

INDEPENDENT CONTRACTOR AGREEMENT

THIS EMPLOYMENT AGREEMENT (“**Agreement**”) is entered into on this the ____ day of _____, 2011 (“**Effective Date**”), by and between J. Andrew Associates, Inc. dba Seven – Utility Management Consultants, LLC., a Texas limit partnership with a principal place of business at 12300 Dundee Court, Suite 214, Cypress, TX 77429 (“**Company**”), and _____, an individual residing at _____ (“**Contractor**”).

WHEREAS COMPANY has marketing agreements with various retail electricity and natural gas providers and is in the business of negotiating contracts with these providers on behalf of its clients and marketing this service to potential clients (collectively “**Power Resale Services**”);

WHEREAS COMPANY desires to engage Contractor as an IC to sell Power Resale Services, such other duties as may be assigned to Contractor relating to Company’s Power Resale Services Business, and to develop certain Intellectual Property (as defined below) for the exclusive use and benefit of Company (collectively the “**Services**”);

WHEREAS Contractor desires to perform the Services for Company, and to receive the compensation to be paid by Company in connection therewith;

WHEREAS Company shall provide Contractor with various kinds of proprietary information and training, including but not limited to business contacts, business plans, trade secrets, technical information, proprietary information licensed or otherwise owned by third parties and other valuable business information, all of which is of a secret or confidential nature;

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Company and Contractor (collectively the “**Parties**” and each a “**Party**”) do hereby agree as follows:

1. Definitions

- a. “**Competitor of Company**” shall mean any individual or entity that is in the business of negotiating contracts with electricity and/or natural gas providers on behalf of its clients and/or markets such a service to potential clients. An individual or entity shall be regarded as a Competitor of Company if it provides or sells such services either during the term of this Agreement or at any time during the twelve (12) month period after the expiration or termination of this Agreement. Competitors of Company shall specifically include, but are not limited to, each of the businesses listed on **Exhibit “A”**.
- b. “**Confidential Information**” shall mean all nonpublic information that Company designates as being confidential, or information that, under the circumstances surrounding disclosure ought to be treated as confidential. Confidential Information includes, without limitation, information related to Company products, procedures and services, the marketing or promotion of any Company product or service, Company’s business policies or practices, and information received from others that Company is obligated to treat as confidential. Confidential Information disclosed to Contractor by any third party in the course of Contractor’s employment with Company shall also be deemed to be covered by this Agreement. Confidential Information does not include any of the foregoing items which (i) have become publicly and widely known and made generally available through no wrongful act of Contractor or of others who were under confidentiality obligations as to the item or items involved, (ii) was known to Contractor, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; or (iii) becomes known to Contractor, without restriction, from a source other than Company without breach of this Agreement by Contractor and otherwise not in violation of the Company’s rights.

- c. “**Confidential Materials**” shall mean all tangible materials containing Confidential Information, including without limitation written or printed documents and computer disks, drives or tapes, whether machine or user readable.
- d. “**Company**” shall mean Seven – Utility Management Consultants, Ltd., and all its present or future subsidiaries, general partners, limited partners and affiliated companies.
- e. “**Intellectual Property**” shall mean any and all of the following made or otherwise arising out of the efforts of Contractor during the term of this Agreement: all copyrights (including, without limitation, the exclusive right to reproduce, distribute copies of, display and thereupon perform the copyrighted work and to prepare derivative works); all copyright registrations and applications; all moral rights; all author’s rights; all trademark rights (including, without limitation, registrations and applications); all right, title and interest in and to any patent, letters patent, industrial model, design patent, petty patent, patent of importation, utility model, certificate of invention, and/or other indicia of inventorship and/or invention ownership, and any application for any of the foregoing, and including any such rights granted upon any reissue, division, continuation or continuation-in-part applications now or hereafter filed, related to any such application; all trade names; all mask work rights; all right, title and interest in and to all trade secret rights arising under the common law, state law, federal law or the laws of any foreign country; all algorithms; all rights in packaging, goodwill and other intellectual property rights; and all divisions, continuations, reissues, renewals and extensions thereof, regardless of whether any such rights arise under the laws of the United States or any other state, country or jurisdiction, and all derivative works thereof.

