

ELECTRIC SERVICES AGREEMENT

Subject to the condition precedent in Section 1.1, this ELECTRIC SERVICES AGREEMENT (this “Agreement”) is made and entered into as of May , 2018 (the “Effective Date”) by and between EnerNOC Inc., a Delaware corporation (“Provider”), and Acton-Boxborough Regional School District (“Host”). Each of Provider and Host are sometimes referred to as a “Party” and collectively as the “Parties.”,

RECITALS

WHEREAS, Host conducts its business at the Premises (defined below);

WHEREAS, Provider desires to install the System at the Premises and provide distributed energy network optimization and management services to Host, on the terms set forth herein; and

WHEREAS, Host desires to retain Provider to provide distributed energy network optimization and management services at the Premises pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider and Host hereby agree as follows:

AGREEMENT

1. OVERVIEW

1.1 Condition Precedent. Notwithstanding anything to the contrary in this Agreement, including all Appendices and Exhibits incorporated by reference herein, the obligations of the Parties to this Agreement are conditional upon the execution of the Advancing Commonwealth Energy Storage (“ACES”) Grant Agreement (as defined in Exhibit A) within on hundred and eighty (180) days of the Effective Date of this Agreement (unless otherwise agreed to between the Parties). In the event that Provider has not fully executed the ACES Grant Agreement within that time period, then this Agreement immediately terminates and no Party shall have any claim against any other party for costs, damages, compensation or otherwise in respect of it.

1.2 Definitions. Capitalized terms used herein shall have the respective meanings set forth in Exhibit A.

2. SERVICES.

2.1 Services. During the Service Term, Provider, its subcontractors, and/or its Affiliates shall provide the services described on Exhibit C (the “Services”), subject to Host meeting its responsibilities identified in Section 3 of that Exhibit C, if any. Provider shall determine, in its discretion, the manner of providing the Services, including which Services to provide at any particular time, and whether to use its subcontractors and/or Affiliates to perform

its obligations under this Agreement. Host acknowledges and agrees that, unless otherwise stated in this Agreement, Provider is not obligated to provide any particular Service at any particular time. Notwithstanding the foregoing, Services shall be provided in accordance with Prudent Operating Practice.

2.2 Host Cooperation.

2.2.1 Host agrees to comply with reasonable recommendations made by Provider in order to increase the effectiveness of the Services, including recommendations to change the applicable Utility tariff for the Premises. Host maintains sole discretion in determining the reasonableness of any recommendation.

2.2.2 Prior to changing its applicable Utility tariff for the Premises, Host will provide no less than sixty (60) days' prior written notice to Provider. Host agrees that, if Provider determines in its commercially-reasonable opinion that the change to the applicable Utility tariff may adversely affect the economics of the Total Annual Benefit, then Host will refrain from any such change upon Provider's written notice, which shall be provided within ten (10) business days after receipt of Host's notice. If Host refrains from any such change upon timely written notice from Provider, this does not prevent Host from seeking to change the applicable Utility tariff again in the future.

2.3 Market Participation. Provider may, at its discretion, utilize the System to provide Market Services. Provider is authorized by Host to act as Host's scheduling coordinator, energy services company, aggregator, curtailment-service provider, demand-response provider, market participant, or other appropriate agent to transact energy services for the Premises and to receive revenues from Market Services. Host shall provide all necessary third-party authorizations for Provider to provide Market Services. Without limiting the generality of the foregoing, Host will designate Provider (or Provider's Affiliate) as their exclusive demand response aggregator for the Term and allow Provider to enroll the System in any demand response or energy market program(s). Provider shall be responsible for any and all costs or obligations relating to the provision of Market Services.

2.4 Use Rights and Access Rights.

2.4.1 Use Rights. Host grants Provider and its subcontractors and Affiliates an exclusive right to use the portion of the Premises identified as the Project Site on Exhibit F hereto (the "Project Site"), for the installation, operation, maintenance, repair, replacement and improvement of the System, together with a nonexclusive right of use of the Premises solely for the purposes laid out in this Agreement (the "Use Rights").

2.4.2 Access Rights. Subject to the rights of tenants thereon, Host grants Provider and its subcontractors and Affiliates a nonexclusive license for access on, under, over, and across the Premises and any other real property adjacent to the Premises and owned or leased by Host (collectively, the "License Area"), solely for the purposes of providing Services at the Premises and locating, installing, operating, maintaining, improving, repairing, relocating, and removing the System on the Premises (the "Access Rights"). The Access Rights include access to electrical panels and conduits to interconnect or disconnect the System with the Premises'

electrical wiring, access, and ingress to, and egress from, the System on, over, and across the License Area during the Term.

2.4.3 Survival and Sufficiency. Both the Use Rights and the Access Rights shall survive for a period of one hundred eighty (180) days following the termination of this Agreement for the sole purpose of removing the System. Without limiting the foregoing grant, Host covenants that the Use Rights and the Access Rights may be used to achieve all the purposes set forth in this Agreement, and represents and warrants that Host has the legal right and ability to grant this license.

2.4.4 Aggregate Data Collection and Usage. Host acknowledges and agrees that Provider and its Affiliates may, within the confines of any applicable laws: (i) collect, process and aggregate any data used with, stored in, or related to the Services, 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 Services, develop new services, understand actual energy usage and demand trends and general industry trends, develop white papers, reports, or databases summarizing 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.

2.4.5 Customer Use and Access License to Services. For the duration of the Service Term, Provider grants to Host a limited, revocable, non-transferrable (except as set forth herein) and non-exclusive right to use and access (including through remote means) the Services solely for Host's internal business operations and subject to the terms of this Agreement. Without limiting the terms of the Agreement, Host agrees not to decompile, disassemble, reverse engineer or otherwise attempt to commandeer the source code relating to the Services 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 Services. Except as expressly permitted herein, Host agrees that it shall not receive any right, title, or interest in, or any license, or right to use, or access, the Services or any patent, copyright, trade secret, trademark or other intellectual property rights therein by implication or otherwise.

2.5 Environmental Attributes and Incentives.

2.5.1 Environmental/Utility Attributes. Provider shall have all right, title, and interest in and to all Environmental Attributes related to the System or the Services. At Provider's expense, Host agrees to reasonably cooperate with Provider in any applications for Environmental Attributes related to the System or the Services.

2.5.2 Environmental/Utility Incentives. Provider shall have all right, title, and interest in and to all Environmental Incentives related to the System or the Services. For avoidance of doubt, the grant award related to the Advancing Commonwealth Energy Storage ("ACES") demonstration program is considered an Environmental Incentive. Any Environmental Incentive related to the System or the Services that is initially credited or paid to Host shall be assigned by Host to Provider without delay. At Provider's expense, Host agrees to reasonably

cooperate with Provider in any applications for Environmental Incentives related to the System or the Services.

2.5.3 Assistance with Environmental/Utility Attributes and Incentives. Host shall assist and reasonably cooperate with Provider in acquiring and maintaining all necessary permits and approvals for the System and the Services from Governmental Authorities. Host shall comply with all laws, regulations, and rules relating to acquiring and maintaining Environmental Attributes and Environmental Incentives and shall deliver to Provider copies of any documentation related thereto that is required by law to be in the name or physical control of Host. Provider shall reimburse Host for its reasonable third party costs incurred in relation to Host's assistance with such matters.

