

FOR BOARD ACTION

Agenda Item # 7

Meeting Date: 11/24/09

SUBJECT:

OPOWER (formerly Positive Energy) *Home Energy Reports*

PREPARED BY:

Patty Hanson
Manager of Marketing and External Affairs

ITEM DESCRIPTION:

Last month, we introduced a Conservation Improvement Program (CIP) opportunity to implement a new kind of residential energy efficiency program, OPOWER's *Home Energy Reports* which is uniquely designed to increase energy conservation behavior. This program uses behavioral science and direct marketing techniques to engage residential energy customers with individualized paper reports and access to a personalized website.

To help obtain the 2010 savings goal of 19,649,530 kWh, we propose a pilot program using 25,000 random RPU residential customers beginning January 2010. Actual billing usage from the selected customers will provide the benchmark to capture actual savings. The rest of our residential customer base will be used as the control group. Using conservative numbers, we expect approximately 3,800,000 in kWh savings at a cost of \$0.09 per kWh saved in the first year and 4,545,900 kWh savings at a cost of \$.07 per kWh in the second year.

OPOWER's program costs, as a professional service contract, to RPU are \$337,501 and \$305,501 in 2010 and 2011, respectively. Website set-up and the Energy Insider website costs of \$62,500 will be waived if a contract is in place by December 15, 2009. While the contract is set-up for two years, RPU does reserve the right to opt-out at the end of the first year with a 30-day written notice.

This program will leverage required CIP spending (part of our approved 2010 budget) by directly helping RPU, and our customers, meet our conservation goals. It also provides a platform for smart grid applications such as familiarizing customers with energy data and preparing customers for the higher granularity and timeliness of smart meters and the opportunities such data brings, such as time-of-use pricing.

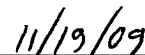
The Implementation and License Agreement along with Appendix A - Statement of Work and Payment Schedule, Appendix B - Additional Services Order Form, and Appendix C - Insurance Requirements are included for the Board's review. The City Attorney has reviewed the Agreements.

UTILITY BOARD ACTION REQUESTED:

The Board is requested to approve the Implementation and License Agreement along with Appendix A, Appendix B, and Appendix C and request the Mayor and the City Clerk to execute the Agreement for OPOWER to provide the *Home Energy Reports* not to exceed \$337,501 in 2010 and \$305,501 in 2011, and with the 2011 expenditure subject to Board and Common Council approval of the 2011 electric utility budget.



General Manager



Date

ROCHESTER PUBLIC UTILITIES

OPOWER, Inc.
IMPLEMENTATION AND LICENSE AGREEMENT

This Implementation and License Agreement (the "Agreement") is between OPOWER, Inc., a Delaware corporation with offices located at 1515 N. Courthouse Road Suite 610 Arlington, VA, 22201 ("OPOWER"), and the City of Rochester, Minnesota, a Minnesota municipal corporation acting through its Public Utility Board, with offices located at 4000 East River Road NE, Rochester, MN 55906-2813 (the "Utility" or RPU), and is effective as of November 24, 2009 (the "Effective Date").

OPOWER has developed technology that permits it to analyze certain patterns and parameters of residential utility customers' energy use and make customized energy conservation recommendations. The Utility wishes to make this information available to its customers. Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OPOWER and the Utility do hereby agree as follows:

1. Definitions.

1.1 **"Confidential Information"** means (i) any information disclosed by one party to the other, which, if in written, graphic, machine readable or other tangible form is marked "Confidential" or "Proprietary" or which, if disclosed orally or by demonstration, is identified at the time of disclosure as confidential and reduced to writing marked "Confidential" within thirty (30) days of such disclosure, or which under the circumstances of the disclosure ought in good faith to be considered confidential; (ii) the Utility Data, which shall be the Confidential Information of the Utility; and (iii) the OPOWER Products, which shall be the Confidential Information of OPOWER. Confidential Information is subject to the Minnesota Government Data Practices Act.

1.2 **"Customer"** means any current or former electric utility customer and any person, organization, or business entity that is eligible to be an electric utility customer of the Utility.

1.3 **"Customer Service Portal"** means the online portal provided by OPOWER enabling Utility customer service staff to access the Home Energy Reports, as more fully described in the applicable SOW.

1.4 **"Designated Customers"** means the 25,000 Customers who receive Home Energy Reports hereunder, or such other group of Customers as mutually agreed upon by the parties and added by executing the Additional Services Order Form, the form of which is set forth in Appendix B.

1.5 **"Email Alerts"** are email messages sent to Designated Customers providing links to the Energy Insider Website, as more fully described in the applicable SOW.

1.6 **"Energy Insider Website"** means a website provided by OPOWER to Customers providing such Customers with additional information about their energy usage, as more fully described in the applicable SOW.

1.7 **“Generalized Information”** means (a) any data or information provided to OPOWER by the Utility under the terms of this Agreement and any data or information collected and/or compiled by OPOWER under the terms of this Agreement, including, but not limited to the product of any manipulation, analysis, calculations, or processing of such data, (b) in each case from which no personal identity can be determined or derived.

1.8 **“Home Energy Report”** means the reports prepared by OPOWER and delivered to the Designated Customers comparing such customers’ energy use to their neighbors and providing targeted energy efficiency offers and rebates, as more fully described in the applicable SOW.

1.9 **“Home Energy Reporting System”** means the combined offline and online system by which OPOWER delivers customized energy data and recommendations to Designated Customers, as more fully described in the applicable SOW.

1.10 **“Infringing Materials”** has the meaning given in Section 13.2.

1.11 **“Insight Engine”** means OPOWER’s proprietary data services and analytics engine that powers the preparation of the Home Energy Reports and related services, as more fully described in the applicable SOW.

1.12 **“Intellectual Property Rights”** means all rights of a person or business entity in, to, or arising out of: (i) any U.S., international or foreign patent or any application therefore and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; (iii) copyrights, copyright registrations, mask works, mask works registrations, applications, moral rights, patents, trademarks, trade dress, trade secrets, and rights of personality, privacy and likeness, whether arising by operation of law, contract, license or otherwise; and (iv) any other similar or equivalent proprietary rights anywhere in the world.

1.13 **“Marks”** means all trademarks, service marks, trade dress, trade names, domain names, corporate names, brand names, product names, proprietary logos, symbols, all other indicia of origin, all applications to register and registrations for the foregoing, and any renewals therefore.

1.14 **“OPOWER Information”** means any data or information collected and/or compiled by OPOWER under this Agreement, excluding the Utility Data.

1.15 **“OPOWER Product”** means any proprietary work or system owned or licensed by OPOWER outside the scope of this Agreement, or any analysis, compilation, aggregation, derivative work, or work of authorship created by OPOWER under the terms of this Agreement, including without limitation the Email Alerts, Home Energy Reporting System, Insight Engine, Program Reports, Sample Reports, OPOWER Information, Customer Service Portal, Energy Insider Website, and the design of the Home Energy Reports as well as any Intellectual Property therein.

1.16 **"Program Report"** means the evaluations of the Services' accomplishments and effectiveness delivered by OPOWER, as more fully described in the applicable SOW.

1.17 **"Sample Reports"** has the meaning given in Section 3.1.

1.18 **"Services"** has the meaning given in Section 2.1.

1.19 **"SOW"** means a Statement of Work appended to and incorporated into this Agreement describing the Services to be provided and the obligations of the parties thereunder. The initial SOW is attached as Appendix A.

1.20 **"Utility Data"** means any data or information supplied by the Utility to OPOWER under this Agreement, including personally identifiable data; provided, however, that the Utility Data shall not include the Generalized Information.

1.21 **"Website Information"** means: (a) data independently developed or created by OPOWER for purposes of implementing, administering, improving, or otherwise providing the Energy Insider Website, and (b) data entered by Customers via the Energy Insider Website.

