

Terms and Conditions

1. Master Agreement. These Terms and Conditions govern and are incorporated into the Master Agreement made by and between the Provider and Customer identified on the Master Agreement. Unless otherwise defined herein, capitalised terms in these Terms and Conditions shall have the meanings given to them in the Master Agreement. Provider will provide Customer with the Solutions in accordance with the Master Agreement.

2. Use and Access License. For the duration of the Term, Provider grants to Customer a limited, revocable, non-transferrable (except as set forth herein) and non-exclusive right to use and access (including through remote means) the Solutions solely for Customer's internal business operations and subject to the terms of the Master Agreement. Without limiting the terms of the Master Agreement, Customer agrees not to decompile, disassemble, reverse engineer or otherwise attempt to perceive the source code relating to the Solutions or any web-based portal relating thereto or assign, sublicense, sell, resell, lease or otherwise transfer, convey, or pledge as security or encumber, any right in the Solutions. Except as expressly permitted herein, Customer agrees that it shall not receive any right, title or interest in, or any license or right to use or access, the Solutions or any patent, copyright, trade secret, trademark or other intellectual property rights therein by implication or otherwise.

3. Confidentiality.

a. Nondisclosure to Third Parties. In performing its obligations under the Master Agreement, each Party may receive non-public information of the other Party ("Confidential Information"). Each Party, on behalf of itself and its employees, contractors and agents (collectively, "Representatives"), agrees not to, except as set forth in Section 3(b) or as required by applicable law or regulation, use or disclose Confidential Information during or after the Term without the prior written consent of the other Party. To protect Confidential Information, each Party agrees to: (i) limit dissemination of Confidential Information to only those Representatives having a "need to know"; (ii) advise each Representative who receives Confidential Information of the confidential nature of such information; and (iii) have appropriate agreements, policies and/or procedures in place with such Representatives sufficient to enable compliance with the confidentiality obligations contained herein.

b. Use of Confidential Information. Customer acknowledges that Provider may receive Confidential Information of Customer from the applicable independent system/grid operator, utility and/or supplier, through data collected through the Solutions or otherwise, which may be used or disclosed by Provider as necessary for the performance of the Master Agreement.

c. Disclosure of Personal Data to Provider Affiliates. Customer Personal Data that Provider collects may be transferred to, and stored at, a destination outside the European Economic Area ("EEA"). It may also be processed by personnel operating outside the EEA that work for Provider, an affiliate of Provider or for one of their suppliers, service providers or sub-contractors. In such circumstances Provider will take all steps reasonably necessary to ensure that Customer Personal Data is treated securely and affiliates of Provider shall have in place appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction of or damage to the Personal Data. Customer agrees to such transfers and processing. The term "Personal Data" has the meaning given in the Data Protection Acts 1998 and 2003 (as amended from time to time, the "DPAs").

4. Aggregate Data Collection and Usage. Customer acknowledges and agrees that Provider may: (i) collect, process and aggregate any data used with, stored in, or related to the Solutions, including, without limitation, end-user energy usage and demand data, and create aggregate data records ("Aggregate Data") by removing any personally identifiable information ("PII") from the underlying data; (ii) use such Aggregate Data to improve the Solutions, develop new solutions, understand actual energy usage and demand trends and general industry trends, develop white papers, reports, or databases summarising the foregoing, and generally for any legitimate purpose related to Provider's business; and (iii) share Aggregate Data with third parties or publish any reports, white papers, or other summaries based on Aggregate Data. Customer shall comply with all requirements under the DPAs to permit the lawful transfer by Customer of any such PII to Provider and Provider's affiliates, including such affiliates located outside of the EEA, for purposes of Provider or such affiliates' creation of the Aggregate Data.

5. Logo Authorisation. In connection with the Master Agreement, Customer hereby consents to Provider's use of Customer's name and logo in Provider's promotional materials, including, but not limited to, website, presentations and other printed materials. Provider acknowledges that Customer is the owner of all right, title and interest in and to Customer's name and logo and shall not take any action that is inconsistent with such ownership.