2.5.4 Impairment of Environmental/Utility Attributes and Incentives. Host shall not willfully and unreasonably take any action or knowingly cause any omission that would have the effect of reducing or impairing the value to Provider of the Environmental Attributes and Environmental Incentives. Host shall promptly notify Provider of any event, action, or omission that Host is reasonably aware could have the effect of reducing or impairing the value of the Environmental Attributes and Environmental Incentives. Upon the occurrence of any such event, action, or omission, and when Host has actual or constructive knowledge of such occurrence, Host shall consult with Provider as necessary to act reasonably to prevent reduction or impairment of the value of Environmental Attributes and Environmental Incentives.

3. SYSTEM.

3.1 Installation, Operation, and Maintenance. Subject to Section 3.3.2, Provider shall be responsible for the installation and System Operations of the System in a manner consistent with all applicable laws and Prudent Operating Practice. If the operation of the System is interrupted as a result of malfunction or other shutdown, Provider shall use commercially reasonable efforts to remedy such interruption. Both Parties shall comply with all applicable laws and regulations relating to the operation of the System and the exercise of any Use Rights and Access Rights, including obtaining and maintaining in effect all relevant approvals and permits. The foregoing notwithstanding, Host acknowledges that Provider is not required to operate the System in a particular manner at any particular time, and that the System may be online or offline at various times during the Term. Provider may take reasonable steps to upgrade or improve the System at any time without Host consent; provided, however, that Provider shall not, without the prior consent of Host, increase the nameplate capability of the System by more than ten percent (10%) from the nameplate System capability described in this Agreement.

3.2 Internet Connection; Access to Records and Monitoring Equipment. Subject to Host's network security protocols and requirements, Host hereby grants to Provider the right to connect the System to any available wired or wireless internet networks at the Premises so that it is possible for Provider to remotely monitor and control the continuous operation of the System. At no cost to Provider, Host shall provide a business-class internet connection and service with static IP address for communications with the System for the entire Service Term. Notwithstanding the foregoing, Provider acknowledges that Host is not required to provide such

connection in a particular manner at any particular time, and that such connection may be online or offline at various times during the Term.

3.3 Maintenance of Health and Safety.

3.3.1 Provider shall take all commercially reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the System and shall comply with all applicable material health, safety, and other laws, rules, regulations, and permit requirements. If Provider becomes aware of any circumstances relating to the Premises or the System that creates a risk of damage or injury to any Person or any Person's property, Provider shall take all steps necessary through prompt action to prevent such damage or injury and shall immediately notify Host. Such action may include disconnecting and removing all or a portion of the System, or suspending the transfer of energy between the System and the Premises. Should Host become aware of any risk of damage or injury to any Person or any Person's property, Host shall promptly notify Provider with respect thereto.

3.3.2

(a) In the event that the System is damaged, then Provider will evaluate the extent of the damage and determine whether the System is capable of repair for a reasonable cost. If, in Provider's reasonable opinion, the System is capable of repair, then Provider will arrange for the repair of the System.

(b) If the System's damage arose from the negligence, gross negligence, or willful misconduct of Provider (or that of Provider's agents or subcontractors), then Provider will bear the costs of such repair at no cost to Host.

(c) If the System's damage arose from the negligence, gross negligence, or willful misconduct of Host, or the negligence, gross negligence, or willful misconduct of a third party (other than Provider's agents or subcontractors), then Provider will repair the damage at Host's sole expense.

(d) If: (i) the System is damaged pursuant to Section 3.3.2(c) above, and; (ii) in Provider's reasonable opinion, the System is not capable of repair for a reasonable cost, then Provider may terminate this Agreement upon written notice, and Host must pay the applicable Service Damages fee identified in Exhibit G within thirty (30) days following the date of that notice. If the System is damaged pursuant to section 3.3.2(b), and in the Provider's reasonable opinion, the System is not capable of repair for a reasonable cost, then Provider may terminate this Agreement upon written notice, and Host will not be responsible for any fees associated with this termination including the Service Damages fee. For the avoidance of doubt, this Section 3.3.2 only applies during the period of time in which Provider retains ownership of the System and during the Service Term. Following the transfer of title of the System to Host, Host bears all responsibility for damage and any associated costs of repair.

(d) Notwithstanding Section 6.2 below, if the System is damaged and neither Party (nor their agents or subcontractors) caused the damage, the Provider will be responsible for

seventy-seven percent (77%) of the cost or repair and Host will be responsible for twenty-three percent (23%) of the cost of repair. If the System is damaged under this subparagraph 3.3.2(d) and in the Provider's reasonable opinion, the System is not capable of repair for a reasonable cost, then Provider may terminate this Agreement upon written notice, and Host will not be responsible for any fees associated with this termination including the Service Damages fee. For the avoidance of doubt, this Section 3.3.2 only applies during the period of time in which Provider retains ownership of the System and during the Service Term. Following the transfer of title of the System to Host, Host bears all responsibility for damage and any associated costs of repair.

3.4 Assistance with Permits and Licenses. Upon Provider's request, Host shall assist and reasonably cooperate with Provider, to acquire and maintain approvals, permits, and authorizations or to facilitate Provider's compliance with all applicable laws and regulations related to the construction, installation, operation, maintenance, and repair of the System, including providing any building owner or occupant authorizations, signing and processing any applications for permits, local Utility grid interconnection applications, and rebate applications as are required by law to be signed by Host. Host shall also promptly deliver to Provider copies of any necessary approvals, permits, rebates, or other financial incentives that are required by law in the name or physical control of Host. Provider shall reimburse Host for reasonable third party costs incurred by Host. At Provider's request, in relation to Host's assistance with such matters described in this paragraph provided that to the extent any third party assistance is needed by Host, then Host will inform Provider with an estimate or budget of such cost..

3.5 Service Commencement Date. Provider shall promptly notify Host of the occurrence of the Service Commencement Date.

3.6 Provider's Taxes. Subject to Section 3.7, Provider is solely responsible for all income, gross receipts, ad valorem, personal property, or other similar taxes and any and all franchise fees or similar fees directly relating to Provider's ownership of the System or the providing of the Services during the period of time in which Provider retains ownership of the System.

3.7 Host's Taxes. As between Host and Provider, and subject to the responsibilities of Provider in Section 3.6, it shall be the responsibility of Host to pay all taxes, charges, levies, and assessments against the Premises, it being understood that failure to do so shall not constitute a default under this Agreement except to the extent such failure materially impacts the ability of Provider to operate the System. Host shall also be responsible for paying all sales, use, and other taxes, and any and all franchise fees or similar fees assessed against Host as a result of Host's purchase of the Services.

3.8 Notice of Damage. Host shall, within twenty-four (24) hours, notify Provider of any physical conditions or other circumstances of which Host has actual knowledge that indicates there has been, or might be, damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

3.9 Removal. Provider shall, within one hundred eighty (180) days after the date of expiration or termination of the Contract Term, remove the System from the Premises, provided

that Provider shall not be required to remove electrical wiring or infrastructure, or any portion of the System below grade level. Provider shall repair any damage caused to the Premises during the removal of the System, and shall be required to otherwise restore the Premises to its condition prior to the installation of the System, ordinary wear and tear excepted. Other than as specifically provided otherwise herein, the removal of the System shall be at the cost of Provider.

3.9.1 Removal for Host Event of Default. Notwithstanding anything to the contrary, in the event of a Host Event of Default that is not cured within the cure period, Provider may terminate this Agreement and is entitled to Service Damages, and Provider may, but is not obligated to, remove the System in accordance with Section 3.9 within a reasonable period of time, unless otherwise agreed to by Parties. In the event that Provider elects to not remove the System pursuant to this Section 3.9.1, Provider will provide Host with written notice within one (1) year of termination of the Agreement. Within a reasonable period of time thereafter, Provider will take any steps as reasonably required to transfer title of the hardware components of the System to Host at no cost. Host will no longer receive or have access to Provider's services or proprietary software.