2. **Party Responsibilities.**

2.1 **OPOWER.** OPOWER shall provide the services to the Utility and its Customers during the Term as set forth in the applicable SOW (the **"Services"**). OPOWER will use reasonable efforts to make the Services available 24 hours per day, 7 days per week, except for downtime for scheduled and unscheduled maintenance, and will promptly investigate any technical problems that the Utility reports to OPOWER.

2.2 **Utility.** The Utility shall provide the Utility Data to OPOWER as mutually agreed upon or as set forth in the SOW.

2.3 **Feedback.** The Utility agrees to provide OPOWER with prompt written notification (e-mails are acceptable) of any comments or complaints about the Services that are made by Customers, and of any problems with the Services or their use that the Utility becomes aware of during the Term. Such written notification shall be OPOWER's Confidential Information.

2.4 **Additional Services and Changes.** The parties may agree to additions or changes to the Services by written amendment to the SOW signed by both parties. Such additions or changes may be subject to changes, more or less, in the Fee Schedule.

3. **Licenses.**

3.1 **OPOWER License to Utility.** Subject to the terms and conditions of this Agreement, OPOWER hereby grants to the Utility:

(a) a worldwide, perpetual, fully paid, non-exclusive, non-sublicensable, royalty-free license to use, internally reproduce, internally distribute, internally transmit, and privately display (i) the Home Energy Reports, solely for use in providing customer service to

Designated Customers; and (ii) the Program Reports solely for the purpose of evaluating the initiatives contemplated hereunder; and

(b) a worldwide, fully paid, non-exclusive, non-sublicensable, royalty-free license during the Term to use, reproduce, publicly perform and publicly display single, Generalized Information samples of the Home Energy Reports ("Sample Reports") solely (i) for the purpose of publicizing and promoting the Services; and (ii) with the written approval of OPOWER for each such use.

3.2 Utility License to OPOWER. Subject to the terms and conditions of this Agreement, the Utility hereby grants to OPOWER:

(a) a worldwide, perpetual, fully paid, non-exclusive, non-sublicensable (except as provided below), royalty-free license to, in connection with the Services, use, reproduce, have reproduced, publish, perform, publicly display, distribute, have distributed, transmit, have transmitted, reformat, modify, edit, translate, compile, archive, and create derivative works of the Utility Data. OPOWER may sublicense the foregoing license to its third party service providers solely as necessary for OPOWER to exercise its rights under this Agreement.

3.3 Trademark License. In performing its obligations under and in accordance with the Agreement (including without limitation Section 9.3), the Utility grants to OPOWER a limited, non-exclusive, non-transferable (except as otherwise provided herein), royalty-free license to use the Utility Marks provided by the Utility to OPOWER; and OPOWER grants to the Utility a limited, non-exclusive, non-transferable (except as otherwise provided herein), royalty-free license to use the OPOWER Marks provided to the Utility, each in connection with the Services and the promotion thereof.

4. Fees. The Utility shall pay to OPOWER the license and service fees set forth in Appendix B ("Fees").

5. Term; Termination.

5.1 Term. The term (the "Term") of this Agreement shall commence on the Effective Date and continue for 36 months unless terminated earlier as expressly provided herein. This Agreement provides for set-up of the Home Energy Reporting System, 24 months of Home Energy Reporting, and subsequent evaluation. At Utility's option, Utility may extend the Term of the Agreement for an additional 24 months of Home Energy Reporting, which shall be executed via a Change Order between the parties.

5.2 Termination. This Agreement may be terminated for cause by either party prior to the expiration of the Term, upon delivery of written notice of termination to the other party, as follows:

(a) if the other party fails to perform or observe any material term or condition in this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the non-breaching party; provided that if the Utility

terminates the Agreement under this Section 5.2(a) OPOWER shall refund Home Energy Report printing and mailing service Fees paid for Services not yet delivered as of the termination date;

(b) if the other party (i) makes a general assignment for the benefit of creditors, (ii) admits in writing its inability to pay debts as they come due, (iii) voluntarily files a petition or similar document initiating any bankruptcy or reorganization proceeding, or (iv) involuntarily becomes the subject of a petition in bankruptcy or reorganization proceeding and such proceeding shall not have been dismissed or stayed within sixty (60) days after such filing;

(c) if the other party is prevented from performing or unable to perform any of its obligations under this Agreement for more than ninety (90) days due to a Force Majeure Event; or

(d) annually, within 30 days of the anniversary of the first energy reports being sent if the Utility does not receive needed Board and City Council approval of project funds in the 2011 electric utility budget;

(e) by mutual written agreement of the parties.

5.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason:

(a) Each party shall promptly cease all use of the other party's Marks, provided that the Utility may continue to internally use the OPOWER Marks solely in connection with the license granted in Section 3.1(a);

(b) The Utility shall promptly cease all use of all OPOWER Products, excluding the Home Energy Reports and Program Reports (which the Utility may continue to use for internal purposes in accord with the license granted in Section 3.1(a)), and shall return or destroy such OPOWER Products (excluding the Home Energy Reports and Program Reports) at OPOWER's request; and

(c) All rights and obligations of the parties under this Agreement shall expire, except that all accrued payment obligations hereunder shall survive such termination or expiration; and the rights and obligations of the parties under Sections 1, 3.1(a), 3.2, 4 (to the extent fees accrued during the Term), 5.3, and 6 – 13 shall survive such termination or expiration.

For the avoidance of doubt, nothing in this Section 5.3 shall restrict OPOWER's right to use the OPOWER Products after termination of this Agreement.

6. Data Security.

6.1 OPOWER shall treat the Utility Data as Confidential Information in accordance with Section 7.

6.2 OPOWER shall use commercially reasonable physical, managerial, and technical safeguards to preserve the integrity and security of the Utility Data while in its possession and control hereunder.

6.3 The Utility shall have the right, during the Term upon seven (7) days notice and during OPOWER's normal business hours, to conduct an audit of OPOWER's compliance with the Data Security provisions of this Agreement, provided that such audit shall be conducted by an independent third party approved by OPOWER (such approval not to be unreasonably withheld), and provided that such audit shall not unreasonably disrupt OPOWER's business or operations.

6.4 OPOWER shall not provide access to any hardware on which the Utility Data is stored, maintained, housed or used in its performance hereunder to any person or entity (except for employees of OPOWER and its affiliates and subcontractors) without the prior written consent of the Utility, which consent shall not unreasonably be withheld.

6.5 OPOWER will notify the Utility in the event it believes, or has reason to believe, that either a confidentiality or security breach has occurred, and will provide assistance in identifying appropriate information relating to the breach.

6.6 Upon the termination of this Agreement, any and all Utility Data in the possession or control of OPOWER, its agents, employees, assigns, providers and subcontractors, residing on any and all hardware shall be securely removed within sixty (60) days thereof. Computer and servers must be electronically wiped (e.g. using a secure data deletion program for computers that writes random data in multiple passes) or the physical media must be destroyed. Tapes, CDs, cartridges and other electronic and/or physical storage and backup media and devices containing Utility Data must also be securely deleted or destroyed within sixty (60) days thereof.

7. Confidentiality.

7.1 **Nondisclosure.** Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as necessary for the performance of this Agreement or as expressly permitted herein, and will not disclose such Confidential Information to any third party except as expressly permitted herein; provided, however, that each party may disclose the other party's Confidential Information to its employees and contractors who have entered into a written agreement that is no less protective of the disclosing party's Confidential Information than this Agreement and who have a need to know such information. The receiving party shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of the disclosing party's Confidential Information, but in no event less than reasonable care. The receiving party shall promptly notify the disclosing party of any actual or suspected misuse or unauthorized disclosure of any of the Confidential Information. Notwithstanding anything to the contrary, the Home Energy Reports shall be delivered and disclosed to Designated Customers as provided herein, and the Utility shall have no obligation to cause the Designated Customers to maintain the confidentiality of the Home Energy Reports.

