

# ENERGYLINK STANDARD TERMS AND CONDITIONS

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions - The following definitions shall apply to this Agreement:

**"Client"** means the Client and its associated companies that utilize the Internet Service;

**"Client Data"** means the data possessed by the Client or data transmitted, generated or processed by the Client, or on behalf of the Client, as a result of the use of the Internet Service;

**"Errors"** means problems caused by errors or defects in the Internet Software that cause aborts, incorrect actions, or incorrect results to occur;

**"Internet Service"** means the service provided to the Client by EnergyLink LLC as set out in the EnergyLink Master Agreement;

**"Internet Software"** means proprietary and other computer software programs operating on the Operating Environment that provide the Internet Service for the Client as set out in the Master Agreement;

**"Internet Software Upgrades"** means additions or revisions, including correction of Errors, to system design or coding that add new functions or improve performance of the Internet Software;

**"Operating Environment"** means the computing operations center operating the Internet Software, from which the Internet Service is provided;

**"Support Services"** means support activities, including user training and technical support, that are not included in the scope of the Internet Service and may be provided to Client by a third party.

**1.2 Headings.** The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect its construction or interpretation.

**1.3 Gender and Tense.** In this Agreement, words importing the singular include the plural and vice versa.

**1.4 U.S. Currency.** Unless otherwise specified, all references in this Agreement to amounts of money are references to U.S. currency.

## 2. CLIENT DATA PROTECTION / CONFIDENTIALITY

**2.1 Client Authorized Use of the Internet Service** – Notwithstanding that the Client retains ownership of Client Data at all times, the Client may access and use the Internet Service for its own internal purposes only and shall not offer access or benefit of such use to any third parties.

**2.2 Ownership of Intellectual Property and Client Restrictions** - The Internet Service and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights associated therewith are the valuable and exclusive intellectual property of EnergyLink LLC protected by contract and intellectual property laws and EnergyLink LLC reserves the right to add, alter or discontinue functional aspects of the Internet Service based on input from various client users. This Agreement does not transfer or assign any ownership rights to Client or anyone else and the Client shall not and shall not authorize any third party to use the Internet Service, build a competitive Internet Service or reverse engineer the Internet Service to compete with EnergyLink LLC.

**2.3 Protection of Client Data from Unauthorized Access** - EnergyLink LLC shall provide firewall protection service on a level consistent with best industry practices appropriate for services of this nature. EnergyLink LLC shall assign login IDs with passwords to representatives of the Client and shall restrict Client Data access only to holders of such login IDs. EnergyLink LLC shall never share Client login ID information with other Clients or third parties. It shall be the Client's responsibility to control which Client representatives are entitled to have login IDs, the disclosure and use of login IDs by its representatives and the revoking of login IDs when its representatives cease to have authority or be employed by it, or suspects that the secrecy of a login ID has been compromised. In any event, the Client shall be responsible for the conduct of its representatives and EnergyLink LLC shall

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have no obligation to investigate the authority of any of the Client's representatives or anyone accessing Client Data as a result of the use of any client's login ID.

**2.4 Safeguards Against Loss of Client Data** - EnergyLink LLC shall take reasonable precautions and make best efforts to safeguard against loss of Client Data, including physical data safeguard practices on a level consistent with best industry practices appropriate for services of this nature. EnergyLink LLC shall promptly advise the Client if EnergyLink LLC suspects or has any information to indicate that an attempt has been made by an unauthorized person to gain access or interfere with the Client Data or Confidential Information. Upon request by the Client as a Support Service, EnergyLink LLC shall provide the Client with special backup copies of Client Data, in a mutually agreeable format.

**2.5 Confidentiality** – In this Agreement, “**Confidential Information**” means the Client Data and any other information disclosed or provided, directly or indirectly, to EnergyLink LLC in the performance of the Internet Service. EnergyLink LLC shall use best efforts to safeguard the Confidentiality of Client Confidential Information, including internal personnel security practices appropriate for services of this nature. EnergyLink LLC shall not, without the Client's written consent, disclose or permit disclosure of any Confidential Information to any third party, or use any Confidential Information, for any purpose other than the performance of the Internet Service.

**2.6 Privacy Policy** – EnergyLink LLC may use Client Data in accordance with Enverus' Privacy Policy, available at <http://info.Enverus.com/privacy-policy/>. EnergyLink LLC may use Client Data to generate statistics and otherwise analyze Client's use of EnergyLink (“Blind Data”) and may disclose such information on an anonymized and aggregated basis to third parties, without restriction.

**2.7 Client Audits** - The Client's auditors shall have the right, during normal business hours, to audit the EnergyLink provision of all safeguard, firewall protection, and confidentiality of Client Data.

### 3. WARRANTY AND LIMITATION OF WARRANTY, INDEMNIFICATION, LIMITATION OF LIABILITY

**3.1 Warranty and Limitation of Warranty** - EnergyLink LLC warrants: a) that it develops its own Internet Software and that the Internet Service and Internet Software do not infringe upon any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any third party; b) that the Internet Service shall perform substantially in accordance with the functional specifications, service and availability levels and performance objectives as posted on the EnergyLink website; and c) that it shall use commercially reasonable efforts to safeguard the Client Confidential Information. Should the Internet Service not perform, EnergyLink LLC shall use commercially reasonable efforts to promptly remedy the system deficiency. Without limiting the generality of the foregoing, EnergyLink LLC does not warrant that the Internet Service will meet the Client's requirements, will be error free, that its use will be uninterrupted, that all backed up data will be recoverable, that all attempts to penetrate the firewall will be blocked or that the security of the Internet Service will not be breached. EnergyLink LLC shall not be responsible for accuracy or usefulness of the content of the data transmitted through the Internet Service or the results obtained through its use by any person. Except as specifically set forth above, the Client shall bear the entire risk of use of the Internet Service and the data accessed thereby.