4. BENEFIT DISTRIBUTION AND SERVICE FEES.

4.1 Consideration for Services.

4.1.1 Benefit Share Methodology. The Total System Benefit will be shared as follows in this Section 4.1.1 (collectively, the "Benefit Share Methodology"):

Host receives twenty-three percent (23%) of the Total System Benefit (hereinafter, the "Host Benefit").

Provider receives seventy-seven percent (77%) of the Total System Benefit (hereinafter, the "Provider Benefit").

4.1.2 Timing; Service Fees and Host Fees.

Provider shall issue a written statement on a monthly basis that identifies: (a) the Total System Benefit for the previous month, and; (b) whether a payment is due to Provider or Host in order to distribute the Total System Benefit in accordance with the Benefit Share Methodology (such statement, the "Monthly Statement").

If a Monthly Statement indicates that there is a payment due to Provider in order to meet the Provider Benefit, then Provider shall issue a written invoice (the "Monthly Invoice"), paid in arrears, and Host shall pay such amount (the "Service Fees"), subject to appropriation, to Provider within thirty (30) days of the Monthly Invoice date.

If a Monthly Statement indicates that there is a payment due to Host in order to meet the Host Benefit, then Provider shall pay such amount to Host within thirty (30) days after delivery of the Monthly Statement (such payment, the "Host Fees").

4.2 Savings Adjustment. In addition, no later than thirty (30) days following the end of each Calendar Quarter, Provider shall calculate the Savings Adjustment for that Calendar

Quarter, if any, and deliver to Host a statement setting forth the Savings Adjustment, if any (the “Quarterly Statement”). Any Quarterly Statement shall include sufficient details (and shall provide any additional information reasonably requested by Host, with Host taking into account Provider’s standard data production standards and capabilities) so that Host can reasonably confirm the accuracy of the Quarterly Statement. If there is a Savings Adjustment due to Provider, then Host shall pay the amount due to Provider, subject to appropriation, within thirty (30) days after receipt of the Quarterly Statement. If there is a Savings Adjustment due to Host, then Provider shall pay the amount due to Host within thirty (30) days after delivery of the Quarterly Statement.

4.3 Energy Statements. Host shall make available to Provider all invoices and statements from the retail energy service provider and distribution service provider for the Premises (the “Energy Statements”). Host shall deliver the Energy Statements to Provider within five Business Days, or, at Host’s election, arrange for direct electronic access by Provider to the Energy Statements.

4.4 Disputed Amounts. A Party may in good faith dispute the correctness of any Monthly Invoice or Quarterly Statement under this Agreement at any time within thirty (30) days following the delivery of the Monthly Invoice or Quarterly Statement. In the event that Host disputes any Monthly Invoice or Quarterly Statement, Host shall nonetheless pay the full amount, subject to appropriation, of the applicable Quarterly Statement excepting any portions thereof that are reasonably believed to be inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth, on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give written notice of the objection(s) to the Provider. Any dispute that cannot be resolved by the parties within a reasonable time frame shall be subject to arbitration in accordance with Section 13.2.2. Any required payment will be made within five (5) Business Days after resolution of the applicable dispute unless otherwise agreed to by Parties.

4.5 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all Monthly Statements or Quarterly Statements under this Agreement, and Provider shall grant an independent, mutually-acceptable third-party auditor reasonable access to the related books, records, and data at the principal place of business of Provider at Host’s sole expense. An independent, mutually-acceptable third-party auditor may examine such relevant books and records solely to determine that payments under this Agreement have been properly made upon request with reasonable notice and during normal business hours.

5. TERM

5.1 Contract Term; Service Term. This Agreement shall have a Service Term (the “Service Term”) of one hundred and twenty (120) months commencing on the Service Commencement Date. The term of this Agreement (the “Contract Term”) shall commence on the Effective Date and shall end upon the expiration of the Service Term, unless terminated earlier in accordance with the terms of this Agreement.

5.2 Early Termination in Advance of Notice to Proceed Date.

5.2.1 Notice to Proceed Date. In the event that the Provider has not received the necessary financing for the System, secured appropriate interconnection rights, or the Notice to Proceed Date has not occurred within one (1) year following the Effective Date, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party delivered at any time prior to the actual Notice to Proceed Date; provided, however, that the foregoing date shall be automatically extended on a day-for-day basis for any Force Majeure occurring after the Effective Date and prior to the Notice to Proceed Date. Notwithstanding the foregoing, Provider shall in good faith make all commercially reasonable efforts to secure all necessary financing and commence installation of the System within one (1) year following the Effective Date.

5.2.2 Final Credit and Engineering Confirmation. The Parties acknowledge that the initial Financials memorialized herein are good-faith estimates based on initial assessments of engineering and construction costs, timetable for installation and interconnection, and Host's creditworthiness. The Parties further acknowledge that Provider will undertake a final assessment to verify these initial estimates, such assessment will include a further evaluation of engineering and construction costs, the timetable for installation and interconnection, and Host's creditworthiness. If, based on this further assessment, Provider reasonably determines that the Financials need to be adjusted, then Host and Provider agree to undertake good-faith discussions to revise the initial Financials. If the Parties cannot agree on updated Financials within thirty (30) days, then Provider may terminate this Agreement upon thirty (30) days' prior written notice.

5.3 Early Termination During the Contract Term.

5.3.1 Tariff Change. At any time during the Contract Term, if ISO-New England Inc., or any Governmental authority implements any materially-adverse changes to the value, existence, or methodology of the applicable rate tariff that, in Provider's commercially-reasonable opinion, will make the System uneconomic, then Provider may terminate this Agreement upon no less than ninety (90) days' written notice to Host.

5.3.2 Material Change. The Parties acknowledge that certain changes to business operations at the Premises may result in reductions in peak load that would prevent Provider from being able to fully utilize the nameplate capacity of the System towards the achievement of the Total System Benefit. As such, at any time during the Contract Term, if there are any changes at the Premises that result in a monthly peak load of less than 1680 kW, the Provider may terminate this Agreement upon thirty (30) days' prior notice to Host.

5.4 Purchase Option. During the Purchase Option Period, and no earlier than January 1, 2022, the Host shall have the option to purchase (the "Purchase Option") the System Provider's right, title, and interest in and to the System free and clear of all liens other than permitted encumbrances (the "Option Interest"), at a price that is equal to the greater of: (a) the Purchase Option Fees applicable for that time period (as identified in Exhibit D), or; (b) the Fair Market Value for the Option Interest (such greater amount, the "Option Price") by providing notice pursuant to Section 12 below (the "Purchase Option Notice"), with such Purchase Option taking effect in accordance with Section 5.5 below.

In the event that the Host and Provider do not agree on the Fair Market Value within thirty (30) days following delivery of the Purchase Option Notice, a mutually-agreeable independent

appraiser (the "Independent Appraiser") with suitable expertise shall be engaged (at equally split expense) to determine the Fair Market Value for the Option Interest. Unless the Host and Provider agree in writing upon such Independent Appraiser within ten (10) days of a request by either Host or Provider, the Independent Appraiser shall be chosen by the Provider. The Host and Provider shall submit all information relating to the calculation of the Fair Market Value to the Independent Appraiser to resolve the dispute, including any additional information reasonably requested by the Independent Appraiser, and request that the Independent Appraiser make a determination and render a decision within twenty (20) Business Days of submission of all information to the Independent Appraiser (or as soon thereafter as is reasonably practicable), which decision shall be final and binding. The timeframe for the Purchase Option Notice shall be extended as is reasonable to accommodate this paragraph.

