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PHINNEY  
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GREEN

PROFESSIONAL  
ASSOCIATION



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October 26, 2015

MANCHESTER  
1000 ELM STREET  
MANCHESTER, NH  
03101  
T 603 668-0300  
F 603 627-8121

Pamela G. Monroe, Administrator  
New Hampshire Site Evaluation Committee  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

CONCORD  
TWO EAGLE SQUARE  
CONCORD, NH  
03301  
T 603 223-2020  
F 603 224-8899

Re: SEA-3, Inc. ("SEA-3")  
**Request for Exemption**  
**SEC Docket No. 2015-01**

HANOVER  
17 ½ LEBANON STREET  
HANOVER, NH  
03755  
T 603 643-9070  
F 603 643-3679

Dear Administrator Monroe:

Enclosed for filing in connection with the above-captioned matter, please find the original and two (2) copies of Portsmouth Intervenors' Objection to the Applicant's Motion for a Protective Order.

I certify that copies of the within filing have been sent to the parties identified on the Service List on this docket.

WWW.SHEEHAN.COM

Very truly yours,

A handwritten signature in blue ink that reads "Chris Cole (Lgc)".

Christopher Cole

CC/ljl  
Enclosure

cc: Service List

**Site Evaluation Committee**

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**In the Matter of the Application of Sea-3, Inc.**

(Request for Exemption)

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**SEC Docket No. 2015-01**

**PORTSMOUTH INTERVENORS' OBJECTION TO THE APPLICANT'S MOTION  
FOR A PROTECTIVE ORDER**

NOW COME the Portsmouth Intervenors,<sup>1</sup> by their counsel, Sheehan Phinney Bass & Green, Professional Association, and respectfully object to the Motion of the Applicant, Sea-3, Inc., seeking a protective order that would limit the disclosure of documents and information responsive to certain Data Requests made by the Portsmouth Intervenors and joined in by Counsel of the Public, and the Intervenors City of Dover, City of Portsmouth, and the Great Bay Stewards. The Portsmouth Intervenors incorporate by reference their Motion to Compel dated October 19, 2015, and in support of this Objection, respectfully state as follows:

**Background**

Sea-3 seeks an order pursuant to which the significant expansion of its facility along the Piscataqua River in Newington, New Hampshire would be determined to be exempt, under RSA 162-H:4 (IV), from the otherwise applicable site certification process established by the Legislature in RSA 162-H. At the day-long Technical Session on October 14, undersigned counsel asked Sea-3's General Manager and principal spokesman, Paul Bogan, if the Applicant or a parent company had hired a public or media relations consultant or firm to assist in the

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<sup>1</sup> The Portsmouth Intervenors are Richard and Catherine Dipentima; Robert Gibbons and Patricia Ford; William and Kristina Campbell; John and Jane Sutherland; and Erica and Matthew Nania.

generation of public comment letters and their submission “in evidence” to the Committee. Mr. Bogan replied that the Applicant or its parent corporation had hired a firm known as Purple Strategies to carry out such a campaign or tasks. Accordingly, undersigned counsel – first orally at the Technical Session, and then in an email the following day – made the following Data Request related to the Applicant’s engagement of Purple Strategies, as follows:

1. Any and all agreements and understandings between Purple Strategies and Sea-3 (or Sea-3 parents, affiliates or subsidiaries, but collectively, “Sea-3”) relating to Sea-3’s application for an exemption from the certification requirements of RSA 162-H;
2. Any and all agreements between Purple Strategies and Sea-3, as defined above, relating to Sea-3’s proposed facility expansion;
3. Any and all documents, communications and correspondence between Purple Strategies and Sea-3 (as defined) relating to Purple Strategies’ work or engagement from January 1, 2015 to the present;
3. Any and all communications (in whatever form and however stored, including electronic mail and electronically stored information) between Purple Strategies and any third parties, including but not limited to persons submitting letters to the Site Evaluation Committee, relating to the Sea-3 application now pending before the Site Evaluation Committee.

In a telephone conversation on Friday October 16 with undersigned counsel and Counsel for the Public, counsel for Sea-3 had at least tentatively agreed to provide the documents contemplated by Data Request Nos. 1 and 2, which seek contracts and agreements relating to the Purple Strategies engagement, and indicated that Sea-3 would refuse to produce the materials sought by Data Request Nos. 3 and 4.

On the evening of October 19, however, the Committee and parties received, by email, the Applicant’s “Contested Motion for Protective Order.” The Motion for Protective Order seemed to withdraw even the tentative agreement to provide the materials responsive to Data Request Nos. 1 and 2, seeking an order from the Committee rendering all of the materials sought by the Data Requests not discoverable. On Wednesday, October 21, 2015, however, the

Applicant produced certain materials that appear to be responsive to Data Request Nos. 1 and 2, above. As these materials actually make more critical the relevance and importance of Data Request Nos. 3 and 4, this Objection followed.