7.2 **Exceptions.** Notwithstanding anything to the contrary herein, neither party shall be liable for using or disclosing data or information that such party can prove:

- (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;
- (b) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
- (c) is disclosed with the prior written approval of the disclosing party;
- (d) was independently developed by the receiving party without any use of the Confidential Information, as demonstrated by files created at the time of such independent development;
- (e) was explicitly released to the receiving party by the Customer to whom the information refers;
- (f) becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights;
- (g) is disclosed generally to third parties by the disclosing party without restrictions similar to those contained in this Agreement; or
- (h) is disclosed pursuant to the order or requirement of a court, administrative agency, other governmental body, or applicable law, including the Minnesota Government Data Practices Act; provided, however, that the receiving party shall (i) provide prompt notice thereof and reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure; and (ii) request and use reasonable efforts to secure confidential treatment of such disclosure.

7.3 Confidentiality of Agreement. Each party shall be entitled to disclose the existence of this Agreement, but agrees that the terms and conditions of this Agreement (including without limitation the Fees) shall be the Confidential Information of OPOWER and shall not be disclosed by the Utility to any third party; provided, however, that the Utility may disclose the terms and conditions of this Agreement:

- (a) as required by any court or other governmental body;
- (b) as otherwise required by applicable law, including the Minnesota Government Data Practices Act;
- (c) to its legal counsel;
- (d) in confidence, to accountants, banks, and financing sources and their advisors;
- (e) in connection with the enforcement of this Agreement or rights under this Agreement; or

(f) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction.

7.4 Remedies. Both parties acknowledge and agree that unauthorized use of the disclosing party's Confidential Information by the receiving party shall diminish the value of such information. Therefore, if the receiving party breaches any of its obligations with respect to confidentiality hereunder, the disclosing party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to injunctive relief, as well as monetary damages. The receiving party shall not dispute the availability to the disclosing party of such relief on grounds that damages would be an adequate remedy therefore; provided, however that nothing herein shall prevent or prohibit the receiving party from disputing the occurrence of such breach or from making submissions with respect to the amount and type of bond, surety or other security to be posted by receiving party in connection with the grant of such remedies.

7.5 Third-Party Confidential Information. Each party represents and warrants that it has not and shall not, and that it shall ensure that its agents, employees, assigns, providers and subcontractors shall not use in the course of its performance hereunder, and shall not disclose to the other party, any confidential information of any third party, unless such party, its agents, employees, assigns, providers and/or subcontractor, as applicable, are expressly authorized in writing by such third party to do so.

8. Administrative Contacts. The parties' primary contacts for purposes of implementing this Agreement shall be as follows:

Utility:

Name: Patty Hanson Phone: (507)280-1615

OPOWER:

General Counsel: Michael Sachse (571) 384 - 1257

9. Ownership.

9.1 By OPOWER. OPOWER acknowledges and agrees that, as between the Utility and OPOWER, the Utility owns all right, title, and interest in and to the Utility Data and Utility Marks and the Intellectual Property Rights therein, and each tangible instance of the Home Energy Reports delivered hereunder excluding the (a) design, look and feel, (b) graphical elements, (c) content (excluding the Utility Data), and (d) the Intellectual Property Rights therein, and nothing in this Agreement will confer on OPOWER any right of ownership or interest in such Utility Data, Utility Marks, or such tangible instances of the Home Energy Reports.

9.2 By Utility. The Utility acknowledges and agrees that, as between the Utility and OPOWER, OPOWER owns all right, title, and interest in and to the OPOWER Products

(excluding the Utility Data), OPOWER Marks, and the Intellectual Property Rights therein, and nothing in this Agreement will confer on the Utility any right of ownership or interest in the OPOWER Products (excluding the Utility Data) or OPOWER Marks.

9.3 Use of Marks.

(a) OPOWER may identify the Services, including but not limited to the Home Energy Reports and Energy Insider Website, and Complementary Offerings with the OPOWER Marks and "powered by OPOWER" or other similar phrasing;

(b) During the Term, (i) the Utility may use OPOWER's Marks to identify and publicize the Services at trade shows and utility industry events; (ii) at the mutual agreement of OPOWER and the Utility, the Utility may use OPOWER's Sample Reports to publicize the Services at trade shows and utility industry events; and (iii) OPOWER may identify the Utility as a OPOWER customer and use the Utility's Marks in connection therewith, provided that such identification shall not state or imply an endorsement by the Utility.

(c) Except as expressly permitted by this Agreement, each party shall have a right of approval over the use of its Marks by the other party.

(d) All use of another party's Marks pursuant to this Agreement shall be in accordance with such party's policies regarding Mark usage, as provided in writing to the party using such Marks from time to time, and any goodwill accruing to any such Mark shall inure to the benefit of the owner thereof. Each party shall have the right to immediately suspend the other party's use of its Mark if such use is not in conformity with such policies. Neither party will use, register or take other action with respect to any Mark of the other party, except to the extent authorized in writing by such party in advance. Each party will have the sole right and discretion to bring proceedings alleging infringement of its Marks or unfair competition related thereto; provided, however, that each party agrees to provide the other party with its reasonable cooperation and assistance with respect to any such infringement proceedings arising under or relating to this Agreement.

10. Representations and Warranties

10.1 **By OPOWER.** OPOWER hereby represents, warrants and covenants that:

(a) The Services (excluding the Utility Data and OPOWER's use thereof under this Agreement) and OPOWER Marks do not and will not violate any applicable statute, regulation, or law, or infringe any Intellectual Property Right of any third party, and will not include any content that constitutes a libel, slander or defamation against any third party or in any way violates, conflicts with or infringes upon any right of any kind or nature of any third party, including without limitation, any rights of publicity or privacy or other rights, or give rise to any legal claim by any third party;

(b) All obligations owed to third parties by OPOWER with respect to the Services (excluding the Utility Data and OPOWER's use thereof under the Agreement) and OPOWER Marks, including without limitation, obtaining and complying with all third party

licenses, remitting any and all third-party payments and making any and all necessary filings have been and will be made, adhered to and maintained;

(c) OPOWER is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation, and has the full power and authority to enter into and perform its obligations under this Agreement; and

(d) The execution, delivery, and performance by OPOWER of this Agreement will not violate any law, statute, or other governmental regulation, or any other agreement or instrument to which OPOWER is a party.

10.2 By the Utility. The Utility hereby represents, warrants and covenants that:

(a) The Utility Data and the Utility Marks, and OPOWER's use of them hereunder, do not and will not violate any applicable statute, regulation, or law or infringe any Intellectual Property Right of any third party, and will not include any content that constitutes a libel, slander or defamation against any third party or in any way violates, conflicts with or infringes upon any right of any kind or nature of any third party, including without limitation, any rights of publicity or privacy or other rights, or give rise to any legal claim by any third party;

(b) All obligations owed to third parties with respect to the Utility Data and the Utility Marks, including without limitation, obtaining and complying with all third party licenses, remitting any and all third-party payments and making any and all necessary filings have been and will be made, adhered to and maintained;

(c) The Utility has the full power and authority to enter into and perform its obligations under this Agreement; and

(d) The execution, delivery, and performance by the Utility of this Agreement will not violate any law, statute, or other governmental regulation, or any other agreement or instrument to which the Utility is a party.

11. Services Warranty.

11.1 OPOWER warrants that the Services (excluding the Utility Data when processed in accordance with the SOW) shall substantially conform with the applicable SOW. OPOWER's sole obligation and the Utility's sole remedy for breach of the foregoing warranty shall be as follows: Provided that the Utility notifies OPOWER in writing of any such non-conforming Services within sixty (60) days of delivery or non-delivery by OPOWER of the applicable non-conforming Services, OPOWER shall make reasonable efforts to correct such non-conforming Services at no additional cost to the Utility.