5.5. Effect of Host's Exercise of Purchase Option. In the event that Host exercises its option pursuant to Section 5.4, as of the next January 1 that follows the Purchase Option Notice and continuing through the remainder of the Service Term:

(a) The Benefit Share Methodology will change to the Purchase-Option Benefit-Share Methodology described in Exhibit A. As of January 1, following the Purchase Option Notice, the Option Interest will transfer to Host, and Host will pay the Option Price prior to that date;

(b) Host will become responsible for the maintenance and repair of the System not covered by Section 2 of Exhibit C as well as replacement of the System. In the event of any operational issues with the System of any kind subsequent to a transfer pursuant to Host's exercise of a Purchase Option, Section 5.6 ("Warranty Pass-Through") will govern. Except as otherwise stated in this Section 5.5, the Parties will continue to perform their obligations under this Agreement, and;

(c) Section 6 below is null and void with respect to the Option Interest. After Host's exercise of the Purchase Option, Host shall bear the risk of loss for the Option Interest, except to the extent caused by the breach by Provider of its obligations under this Agreement or the gross negligence or intentional misconduct of Provider. For the avoidance of doubt, Provider will no longer be able to exercise any termination rights under Section 5.2.2 following the exercise of a Purchase Option.

Transfer of the Option Interest does not confer any additional rights, interest, or title to any Services beyond the rights granted pursuant to Section 2.4.5 of this Agreement.

5.6 Warranty Pass-Through. In the event of the transfer of ownership of the System to Host pursuant to Host's exercise of a Purchase Option, the System, including any internal components thereof, and any accessories or other parts furnished by Provider, but manufactured by others, shall carry whatever warranty, if any, the manufacturers thereof have given to Provider and which can be passed on to Host. In the event of any operational issues following such a transfer, Host agrees to look solely to Provider's products and other such manufacturers or suppliers of such accessories or parts for any warranty, repair, or product liability claims arising out of the performance, condition, or use of such accessories or parts. Provider agrees to promptly cooperate in furnishing assignments of its rights thereto to Host from such manufacturers and suppliers. Provider shall not be liable for any repairs, replacements or adjustment to the Product

or any costs of labor performed by Host after the exercise of the Purchase Option. Host shall, within warranty period, notify Provider in writing of any defect(s), Provider shall pursue the appropriate remedy and Host will fully cooperate with Provider in pursuing the remedy thereof.

6. TITLE AND RISK OF LOSS.

6.1 Title. As between Host and Provider, Provider shall at all times retain title to and be the legal and beneficial owner of the System during the Contract Term, and the System shall remain the personal property of Provider and shall not attach to or be deemed a part or fixture of the Premises. Provider may file one or more precautionary financing statements in jurisdictions it deems appropriate with respect to the System in order to protect its rights in the System.

6.2 Risk of Loss. Provider shall bear the risk of loss for the System, except to the extent caused by the breach by Host of its obligations under this Agreement or the gross negligence or intentional misconduct of Host or its invitees.

6.3 System Casualty. Upon the total damage, destruction, or loss of the System, or, in the reasonable opinion of Provider's insurance provider, the System is determined to have experienced a constructive total loss, Provider shall have the option, in its sole discretion, to repair or replace the System or terminate this Agreement. Provider shall notify Host in writing of its election within thirty (30) days after the date of the damage to the System. Provider shall under all circumstances be entitled to all insurance proceeds under Provider's insurance with respect to the System. If Provider elects to repair or replace the System, Provider shall undertake such repair or replacement as quickly as practicable. Such repair or replacement will be at Provider's expense, unless the damage, destruction, or loss of the System was caused by the breach by Host of its obligations under this Agreement or the negligence, gross negligence, or intentional misconduct of Host, in which case such repair or replacement will be at Host's sole expense.

6.4 If Provider elects to terminate this Agreement pursuant to Section 6.3, the termination shall be effective immediately upon delivery of the notice under Section 6.3 and Provider shall remove the System and restore the Premises in the manner set forth in Section 3.9 of this Agreement.

7. FORCE MAJEURE.

7.1 Force Majeure. To the extent either Party is prevented by an event of Force Majeure from performing its obligations under this Agreement, such Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments which have already come due). The Party claiming Force Majeure shall use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts, or similar disputes except on terms acceptable to such Party in its sole discretion. The non-claiming Party shall not be required to perform or resume performance of its obligations to the claiming Party corresponding to the obligations of the claiming Party excused by Force Majeure. Notwithstanding any provision herein to the contrary, Host shall not be obligated to make

payments under this Agreement to the extent that an event of Force Majeure is preventing Provider from performing its obligations under this Agreement.

7.2 Notice. In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance; provided, however, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless the delay in giving notice unduly prejudices the other Party.

8. ADDITIONAL COVENANTS.

8.1 Liens. Host shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor, or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the System or any portion thereof. If Host breaches its obligations under this Section 8.1, it shall promptly notify Provider in writing, shall promptly cause any lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred in discharging and releasing such lien. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor, or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Premises or any portion thereof. If Provider breaches its obligations under this Section 8.1, it shall promptly notify Host in writing, shall promptly cause any lien to be discharged and released of record without cost to Host, and shall indemnify Host against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred in discharging and releasing such lien.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Representations and Warranties of Host. Host represents and warrants to Provider that, at the time of execution of this agreement:

9.1.1 Host has the requisite authority to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery of this Agreement and the performance by Host of its obligations hereunder have been duly authorized by all requisite action of its governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the Services, including the sale or delivery of energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Host;

9.1.2 Host is the registered and beneficial owner of the Premises in fee simple with good and marketable title thereto. The Premises are and shall remain free and clear of any liens, mortgages, security interests, charges, encumbrances, covenants, claims, or any other exceptions to title. There are no existing, pending, or, to the best of Host's knowledge, threatened condemnation, incorporation, annexation, or moratorium proceedings affecting the Premises or any portion thereof. Host has not received any notice of, nor do they have any knowledge of, any violation of law, zoning ordinance, code or regulation affecting the Premises.

To the best of Host's knowledge, the Premises and the current and proposed use, occupation, and condition thereof do not violate any applicable deed restrictions or other covenants, restrictions, or agreements applicable to the Premises. Host has contracted for no work, or labor or materials supplies, at or on the Premises, or in connection with the construction, maintenance, rehabilitation, or alteration of the Premises, for which payment has not been paid in full, and no contractor, subcontractor, or other party has any claim for payments of any of the same or the right to place a lien against the Premises therefor. No person has been granted a right of first refusal or option to purchase, lease, or use the Premises, or any part or parts thereof, for any purpose.

9.1.3 This Agreement constitutes Host's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.1.4 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Host that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Host to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Host;

9.1.5 To the best of Host's current knowledge, the audited financial statements of Host covering the calendar year periods following the date that Host acquired its interest in the Premises, and any related audited statements (i) were prepared in accordance with generally accepted accounting principles consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal year-end adjustments and the lack of footnote disclosures; and (ii) present fairly the financial condition of Host as of the dates thereof and results of its operations for the periods covered thereby. Host further represents and warrants to Provider that since the date of the most recent above-referenced audited financial statements, there has been no material adverse change in Host's financial condition, business, operations or prospects.

9.2 Representations and Warranties of Provider. Provider represents and warrants to Host that, at the time of execution of this agreement:

9.2.1 Provider has the requisite corporate, partnership, or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery of this Agreement and the performance by Provider of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the Services, including the sale or delivery of energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Provider;

9.2.2 This Agreement constitutes Provider's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable

bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.2.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Provider that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Provider to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Provider; and

9.2.4 To Provider's knowledge, neither the System nor the Services infringe on any third party's intellectual property or other proprietary rights. If the System or Services 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 and Provider's sole expense, either: (i) replace such System or Services with a materially-equivalent System or Services free of the alleged infringement; (ii) modify or obtain a license for the System or Services to avoid the alleged infringement; or (iii) after Provider has demonstrated to Host its good-faith efforts to achieve the foregoing without success, terminate the applicable Services, to be effective upon written notice.