### Argument

#### **1. The Materials and Information Sought Are Discoverable**

Site 202.12 provides authorization for the making of “data requests in the nature of interrogatories, requests for production of documents, requests for admission of material facts, depositions and any other discovery method permissible in civil judicial proceedings before a state court when such discovery is necessary to enable a party to acquire evidence admissible in a proceeding and when such method will not unduly delay the prompt and orderly conduct of the proceeding.” The materials sought by the Data Requests are discoverable under this broad definition. At a minimum, the Data Requests seek information about the Purple Strategies/Sea-3 decision to create a website populated with specific information, and soliciting letters that are pre-typed and pre-prepared, and which are sent directly to the Committee’s Docket Administrator for publication on the Committee’s public docket, presumably because public support for the exemption is an element of the Applicant’s burden in this proceeding. See RSA 162-H:4, IV, (c). In order to understand these letters, the parties and the Committee are, among other things, entitled to understand Sea-3/Purple Strategies’ plans and tactics for bringing people to the website in the first place.

The Applicant asserts, however, that at least a certain body of information and documents are not discoverable. The Applicant’s argument is summarized in its Motion as follows:

“The Committee should grant a protective order because the data requests seek information that is protected from discovery. SEA-3 specifically retained Purple Strategies to assist SEA-3 in preparing for and participating in these Committee proceedings. Sea-3 did not

retain Purple Strategies to submit testimony or evidence in these or any other proceedings. As such, Purple Strategies' engagement falls squarely within the protected category of trial preparation.”

Motion for Protective Order at ¶11.

The Motion for Protective Order provides no other information about the contours of its engagement of Purple Strategies. Sea-3 acknowledges that Purple Strategies “assisted Sea-3 in developing” a website that “enables members of the public to voluntarily, and without compensation, submit their viewpoint to the Committee.” Motion for Protective Order at ¶7. Sea-3 also suggests that the Data Requests are “an attack on Sea-3’s public outreach efforts.” *Id.* at ¶10. The documents produced by Sea-3 actually demonstrate that the details and contours of the Sea-3/Purple Strategies relationship are discoverable, and relevant.

**2. The Materials So Far Produced Demonstrate that None of the Purple Strategies’ Work Constitute Non-Discoverable Trial Preparation Materials**

The documents subsequently produced by Sea-3 demonstrate that the Sea-3/Purple Strategies engagement is not concerned with trial strategy or trial preparation. Instead, the materials produced show that Purple Strategies was engaged to influence the Committee, to develop the trappings of “public opinion” favorable to the application for an exemption, and to help produce a cascade of “public comment” on the Committee. The materials produced include four (4) documents: (A) what appears to be the principal agreement, the “Master Services Agreement,” between Sea-3 and Purple Strategies; (B) Statement of Work One; (C) Statement of Work Two; and (D) Statement of Work Three. The Master Services Agreement and SOWs provide some, but limited, insight into the purpose of Sea-3’s engagement of Purple Strategies. For example, **SOW One** (dated July 27, 2015) promises a “grassroots strategy and outreach,” which among other things will “identify key influencers of Client’s proposal on the Site Evaluation Committee to help educate them on the benefits and help mobilize them to act on

[Sea-3's] behalf." See Exhibit A, attached, at page 8. SOW One concludes that "the goal of the above Services is to generate tangible public support for the SEC exemption." SOW Two (effective date September 16, 2015) promises to create the so-called "microsite," www.securepropanenh.com, with a target launch date of September 25, 2015, and promising to "include a landing page, a facts page, a newsroom page, and a take action page." See Exhibit A, at page 10. SOW Three (effective date September 29, 2015) promises to prepare a "digital media plan targeting key audiences, as agreed upon between the Parties, with an estimated run from October 7, 2015 through November 4, 2015." See Exhibit A, at page 12.<sup>2</sup> None of the SOWs are aimed at trial preparation or trial strategy; they deal with the formation of "public opinion" and an effort to influence the Committee through "public comment."

As a result of this "grassroots strategy and outreach," the Committee has received in excess of one hundred (100) letters (as of October 21, 2015), purporting to be from members of the public, in support of the Sea-3 application for an exemption from the certification requirements of RSA 162-H. Many of the letters have been received after the October 14 Technical Session and continue to come in daily (something on the order of 40 additional letters on October 21, 2015 alone). Among the uniform statements used in the templated letter submitted by the senders is this one:

"Given the fact that Sea-3 has satisfied all of the legal requirements for an exemption from the SEC's lengthy review process and given the benefits this upgrade will bring to the New Hampshire economy and families relying on propane, I do hope [the Committee] will respond to the Sea-3 application with an affirmative vote."

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<sup>2</sup> It also seems noteworthy that the phased strategy embodied in these SOWs was aimed at avoiding the Data Request and Technical Session deadlines established by the parties and the Committee's counsel prior to the disclosure that SEA-3 had hired Purple Strategies to take steps aimed at influencing the Committee's determination of the Applicant's request for an exemption.

This solicitation of a vote in favor of the Applicant's request for exemption, frankly, begs for elucidation, including asking the party submitting the letter the basis for each of the statements (satisfaction of legal requirements, entitlement to an exemption, benefits to the economy). Most of the letters are not signed in the traditional sense. None of the letters provide any background or bona fides about the sender. And all of the letters, as far as one can tell, appear to have been written in the first instance by the Applicant's paid media consulting firm for the purpose of influencing the Committee in a manner that is favorable to the application for exemption (e.g., "I do hope [the Committee] will respond to the Sea-3 application with an affirmative vote"). The letters appear to have been submitted for evidentiary purposes but lack any indicia of genuineness or authenticity.