6. Indemnification. Provider agrees to defend and indemnify (subject to the terms of this Section), at its own expense, any third party claim against Customer, its parent corporation, affiliates, directors, employees and agents that arise due to any (i) bodily injury, death or damage to tangible personal property to the extent caused by the negligent acts or omissions of Provider or its employees in the performance of the Master Agreement ("Injury, Death or Damage Claim"); and (ii) a claim that the Solutions (or any software, hardware, or other component thereof) or any other goods, software or Solutions provided by Provider hereunder (so long as the foregoing have not been altered or modified by a party other than Provider) or the use thereof by Customer infringes upon any copyright, trademark, or proprietary right of any third party ("Third Party IP Claim"). Provider will pay reasonable legal fees as incurred and such damages or costs as are finally awarded against Customer or agreed to in settlement for such claim provided that Customer gives Provider (i) prompt written notice of any such claim or threatened claim; (ii) sole control of the defense, negotiations and settlement of such claim; and (iii) full cooperation in any defense or settlement of the claim. The foregoing indemnification obligations (y) shall not apply to the extent that any such claims or damages result from goods, software or Solutions provided by a party other than Provider, or are the fault of or caused by the sole acts or omissions of Customer; and (z) set out Provider's entire liabilities to Customer and Customer's sole and exclusive remedies against Provider in respect of any Injury, Death and Damage Claims and any Third Party IP Claims.

7. Limitation on Liability.

a. Nothing in the Master Agreement excludes or limits Provider's liability for:

- i. death or personal injury caused by Provider's negligence;
- ii. fraud or fraudulent misrepresentation;
- iii. any liability arising from Section 6 (Indemnification); or
- iv. any liability which cannot legally be excluded or limited.

b. Subject to Subsection (a) above, neither Party nor its affiliates, officers, directors, partners, shareholders or employees, or any contractor or subcontractor or their employees are liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Master Agreement for any:

- i. loss of profit;
- ii. loss of revenue;
- iii. loss of income;
- iv. loss of use;

- v. loss of cost of capital;
- vi. loss of business; or
- vii. loss of anticipated savings;

in each case whether direct or indirect, or for any indirect, special or consequential loss or damage, howsoever arising.

c. Subject to Subsection (a) above, Provider's and its affiliates' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Master Agreement shall not exceed €100,000.

8. Warranty Limitations. IF THE SOLUTIONS BECOME OR ARE LIKELY TO BECOME THE SUBJECT OF ANY THIRD PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM OR ACTION, PROVIDER MAY, AT PROVIDER'S SOLE OPTION, EITHER: (I) REPLACE SUCH SOLUTIONS WITH AN EQUALLY SUITABLE SOLUTION FREE OF INFRINGEMENT; (II) MODIFY OR OBTAIN A LICENSE FOR THE SOLUTIONS SO THAT THEY NO LONGER INFRINGE ON ANY RIGHTS; OR (III) AFTER PROVIDER HAS DEMONSTRATED ITS GOOD FAITH EFFORTS TO ACHIEVE THE FOREGOING WITHOUT SUCCESS, TERMINATE THE MASTER AGREEMENT. EXCEPT AS PROVIDED HEREIN, THE SOLUTIONS (AND ANY SOFTWARE, HARDWARE, OR OTHER COMPONENT THEREOF) ARE PROVIDED AS IS WITHOUT ANY WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

9. Choice of Law. The Master Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed and enforced in accordance with the laws of Ireland. All disputes or claims arising out of or relating to the Master Agreement shall be subject to the exclusive jurisdiction of the Irish Courts to which the Parties irrevocably submit.

10. Data Enablement. If required by Provider for Customer's use and access to the Solutions, Customer shall, within twelve (12) days following execution by the Parties of the Master Agreement or an Order Form, as applicable, provide Provider with reasonable access to perform a data enablement for the Solutions, including the installation of an EnerNOC site server that allows for Internet-based power metering, data collection, near real-time data communication, and Internet-based reporting and analytics. Customer agrees to collaborate with Provider in a timely manner in enabling data for the Solutions and in testing, enabling and maintaining the installed EnerNOC site server, the Solutions and any other components of the EnerNOC system.