EXCEPT AS PROVIDED HEREIN AND AS MAY BE PROVIDED IN SECTION 5.6, THE SYSTEM, SERVICES, 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.

10. DEFAULTS/REMEDIES.

10.1 Provider Event of Default. Each of the following events shall constitute a "Provider Event of Default":

10.1.1 Provider fails to pay to Host any amount when due under this Agreement and such breach remains uncured for thirty (30) calendar days following written notice of such breach to Provider;

10.1.2 (i) Provider commences a voluntary case under any bankruptcy law; (ii) Provider fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Provider in an involuntary case under any bankruptcy law; (iii) any involuntary bankruptcy proceeding commenced against Provider remains undismissed or undischarged for a period of ninety (90) days; or (iv) Provider is declared bankrupt in any court in any jurisdiction during the Contract Term.

10.1.3 Provider materially breaches any other term of this Agreement and (i) if such breach is capable of being cured within thirty (30) days after Host's notice to Provider of such breach, Provider has failed to cure the breach within such thirty (30) day period, or (ii) if Provider has diligently commenced work to cure such breach during such thirty (30) day period

but such breach is not capable of cure within such period, Provider has failed to cure the breach within a further one hundred fifty (150) day period, such aggregate period shall not exceed one hundred eighty (180) days from the date of Host's notice.

10.2 Host's Remedies. If a Provider Event of Default has occurred and is continuing, Host may terminate this Agreement by written notice to Provider following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity.

10.3 Host Event of Default. Each of the following events shall constitute a "Host Event of Default":

10.3.1 Host fails to pay to Provider any amount when due under this Agreement and such breach remains uncured for thirty (30) calendar days following written notice of such breach to Host;

10.3.2 (i) Host commences a voluntary case under any bankruptcy law; (ii) Host fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Host in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Host remains undismissed or undischarged for a period of ninety (90) days; or (iv) Host is declared bankrupt in any court in any jurisdiction during the Contract Term.

10.3.3 This subsection intentionally left blank.

10.3.4 Host ceases to conduct business at the Premises. Notwithstanding the foregoing, the Parties agree that Host will not have committed a Host Event of Default under this Section 10.3.4 if: (i) Provider has consented to the assignment of this Agreement to a Successor pursuant to Section 17.1 below, or; (ii) Host conducts an Acceptable Relocation (as described in Section 17.2 below) to a new location in the Territory (the "New Premises").

10.3.5 Host materially breaches any other term of this Agreement, including its obligations under Exhibit C, and (i) if such breach is capable of being cured within thirty (30) days after Provider's written notice of such breach to Host, Host has failed to cure the breach within such thirty (30) day period, or (ii) if Host has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Host has failed to cure the breach within a further one hundred fifty (150) day period, such aggregate period not to exceed one hundred eighty (180) days from the date of Provider's notice. Provider shall have access at all times during the relevant cure period to the property in order to service or provide necessary maintenance to the System.

10.3.6 A change to business operations at the Premises occurs that prevents Provider from being able to fully utilize the nameplate capacity of the System, as described in Section 5.3.

10.3.7 This subsection intentionally left blank.

10.4 Provider's Remedies. If a Host Event of Default has occurred and is continuing beyond any applicable cure period, Provider may terminate this Agreement by written notice to

Host following the expiration of the applicable cure period. Upon such termination, Host shall pay to Provider the applicable termination value set forth in Exhibit G (the “Service Damages”), as liquidated damages and not as a penalty. It is acknowledged that the Host’s failure to cure any Host Event of Default beyond its applicable cure period (1) may cause the Provider to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Provider of actual damages, and (2) that Service Damages represent a fair, reasonable and appropriate estimate thereof. Pending Host’s payment of the Service Damages, Provider may remain on the Premises and operate the System for its own account.

10.5 Waiver of Consequential Damages. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SERVICE DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

10.6 Limitation of Liability. PROVIDER’S MAXIMUM LIABILITY UNDER THIS AGREEMENT (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED FIVE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$5,400,000). IT IS INTENDED THAT THIS LIMITATION APPLY TO ANY AND ALL LIABILITY OR CAUSE OF ACTION HOWEVER ALLEGED OR ARISING UNLESS OTHERWISE PROHIBITED BY LAW.

11. FINANCING ACCOMMODATIONS.

11.1 Host Acknowledgment. Host acknowledges that Provider may finance the System and that Provider’s obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a security interest in the System. In order to facilitate such financing, and with respect to any financing Provider of which Provider has notified Host in writing (each, a “Financing Party”), Host agrees as follows:

11.1.1 Consent to Collateral Assignment. Provider shall have the right to assign this Agreement as collateral for financing or refinancing of the System, and Host hereby consents to the collateral assignment by Provider to any Financing Party of Provider’s right, title, and interest in and to this Agreement.

11.1.2 Financing Party’s Rights Following Default. Notwithstanding any contrary term of this Agreement:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty, or obligation required of Provider hereunder or cause to be cured any default or event of default of Provider in the time and manner provided by the terms of this Agreement. If Financing Party has succeeded to Provider's interests, Financing Party is required to pay all sums due under the Agreement and to perform any other act, duty, or obligation including efforts to cure any default of Provider .

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Provider to Financing Party, Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Provider Event of Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, or any equivalent bankruptcy proceedings at the request of Financing Party made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Financing Party or its assignee on substantially the same terms as this Agreement provided the Financing Party or its assignee incur all liabilities of Provider under this Agreement.

11.1.3 Financing Party Cure Rights. Host shall not exercise any right to terminate or suspend this Agreement unless Host has given prior written notice to each Financing Party of which Host has written notice. Host's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the cure period allowed for a default of that type under this Agreement to cure the condition. Host's and Provider's obligations under this Agreement shall otherwise remain in effect, and Host and Provider shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

11.1.4 Continuation Following Cure. If Financing Party or its assignee acquires title to, or control of, Provider's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 11.1.3, then this Agreement shall continue in full force and effect.

11.2 Notice of Defaults and Events of Default. Host agrees to provide to each Financing Party of which Host has written notice, a copy of all notices that Host delivers to Provider pursuant to this Agreement.

11.3 Potential Investor and Financing Participant. Provider shall keep Host reasonably informed as to the identity of any potential investor or financing participant with respect to the System and provide to Host any information reasonably requested thereby with

respect to such investor or participant excluding any information that such investor or participant, or Provider, is unable to provide.

12. NOTICES. Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Provider: EnerNOC, Inc.
1 Marina Park Drive, Suite 400
Boston, MA 02210
Attention: Legal Department
e-mail: contractmanagement@enernoc.com

With a copy to: EnerNOC, Inc.
1 Marina Park Drive, Suite 400
Boston, MA 02210
Attention: Marc Rizzo
e-mail:

To Host:

Attention:
Phone:

With a copy to:

Attention:
Phone:

13. GOVERNING LAW; DISPUTES.

13.1 Choice of Law. This Agreement shall be construed in accordance with the laws of Commonwealth of Massachusetts, without regard to its conflict of laws principles.

13.2 Disputes.

13.2.1 Management Negotiations. The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party's senior management. Either Party may, by written notice to the other Party, request a meeting to initiate negotiations to be held within fifteen (15) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within thirty (30) Business Days of their first meeting, either Party may pursue arbitration in accordance with Section 13.2.2.