The development of the microsite aimed at providing Sea-3's views of the Committee process and the merits of its application for an exemption from the certification requirements of RSA 162-H are not part of any attorney work product, or trial preparation, or trial strategy. The website itself is nothing more than a private advertising campaign to develop public opinion, and a solicitation to provide "public comment" to the Committee. Data Request No. 4 seeks "communications (in whatever form and however stored, including electronic mail and electronically stored information) between Purple Strategies and any third parties, including but not limited to persons submitting letters to the Site Evaluation Committee, relating to the Sea-3 application now pending before the Site Evaluation Committee." This Data Request seeks, among other things, information on exactly how Purple Strategies drives computer and email users to the securepropanenh.com website, so that those people will use the so-called "take action" function, which entreats visitors to the site as follows:

We want you to send a letter to the New Hampshire Site Evaluation Committee to support Sea-3's efforts to bring low-priced, domestically-

produced propane to New Hampshire. Simply fill out the information below and click “send” to let your voice be heard.

Purple Strategies’ and Sea-3’s inducement to people to visit the site, review the uniformly positive information provided by the site, and to “simply...click ‘send’” to influence the Committee and “support Sea-3[],” are not attorney work product or trial preparation.

The as yet unproduced “digital media plan targeting key audiences” (contemplated and promised by SOW Three) is not part of any trial strategy, trial preparation or attorney work product; it is a media campaign aimed at, at least in part, the submission of letters to the Committee’s docket. Data Request Nos. 3 and 4 seek relevant information concerning this plan, the understanding of the parties to the contract, and any communications between and among Sea-3 and Purple Strategies, and between and among Purple Strategies and third-parties, in the course of carrying out the media plan.

### **3. The Data Requests are Not Interposed for an Improper Purpose**

Sea-3’s assertion that the Data Requests are a “wide ranging fishing expedition” and have been made for improper purposes is incorrect. The Committee has now received over 100 identical letters in support of the application for an exemption. Those letters have been carefully and expressly made part of the public docket of this matter, through the ingenuity of Sea-3 and its paid publicist, Purple Strategies. The Data Requests seek to understand the relationship and strategy relating specifically to the creation and submission of those letters – hardly a “wide ranging fishing expedition.” While it may be true that some of the Intervenors have engaged in public outreach, none of their efforts in this regard involve the automated creation and submission of putative evidentiary materials in the Committee’s public docket.<sup>3</sup>

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<sup>3</sup> Nor was Counsel for the Public’s use of the automated service provided by the Sea-3/Purple Strategies website improper. Counsel was simply testing the site, using his own email, to determine what, if any, controls there may be on the site to prevent the use of fictitious names, the use of the automated functions more than once by the same



To the extent that the Data Requests result in some delay in the adjudicative hearing of this matter, the cause of such a delay lies squarely with the Applicant. The disclosure of Sea-3's part in the en masse generation of letters to the Committee – and the parties' need to evaluate the provenance of those letters – is very recent. The disclosure of the relationship between Sea-3 and its public relations firm occurred at the October 14 Technical Session. The bulk of the letters have been delivered to the Committee's docket immediately before and after the October 14 Technical Session. The Intervenors and Counsel for the Public have acted as promptly as possible. The question of delay, moreover, is whether such delay is "undue." See N.H. Admin. R., Site 202.12 (discovery shall be allowed when method "will not unduly delay" the proceeding). In the present context – where the information sought is directly related to one of the central issues in contention in this case, the delay is not undue, but is instead appropriate and necessary to ensure that the Committee (a) can have a "full and true disclosure of facts", Appeal of Sutton, 141 N.H. 348 (1996), and (b) may "exclude irrelevant, immaterial or unduly repetitious evidence." RSA 541-A: 33, II.

Accordingly, the Portsmouth Intervenors respectfully request an Order from the Committee denying the Motion for Protective Order and requiring the Applicant to immediately produce the documents, information and materials sought by the Data Requests listed above.

Respectfully submitted,

PORTSMOUTH INTERVENORS,

By Their Attorneys,

Sheehan Phinney Bass & Green, P.A.

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person, and other quality control issues – all in the absence of any cooperation from Sea-3 or disclosure of underlying documents and information about the site and the letters.

Dated: October 26, 2015

By: Megan Carline  
for Christopher Cole (Bar No. 8725)  
1000 Elm Street  
P.O. Box 3701  
Manchester, NH 03105-3701  
(603) 627-8223  
ccole@sheehan.com

**Certification**

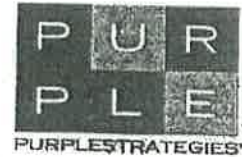
I hereby certify that on this 26th day of October 2015, I caused a copy of the foregoing, to be sent via email to the persons on the Service List on this Docket.

Megan Carline  
for Christopher Cole

# **EXHIBIT A**

CONFIDENTIAL

MASTER SERVICES AGREEMENT



This Master Services Agreement ("Agreement") is made on the 27<sup>th</sup> day of July, 2015 ("Effective Date"), by and between Purple Strategies New England, a division of Purple Strategies, LLC, having its principal place of business at 815 Slaters Lane, Alexandria, Virginia 22314 (hereinafter "Purple"), and Sea-3, Inc. having offices at 190 Shattuck Way, Newington, New Hampshire 03801 (hereinafter "Client") (Purple and Client hereinafter collectively referred to as "Party" or "Parties").