11. Non-Payment. In the event that Customer fails to make any payment to Provider for undisputed amounts by the date such payment is due, Provider may (i) immediately suspend Customer's access to the Solutions and all related services until payment is received by Provider if payment is past-due by more than ten (10) business days; (ii) offset unpaid amounts due against any demand response payments to Customer; and/or (iii) terminate the Master Agreement or the applicable Order Form if Customer's non-payment continues for more than thirty (30) days following date of written notice of non-payment from Provider. Such remedies are in addition to any legal or equitable remedies available to Provider.

12. Customer's Support Requirements.

a. Customer Data. Customer agrees to provide or cause to be provided to Provider such contact, billing and energy usage data, and facility information as is required by Provider to support the Solutions ("Customer Data"). Customer (i) represents that it has the right to provide Customer Data to Provider and will provide Customer Data to Provider in compliance with applicable legal requirements; (ii) authorises Provider to use, copy, store, modify and display Customer Data for Customer's benefit and as expressly set forth in Section 4 of these Terms and Conditions; and (iii) authorises Provider to access Customer Data to provide quality assurance, perform software maintenance, and deliver customer service and technical support. During the Term and for thirty (30) days following expiration or termination of the Master Agreement, Provider will preserve and maintain Customer Data. Thereafter, Provider will have no obligation to preserve or return any Customer Data.

b. Demand Response. If Customer is enrolled in a demand response programme, Customer represents and warrants it has the intent and ability to generate and/or reduce electrical demand to achieve Accepted Capacity (as defined in the applicable Programme Rule Attachment attached to the applicable Order Form) when notified by Provider during demand response events. If Customer is enrolled in a demand response programme utilising on-site electric generation, Customer further represents and warrants that (i) it holds all licenses and/or permits that are required by applicable law for the proper participation in such demand response programme; and (ii) when responding to a demand response event, it will comply with, and be responsible for any violation of applicable law.

c. General Support Requirements. Customer agrees to submit directly to its utility companies any pulse requests required by Provider within five (5) business day's following instruction by Provider.

13. Provider Limitation. Provider shall be Customer's exclusive provider during the Order Term for the site addresses listed on the [Site Address Attachment](#) for any demand response programme and/or demand management services, irrespective of whether such programme and/or service is set forth in an Order Form.

14. Payments to Utilities or Other Suppliers. In no event shall Provider or its affiliates, directors, employees and agents (collectively, the "Indemnified Parties") be responsible or liable for payment of any utility bill of Customer or any amount Customer may owe to any utility or other supplier. To the fullest extent permitted by law, Customer shall defend and indemnify, at its own expense, any third party claim against the Indemnified Parties, that arise due to any allegation that the Indemnified Parties are responsible for payment of any utility bill of Customer or a portion thereof, or any other amounts due by Customer to any utility or other supplier. In connection with the foregoing indemnification obligations, Customer shall pay reasonable legal fees as incurred and such damages or costs as are finally awarded against Provider or agreed to in settlement for such claim.

15. Miscellaneous. Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of Provider; except that Customer may assign the Master Agreement to its successor or any entity acquiring all or substantially all of the assets of Customer by providing Provider with written notice promptly following the acquisition date. The Master Agreement, including any addenda, exhibits and attachments, constitutes the entire agreement between Provider and Customer with respect to Provider's provision of the Solutions identified on an Order Form, and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, the Master Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. The Master Agreement shall be binding upon the Parties together with their successors and permitted assigns. Each Party shall be responsible for its Representatives' compliance with the Master Agreement.