11.2 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10 AND 11, EACH PARTY'S DATA, SERVICES, PRODUCTS, AND MARKS ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND EACH PARTY HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF

MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ERROR-FREE OR UNINTERRUPTED SERVICE, WHETHER ALLEGED TO ARISE BY LAW, BY USAGE IN THE TRADE, BY COURSE OF DEALING OR COURSE OF PERFORMANCE.

12. Limitation on Damages.

12.1 EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, WARRANTY, OR OTHERWISE.

12.2 MAXIMUM AGGREGATE LIABILITY. EXCEPT FOR ANY INDEMNIFICATION LIABILITY ARISING UNDER SECTION 13 OF THIS AGREEMENT, THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED \$1,000,000.00, PROVIDED THAT THE UTILITY WILL REMAIN LIABLE FOR THE AGGREGATE AMOUNT OF ANY PAYMENT OBLIGATIONS OWED TO OPOWER PURSUANT TO THIS AGREEMENT.

13. Indemnification.

13.1 General Indemnity. Each party shall indemnify, defend and hold harmless the other party, any entity controlled, controlled by or under common control with the party, and the officers, directors, consultants, employees, successors and permitted assigns of each from and against any third party lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, costs, expenses, including attorney's fees and costs, or other liability arising from any breach of any of the representations or warranties made by the party hereunder. The indemnified party shall promptly notify the indemnifying party in writing of any such claim, provided that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure; and the indemnified party shall provide all assistance and information reasonably required for the defense and/or settlement of the claim. The indemnifying party shall keep the indemnified party informed of and consult with the indemnified party in connection with the progress of such litigation or settlement, and shall not have any right, without the indemnified party's written consent, to settle any such claim in a manner that does not unconditionally release the indemnified party. The indemnified party shall have the right, at its own expense, to be represented by and actively participate through its own counsel in any such suits and proceedings.

13.2 Injunctions. If any use of the Services, the Utility Data, or any portion thereof is enjoined, or is found by final, nonappealable order of a court or a regulatory body of competent jurisdiction to infringe or misappropriate any third-party's Intellectual Property Rights (such Services or Utility Data to be deemed the "Infringing Materials") in any place where the

Infringing Materials are used or accessed, in addition to any rights in this Section 13, then OPOWER (in the case of the Services) or the Utility (in the case of the Utility Data) shall, at its sole expense, either: (i) obtain from such third-party the right for the other party to continue to use the Infringing Materials; or (ii) modify the Infringing Materials to avoid and eliminate such infringement or misappropriation, as the case may be; provided, however, that such modification shall comply with the SOW; or (iii) if neither of the remedies are commercially feasible, terminate this Agreement.

13.2 Sole Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 13 SET FORTH EACH PARTY'S SOLE AND EXCLUSIVE LIABILITY AND EACH PARTY'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

14. Insurance Requirements. OPOWER shall maintain in effect at all times during the Term coverage or insurance as specified in the sample certificate of insurance attached as Appendix C

15. Invoices

15.1 OPOWER shall submit invoices to the Utility for each payment event set forth in Appendix A.

15.2 Invoices shall include a non-duplicated invoice number, the service agreement number, the Utility Department name, and the name of the point of contact for the Department and the RPU PO number.

15.3 All invoices shall be mailed or delivered to:

Rochester Public Utilities

Attn: Patty Hanson

4000 East River Rd NE

Rochester, MN 55906-2813

16. Payment

16.1 All proper invoices received by the Utility will be paid within 30 days of the invoice issued in accord with Appendix A.

16.2 If payment is not timely made per subsection 16.1, interest shall accrue on the unpaid balance of the lesser of one percent (1%) per month or the maximum lawful rate.

17. Travel Expenses. The Utility will reimburse OPOWER for all travel or lodging expenses incurred by OPOWER in connection with this Agreement at the request of or as pre-approved by the Utility. All invoices for expenses shall be accompanied by copies of receipts or other reasonable documentation of expenses incurred.

18. Right to Audit.

18.1 OPOWER agrees that during OPOWER's normal business hours for the Term of this Agreement and for a period of one (1) year thereafter, an independent third party approved by OPOWER (such approval not to be unreasonably withheld) shall have access to, and the right to examine and audit, the following records at OPOWER's offices, provided that such audits shall not unreasonably disrupt OPOWER's business or operations:

- The Program Reports prepared hereunder.
- The CD-ROMs containing the Home Energy Reports delivered to Designated Customers hereunder.
- Invoices for postal and mailing services as available.
- Invoices for travel expenses as available.

OPOWER shall retain all such records for a period of one (1) year after the Term. The Utility and OPOWER shall establish procedures for performing such audits and shall preserve the confidential and proprietary status of audited documents and information.

19. Subcontractors.

19.1 OPOWER will subcontract for some of the work performed under this contract, including printing and mailing services, and certain computer services. Work performed for OPOWER shall be pursuant to a written contract between OPOWER and the subcontractor and shall include data security protections similar in scope to those provided as part of this Agreement. The terms of the subcontract may not conflict with the terms of this Agreement.

19.2 OPOWER shall be fully responsible to the Utility for all its obligations performed by subcontractors hereunder. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between the Utility and any such subcontractor, nor shall it create any obligation on the part of the Utility to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.

20. **Advertising.** Except as expressly provided herein, OPOWER shall not advertise or publish, without the Utility's consent, the fact that the Utility has entered into this Agreement, except to the extent required by law.

21. Miscellaneous.

21.1 **Assignment.** Neither party may assign, sublicense, delegate or otherwise transfer any of its rights or obligations under this Agreement without the express prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement without consent to another entity merging with, consolidating with, or acquiring all or substantially all of the party's assets or stock, provided that the assignee shall assume all rights and obligations under this Agreement. Any authorized assignment shall be binding upon and enforceable by and

against the parties' successors and assigns, provided that any unauthorized assignment shall be null and void and constitute a breach of this Agreement.

21.2 Entire Agreement. This Agreement, and any appendices, exhibits, and amendments thereto, constitutes the entire agreement between the parties and supersedes all previous agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may not be amended without the prior written consent of all parties. In the event of any inconsistency between the appendices or exhibits and this Agreement, the provisions of this Agreement shall govern.

21.3 Force Majeure. Except for payment obligations, if either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of the party invoking this provision, including but not limited to acts of God, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes (each, a "Force Majeure Event"), such party's performance shall be excused and the time for performance shall be extended accordingly provided that the party immediately takes all reasonably necessary steps to resume full performance.

21.4 Governing Law. This Agreement is made under and shall be governed by the laws of the State of Minnesota, excluding its conflicts of law principles. All disputes arising from this Agreement shall be resolved in the courts of Minnesota and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of either party to seek and secure injunctive relief from any competent authority as contemplated herein.

21.5 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices shall be sent to the address specified below:

If to the Utility:

4000 East River Rd NE

Rochester, MN 55906

Attn: Patty Hanson

If to OPOWER:

1515 N. Courthouse Road Suite 610

Arlington, VA, 22201

Attn: Daniel Yates

Either party may change its contact information by providing the other party with notice of the change in accordance with this section.

21.6 Relationship of Parties. The parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other party. Neither

party shall hold itself out as an agent of the other party. This Agreement will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind.

21.7 Severability. If any provision of this Agreement is held invalid or unenforceable, it shall be replaced with the valid provision that most closely reflects the intent of the parties and the remaining provisions of the Agreement will remain in full force and effect.

21.8 Waiver. No delay or failure by either party to exercise any right or remedy under this Agreement will constitute a waiver of such right or remedy. All waivers must be in writing and signed by an authorized representative of the party waiving its rights. A waiver by any party of any breach or covenant shall not be construed as a waiver of any succeeding breach of any other covenant.

21.9 Headings. The headings of the articles and paragraphs contained in this Agreement are inserted for convenience and are not intended to be part of or to affect the interpretation of this Agreement.

21.10 Construction. Both parties acknowledge and agree that the Agreement has been jointly prepared and its provisions will not be construed more strictly against either party as a result of its participation in such preparation.