2. **Services**

a. **Independent Contractor**

In performing the Services under this Agreement, Contractor shall act solely as an independent contractor. This Agreement does not and shall not be construed so as to constitute any form of partnership or joint venture between the Parties nor shall it be construed to create an employer – employee relationship between the Parties.

b. **Performance of the Services**

Consultant shall perform the Services in a competent, professional and workmanlike manner, for the exclusive benefit of Company.

3. **Compensation and Term of Employment**

a. **Compensation**

Company hereby agrees to pay Contractor pursuant to the commission schedule attached hereto as **Exhibit “B”**. Payment of such amounts shall be made in accordance with Company’s regular practices. Company hereby reserves the right to modify the commission schedule at any time during the term of this Agreement, after providing Contractor Ten (10) days notice of any such modification.

b. **Term and Termination**

The term of this Agreement shall begin on the Effective Date and shall expire on a date Two (2) calendar years after the Effective Date (the “**Initial Term**”). Upon expiration of the Initial Term the Agreement shall be automatically extended for a period of One (1) year, upon the same terms and conditions as herein contained, unless one Party notifies the other Party in writing at least Thirty (30) days prior to the expiration of the Initial Term. Notwithstanding anything to the contrary herein, the Parties acknowledge that this Agreement may be

terminated at any time by either Party, with or without cause, and with or without notice to the other Party. The Parties further understand and acknowledge that Contractor's employment by Company is "at-will."

4. Ownership of Intellectual Property

Contractor hereby agrees to promptly disclose to Company any and all Intellectual Property made or developed by Contractor in connection with Contractor's work with Company. All elements of all Intellectual Property shall be exclusively owned by Company and shall be considered "Work Made for Hire" by Contractor for Company. Company shall exclusively own all United States and international copyrights and all other intellectual property rights in the Intellectual Property. Contractor agrees to assign, and upon creation of each element of the Intellectual Property automatically assigns to Company, its successors and assigns, ownership of all United States and international copyrights and all other intellectual property rights in each element of the Intellectual Property.

Contractor agrees that any and all such Intellectual Property shall be the absolute property of Company or Company's designees and, at the request of Company, Contractor shall provide any reasonably necessary assistance to Company in making application in due form for United States letters patent and foreign letters patent on such Intellectual Property. In the event that Company requests that Contractor provide such application assistance after termination of Contractor's employment with Company, Company agrees to compensate Contractor for time spent providing the requested assistance at Contractor's most recent rate of compensation. Contractor shall execute any and all instruments and do any acts necessary or desirable in connection with any such application for letters patent in order to establish and perfect in Company the entire right, title, and interest in such Intellectual Property, and also to execute any instruments desirable in connection with any continuations, renewals, or reissues thereof or in the conduct of any related proceedings or litigation. If agreed to in writing by Company and Contractor prior to making any expense, Company shall bear all reasonably necessary out of pocket expenses incurred by Contractor as a result of the performance of the obligations provided for in this Section 4. Except as authorized by Company (in writing if after termination of this Agreement), Contractor shall not disclose, directly or indirectly, any information relating to any such Intellectual Property.

If Contractor has any intellectual property rights to any Intellectual Property that cannot be assigned to Company, Contractor unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Company with respect to such Intellectual Property, and agrees, at Company's request and expense, to consent to and join in any action to enforce the rights such Intellectual Property. If Contractor has any intellectual property rights in any Intellectual Property that cannot be assigned to Company or waived by Contractor, the Contractor, unconditionally and irrevocably grants to Company during the term of such rights, an exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to sublicense, to reproduce, create derivative works of, distribute, publicly perform and publicly display by all means now known or later developed, such Intellectual Property.