WITNESSETH:

1. Term of Agreement. This Agreement shall commence as of the Effective Date and shall continue in force, unless terminated sooner as provided herein, for a period of one (1) year, but may be extended upon written agreement of the Parties.
2. Scope of Duties. Purple agrees in accordance with the terms hereinafter to perform for Client the Services set forth in written Statement(s) of Work that the Parties may agree upon from time to time during the Term. As used in this Agreement "Statement of Work" or "SOW" means a Statement of Work executed pursuant to this Section 2. "Services" as used in this Agreement means, collectively, the services, functions and responsibilities to be provided by Purple under this Agreement and all Statements of Work.

Each SOW shall include a description of work, charges and other terms that the Parties agree are applicable to such SOW. SOWs shall be sequentially numbered in the order of execution, shall be signed by authorized representative of the Parties, and, upon written execution by both Parties, shall be deemed incorporated into this Agreement.

Each SOW shall reference this Agreement and all of the terms and conditions contained in this Agreement shall be a part of the SOW unless specifically stated otherwise. To the extent that any of the terms or conditions of a SOW is in conflict with the terms and conditions of this Agreement, the terms of the SOW will control.

If at any time following the execution of this Agreement, Client should desire to change the specifications or other elements of a SOW, Client shall submit to Purple a written proposal specifying such changes. Purple shall evaluate each such proposal and shall submit to Client a written response within five (5) working days following receipt thereof. Purple's response shall include a statement of the availability of personnel and resources, as well as the effect the proposed changes will have on the payment amount and delivery dates specified in this Agreement.

Any changes to a SOW shall be evidenced by an Amendment to the SOW. The Amendment shall be signed by authorized representatives of Purple and Client, and shall be deemed a part of this Agreement. If Purple does not approve the Amendment, Purple shall not be obligated to perform any additional services hereunder.

3. Payment for Services. Client agrees to pay Purple amounts determined in accordance with the attached Statement(s) of Work. Invoices will be billable on first day of month Services are rendered. Payment for media planning and placement is due upon receipt. Payment for all other Services is due within thirty (30) days of the date of invoice.

4. **Payment for Expenses.** Client agrees to reimburse Purple for out of pocket and other approved expenses incurred by Purple in order to perform the duties required to fulfill this Agreement with Client. Unless an expense is requested in writing by Client, any expense in excess of \$100 shall be approved in advance by Client.
5. **Timeliness.** Purple agrees to perform all Services and deliver all products specified in this agreement in a timely way, and Client agrees to pay for such Services, products and expenses incurred by Purple within thirty (30) days of receipt of invoice. Upon expiration or termination of this Agreement, Purple agrees to provide a final accounting of its expenses, and an invoice for any balance still due. Any balance due and owed to Purple shall be remitted by Client within ten days of the submission of such final accounting statement and invoice.
6. **Delays.** Purple shall inform Client immediately of any anticipated delays in the delivery schedule and of the actions being taken to assure completion of the Services and deliverables within such schedule. If any delivery date is missed, Client may, at its sole option, terminate the Services of Purple under an applicable SOW or under this Agreement; provided, however, that Client shall provide Purple with thirty (30) days to cure the delay prior to declaring a default. Client may not declare a default hereunder if such delay is caused by any action or failure to act of Client.

Purple cannot be held in default of this Agreement or a SOW in case of delays on the part of Client. In such case, Purple will provide Client with written notice that such a delay has occurred. Work on the applicable SOW shall not resume until the reason for the delay has been resolved by Client and notice of its resolution has been provided to Purple.

7. **Termination.** Any Party, after written notice to the other Party of the occurrence of an event of default or breach by the other Party, and containing a specific statement as to the alleged default or breach, may treat this Agreement as terminated if such default or breach is not cured within seventy-two (72) hours following the receipt of such written notice, provided, however, that such default or breach can be cured within seventy-two (72) hours, then the defaulting or breaching party shall have a reasonable amount of time to cure said default or breach so long as the defaulting or breaching party reasonably and diligently pursues the remedy of such default or breach. Otherwise, this Agreement may be terminated by either Party, for any reason, by giving the other Party at least thirty (30) days prior written notice of the date upon which they will terminate this Agreement ("**Date of Termination**"), and this Agreement, and any applicable Statement(s) of Work, shall be of no further force or effect following the Date of Termination. In the event of termination for default or breach of this Agreement by Client, Client agrees to pay Purple all outstanding invoices within five (5) days. In the event of termination for any other reason, Purple shall continue to provide Services to Client and Client agrees to pay Purple amounts agreed upon in any SOWs pursuant to this Agreement through the Date of Termination.
7. **Indemnities.**
  - A) **Indemnity by Purple.** Purple shall indemnify, defend and hold harmless Client and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all losses, liabilities, damages and claims, and all related costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (collectively "**Losses**") and threatened Losses arising from, in connection with, or based on allegations whenever made of, any of the following:

1. Any claim or action that arises out of the gross negligence or willful misconduct of Purple;
  2. Any claim or action arising out of Purple's error or omission in the performance of or failure to perform its obligations set forth in this Agreement; except to the extent the claim results from Client's act or omissions, or from materials provided to it by Client, when used in accordance with Client's instructions and approvals;
  3. Any third party claim or action arising out of or in connection with Purple's breach of its obligations under Section 9 ("Confidentiality");
  4. Any claim or action arising out of or in connection with any fraudulent or dishonest acts committed by Purple's employees, agents or subcontractors, acting alone or in collusion with others; or,
  5. Any claim or action based upon infringement of the intellectual property rights of any other person or entity, except to the extent the intellectual property at issue was provided to Purple by Client.
- B) Indemnity by Client. Client shall indemnify, defend and hold harmless Purple and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all Losses and threatened Losses arising from, in connection with, or based on allegations whenever made of, any of the following:
1. Any claim or action that arises out of the gross negligence or willful misconduct of Client;
  2. Any claim or action based upon any of Client's products or services;
  3. Any claim or action arising out of risks brought to the attention of Client by Purple in writing where Client has nonetheless elected to proceed thereby agreeing to accept those risks;
  4. Any claim or action arising out of the use by Purple of materials or intellectual property as to which Client undertook the responsibility to obtain usage or other rights;
  5. Any claim or action based upon Client's ultimate use of the Services and deliverables, or use of the work product in a manner for which it was not intended, except to the extent caused by a breach of this Agreement by Purple; or,
  6. Any legally binding requirement to produce documents or provide testimony arising out of the Services rendered by Purple under this Agreement.
- C) Indemnification Procedures.
1. Notices. The Indemnified Party will promptly notify in writing the Indemnifying Party of its receipt of any claim, suit or other demand naming it as a defendant or asserting any liability for which it would be indemnified under this Agreement. However, the failure of an Indemnified Party to give notice as provided, above, shall not relieve the Indemnifying Party of its obligations under this Indemnification Section, except to the extent that the failure results in no actual notice provided and Indemnifying Party is damaged as a result of the failure to give such notice.
  2. Company Counsel. Indemnifying Party will direct the defense and settlement of any such claim, with counsel of Indemnifying Party's choosing, and will provide Indemnified Party, at Indemnifying Party's expense, with information and assistance that is reasonably necessary for the defense and settlement of the claim.

3. Separate Counsel. The Indemnified Party shall have the right to employ separate counsel and to participate in any such action, but the fees and expenses of such counsel shall be at the expense of Indemnified Party unless: (1) the employment of counsel by Indemnified Party has been authorized by Indemnifying Party; (2) Indemnified Party has been advised by its counsel in writing that there is a conflict of interest between Indemnifying Party and Indemnified Party in the conduct of the defense of the action (in which case Indemnifying Party shall not have the right to direct the defense of the action on behalf of Indemnified Party); or (3) Indemnifying Party has not in fact employed counsel to assume the defense of the action within a reasonable time following receipt of the notice given pursuant to this Indemnification Section.
  4. Settlements. Indemnifying Party shall not be liable for any settlement of an action effected without its written consent, nor shall Indemnifying Party settle any such action without the written consent of Indemnified Party. In each case the consent of the parties shall not be unreasonably withheld. Indemnifying Party will not consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to Indemnified Party a release from all liability with respect to the claim.
- D) Limitation of Liability. NOTWITHSTANDING THE FOREGOING, PURPLE AND CLIENT'S TOTAL AGGREGATE LIABILITY FOR ANY CLAIM OF ANY KIND ARISING AS A RESULT OF OR RELATED TO THE SERVICES PERFORMED HEREUNDER, WHETHER BASED IN CONTRACT, WARRANTY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, SHALL BE LIMITED TO THE AMOUNTS RECEIVED BY PURPLE FROM CLIENT FOR THE PARTICULAR PROJECT(S) WHICH FORM(S) THE BASIS OF SUCH A CLAIM. DIRECT DAMAGES SUBJECT TO THIS LIMIT SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR AN INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR OTHER SIMILAR TYPE OF DAMAGES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, JUDGMENTS, SETTLEMENTS, OUT-OF-POCKET COSTS, EXPENSES AND DISBURSEMENTS (INCLUDING, BUT NOT LIMITED TO, REASONABLE COSTS OF INVESTIGATION, AND REASONABLE ATTORNEYS', ACCOUNTANTS' AND EXPERT WITNESSES' FEES) OF WHATEVER KIND AND NATURE ARISING BY REASON OF ANY ACT, OMISSION, MATTER OR EVENT RELATING TO THIS AGREEMENT OR ARISING OUT OF ANY DEFAULT OR BREACH THEREOF, WHETHER OR NOT EITHER PARTY IS INFORMED, KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH LOSSES IN ADVANCE.
8. Rights to Work Product. Purple hereby acknowledges that the deliverables and any other documentation, materials or intellectual property hereunder (collectively, the "Work Product") are works that have been specially commissioned by Client and are "work made for hire" for Client and, upon receipt of payment for the applicable Work Product, Client shall own all right, title, and interest therein. Purple shall have the right to disclose Client's name, the general nature of Purple's work for Client, and Work Product that has been released into the public domain for Purple's marketing purposes, portfolio use, advertising, press releases, case studies, business proposals, in pitches and any other applicable marketing or sales purpose. Purple agrees to cease use of Work Product upon written request from Client.
  9. Confidentiality.
    - A) Confidential Information. For purposes of this Agreement, the term "Confidential Information" means all information that is not generally known by the public and that: is obtained by Purple from Client, or that is learned, discovered, developed, conceived, originated, or prepared by Purple

during the process of performing this Agreement, and, relates directly to the business or assets of Client. Confidential Information does not mean information generated by Purple and authorized by Client to be communicated or disseminated by Purple to third parties.