----- Signature Page Follows -----

ACCEPTED FOR
THE UTILITY

Dated: _____

ROCHESTER PUBLIC UTILITIES

Darryl Hanson

Authorized Representative

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed as to form by:

City Attorney

ACCEPTED FOR
OPOWER.

By: *Daniel Yates*

Name *Daniel Yates*
Title *CEO & Founder*

Date: *11/10/09*

Federal Tax ID: _____

Appendix A - Statement of Work and Payment Schedule

Appendix B - Additional Services Order Form

Appendix C- Insurance Requirements

APPENDIX A

STATEMENT OF WORK AND PAYMENT SCHEDULE

STATEMENT OF WORK

This Statement of Work ("SOW") covers the engagement between OPOWER. ("OPOWER") and the City of Rochester, Minnesota, a Minnesota municipal corporation acting through its Public Utility Board ("RPU") for the delivery of the Home Energy Reports, the Energy Insider Website, and Program Reports in RPU's Service Territory. The SOW is an integral part of, and incorporated by reference into, that certain Implementation and Licensing Agreement dated November 24, 2009 ("Agreement"). Capitalized terms have the meaning given in the Agreement.

OPOWER's Home Energy Reporting System and Insight Engine are respectively the front-end and back-end of the communications platform it provides to utilities to better use customer data to engage customers. The Insight Engine is a software analytics engine that analyzes an array of data streams to derive insights about customer segments and individual customers. The Home Energy Reporting System is delivered in the mail and online. It tells customers where they stand in their neighborhood with respect to electrical energy use. Further, it uses customers' energy profiles – determined by the Insight Engine (e.g. heavy A/C use, consistent use, home owner/renter, etc) – to individually target energy efficiency offers and rebates most relevant to them.

Home Energy Reports will be mailed to targeted residential customers on an average bi-monthly frequency (6 reports every 12 months), with exact frequencies for each customer mutually-agreed-to, for the duration of the program. The energy and program participation data for this implementation will be provided on an ongoing basis by RPU, and will be combined with third party data to build comprehensive profiles of each participating RPU customer. In addition to the Home Energy Reports, a customer service interface will give customer service representatives online access to the full history of the Home Energy Reports delivered to customers. Lastly, the Energy Insider customer-facing website will provide customers online access to their Home Energy Report, online benchmarking and audit-like functionality ("best tips for me" and "neighbor challenge"), and access to additional energy efficiency information beyond that presented on the mailed report.

Throughout the course of the Agreement robust measurement and verification will be performed, with annual updates culminating in a final report at the conclusion of the program. The report will detail the program impact on the customer base on a number of critical dimensions, including reduction in energy use and overall increase in program participation in energy efficiency programs.

Scope of Work Outline

Product Definitions:

- A. Home Energy Reporting System
 - i. Home Energy Reports
 - ii. Energy Insider Website
- B. Insight Engine
- C. Customer Service Interface
- D. Program Reports

Project Phases:

PHASE I A: INFRASTRUCTURE AND PRODUCT CUSTOMIZATION

1. Deploy technical infrastructure
2. Select pilot regions and acquire 3rd party data
3. Design optimization, segmentation and targeting plan.
4. Integration of program marketing for Home Energy Reports and Energy Insider Website

PHASE I B: PRODUCT INTEGRATION

5. Deploy Customer Service Interface
6. Implement automated data transfer (electricity)
7. Integrate RPU's data streams and populate Insight Engine (electricity)
8. Final Selection of Designated Customers (electricity)

PHASE II: IMPLEMENTATION

9. Implement Home Energy Reports (offline reporting)
10. Deployment of Energy Insider Website (online functionality)

PHASE III: MEASUREMENT AND VERIFICATION

11. Measure and Report on conservation, efficiency and program participation

PHASE IV: OPTIMIZATION AND EXPANSION (optional)

12. Optimize expansion and selection of new Designated Customers based on learnings from phases II and III.

The final project timeline will be mutually agreed to via the Program Work Plan that will be completed after the program kickoff meeting.

Commencing delivery of the Home Energy Reports is subject to RPU's approval prior to the mutually agreed to scheduled mailing date, which shall not be unreasonably withheld or delayed. RPU will be invoiced and obligated to pay for the milestone payments tied to the program stated in this Statement of Work, and shown on the pricing schedule in Appendix A. Payment shall not be unreasonably withheld or delayed.

PRODUCT DEFINITIONS

A. Home Energy Reporting System

The Home Energy Reporting System is a combined offline and online system of delivery of customized energy data and recommendations to Designated Customers. Designated Customers are those residential customers who are chosen to receive the reports and access to the website. The system is delivered as a software-as-a-service ("SaaS"), minimizing IT footprint and demands on RPU's staff.

The offline portion of the system, called "Home Energy Reports", is comprised of the following modules, each of which is individually selected for the Designated Customer:

- a. *Energy Comparison Report*: An individualized comparison of the Designated Customer's energy use to a group of Customers living in similar sized homes, nearby. The group of Customers is selected to be large enough so that the energy use of another individual Customer cannot be derived.
- b. *Progress Tracker*: An individualized comparison of the Designated Customer's energy use for the current time period this year compared to their usage during that same time period during the previous year. For Designated Customers who respond to requests for commitments to reduce energy use, their commitment is presented to them in the Progress Tracker for easy tracking.
- c. *Dynamically Generated Tips and Offers*: Tips, recommendations, or offers (collectively "Action Steps") to market new products and services to Designated Customers and to help them reduce overall and peak electricity consumption.
 - o Includes RPU marketing and efficiency programs, referrals to and promotions for energy saving products and services.
 - o Optional: may include 3rd party offers, discounts and coupons (to be priced as an option for 2010).
 - o Dynamically generated and targeted for each Designated Customer based on the analysis, profiling and segmentation performed in Task 6, and/or as directed by RPU marketing staff.

Delivery of offline Home Energy Reports is as follows:

- d. OPOWER manages the creation, printing and mailing of Home Energy Reports.
- e. The Home Energy Reports are delivered to the Designated Customers via USPS Standard Mail.

Energy Insider Website: The online component of the Home Energy Reporting System, the Energy Insider Website, serves as an extension and elaboration of the offline reports, providing Designated Customers with more opportunities to learn about their energy consumption and gain access to all available offers and rebates. This website includes OPOWER's robust online analysis tools, audit-like ("best tips for me" and "neighbor challenge"), and content functionalities. The website is deployed as a destination for Designated Customers to better understand their energy use and to learn about actions they may take to reduce their consumption. The site is hosted and maintained by OPOWER and is private labeled for RPU so that it appears to the Customer to be a site provided by RPU. The Energy Insider Website will allow customers to: a) see similar information online as they would receive in a printed Home Energy Report; b) set personal goals for reducing energy use and track their progress towards their goal; c) browse the full set of energy efficiency tips in OPOWER's efficiency database; d) join other customers in sharing best practices, comments and reviews; e) view benchmarking online and audit-like

functionalities (“best tips for me” and “neighbor challenge”); f) provide information online that will be leveraged to make online and offline reporting and benchmarking more robust.

B. Insight Engine

The **Insight Engine** is the back-end data services and analytics engine that powers OPOWER’s customer facing applications, including both the online and offline components of the Home Energy Reporting System, for all OPOWER clients. The Insight Engine includes:

- Flexible ETL framework for regular, automated importing of multiple data streams from multiple data sources.
- Sophisticated data matching and cleansing routines for demographic, housing and energy data.
- Geo-coding module for latitude/longitude positioning of addresses.
- Customizable data calculation engine for neighborhood normative comparisons.

C. Customer Service Interface

The Customer Service Interface is a password protected web application for RPU (or OPOWER) customer service staff to support the Home Energy Reporting System. The Customer Service Interface includes:

- Individual password protected user accounts for each customer service representative.
- Flexible permissioning system for differing levels of administrative access.
- Access to all current and historical Home Energy Reports in PDF format, and searchable by both Report Customer last name and account number.