5. Confidential Information

Except as authorized by Company (in writing if after termination of this Agreement), Contractor shall not disclose or use, directly or indirectly, either during or subsequent to Contractor's performance of the Services provided in this Agreement, any Confidential Information or Confidential Materials obtained during the term of this Agreement. This provision shall apply regardless of whether or not such Confidential Information or Confidential Materials were acquired, originated or developed in whole or in part by Contractor. Additionally, excluding disclosures made in the proper performance of the Services, Contractor shall not distribute or otherwise disclose to any third party any Confidential Materials, except as authorized in writing by Company.

Contractor agrees to deliver to Company promptly upon request or on the date of the termination of this Agreement, all documents, copies thereof, and any other materials in Contractor's possession or control

concerning or relating to any Confidential Information or Confidential Materials obtained during the term of the Agreement.

6. Non-Competition and Non-Solicitation

The Parties hereby recognize that Company is in the business of providing Power Resale Services using its own Confidential Information and Confidential Information licensed or otherwise owned by third parties (collectively “**Trade Secrets**”); that this is an emerging and highly competitive market; and that access to business relationships and the Trade Secrets constitutes a major portion of Company’s competitive advantage in this market. In consideration for the promises by Contractor below, within ten (10) days after the Effective Date, Company agrees to disclose to Contractor certain Trade Secrets, which Company will use to provide the Power Resale Services. In addition, Company intends to disclose additional Trade Secrets during the term of this Agreement. Any disclosure and/or any unauthorized use of this information would cause serious financial loss, detriment and damage to Company. Company desires to be able to disclose the Trade Secrets to Contractor with the secure knowledge that this information will be used solely and strictly for the benefit of Company and not in competition with or to the detriment of Company directly or indirectly, by Contractor or any of his agents, future contractors or future employers. Therefore, the Parties hereby agree that the covenants contained in this Section 6 shall be enforceable even if Company or Contractor is in breach of any other covenants in this Agreement.

In consideration for Company’s disclosure of the Trade Secrets, the compensation to be paid to Contractor, and the mutual covenants and restrictions contained in this Agreement, the Parties agree as follows:

a. **Non-Competition**

During the term of this Agreement and for a period of two (2) years after the termination of this Agreement (regardless of which Party terminates the Agreement), Contractor shall not directly or indirectly, individually or as an contractor or employee of any third party, perform services as or for a Competitor of Company: (i) at a location within 100 miles of any location in which Contractor performed services for Company; (ii) that are the same or substantially similar to the services Contractor performed for Company; or (iii) involve the use of any Trade Secrets or Intellectual Property that Contractor received, obtained or developed during the term of this Agreement. Contractor agrees that if he/she violates the provisions of this section, then the number of days that such violation exists shall be added to the period of limitation on the proscribed activities.

b. **Non-Solicitation of Company Employees and Contractors**

Contractor hereby recognizes that Company has made a substantial investment in hiring and training its personnel and contractors. Therefore, while employed by Company and for a period of two (2) years thereafter, Contractor will not either directly or on behalf of others solicit or recruit any employees or contractors of Company or any affiliate or subsidiary of Company to leave the Company or to join a Competitor of Company. In the event that Contractor shall breach this covenant, Contractor shall be liable to Company for liquidated damages equal to the total compensation paid to Contractor by Company during the last twelve (12) months of this Agreement. Such sum shall be due and payable twenty (20) days after demand, and if such sum is not timely paid, and Company must attempt collection thereof, then Company shall be entitled to reasonable attorney’s fees and costs.

c. **Necessity of Covenant not to Compete**

The Parties hereby acknowledge that the non-competition provisions of Section 6 are ancillary to this Agreement, which is an otherwise enforceable agreement. Contractor acknowledges and agrees that his/her work for a Competitor of Company during the non-competition period would inevitably lead to Contractor’s unauthorized use of Trade Secrets, even if such use was unintentional. Because prohibiting Contractor’s employment with a Competitor of Company is the only practical and effective way to monitor and restrain

Contractor's use of Trade Secrets, Contractor agrees that the non-competition restrictions provided in this Agreement are the narrowest way to protect Company's interest and the narrowest way of enforcing Contractor's consideration for the receipt of the Trade Secrets.