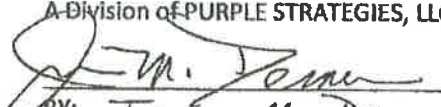
- B) Obligation of Confidentiality. During the term of this Agreement, and for a period of two (2) years thereafter, Purple agrees that it will not disclose to others, use for its own benefit or for the benefit of anyone other than Client, or otherwise appropriate or copy, any Confidential Information, whether or not developed by Purple, except as required in the performance of its obligations to Client hereunder. The obligations of Purple under this paragraph shall not apply to any information that (a) is or becomes generally available to the public through no wrongful act of Purple or its employees or agents; (b) was available to Purple on a non-confidential basis prior to such provision, exchange or disclosure; (c) was known to Purple prior to the date of such provision, exchange or disclosure; or, (d) in the event Purple is required to disclose Confidential Information by court order or applicable law.
- C) Exceptions. The term "Confidential Information" does not include information which: (a) is or has become generally known to the public through no wrongful act of Purple, (b) was already known to Purple at the time of its disclosure by Client as evidenced by Purple's written records, The obligations of Purple under this paragraph shall not apply to any information that becomes public knowledge through no fault of Purple, was independently developed by Purple without the use of Client's Confidential Information as evidenced by Purple's written records, (d) information generated by Purple and authorized by Client to be communicated or disseminated by Purple to third parties, or (d) such disclosure is legally compelled.
- D) Compelled Disclosure. If Purple or any of its employees or agents is legally compelled (whether by regulatory request, deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any Confidential Information, Purple shall, to the extent permitted by law, promptly notify Client in writing of such requirement so that Client may seek a protective order or other appropriate remedy and/or waive compliance with the provisions hereof. Purple will use commercially reasonable efforts, at Client's expense, to obtain or assist Client in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, Purple may disclose, at Client's expense and without liability hereunder, that portion of Confidential Information that it has been advised by counsel that Purple is legally compelled to disclose; however, Client agrees to use commercially reasonable efforts to obtain assurance, at no cost to Purple, that confidential treatment will be accorded such Confidential Information by the person or persons to whom it is disclosed.
9. Non-Solicitation. Until the first anniversary of the Date of Termination, Client shall not, without Purple's prior written consent, hire, engage or solicit the employment or services of any person who is or was during the term of this Agreement employed by or an independent contractor of Purple. Client acknowledges that the specialized nature of Purple's proprietary information, trade secrets and other intellectual property are such that a breach of this Section 10 would necessarily and inevitably result in disclosure, misappropriation and/or misuse of such proprietary information, trade secrets and other intellectual property and, accordingly, Client acknowledges and agrees that such breach would impose unique and irreparable harm upon Purple and that Purple shall be entitled to liquidated damages equal to one hundred fifty (150) percent of the solicited employee's annual compensation in the year prior to the year in which the solicitation occurred. Nothing in this Section shall prohibit Client's use of a general solicitation in a publication.



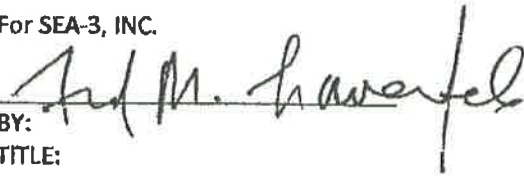
10. Force Majeure. Neither Purple nor Client shall be liable for any delay or failure in performance due to acts of God, hurricane, earthquake, flood, riots, fire, epidemics, war or terrorism where such occurrence renders it unable to perform. Each Party shall immediately notify the other Party of the occurrence of such an event affecting such Party and shall use all reasonable efforts to recommence performance as soon as possible. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
11. Choice of Law and Disputes. This Agreement shall be governed by the laws of the State of New York without regard to conflict of laws principles, and any legal action instituted with respect to this Agreement, or related thereto, shall be commenced and decided in a court of competent jurisdiction in the State of New York.
12. Headings and Construction. This Agreement shall be deemed drafted equally by both parties. Its language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. The headings in this Agreement are only for convenience and are not intended to affect construction or interpretation. Any references to paragraphs, subparagraphs, sections or subsections are to those parts of this Agreement, unless the context clearly indicates to the contrary. Also, unless the context clearly indicates to the contrary, (a) the plural includes the singular and the singular includes the plural; (b) or is used both conjunctively and disjunctively; (c) any, all, each, or every means any and all, and each and every; (d) includes and including are each without limitation; (e) herein, hereof, hereunder and other similar compounds of the word here refer to the entire Agreement and not to any particular paragraph, subparagraph, section or subsection; and (f) all pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the entities or persons referred to may require.
13. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.
14. Amendment. This Agreement may be amended only with the written agreement of the Parties.
15. Entire Agreement. This document constitutes the entire agreement between the Parties with respect to the subject matter hereof, and shall supersede all previous communications, representations, understandings and agreements, whether oral or written, between the parties or any official or representative thereof.
16. Counterparts and Delivery. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original hereof and all of which shall be deemed to constitute one and the same instrument. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or executed PDF email attachment, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of a Party, the other Party shall re-execute original forms of this Agreement and deliver them to the other Party. No Party shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine as a defense to the formation of a contract and each Party forever waives any such defense.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

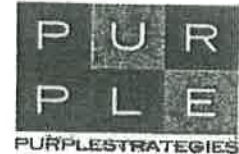
For PURPLE STRATEGIES NEW ENGLAND  
A Division of PURPLE STRATEGIES, LLC

  
BY: James M. Demers  
TITLE: Managing Partner

For SEA-3, INC.