13.2.2 Arbitration. Any controversy or dispute not amicably resolved by the Parties or through management negotiations shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of one hundred thousand dollars (\$100,000), then at the election of either Party, there shall be a panel of three (3) arbitrators. If the Parties do not mutually agree on the arbitrator(s), the Parties shall then utilize the American Arbitration Association, or if the American Arbitration Association no longer exists, another entity mutually acceptable to the Parties to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect or by the rules set forth by the other mutually acceptable entity used for Arbitration. Notwithstanding that the Construction Industry Arbitration Rules may provide otherwise, the prevailing Party in any such arbitration shall be entitled to recover its arbitration costs, inclusive of counsel, expert, arbitrators' and administrative fees, from the losing Party, as determined by the arbitrator(s). Any such arbitration shall be conducted in Boston, Massachusetts.

14. INDEMNIFICATION.

14.1 Provider's Indemnity to Host. To the fullest extent permitted by law, Provider shall indemnify and defend Host (including Host's permitted successors and assigns) and Host's subsidiaries, members, , employees and agents (collectively, "Host Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, attributable to bodily injury or tangible property damage incurred by Host Indemnified Parties to the extent directly caused by Provider's negligence, gross negligence, or willful misconduct ("Host Claim"). Provider's indemnification obligations under this Section 14.1 shall not extend to any Host Claim to the extent such claim is due to the sole negligence or willful misconduct of any Host Indemnified Party.

14.2 Host's Indemnity to Provider. To the fullest extent permitted by law, Host shall indemnify and defend Provider (including Provider's permitted successors and assigns) and Provider's subsidiaries, directors, officers, members, shareholders, employees and agents (collectively, "Provider Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, attributable to bodily injury or tangible property damage incurred by Provider Indemnified Parties directly caused by Host's negligence, gross negligence, or willful misconduct ("Provider Claim"). Host's indemnification obligations under this Section 14.2 shall not extend to any Provider Claim to the extent such claim is due to the sole negligence or willful misconduct of any Provider Indemnified Party.

14.3 Indemnification Procedure. The indemnifying Party will pay reasonable legal fees as incurred and such damages or costs as are finally awarded against indemnified Party or agreed to in settlement for such claim provided that indemnified Party gives the indemnifying Party (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 and prompt cooperation in any defense or settlement of the claim.

15. INSURANCE.

15.1 Insurance Required. Each Party shall maintain in full force and effect throughout the Contract Term, with insurers of recognized responsibility authorized to do business in the State in which the System will be located, assigned an A.M. Best rating of no less than A IX, insurance coverage in the amounts and types set forth on Exhibit E. Each policy of insurance maintained by Host shall (a) name Provider as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Provider. Each policy of insurance maintained by Provider shall (a) name Host as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Host. Each Party shall, within ten (10) days of receipt of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

15.2 Waiver of Subrogation. Each policy of insurance required hereunder shall provide for a waiver of subrogation rights against the other Party, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

15.3 No Waiver of Obligations. The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

16. CONFIDENTIAL INFORMATION.

16.1 Confidentiality. Neither Party (the "Receiving Party") shall use for any purpose other than performing its obligations under this Agreement, divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the "Disclosing Party"), any confidential information of the Disclosing Party. Confidential information includes, without limitation, this Agreement and exhibits hereto; all information or materials prepared in connection with the System; drawings; specifications; techniques; models; data; documentation; Host, supplier, or personnel names and other information related to Hosts, suppliers, or personnel; pricing policies and financial information; and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not, to the knowledge of the Receiving Party, receive the same, directly or

indirectly, from the Disclosing Party. The Receiving Party shall use no less than a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed; (ii) as otherwise required by law; (iii) as advisable or required in connection with any government or regulatory filings, including, without limitation, filings with any regulating authorities covering the relevant financial markets; (iv) to its attorneys, supervising governmental agencies having jurisdiction over the Premises, accountants, financial advisors, or other agents, in each case bound by confidentiality obligations; (v) to banks, investors, and other financing sources and their advisors, in each case if any such Person has agreed to abide by the terms of this Section 16.1; (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by the same or similar confidentiality obligations; or (vii) to any Governmental Authority having jurisdiction over the Premises or the System, or otherwise in connection with any Environmental Incentive. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16.2 Irreparable Injury; Remedies. Host and Provider each agree that disclosing Confidential Information of the other Party in violation of the terms of this Article 16 may cause irreparable harm, and that, notwithstanding Section 10.5 and Section 13.2, the harmed Party may immediately seek any and all remedies available to it at law or in equity, including, but not limited to, injunctive relief from a court of competent jurisdiction.

17. TRANSFER OR RELOCATION

17.1 Assignment for Transfer. Host agrees to provide no less than one hundred and twenty (120) days' notice prior to the sale or transfer of ownership of the Premises ("Premises Transfer") to a non-Affiliate third party (the "Successor"). Notwithstanding anything to the contrary in Section 18.1, in the event of Host's Premises Transfer to a Successor, Provider shall have the right, in its sole discretion, to determine whether to:

- (a) provide the Services and System at the Premises to Successor;
- (b) provide the Services at the New Premises, pursuant to Host's Acceptable Relocation and with Host's consent, or;
- (c) elect not to exercise any of its rights under Section 17.2(a)-(b), which may result in a Host Event of Default per Section 10.3.4.

In the event that Provider intends to provide the Services at the Premises to Successor pursuant to Section 17.1(a), then Host agrees to execute any agreement as reasonably requested by Provider to assign this Agreement, or its rights and obligations hereunder, to Successor. Further, Host will undertake commercially-reasonable efforts to introduce Provider to Successor prior to

the sale or transfer of ownership of the Premises so that the parties can discuss potential business opportunities related to the Services and System.

17.2 Acceptable Relocation.

(a) To be considered an Acceptable Relocation, the following criteria must be met:

- (i) Host must have provided no fewer than one hundred and twenty (120) days' written notice to Provider prior to ceasing business at the Premises;
- (ii) Provider, at its sole discretion, must have waived its rights pursuant to Section 17.1(a) to continue to provide the Services and System to the successor at the Premises;
- (iii) Provider, at its sole discretion, must have determined that the New Premises could support the operation of the System with substantially-similar Total System Benefit to that of the Premises, based on any factors it deems relevant, and;
- (iv) Host must pay, at its sole cost, for the removal of the System from the Premises and the installation of the System at the New Premises by Provider (or its Affiliates and/or subcontractors), including all necessary permitting and engineering costs.

(b) In the event of an Acceptable Relocation and with Host's consent to continue such services at the New Premises, Host agrees to extend the Service Term for a period of time as is reasonably necessary for Provider to recover all Total System Benefit lost or diminished by the removal, transport, and re-installation of the System, as such period of time is reasonably determined by Provider. Host agrees to execute any amendment or contract necessary to effectuate this extension, as may be requested by Provider. Host further agrees that any rights and/or obligations provided for pursuant to this Agreement with respect to the Premises will apply in equal effect with respect to the New Premises, unless otherwise agreed to by Parties.

18. MISCELLANEOUS.

18.1 Assignments. Neither Party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, (A) Provider may assign any of its rights, duties, or obligations under this Agreement, without the consent of Host, to: (i) any of its Affiliates, or (ii) any third party in connection with a financing transaction, and; (B) Host may assign any of its right, duties, or obligations under this Agreement, without the consent of Provider, (i) to any Affiliate successor owner of the Premises, (ii) to any successor owner of the Premises following a foreclosure or deed in lieu thereof with respect to the Premises.