D. Program Reports

Program Reports are provided annually to provide a robust evaluation of the program’s accomplishments and effectiveness. Program Reports are composed of two sections, the first of which is Confidential, and the second of which can be shared. The Confidential first section contains detailed information on the technical approaches and techniques utilized to perform the program analysis. These details include analytic methodologies, 3rd-party data sources, data matching techniques, regression models, and models used for energy profiling. The second section, which may be shared, contains the key findings and results from the analysis of the program. These results include the overall energy savings and program participation results from the program, with performance breakdowns by key segments (segments detailed in Task 8 below).

All of these products comprise the Home Energy Reporting System Suite, and are currently being provided (in whole or part, depending on the project) to all OPOWER utility clients, being delivered as a software-as-a-service.

PHASE 1A: INFRASTRUCTURE AND PRODUCT CUSTOMIZATION

Task 1: Deploy technical infrastructure

OPOWER will install and configure all necessary hardware, software and network infrastructure for the delivery of the Home Energy Reports and Energy Insider Website.

Task 1 Details:

OPOWER will set up and configure the technical infrastructure:

- Requisition and configure OPOWER servers.
- Install and configure required underlying software (e.g. database server, application server, web server, etc)
- Install and configure multi-layered backup system
- Extend and secure networking topology.
- Harden network servers and implement operations processes and access controls

Task 1 Deliverables:

- Fully deployed hardware and software infrastructure ready for program launch

Task 2: Select pilot regions and acquire 3rd party data

OPOWER will perform historical energy usage, demographic and geographic research, in conjunction with RPU, to identify the regions of RPU's territory best suited to deploy the pilot program. Zip codes, city, and county boundaries will be considered so as to optimize data coverage and ensure speedy deployment.

Task 2 Details:

OPOWER will identify pilot regions:

- OPOWER and RPU will work together to select 25,000 initial residential Designated Customers and an accompanying control group (up to 20,000). The initial plan is for approximately 25,000 customers to receive electric reports. The control groups will also be established for each type of customer. Agreement on the final split will be based upon program goals and by mutual consent.
- Analyze demographic, geographic, and local data coverage rates to select optimal regions for pilot program.
- Acquire housing data from 3rd party providers and county assessor offices in pilot region
- Acquire demographic data from 3rd party providers for pilot region
- Extend geo-coding licenses to selected areas

Task 2 Deliverables:

- Selected pilot regions with accompanying 3rd party data sample.

Task 3: Design optimization, segmentation and targeting plan

OPOWER will develop an analytically grounded segmentation plan to optimize targeting of RPU programs and recommendations.

Task 3 Details:

OPOWER and RPU will:

- Compile available analysis of previous marketing campaigns used to market RPU rebates, programs and recommendations. Where possible, key metrics, such as internal and external cost per acquisition, will be provided to better inform targeting efforts.

OPOWER will:

- Use energy, housing, and demographic data and available past program participation data to design a multi-dimensional segmentation plan of Designated Customers based on:
 - Energy consumption patterns (e.g. normalized high seasonal peak, high base load, etc.)
 - Housing data (e.g. age of house, size of house, value of home, type of construction, presence of a pool, presence of a garage)
 - Past program participation & rebate redemption (e.g. Energy Star and other rebates; rate programs, etc...) if available
 - Demographic data (e.g. renter vs. homeowner, presence of children in the household, indicators of interest in environmental issues, age of customer, duration of residence, socioeconomic/income levels, as available)
- Identify high-potential prospects for program marketing by profiling historical participants and available historical marketing campaign results.

Task 3 Deliverables:

- Designated Customer segmentation and targeting plan summary.

Task 4: Integration of program marketing for Home Energy Reports and Energy Insider Website.

OPOWER will work with RPU to target RPU rebates, programs, and recommendations in the Home Energy Reports and through the Energy Insider Website. Updates to these marketing materials will be implemented as needed.

Task 4 Details:

OPOWER and RPU will:

- Compile a comprehensive list of rebates, programs, and recommendations for inclusion in the Home Energy Reports and Energy Insider Website.

OPOWER will:

- Brand the Home Energy Reports and Energy Insider Website with the RPU logo according to RPU's branding style guide.
- Integrate RPU's rebates, programs, and recommendations into OPOWER's offer and tip database for presentation on the Home Energy Reports and Energy Insider Website.
- Update rebates, programs, and recommendations, as needed, by material changes in program structure or availability of program funds.

Task 4 Deliverables:

- Sample Home Energy Report branded with the RPU logo, according to RPU's style guide.
- Energy Insider Website branded with the RPU logo, according to RPU's style guide. RPU marketing materials and efficiency programs integrated and formatted for use in OPOWER's Action Steps database.
- Periodic updates of marketed RPU efficiency programs and campaigns as required.

PHASE I B: PRODUCT INTEGRATION AND CUSTOMIZATION

Tasks in Phase IB will need to occur in parallel with Phase IA, as they often require greater time for completion.

Task 5: Deploy Customer Service Interface

OPOWER will provide its Customer Service Interface to support the Home Energy Reporting System, and conduct on-site training of customer service staff on using this interface.

Task 5 Details:

OPOWER will:

- Create and permission password-protected accounts for customer service representatives and customer service managers. OPOWER will not be providing customer service representatives as they will be provided by RPU (or RPU contractor).
- Conduct up to eight-hours of on-site training session.

Task 5 Deliverables:

- Configured and deployed Customer Service Interface
- Onsite training day (8 hours) done in shifts as needed over 1-2 days.

Task 6: Implement Automated Data Transfer

OPOWER and RPU will jointly develop, implement, and finalize a protocol for regular, secure transfer of data from RPU to OPOWER in a mutually agreed upon format(s).

Task 6 Details:

- Establish secure, firewalled connection (e.g., sftp, ssh) between OPOWER servers and RPU data center for secure transmission of data.

OPOWER and RPU will jointly develop data transfer protocols:

- Develop the list of data elements owned by RPU (e.g., electricity usage and billing data and, energy efficiency program participation) and mutually agreed upon data formats for each to be used in the project implementation. Transfer protocols will need to be developed for data coming from the electricity system.
- Establish a process for the initial transfer of historical data from RPU to OPOWER. The expected data transfer will include 12+ months of energy usage data (back to January 1, 2008, as available) and customer identifying data (address, account #, etc) for the customers from which Designated Customers, neighbors and control groups will be developed.
- Establish an ongoing process for energy usage updates for the selected groups of Designated Customers and customers in the neighbor and control groups.
- Establish an ongoing process for notification of all new Customers and all Customers that have ended their relationship with RPU.

Task 6 Deliverables:

Task 6 Deliverables: Electricity deployment

- Establish secure, firewalled connection (e.g., sftp, ssh) between OPOWER servers and [Utility] data center for secure transmission of electricity data.
- OPOWER receives initial historical energy data and other agreed upon data elements via established, secure connection.
- OPOWER and RPU establish a schedule for ongoing automated data update processes for new, continuing, and departing Customers.

Task 7: Integrate RPU data streams and populate Insight Engine

OPOWER will integrate data received from RPU with third party data and populate the Insight Engine database by performing the following steps.

Task 7 Details:

OPOWER will:

- Define and author data transform layer for initial and ongoing meter data from RPU.
- Parse and load initial account information and meter read data, and additional data provided by RPU in accordance with Task 6.
- Parse and load available third-party data (e.g. housing data, demographic data) sourced by OPOWER in Task 2.
- Match data, ensuring accurate combination of initial and ongoing Customer and 3rd-party data through the unique customer identifier from your system, and for the 3rd party data through rigorous name and address matching to append those data to your customer data.
- Standardize all addresses to USPS standards for geo-coding and mailing purposes.
- Geo-code all addresses to establish longitude and latitude coordinates for each premise.
- Initiate ongoing normative calculations to determine and regularly update neighbor and efficient neighbor calculations for each Customer.