  
BY: Fred M. Laverfel  
TITLE:

CONFIDENTIAL



STATEMENT OF WORK ONE

This Statement of Work One ("SOW 1") is entered into between Purple Strategies New England, a division of Purple Strategies, LLC ("Purple") and Sea-3, Inc. ("Client") pursuant to the terms of the Agreement between such Parties effective as of July 27, 2015, and is subject to the terms and conditions of the Agreement.

The Effective Date of this SOW 1 is July 27, 2015 (the "SOW 1 Effective Date") and Services shall extend until complete, until terminated by either Party with thirty (30) days notice to the other Party, or upon termination of the Agreement, whichever is sooner.

**DESCRIPTION OF SERVICES:** Purple shall provide the following Services to Client:

Strategic Communications Counsel and Campaign Planning. Purple will provide ongoing communications planning and strategic counsel, including attending a full-day planning session and development of a campaign management hierarchy, process, and plan. The campaign plan will include a political assessment of the existing landscape and account for various scenarios, including winning or losing the Client's application for an exemption from the full permitting process by the New Hampshire Site Evaluation Committee (the "SEC Exemption"). Purple will work closely with Client's other consulting teams to help ensure a coordinated effort.

Grassroots Strategy and Outreach. Purple will work with members of Client's project team to identify key influencers of Client's proposal on the Site Evaluation Committee to help educate them on the benefits and help mobilize them to act on Client's behalf. This shall include assisting in developing grass-tops and grassroots support.

Message and Material Development. Based on possible public opinion research and the project team's assessment, Purple will develop a strategic communications plan that will include key messages that can be used with target audiences and corresponding materials for Client's media and government relations team that may include: opinion editorials, FAQ documents, talking points, leave-behind fact sheets, or letters to the editor. When applicable, Purple will assist with the placement of key messaging materials.

The goal of the above Services is to generate tangible public support for the SEC Exemption. Tangible support can take the form of letters to the SEC or personal appearance at the SEC hearings or other actions by members of the public.

All other Services, including any research, creative, production, list procurement, digital and social media, strategic execution, social media outreach execution, or media research, planning and placement Services, will be scoped and priced separately, upon Client request.


**PAYMENT FOR SERVICES:**

Client agrees to pay monthly fee of [REDACTED] for all of the Services identified in this SOW 1. Any travel or other expenses not expressly identified in this SOW will be billed separately.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Parties hereto have executed this SOW 1 as of SOW 1 Effective Date.

For: PURPLE STRATEGIES NEW ENGLAND  
A Division of PURPLE STRATEGIES, LLC

  
BY: James M. Demers  
TITLE: Managing Partner

For: SEA-3, INC.

  
BY:  
TITLE:

CONFIDENTIAL



STATEMENT OF WORK TWO

This Statement of Work Two ("SOW 2") is entered into between Purple Strategies New England, a division of Purple Strategies, LLC ("Purple") and Sea-3, Inc. ("Client") pursuant to the terms of the Agreement between such Parties effective as of July 27, 2015, and is subject to the terms and conditions of the Agreement.

The Effective Date of this SOW 2 is September 16, 2015 (the "SOW 2 Effective Date") and Services shall extend until complete, until terminated by either Party with thirty (30) days notice to the other Party, or upon termination of the Agreement, whichever is sooner.

**DESCRIPTION OF SERVICES:** Purple shall provide the following Services to Client:

Microsite Development Services. Purple will create a microsite for Client, which will include a landing page, a facts page, a newsroom page and a take action page. Purple will pursue securing the [www.SecurePropaneNH.com](http://www.SecurePropaneNH.com) URL for the microsite, and will target a launch date of September 25, 2015.

**PAYMENT FOR SERVICES:**

Client agrees to pay Purple a fee of [REDACTED] for all of the Services identified in this SOW 2. Any travel, stock photo, hosting or other expenses not expressly identified in this SOW will be billed separately.

**ADDITIONAL TERMS:**

1. Changes in Project Scope. If at any time following the execution of this SOW 2, Client should desire to change the specifications or other elements of the SOW 2, Client shall submit to Purple a written proposal specifying such changes. Purple shall evaluate each such proposal and shall submit to Client a written response within five (5) working days following receipt thereof. Purple's response shall include a statement of the availability of personnel and resources, as well as the effect the proposed changes will have on the payment amount and delivery dates specified in this SOW 2. Any changes to the SOW 2 shall be evidenced by a "SOW 2 Amendment." The SOW 2 Amendment shall be signed by authorized representatives of Purple and Client, and shall be deemed a part of this Agreement. If Purple does not approve the SOW 2 Amendment, Purple shall not be obligated to perform any additional services hereunder.

2. Delays. Purple shall inform Client immediately of any anticipated delays in the delivery schedule and of the actions being taken to assure completion of the microsite within such schedule. If any delivery date is missed, Client may, at its sole option, declare a default under this Agreement and may pursue all remedies set forth in Agreement; provided, however, that Client shall provide Purple with thirty (30) days to cure the delay prior to declaring a default. Client may not declare a default hereunder if such delay is caused by any action or failure to act of Client.

Purple cannot be held in default of this Agreement in case of delays on the part of Client. In such case, Purple will provide Client with written notice that such a delay has occurred. Work on the microsite shall not resume until the reason for the delay has been resolved by Client and notice of its resolution has been provided to Purple.