18.2 Entire Agreement. This Agreement represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

18.3 Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing mutually executed by duly authorized representatives of Provider and Host.

18.4 No Partnership or Joint Venture. Provider and Provider's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of Host. Host and Host's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of Provider. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement.

18.5 Headings; Exhibits. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. Any Exhibits referenced within and attached to this Agreement, including any attachments to the Exhibits, shall be a part of this Agreement and are incorporated by reference herein.

18.6 Remedies Cumulative; Attorneys' Fees. No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding at trial and on appeal and/or enforcing any judgment granted therein.

18.7 Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. Any such waiver must be in a writing executed by the Party making such waiver.

18.8 Severability. If any part, term, or provisions of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement and shall not render this Agreement unenforceable as a whole. Instead, the part of the Agreement found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

18.9 Currency. Unless otherwise specified, all references to money amounts are to United States dollars.

18.10 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate the System to public use or subject itself to regulation as a “public utility” as such term may be defined under any applicable law.

18.11 Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract.

18.12 Forward Contract. The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

18.13 Publicity. The Parties agree that each may, from time to time, issue press releases regarding the System, provided, however that neither Party shall issue a press release regarding the System without the prior consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Parties shall cooperate with each other in connection with the issuance of such press releases. Host and Provider understand and agree that this System shall be used for sales and marketing purposes, it being understood that neither Party shall create any marketing materials or engage in any public relations activities with respect to the System without the prior consent of the other Party, which consent shall not be unreasonably withheld or delayed. Host may publicize that it is serving as a host for the System and display photographs of the System in its advertising and promotional materials, provided that such materials shall identify Provider as the owner and developer of the System and shall be consistent with Section 2.4.

18.14 Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (“.PDF”) signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

18.15 Further Assurances.

18.15.1 Additional Documents. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms of this Agreement and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this section.

18.15.2 Certificates. From time to time, Host shall provide and enter into, within five (5) Business Days after receipt of a written request from Provider or Financing Provider (i) a lien waiver from any party purporting to have a lien, security interest, or other encumbrance on the Premises, confirming that it has no interest in the System, (ii) an estoppel certificate attesting, to the knowledge of Host, of Provider’s compliance with the terms of this Agreement or detailing any known issues of noncompliance, and making such other representations, warranties, and accommodations reasonably requested by the recipient of the



estoppel certificate, or (iii) a consent agreement with Financing Party, including such customary terms and conditions as may be reasonably requested by Financing Party.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Electric Services Agreement to be duly executed and delivered as of the Effective Date.

PROVIDER

HOST

EnerNOC Inc.

**Acton Boxborough Regional School
District**

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

DEFINITIONS

“ACES Grant Agreement” refers to a grant agreement between Provider and the Massachusetts Clean Energy Center pursuant to the Advancing Commonwealth Energy Storage (“ACES”) demonstration program.

“Affiliate” means, with respect to any person or entity, any other person or entity controlling, controlled by or under common control with such first person or entity. For purposes of this definition and this Agreement, the term “control” (and correlative terms) means the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or profits of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

“Agreement” has the meaning set forth in the Preamble.

“Benefit Share Methodology” has the meaning set forth in Section 4.1.1 above:

“Bill Savings” means the savings realized directly on Host’s Utility bill(s) through the use of the System that are attributable to Bill Savings Services. For the avoidance of doubt, “Bill Savings” includes but is not limited to, savings that are realized from demand charge management, energy arbitrage, load shaping, and coincident peak or installed capacity tag mitigation.

“Bill Savings Services” means any service provided by the System that results in Bill Savings on Host’s Utility bill(s).

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Calendar Quarter(s)” refers to, collectively and individually, each consecutive three-month period of a given calendar year, with the first Calendar Quarter beginning on January 1 and ending on March 31 of a given year.

“Confidential Information” has the meaning set forth in Section 16.1.

“Contract Term” has the meaning set forth in Section 5.1.

“Effective Date” has the meaning set forth in the Preamble.

“Energy Statements” has the meaning set forth in Section 4.24.24.3.

“Environmental Attributes” means any and all environmental benefits, air quality credits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to energy generation by a renewable fuel source and its displacement of energy generation by conventional,

nonrenewable, and/or carbon-based fuel sources. Environmental Attributes include, but are not limited to, (1) any benefit accruing from the renewable nature of the generation's motive source; (2) any avoided emissions of pollutants to the air, soil, or water (such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants other than those that are regulated pursuant to state or federal law); (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (4) any property rights that may exist with respect to the foregoing attributes howsoever entitled; (5) any green tags, renewable energy credits or similar credits, including RECs created pursuant to applicable law ("RECs"); and (6) any reporting rights to these avoided emissions, including, but not limited to, green tag or REC reporting rights. Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes, (ii) Environmental Incentives, or (iii) emission reduction credits encumbered or used for compliance with local, state, or federal operating and/or air quality permits.

"Environmental Incentives" means any and all financial incentives, from whatever source, related to the construction, ownership, or operation of the System. Environmental Incentives include, but are not limited to, (i) federal, state, or local tax credits; (ii) any other financial incentives in the form of credits, reductions, or allowances that are applicable to a local, state, or federal income taxation obligation; and (iii) other grants, rebates, or subsidies, including utility incentive programs. Environmental Incentives do not include Environmental Attributes.

"Fair Market Value" includes, at a minimum, all revenue streams, contracted and merchant, the optimization benefit from the System, operational costs, and software licensing at the time of the purchase. It should assume a least one replacement of the batteries in the lifetime of the project and be discounted at rates reflective of the risk/reward for an asset of this nature at the time of exercise of the option.

"Financials" means, individually and collectively: (i) the distribution of fees between the Parties as identified pursuant to the Benefit Share Methodology in Exhibit A; (ii) the Purchase-Option Fees identified in Exhibit D, and; (iii) the Service Damages identified in Exhibit G.

"Financing Party" has the meaning set forth in Section 11.1.

"Force Majeure" means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of, and without the fault or negligence of, the Party relying thereon as justification for such delay, nonperformance, or noncompliance, which includes, without limitation, an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood, volcanic eruption or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

“Governmental Authorities” means any national, state, regional, municipal or local government, any political subdivision thereof, or any governmental, quasi-governmental, regulatory, judicial or administrative agency, authority, commission, board or similar entity having jurisdiction over the System or its operations, the Premises, or otherwise over any Party.

“Host Event of Default” has the meaning set forth in Section 10.3.

“Host Indemnified Parties” has the meaning set forth in Section 14.1.

“Host” has the meaning set forth in the Preamble.

“ISO-NE” means ISO New England, Inc., or any successor(s).

“Market Services” means any program or market that is administered or operated by the relevant Utility or ISO-NE, that provides remuneration to Provider and/or remuneration related to the Premises in exchange for adjusting the electrical load of the Premises and/or exporting power to the electrical grid, including any and all demand response programs. For the avoidance of doubt, “Market Services” includes, but is not limited to the Forward Capacity Market; Forward Reserves; Frequency Regulation; the Eversource Peak-Shaving Pilot; Price-Responsive Demand (“PRD”) as well as the National Grid pilot program, and any non-wires solutions, as well as any successor offerings or any new program that is substantially similar to the foregoing programs.

“Notice to Proceed Date” means the date on which physical work of a significant nature commences relating to the installation of the System at the Premises.

“Party” and “Parties” have the meanings set forth in the Preamble.

“Person” means any individual, corporation (including, without limitation, any non-stock or non-profit corporation), limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or governmental body.

“Premises” means all the real property and improvements commonly known as Acton Boxborough Regional School District, 16 Charter Road, Acton MA 01720.