**3.2 Indemnification** – Should any claim of infringement be made by a third party against the Client, the Client must promptly notify EnergyLink LLC and provide reasonable assistance to EnergyLink LLC to defend against the claim and EnergyLink LLC shall defend the claim at EnergyLink LLC's expense. EnergyLink LLC shall be liable for and shall indemnify and hold the Client harmless against any and all damages, costs, legal fees, expenses, or liabilities incurred directly or indirectly by the Client arising out of any such claim or as a result of EnergyLink LLC's willful misconduct or negligence relating to its obligation to maintain the confidentiality of the Client Confidential Information.

**3.3 Limitation of Liability** - Except as specifically set forth in Paragraphs 3.1 and 3.2 herein, in no event shall EnergyLink LLC, or anyone else who has been involved in the creation, production, or delivery of the Internet Service or provision of other services described in this Agreement, be liable for incidental, consequential, exemplary, or punitive damages, for any reason whatsoever, arising out of this Agreement, even if EnergyLink LLC was advised, had other reasons to know, or, in fact, knew of the possibility thereof. For any breach of this Agreement, except for any breach by EnergyLink LLC of the warranties in Paragraph 3.1 (a) and (c) herein,

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EnergyLink LLC's liability shall be limited to the amount the Client has paid to EnergyLink LLC for use of the Internet Service specifically relating to the damages in question, provided that this limit on liability shall not apply to any liability arising from or related to EnergyLink LLC's gross negligence or willful misconduct.

### 4. MISCELLANEOUS

**4.1 Entire Agreement** - The provisions in this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, and all other communications relating to the subject matter hereof and shall be construed as if both Parties equally participated in its drafting, and thus shall not be construed against either Party as drafter. No amendment or modification of any provision of this Agreement will be effective unless set forth in a document that purports to amend this Agreement and is executed by both parties hereto.

**4.2 Relationship of the Parties** - This Agreement shall not create or establish an agency, partnership, or joint venture between the parties and the parties jointly and severally disclaim any such relationship. The parties are acting independently and neither party owes any fiduciary, special, implied, or other duty to the other party. Client agrees and covenants not to directly or indirectly solicit, hire, recruit, or induce the termination of employment of any employee or contractor of EnergyLink LLC during or within one year after the Term.

**4.3 Authority** - Each party has full power and authority to enter into, perform, and execute this Agreement and acknowledges that it has read this Agreement, understands it and agrees to be bound by it. Each person signing this Agreement on behalf of a party hereto has been properly authorized and empowered to enter into and execute this Agreement.

**4.4 Severability** - If any provision of this Agreement is held to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained herein unless the deletion of the provision would result in such material change to cause the remainder of the Agreement to be unreasonable.

**4.5 Assignment** - Neither party may assign their rights under this Agreement without the prior written consent of other party, which shall not be unreasonably withheld. The terms and conditions of this Agreement shall be binding upon and enforceable by any and all successors or assigns.

**4.6 Notice** - Any written notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered to the addresses set out in the Master Agreement, or to such other address as a party shall designate through the Internet Service.

**4.7 Force Majeure** - Neither party shall be liable for any damages or penalty for delay in performance of its obligations hereunder or for failure to give notice of delay when such delay is due to causes beyond the party's reasonable control including, but not limited to, acts of God or the public enemy, revolutions, insurrections, riots, wars, national emergencies, fire, flood, explosion, sabotage, labor disputes, or any other causes beyond the reasonable control of such party, but specifically excluding the financial ability of either party to perform its obligations under this Agreement.

**4.8 Governing Law** - The validity, construction, and performance of this Agreement shall be governed by the laws of the State of Texas.

**4.9 Waiver** - Waiver of any breach or failure to enforce any term of this Agreement shall not be deemed a waiver of any other breach or right that may arise.

**4.10 Remedies** - Should EnergyLink LLC breach its obligation of confidentiality hereunder, it acknowledges that same would cause irreparable harm to Client for which money damages would be an inadequate remedy and EnergyLink LLC further acknowledges that the Client may seek injunctive or other extraordinary relief in such circumstances.

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**4.11 Publicity** - EnergyLink LLC is expressly permitted to use, in any manner or form, the Client's name as part of a factual listing of current EnergyLink subscribers in communications with current and potential EnergyLink subscribers. Other than the uses permitted herein, EnergyLink LLC shall not use the Client's name in connection with any publicity, release, advertisement or other publication without prior written consent of the Client.

**4.12 Export Controls** - EnergyLink is subject to U.S. Export Administration Regulations. Diversion or use contrary to U.S. or other applicable law and regulation is prohibited. Client agrees not to export, import, or transmit Client Data to any country or end user for any use in (1) any countries subject to U.S. trade embargoes (and all other nations that may from time to time be included on such a list); or (2) any persons or entities on the U.S. "Denied Persons List," "Specially Designated Nationals List," and "Entities List;" or (3) other locations or persons prohibited by law. Client represents that neither the U.S. Bureau of Industry and Security nor any other governmental agency has issued sanctions against Client or denied Client's export privileges.