16. Taxes. Fees, costs, and expenses described in the Master Agreement do not include any sales, use, personal property, duty, levy, or similar governance charge, value added or good/services taxes. Provider may include applicable taxes as separate items on Customer's invoice, and Customer shall be responsible to pay and/or reimburse Provider for all taxes (other than taxes based on Provider's income), unless Customer has provided adequate evidence of exemption upon execution of the Master Agreement. If withholding of taxes is required by any government, Customer shall remit such taxes in accordance with applicable law, gross up the applicable payment amounts so that Provider receives the full amount of fees invoiced, and provide Provider with applicable evidence of withholding.

17. Termination. Either Party may terminate (i) the Master Agreement or the applicable Order Form in the event of the other Party's material breach, provided that the breaching Party fails to cure the specific breach within thirty (30) days following date of written notice from the non-breaching Party specifying the purported breach; (ii) immediately if a liquidator or examiner is appointed to the other Party, or a receiver, manager, receiver manager, sequestrator, administrative receiver, trustee or other similar officer, or other encumbrancer takes possession of or is appointed over, the whole or any material part of the other Party's assets, rights or revenues, or the other Party is otherwise insolvent or bankrupt; or (iii) the Master Agreement for convenience by giving the other Party sixty (60) days prior written notice, provided, however, that neither Party may terminate the Master Agreement so long as any Order Form thereunder remains in effect. In addition, if Customer is enrolled in a demand response programme, either Party may terminate the portion of the Order Form applicable to such programme (iv) if such programme is materially altered, suspended or ended; or (v) in accordance with the terms set forth in the applicable Programme Rule Attachment attached to the Order Form.

18. Notices. Any notices required or permitted to be given hereunder by either Party to the other Party shall be given in writing by: (i) personal delivery; (ii) bonded courier or nationally recognised overnight delivery company; or (iii) electronic mail. If notice is given by personal delivery, bonded courier or nationally recognised overnight delivery company, such notice shall be addressed to the Parties as follows (or to such other addresses as the Parties may request in writing by notice given pursuant to this Section): to Provider at EnerNOC Ireland Limited, Attn: Legal Department, One Marina Park Drive, Suite 400, Boston, MA 02210 USA; and to Customer at the Customer address indicated on the Master Agreement. If notice is sent by electronic mail, such notice shall be sent to Provider at contractmanagement@enemoc.com; and/or to Customer at the email address, if any, indicated on the Master Agreement. Every such notice shall be deemed to have been served upon delivery if served by personal delivery or at the expiration of two (2) days after dispatch of the same if delivered by bonded courier or nationally recognised overnight delivery company, or at 10 am Irish time of the recipient on the next working day following dispatch if sent by electronic mail.

19. Rights of Third Parties. The Parties agree that Provider enters into the Master Agreement for its own benefit but also as an agent for the benefit and on behalf of its affiliates and that all rights and benefits of Provider (but not any burdens or obligations) under or in connection with the Master Agreement including under indemnity, contract, tort, or howsoever arising shall be rights and benefits of Provider's affiliates (as if such affiliates were a party to the Master Agreement). Such rights and benefits shall be enforceable under the Master Agreement by Provider as agent for its affiliates.

20. Insurance. Provider shall maintain the following insurance: (i) Commercial General Liability or Public Liability Insurance with limits of €1,000,000 per occurrence and €2,000,000 aggregate; (ii) Automobile Liability Insurance with limits of €1,000,000 per occurrence combined single limit; and (iii) Workers' Compensation and Employers' Liability Insurance with limits of not less than €13,000,000. All insurance carriers must have an AM Best rating of A-VIII or better. At Customer's request, Customer shall be listed as a certificate holder and additional insured on the Commercial General Liability policy. The Commercial General Liability policy shall include an indemnity to principal clause. Customer shall be notified in writing at least thirty (30) days prior to cancellation of any insurance policy.

21. Parent Company Guarantee. Provider is a wholly-owned subsidiary of EnerNOC, Inc., a Delaware corporation. EnerNOC, Inc. hereby guarantees to and for the benefit of Customer the full and timely performance of the obligations of Provider when and if such obligations become due hereunder.