“Provider Event of Default” has the meaning set forth in Section 10.1.

“Provider Indemnified Parties” has the meaning set forth in Section 14.2.

“Provider” has the meaning set forth in the Preamble.

“Prudent Operating Practice” means the practices, methods, and standards of professional care, skill, and diligence engaged in or approved by a significant portion of the electric power industry for energy storage and efficiency facilities of similar size, type, and design as the System that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with applicable law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition.

“Purchase-Option Benefit-Share Methodology” means the distribution of the Total System Benefit is as follows:

- Provider receives twenty-three percent (23%) of Total System Benefit
- Host receives seventy-seven percent (77%) of Total System Benefit

“Purchase Option Period” refers to the period of time between January 1 and September 30 of a given calendar year, except that the Purchase Option Period does not include the period of time between the Effective Date and December 31, 2021.

“Savings Adjustment” means, for any Calendar Quarter, the Host’s pro-rata share of Bill Savings minus the pro-rata portion of Service Fees for that Calendar Quarter. If the Savings Adjustment is due to Provider, then it shall be payable by Host to Provider. If the Savings Adjustment is due to Host, then it shall be payable by Provider to Host.

“Service Commencement Date” means the date when the System is fully installed and ready to provide Services, as determined by Provider.

“Service Damages” has the meaning set forth in Section 10.4.

“Service Fees” has the meaning set forth in Section 4.1.2.

“Service Term” has the meaning set forth in Section 2.3.

“Services” has the meaning set forth in Section 2.1.

“System” means the energy storage and efficiency system described in Exhibit B.

“System Operations” has the meaning set forth in Exhibit C.

“Territory” refers to location(s) that are wholly within the ISO-NE Northeast Massachusetts and Boston Load Zone (“NEMA”).

“Total System Benefit” means the sum of all Bill Savings and Market Services revenue realized by the operation of the System during a calendar year, net of any electricity expenses associated with the operation of the System, as calculated by the Provider and detailed in the Monthly Statement. A hypothetical calculation of Total System Benefit is provided in Exhibit H.

“Utility” means either the Premises’ utility company or a third-party supplier.

EXHIBIT B

DESCRIPTION OF THE SYSTEM

System:

Energy storage system, 2100 kW/ 4176 kWh (operational capacity).

EXHIBIT C

SERVICES AND DEPENDENCIES

1. Provider's Services.

Subject to Host's responsibilities in Section 3 of this Exhibit C, the services to be provided by Provider to Host are generally the installation and System Operations of the System and those operational services necessary to optimize the Services.

These Services will include Market Services and Bill Savings Services.

2. System Operations.

As used in this Agreement, "System Operations" refers to the operation of, and routine maintenance to, the System, as described herein in this Section 2.

(a) Software Platform. Provider shall provide authorized employees of Host with access to the Provider's software platform (the "EnerNOC Software Platform") via a web-based interface pursuant to the grant of license described in Section 2.4.5 above. Host shall provide notice to Provider of up to five (5) employees who shall be provided access to the EnerNOC Software Platform (the "Representatives"). Provider shall authorize such access to other such Host employees as becomes reasonably necessary due to employee unavailability so long as only five (5) employees have access to the EnerNOC Software Platform at any given time.

(b) Network Operations Service. On a continuous basis, Provider shall monitor the functioning of the System, including the functioning of the inverters, the batteries, and the containers, in compliance with the instructions and manuals of the equipment manufacturers. In the event any component part of the System fails or ceases to operate properly, Provider shall promptly proceed with its obligations set forth in Section 1(c)(ii)1(e)(ii)2(e)(ii) of this Exhibit C.

(c) Hardware Maintenance Program.

(i) *Preventive Maintenance*. Subject to Section 3 above, including Section 3.3.2, Provider shall provide the following preventive maintenance services:

1. Battery system maintenance consisting of visual inspection of the battery system, replacement of Consumables as needed (including the fan, DC protections, and battery modules), and adjustment of torque on bolts in modules and racks;

2. Power conversion system maintenance consisting of annual preventative maintenance, including visual inspections, replacement of inverter air filters, and replacement of defective parts, as necessary; and

3. General balance-of-plant maintenance consisting of heating, ventilation, and air conditioning ("HVAC") or thermal-management maintenance, and any fire

detection and suppression system maintenance (consisting of verification of system readiness).

(ii) *Corrective Maintenance.*

(A) In the event any component part of the System fails or ceases to operate properly in a manner that does not impact the ongoing operation or functionality of the System (a "Minor Event"), Provider shall initially use best efforts to diagnose and resolve the Minor Event through remote access of the System on the same day the Minor Event occurs.

(B) If the Minor Event cannot be resolved remotely, Provider shall escalate the Minor Event to Customer's designated Representative located at the Project Site for action to be taken by Customer's designated Representative, when possible, to correct the Minor Event through physical access to the System.

(C) If the Minor Event cannot be resolved through access to the System by Representatives of Customer, Provider shall use best efforts to, or shall cause a subcontractor to, dispatch a technical support team to the Project Site within six (6) weeks of the Minor Event occurring, which technical support team shall thereafter diagnose and resolve the Minor Event as promptly as they are able.

3. Host's Responsibilities.

Host will pay all utilities bills attributable to Host when such bills become due or within a reasonable time period thereafter. Host agrees to provide written notice to Provider in the event that Host receives a bill that it believes is attributable to Provider.

EXHIBIT D

PURCHASE-OPTION FEES

<u>Time Period (Years)</u>	<u>Purchase-Option Fees</u>
1	N/A
2	N/A
3	\$750,000
4	\$640,000
5	\$560,000
6	\$520,000
7	\$400,000
8	\$300,000
9	\$170,000
10	\$100,000

As used in this Exhibit D, “Year” refers to each full calendar year subsequent to the Service Commencement Date. For example, if the Service Commencement Date is in 2018, then Year 1 above refers to the calendar year beginning as of January 1, 2019.

EXHIBIT E

INSURANCE REQUIREMENTS

ARTICLE 1: PROVIDER SHALL OBTAIN AND MAINTAIN THE FOLLOWING INSURANCE POLICIES:

(i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(ii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(iii) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System of not less than one million dollars (\$1,000,000) combined single limit per occurrence and not less than two million and seven-hundred thousand dollars (\$2,700,000) annual aggregate. Host shall be named as an additional insured under this liability insurance, provided however that Provider shall in no event be obligated to repair or replace Host's buildings or Premises;

(iv) As of the start of the Service Term, Environmental insurance of not less than three million dollars (\$3,000,000);

(v) Provider may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(vi) Provider may elect to self insure any or all of the insurance requirements contained in this Agreement.

ARTICLE 2: HOST SHALL OBTAIN AND MAINTAIN THE FOLLOWING INSURANCE POLICIES:

(vii) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(viii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(ix) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than one million dollars (\$1,000,000) combined single limit per occurrence and not less than two million dollars (2,000,000) annual aggregate. Provider shall be named as an additional insured under this liability insurance;

(x) Host may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(xi) Host may elect to self insure any or all of the insurance requirements contained in this Agreement.

EXHIBIT F
PROJECT SITE



EXHIBIT G

SERVICE DAMAGES

<u>Time Period (Year)</u>	<u>Service Damages</u>
1	\$1,380,000
2	\$1,280,000
3	\$1,150,000
4	\$1,000,000
5	\$860,000
6	\$780,000
7	\$600,000
8	\$420,000
9	\$220,000
10	\$150,000

As used in this Exhibit G, “Year” refers to each successive twelve (12) month period that follows the Service Commencement Date during the Contract Term.