Task 7 Deliverables:

Task 7 Deliverables: Electricity deployment

- Insight Engine with loaded and matched historic and ongoing energy data, housing, and demographic data for all Customers.
- Geo-codes and normative calculations for all Customers loaded in the Insight Engine.

Task 8: Final selection of Designated Customers

OPOWER will analyze the integrated data resulting from Task 7 and provide statistics and insights necessary to enable the final selection of the test and control groups for the program.

Task 8 Details:

- Working in conjunction with RPU, OPOWER will randomly partition the customers in the selected pilot regions into test and control, selecting an exact set of customers from the pilot regions identified in Task 2. The final test group selection will comprise the Designated Customers.
- The selection of the Designated Customers must meet OPOWER's technical eligibility

requirements for available data and "neighbor" selection. Such eligibility requirements shall be shared with RPU in writing prior to implementation, via a data requirements document.

Task 8 Deliverables:

Task 8 Deliverables: Electric deployment

- Final selection of Designated Customers and control group for the program implementation.

PHASE II: IMPLEMENTATION

Task 9: Implement Home Energy Reports Program

OPOWER will deliver the Home Energy Reports to RPU Designated Customers through an opt-out program. OPOWER will make the Energy Insider Website available to RPU Designated Customers.

Task 9 Details:

- Designated Customers will receive offline Home Energy Reports for an initial period of 24 months, with optional 12-month extensions subject to mutual signed agreement by RPU and OPOWER.
- Accompanying the first months' mailing will be an introductory insert explaining the nature of the program, its duration, and the options for learning more or opting out.
- Home Energy Reports shall be delivered at an average frequency of no fewer than six reports per Designated Customer per year.
- The Energy Insider Website will be available to Designated Customers throughout the initial term of the program.

RPU customer service staff will be able to opt-out Designated Customers who call in and request to no longer receive the Home Energy Reports.

Optional: At RPU's discretion, OPOWER may source and include 3rd party offers and coupons in the Home Energy Reports to increase their effectiveness and ability to be acted upon.

Task 9 Deliverables:

- Delivery of an average of six (6) reports per year per Designated Customer for 24 months. Over the program duration, 300,000 reports will be delivered to RPU Designated Customers.

Task 10: Deploy Home Energy Reporting Website

OPOWER shall make available the Energy Insider Website to all Designated Customers.

Task 10 Details:

- OPOWER will work with RPU to "private-label" the website, branding it with RPU's logo, according to RPU's style guide.
- OPOWER will work closely with RPU to set up a mutually agreed upon authentication process to allow Designated Customers access to their energy information online. Such authentication process

- will include a method to provide Designated Customers with secure and easy access to their information through the website.
- OPOWER will host and maintain the website, which is integral to the Home Energy Reporting System, which in turn is integrated with the Insight Engine, both also hosted and maintained by OPOWER.
 - The Energy Insider Website includes the following sections:
 1. *Online Home Energy Report*: This section is a secure area for Designated Customers to see online a very similar set of information to what is contained in their printed Home Energy Reports. Designated Customers can see their electricity usage compared to neighborhood averages, and receive targeted energy efficiency recommendations generated by the Insight Engine.
 2. *Commitment Tracker*: Enables Designated Customers to set a personal goal to reduce their energy use and to track their progress online.
 3. *Energy Efficiency Recommendation Library*: Designated Customers gain access to OPOWER's entire library of Energy Efficiency Tips, organized by cost to implement and type of energy use (heating, cooling, lighting, etc).
 4. *Online Benchmarking*: Designated Customers view their benchmarking analysis, and interact with the website to view various analyses over time. This functionality is linked to the benchmarking report and customers' account information.
 5. *Online mini-Audit Functionality*: Designated Customers can answer questions and provide input about their homes and energy-related behaviors, through the "best tips for me" and "neighbor challenge". This functionality is linked to the benchmarking report and customers' account information.
 6. *OPOWER's Network*: Designated Customers gain access to the OPOWER Network, where they can share their suggestions with others, view popularity rankings of different efficiency tips in their neighborhood, and understand what's working and what isn't working for people like them.

Task 10 Deliverables:

- Contractor shall make available the Energy Insider Website to all Designated Customers for a period of up to twenty-four (24) months unless extended per the contract option.

PHASE III: MEASUREMENT AND VERIFICATION

Task 11: Measure and Report on Conservation, Efficiency and Program Participation

- OPOWER shall provide annual reports, thirteen months from the date of the first mailing of Home Energy Reports and every twelve months thereafter or until this Agreement is terminated in electronic format to verify program accomplishments (the "Program Reports").

Task 11 Details:

Program Reports are composed of two sections, the first of which is Confidential, and the second of which can be shared. These details include analytic methodologies, 3rd-party data sources, data matching techniques, regression models, and models used for energy profiling.

Program Reports will include:

- Section 1: the first section is Confidential and contains detailed information on the technical approaches and techniques utilized to perform the program analysis:
 - Detailed information on the statistical analytic techniques used, such as multi-variate predictive modeling methodology.
 - Information on the methodology used to select test and control groups
 - Matching techniques and data cleaning techniques used to avoid bias
 - Details on cross sectional model diagnostics
- Section 2: the second section may be shared, is not Confidential, and contains the key findings and results from the analysis of the program. This includes the overall energy savings and program participation results from the program, and results broken down by segment, as delineated below:
 - Analysis of change in electric consumption among Designated Customers compared to the established control group and to their historic consumption. Analysis shall include breakdown of program impact by segments, subject to sufficient data sets and mutual consent. Such segments may include analysis by:
 - Heat type (electric or gas)
 - Designated Customer investment likelihood (a combined measure of wealth, home ownership, etc)
 - Energy profile (high summer peak, low summer peak, etc)
 - Year over year analysis of energy usage
 - Final output includes overall analysis of savings impact of the Reports and cost of the Reports per customer and to RPU in order to understand cost-effectiveness (per customer and total for time period). OPOWER shall provide all assumptions and factors used in the calculation of energy and cost savings for RPU internal verification purposes.
 - Response rates for trackable actions taken by Designated Customers and for program participation rates for which data is provided to OPOWER including rebate redemptions and other efficiency and conservation programs tracked at the household level. OPOWER will measure the incremental response rates and aggregate program participation attribution rates for Designated Customers compared to the control group.

Task 11 Deliverable: Delivery of annual Program Reports (reports delivered after each 12 months of Home Energy Reporting)

PHASE IV: OPTIMIZATION AND EXPANSION (Optional)

Task 12: Optimize expansion and selection of new Designated Customers based on learnings from PHASES I - III.

At the end of the first year and any subsequent years as agreed to by RPU and OPOWER, OPOWER will analyze the results from DELIVERABLES II and III and provide recommendations about how to optimize the expansion of the Home Energy Reporting System among RPU's customers.

Task 12 Details:

- Working in conjunction with RPU, OPOWER will identify the priorities subject to RPU's approval, for expansion and select a set of households that is optimized to increase the efficacy of the program and to increase and explore learnings from the ongoing implementation.
- If desired by RPU, OPOWER and RPU will together select 25,000 additional Designated Customers or some other number of Designated Customers as determined by RPU, and an accompanying control group.
- Customers must meet OPOWER's technical eligibility requirements for available data and neighbor selection, as provided to RPU.
- The frequency of Home Energy Report delivery to different sub-segments of the Designated Population as determined in Task 5 above shall be reconsidered and optimized and this frequency shall be established by amendment to this Statement of Work, with an accompanying amendment to the budget, as appropriate.

Task 12 Deliverables:

- Selection of Designated Customers and control group for the program expansion.

Pricing Table

All proper invoices received by the RPU will be paid within 30 days of the invoice.

