

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. Notwithstanding the foregoing, solely with respect to the software components of the Solutions or any web-based portal relating thereto, if the software's source code is necessary to obtain the information required to achieve the interoperability of the Solutions and/or web-based portal software with other programmes, Customer shall inform Provider in writing accordingly and Provider shall notify Customer within ten (10) business days from receipt of Customer's request that (a) Provider will perform the work in order to achieve such interoperability and invoice Customer accordingly based on Provider's then-current rates and policies (time, materials, travel); or (b) Customer itself is entitled to undertake those actions, but only to the extent permitted by such applicable law and required to achieve such interoperability.

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; 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, trade secret or proprietary right of any third party. 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 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 omis-

sions of Customer.

7. Limitations and Exclusions of Liability.

a. Each Party's liability for death or personal injury caused by negligence (as such term is defined by the Unfair Contract Terms Act 1977) is unlimited. Each Party's liability for fraudulent misrepresentation is unlimited.

b. Subject to Subsection (a) directly above, to the maximum extent permitted by applicable law, Provider's liability arising out of or in connection with the Master Agreement whether in contract or in tort (including, in each case, negligence) or otherwise howsoever for direct damages to, or loss of, tangible property caused by Provider's negligence shall be limited to £100,000 for any one event or series of connected events.

c. Subject to Subsections (a) and (b) directly above, to the maximum extent permitted by applicable law, under no circumstances will Provider or its subsidiaries or affiliates be liable, in contract, tort or otherwise, for any loss of data, loss of goodwill, business, business opportunity, revenue or profits, interruption in use or availability of data, stoppage of other work or impairment of other assets, regardless of how any of the foregoing damages are characterised, or for any consequential, indirect, special, punitive, exemplary or incidental damages or lost profits, whether foreseeable or unforeseeable, arising out of breach or failure of express or implied warranty or remedy, breach of contract, misrepresentation, negligence, strict liability in tort or otherwise.

d. Subject to Subsections (a) and (b) directly above, Provider's liability under or in connection with the Master Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, for (i) direct damages, and (ii) any matter subject to Subsection (c) directly above or Section 8 below to the extent it cannot be excluded under applicable law, shall be limited to a maximum amount of £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 EQUALY 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 OR CONDITION OF ANY KIND. ALL WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

9. Choice of Law. The Master Agreement shall be governed by and construed and enforced in accordance with English law, without giving effect to choice of law rules that would require the application of any other law. Any controversy or claim arising out of or relating to the Master Agreement or the existence, validity, breach or termination thereof, whether during or after the Term, shall be brought in the English courts located in London, United Kingdom, to whose exclusive jurisdiction the Parties hereby irrevocably submit. Notwithstanding any provision of the Master Agreement to the contrary, either Party shall be free to seek immediate injunctive or other equitable relief in any court of competent jurisdiction to protect its Confidential Information or to prevent any actual or threatened harm to its interests for which injunctive or other equitable relief is available as a matter of law or equity.

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 program 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. The Parties to the Master Agreement do not intend that any term of the Master Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.

16. Taxes. All amounts payable under the Master Agreement are expressed exclusive of VAT. 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 will include applicable taxes, where appropriate or when required under applicable law, 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 or the applicable Order Form. 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. Each Party shall provide VAT receipts as applicable.

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) the Master Agreement or any Order Form immediately upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other Party's debts; (iii) the Master Agreement or any Order Form immediately if the other Party ceases to carry on its business in the ordinary course, becomes insolvent, generally does not pay its debts as they become due, or admits in writing its inability to pay its debts; (iv) the Master Agreement or any Order Form immediately if the other Party calls any meeting of its creditors or negotiates or makes an assignment, composition or any general arrangement with or for the benefit of its creditors; (v) the Master Agreement or any Order Form immediately if the other Party has a receiving order made against it or has a receiver of all or any of its undertakings or assets appointed; (vi) the Master Agreement or any Order Form immediately if the other Party enters into proceedings, presents a petition or has a petition presented against it for its winding up, liquidation, reorganisation or dissolution (other than for the purpose of a solvent reconstruction or amalgamation); (vii) the Master Agreement or any Order Form immediately if any substantially similar event to those specified in subclauses (iii) through (vi) occurs with respect to the other Party under the laws of another jurisdiction; or (viii) 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 (ix) if such programme is materially altered, suspended or ended; or (x) 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 UK 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@enernoc.com; and/or to Customer at the email address, if any, indicated on the Master Agreement.

19. Insurance. Provider shall maintain the following insurance: (i) Public and Products Liability Insurance with minimum limits of £5,000,000 any one (1) claim for Public Liability and £5,000,000 in the aggregate; and (ii) Employers' Liability Insurance with a minimum limit of £10,000,000. 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 on the Public and Products Liability Insurance policies.

20. 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.