7. Miscellaneous

- a. The Parties agree that the obligations incurred under the terms of Sections 4, 5 and 6 of this Agreement shall continue after the termination of this Agreement, and that each Party shall only be released from these obligations by the specific written agreement of the other Party or upon the expiration of the time period specified in such Section.
- b. The Parties hereby acknowledge and agree that breach of the covenants and agreements contained in Paragraphs 4, 5 and 6 of this Agreement shall cause immediate and irreparable damage to Company and that Company's remedy at law for any such breach would be inadequate. Contractor agrees that Company shall be entitled to have temporary or permanent injunctive relief without the necessity of proof of actual damage or bond. Such injunctive relief shall not be exclusive, but shall be in addition to any other rights or remedies to which Company shall be entitled. In any dispute under this Agreement, the parties agree that the prevailing party shall be entitled to recover the costs and expenses of such dispute, including reasonable attorneys' fees and costs.
- c. The Parties agree that any failure by Company to exercise any of its rights under this Agreement or at law, or to insist on the complete performance of all obligations by Contractor under the terms of this Agreement shall not constitute or be construed as a waiver by Company of any of its rights, privileges, obligations or duties, or as creating any contrary custom or course of conduct. No waiver of any right or remedy under or relating to this Agreement shall be binding on Company unless in writing and signed by an authorized officer of Company.
- d. The Parties agree that this Agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas (without regard to its principles of choice of law), and applicable federal law, and that all of the obligations of the Parties are performable in Harris County, Texas. Venue for any action concerning this Agreement shall be in Houston, Harris County, Texas.
- e. The Parties agree that this Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.
- f. The Parties agree that if any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, the remaining provisions will remain in full force and effect. If any provision is held to be unenforceable because it is excessive in duration or scope, such provision shall be deemed and construed to be modified so that it is enforceable to the maximum extent allowed under applicable law while reflecting as closely as possible the intent of the Parties as expressed herein.
- g. The Parties agree that this Agreement constitutes the sole and only agreement of the Parties to this Agreement concerning the subject matter of this Agreement, and supersedes any prior understanding or written or oral agreements between the Parties to this Agreement. No modification, amendment, deletion, addition or other change in this Agreement shall be effective for any purpose unless specifically set forth in writing and signed by each of the Parties.
- h. This Agreement may be transmitted by facsimile, and it is the intent of the Parties for the facsimile of any autograph printed by a receiving facsimile machine to be an original signature and for the facsimile and any complete photocopy of the Agreement to be deemed an original.

- i. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

Signed and accepted:

Seven - Utility Management Consultants, Ltd.
a Texas limited partnership

By: **J. Andrew Associates, Inc.**
a Texas corporation,
its General Partner

Independent Contractor

By: _____

By: _____

Printed Name: Jason Mass, CEO & Founder

Printed Name:

Date: _____

Date: _____

Social Security #

State & Drivers License #

Exhibit A

Competitors of Company

Amerex Retail Energy Services Ltd.

Axiom Energy Services

Choice! Energy Services

Cogdill Energy Consultants

Curtis & Clark Engineering, LLC

Eisenbach Consulting

Energistic Solutions Inc.

Fox, Smolen and Associates

GSE Consulting

Good Energy

Poco Energy Group

Power Brokers

Public Utility Brokers

Rapid Power Management, L.P.

TES Energy Services

Tradition Energy

Suppliers and business partners of Seven – Utility Management Consultants, Ltd. *Upon written permission from management, employee may be employed at one of our suppliers.