1. License Fees:	Due Date:
Home Energy Reports	
<p>\$75,000 set-up fee for the initial 25,000 Designated Customers. In the event that the parties agree to expand the Home Energy Reports to additional Customers, there shall be an additional set-up fee of \$1.00 per additional Designated Customer.</p>	<p>Execution of the Agreement</p>
<p>\$5.00 license fee per Designated Customer per year or portion thereof.</p>	<p>In the first year, ½ due at Execution of the Agreement, and ½ due upon delivery of the first reports.</p> <p>\$5.00 per Designated Customer also due annually upon anniversary of delivery of first month's Home Energy Reports.</p>
Energy Insider Website	
<p>Set-up Fee waived (Quoted pricing \$25,000).</p> <p>Fees for additional Designated Customers will be quoted at then-current pricing</p>	<p>N/A</p>
<p>Licensing fees waived for the first year for the initial 25,000 Designated Customers (Quoted pricing is \$1.50 per Designated Customer per year of reporting or portion thereof).</p> <p>Fees for the Energy Insider beyond the initial 24-month Term or for additional Designated Customers will be quoted at then-current pricing.</p>	<p>\$37,500 due annually upon anniversary of delivery of first month's Home Energy Reports.</p>
3rd Party Data Refresh	
<p>Due annually upon anniversary for updating of customer database.</p>	<p>\$15,000 due annually upon anniversary of the delivery of the first months Home Energy Reports.</p>

2. Service Fees

Service Fee	Payment Terms
Home Energy Reports Print Management, Printing, and Mailing	
\$5.00 per Designated Customer per year or portion thereof*	1/3 due upon delivery of the first Home Energy Reports of the initial year, and the remainder of each year's payments paid in quarterly installments due upon the first day of the month in which Home Energy Reports are mailed to Designated Customers.
Introductory explanatory insert, \$7,500	Minimum of 25,000 inserts will be sent (with the first month of reporting), with payment due on the first day of the month in which Home Energy Reports are mailed to Designated Customers.
Staff Training Days	
\$2,000 per day or portion thereof	Due two (2) weeks prior to training day.
Up to \$3,000 Travel budget per year	Travel costs due two(2) weeks prior to training day

* Fee Calculation is based upon delivery to each Designated Customer of an average of six (6) one-page double-sided 8.5" by 11" Home Energy Reports per year via USPS standard mail at current freight and postage prices. OPOWER may increase the fees by not more than an amount equal to the percentage increase of the USPS rate for Standard Mail Regular - Letters AADC Local entry rate, as defined in the USPS Domestic Mail Manual (current price is \$0.256).

Additional Services may be subject to additional Fees as quoted by OPOWER.

All Fees are non-refundable except as expressly provided herein.

Payment Schedule

The table below graphically illustrates the payment timeline delineated above during the project term (first 24 months of report delivery):

2-year Term Payment Schedule- RPU (all payments are due Net 30 upon receipt of invoice)										
Description of Assessment	12/15/2008	Print Mailing Mkt. [70%] - Unaudited for Apr./May 2009	FIS + 3 months							
			FIS + 3 months	FIS + 6 months	FIS + 9 months	FIS + 12 months	FIS + 15 months	FIS + 18 months	FIS + 21 months	
Program Size: 25,000 homes receiving reports and access to Energy Insider Website Home Energy Reports: Average of 6 paper reports/homehold/12 months a total of 150,000 reports per year. Total of 300,000 reports for 24 months of reporting Energy Insider Website: 24 x 7 access for all 25,000 households for full 24 months										
Program Setup	\$ 75,000									
Home Energy Reports System Licensed	\$ 62,500	\$ 62,500					\$ 125,000			
Energy Insider Website	(\$1.50 Per MH)	webred if contract in place by 12/15/09	\$ -				\$ 37,500			
Website Setup	(\$25,000)	webred if contract in place by 12/15/09	\$ -							
Data Refresh	\$ -		\$ -				\$ 15,000			
Print Management, Printing, & Mailing	\$ -	\$ 41,667	\$ 27,778	\$ 27,778	\$ 27,778	\$ 27,778	\$ 43,667	\$ 27,778	\$ 27,778	\$ 27,778
Welcoming Report	\$ -	\$ 7,500								
Program Training	\$ -	\$ 2,000								
Travel (Estimate not to exceed)	\$ -	\$ 3,000					\$ 3,000			
SUBTOTAL	\$ 137,500	\$ 116,667	\$ 27,778	\$ 27,778	\$ 27,778	\$ 27,778	\$ 222,567	\$ 27,778	\$ 27,778	\$ 27,778
Year 1 Total	\$ 337,501									
Year 2 Total	\$ 305,801									
Includes Energy Insider Website in year 2 @ \$1.50 per MH= \$37,500										
Printing and Mailing: Fee Calculation is based upon delivery to each Designated Customer of an average of six (6) one-page double-sided 8.5" by 11" Home Energy Reports per year via USPS standard mail at current freight and postage prices. The fees set forth for printing and mailing shall be in effect from the date of contract signing and for a period of 12 months. Thereafter, Positive Energy may increase the fees by not more than an amount equal to the percentage increase of the USPS rate for Standard Mail Regular - Letters, AADC Local entry rate, as defined in the USPS Domestic Mail Manual (currently \$0.256).										
All Fees are non-refundable except as expressly provided herein.										

**AMENDMENT #1
TO
SERVICES AGREEMENT**

This Amendment #1 ("Amendment #1") is dated and effective as of _____, 2009 by and between **OPOWERPOWER**, a Delaware corporation ("**OPOWER**"), and _____, a _____ ("**Utility**"), and amends the Services Agreement # _____ executed between the parties and dated as of _____ (the "**Agreement**").

WHEREAS the parties wish to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following.

1. The term of the Agreement shall be extended until _____.
2. The Statement of Work shall be amended to add the following deliverables:

Deliverable	Delivery Date	Additional Fees Due
Home Energy Reports		

3. As modified by this Amendment #1, OPOWER and the Utility agree that the terms and conditions set forth in the Agreement, and all exhibits, schedules, addenda, and prior modifications thereto, shall remain in full force and effect and shall govern, control, and contain the entire understanding between the parties with respect to the

subject matter of the Agreement, except as otherwise modified by the express written agreement between the parties.

EXECUTED as of the date first set forth above.

OPOWERPOWER.

By _____

Name _____

Title _____

Dated: _____

ROCHESTER PUBLIC UTILITIES

Authorized Representative

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed as to form by:

City Attorney

APPENDIX C

The following minimum insurance coverage shall be provided by OPOWER and for the duration of this contract with RPU named as additional insured on a primary and non-contributory basis by OPOWER (Except for the worker's compensation.). OPOWER shall also provide a waiver of subrogation. All insurance required shall be effective as to any occurrence during the life of this agreement. OPOWER shall furnish to RPU Certificates of Insurance that the required coverages are in force. Such certificate shall contain a clause stating that in the event of cancellation or material change, at least thirty (30) days' prior written notice shall be given to RPU.

Commercial General Liability including Contractual Liability

Limits not less than \$1,000,000 combined single limit for bodily injury and property damage.

Auto Liability

Limits not less than \$1,000,000 combined single limit for bodily injury and property damage policy shall include owned and blanket non-owned vehicles and hired coverage.

Worker's Compensation

Statutory limits and employer's liability insurance with limits of not less than \$500,000 per accident or disease.

Excess Liability

Limits not less than \$2,000,000 combined single limit for bodily injury and property damage. Except for the Workers' Compensation insurance, such policy shall be excess over all other policies required above.

Professional Liability

Limits not less than \$1,000,000.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the Implementation and License Agreement along with Appendix A, Appendix B, and Appendix C between OPOWER, Inc. and the City of Rochester acting through its Public Utility Board, and request the Mayor and the City Clerk to execute the agreement for

RPU's Conservation Improvement Program, *Home Energy Reports*

Not to exceed \$337,501 in 2010 and \$305,501 in 2011, and subject to Board and Common Council approval of the 2011 electric utility budget.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 24th day of November, 2009.

President

Secretary