3. Acceptance Testing. Upon completion of the microsite and the delivery of all items required to be provided under this SOW 2, Client shall have ten (10) days from such completion to inspect, test and evaluate the microsite to determine whether it satisfies Client's acceptance criteria. If the microsite does not satisfy the

acceptance criteria, Client shall give Purple written notice stating why the microsite is unacceptable. Purple shall have ten (10) days from the receipt of such notice to correct the deficiencies. Client shall then have ten (10) days to inspect, test and reevaluate the microsite. If the microsite still does not satisfy the acceptance criteria, Client shall have the option of either: (1) repeating the procedures set forth above, or (2) terminating this Agreement pursuant to the Agreement. If and when the acceptance tests establish that the microsite complies with the acceptance criteria, Client shall notify PURPLE that it accepts the microsite.

4. Delegation of Labor. Purple reserves the right to assign subcontractors and/or third parties to perform services on Purple's behalf.

5. Demobilization. In the event that Client does not provide required approvals or deliverables requested from Purple for the microsite, and the lack of these approvals or deliverables causes Purple's resources to go into a waiting state of thirty (30) days or more ("Demobilization"), Purple reserves the right to remove temporarily any and/or all resources from the project. Once Client has provided the required deliverables or approvals necessary to continue the project, Purple will activate any resources necessary. An additional "start / stop fee" equivalent to 10% of the total project payment will apply in cases of Demobilization.

IN WITNESS WHEREOF, the Parties hereto have executed this SOW 2 as of SOW 2 Effective Date.

For: PURPLE STRATEGIES NEW ENGLAND  
A Division of PURPLE STRATEGIES, LLC

For: SEA-3, INC.

  
BY: Pat Griffin  
TITLE: Managing Partner

  
BY:  
TITLE:

CONFIDENTIAL



STATEMENT OF WORK THREE

This Statement of Work Three ("SOW 3") is entered into between Purple Strategies New England, a division of Purple Strategies, LLC ("Purple") and Sea-3, Inc. ("Client") pursuant to the terms of the Agreement between such Parties effective as of July 27, 2015, and is subject to the terms and conditions of the Agreement.

The Effective Date of this SOW 3 is September 29, 2015 (the "SOW 3 Effective Date") and Services shall extend until complete, until terminated by either Party with thirty (30) days notice to the other Party, or upon termination of the Agreement, whichever is sooner.

**DESCRIPTION OF SERVICES:** Purple shall provide the following Services to Client:

Media Research, Planning and Placement Services. Purple shall perform Media Research, Planning and Placement Services for Client. Purple shall provide Client with a digital media plan targeting key audiences, as agreed upon between the Parties, with an estimated run from October 7, 2015 through November 4, 2015.

**PAYMENT FOR SERVICES:**

Client agrees to pay Purple amounts detailed in pre-approved media plans. Payment for media research, planning and placement is due upon receipt of invoice. Any travel or other expenses not expressly identified in this SOW 3 will be billed separately.

IN WITNESS WHEREOF, the Parties hereto have executed this SOW 3 as of SOW 3 Effective Date.

For: PURPLE STRATEGIES NEW ENGLAND  
A Division of PURPLE STRATEGIES, LLC

For: SEA-3, INC.

BY: Patrick Griffin  
TITLE: Managing Partner

BY: Fred M. Lowcraft  
TITLE: Authorized Signatory

CONFIDENTIAL



**STATEMENT OF WORK FOUR**

This Statement of Work Four ("**SOW 4**") is entered into between Purple Strategies New England, a division of Purple Strategies, LLC ("**Purple**") and Sea-3, Inc. ("**Client**") pursuant to the terms of the Agreement between such Parties effective as of July 27, 2015, and is subject to the terms and conditions of the Agreement.

The Effective Date of this SOW 4 is October 5, 2015 (the "**SOW 4 Effective Date**") and Services shall extend until complete, until terminated by either Party with thirty (30) days notice to the other Party, or upon termination of the Agreement, whichever is sooner.

**DESCRIPTION OF SERVICES:** Purple shall provide the following Services to Client:

Telemarketing Services. Purple shall perform telemarketing Services for Client, to include telephone calls, letters and follow up calls to a target audience ("**Target**"), as agreed upon between the Parties. Purple shall purchase data records to help identify Targets for calling. Deliverables will include: scripts for telephone calls, and letter drafting and design.

**PAYMENT FOR SERVICES:**

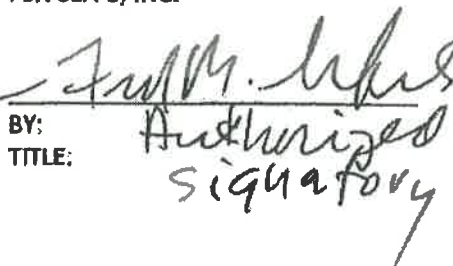
Client agrees to pay Purple [redacted] for the purchase of data records. Client further agrees to pay Purple a fee of [redacted] for setup of the letter and script language. Finally, Client agrees to pay Purple a fee of [redacted] per Target anticipating an approximate one hundred (100) total Targets.

IN WITNESS WHEREOF, the Parties hereto have executed this SOW 4 as of SOW 4 Effective Date.

For: PURPLE STRATEGIES NEW ENGLAND  
A Division of PURPLE STRATEGIES, LLC

For: SEA-3, INC.

  
BY: Patrick Griffin  
TITLE: Managing Partner

  
BY: [redacted]  
TITLE: Authorized Signatory