
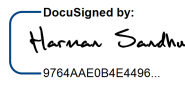
Record Tracking

Status: Original	Holder: Joseph	Location: DocuSign
4/6/2023 11:17:36 AM	joseph.chaparo@sew.ai	

Signer Events	Signature	Timestamp
Harman Sandhu Harman.Sandhu@sew.ai President SEW Security Level: Email, Account Authentication (None)	DocuSigned by: *Harman Sandhu* 9764AAE0B4E4496... Signature Adoption: Pre-selected Style Using IP Address: 146.70.172.10	Sent: 4/6/2023 11:18:15 AM Viewed: 4/6/2023 11:31:40 AM Signed: 4/6/2023 11:32:17 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/6/2023 11:18:15 AM
Certified Delivered	Security Checked	4/6/2023 11:31:40 AM
Signing Complete	Security Checked	4/6/2023 11:32:17 AM
Completed	Security Checked	4/6/2023 11:32:17 AM

Payment Events	Status	Timestamps