Exhibit B
Commission Schedule

As used herein, “**Net Revenue**” shall mean the funds Company actually receives from Company’s supplier arising out of a sale generated and serviced by Contractor, less all expenses incurred by Company to close such transaction. In the event that Company provides additional or out of ordinary administrative assistance to complete a transaction, Company reserves the right to deem such additional administrative expense to be a Company expense and shall have the right to deduce such expense from Net Revenue.

Company shall pay Contractor an amount equal to 40% of the Net Revenue arising out of each sale generated and serviced by Contractor (the “**Commission**”). Payments to the contractor will be calculated and paid according the following schedule:

1. Starting the month after a client contract’s start date, contractor will be paid an amount equal to:
$$1/12 \times \text{Estimated revenue earned/yr} \times 40\% \times 80\%.$$
2. Company shall pay Contractor the Commissions on the 15th of every month.
3. 6 Months after the client contract ends, company will prepare a final True Up adjustment based on actual client consumption over the course of the contract. The True Up report will show:
 - A. Total ACTUAL client usage over the contract term \times booked margin = Total ACTUAL revenue earned
 - B. Total ACTUAL revenue earned \times 40% = Total commission owed contractor
 - C. Total commission owed - combined monthly payment made to date = True-Up Credit (Debit)
 - D. The True-Up Adjustment report and payment will be supplied on the next regular scheduled payment date.

Company shall have the option, in its sole digression, to pay Contractor a draw against a future Commission. The amount of any such payment shall be entirely determined by Company on a case by case basis.

Contractor shall not continue to receive the Commission arising from ongoing Net Revenue unless Contractor continues to actively service such client. Additional details concerning compensation for the Services are provided in *Duties and Obligations of Contractor*, which Company has made available to Contractor.

The commission structure does not form a written contract or guarantee. Eligibility to receive commissions is based on position and individual performance. Failure to maintain an acceptable level of performance or to meet agreed upon sales goals may result in forfeiture of eligible commissions.

Contractors or employees are not eligible to receive commissions after contract termination, resignation, or termination of employment; including but not limited to: commissions from current clients or future business/closes from current clients. Company shall have the option, at its sole digression, if a contractor (of more than 24 months with Seven) wishes to resign, to negotiate a discounted payment amount based on future commissions expected on all current client contracts the contractor has brought to Seven.

In the event of an untimely passing (death) of a contractor, all regularly scheduled (non discounted) commissions will be paid out for the remainder of all current clients contracts that the contractor brought in. This money and the schedule will be communicated to and paid to the family of the contractor, per applicable estate and/or last will & testament directives by the contractor.



VII S E V E N

Utility Management Consultants, Ltd.

Honesty and Integrity Statement

We believe in Honesty and Integrity in all of our business practices. As a Supplier, Employee, Independent Contractor, business associate, or customer (hereafter, ASSOCIATE) of Seven - Utility Management Consultants, Ltd., I will illustrate honesty and integrity in all business dealings with Seven – Utility Management Consultants, Ltd. and J. Andrew Associates, Inc. Seven – Utility Management Consultants, Ltd. and J. Andrew Associates, Inc. also makes this vow to ASSOCIATE.

I will use the highest ethical standards in all business dealings.

Should an instance occur where a decision needs to be made where there is a question of honesty or integrity (i.e. an opportunity to deceive, misrepresent or grossly exaggerate claims) ASSOCIATE will consult with Jason Mass or an officer of Seven – Utility Management Consultants, Ltd. and J. Andrew Associates, Inc. to determine appropriate course of action.

Seven – Utility Management Consultants, Ltd. and J. Andrew Associates, Inc. will have a zero tolerance policy for any suspicious activities. Violations can result in immediate termination of any agreement between our companies.

Both parties intend to have an honest, open, ethical and fruitful business relationship.

Associate to Seven – Utility Management Consultants, Ltd. and J. Andrew Associates, Inc.:

Seven – Utility Management Consultants, Ltd. & J. Andrew Associates, Inc.

By: _____

By: _____

Printed Name:

Printed Name: Jason Mass, CEO & Founder

Date: _____

Date: _____