

## EnerAllies, Inc.

### END USER LICENSE AGREEMENT

BY ENTERING INTO A SERVICES AGREEMENT WITH ENERALLIES, INC. ("ENERALLIES") OR AN AUTHORIZED RESELLER OF ENERALLIES (ITS "RESELLER") REGARDING THE OFFERING (AS DEFINED BELOW), YOU OR THE ENTITY THAT YOU REPRESENT ("YOU," "YOUR," "YOURS" OR "CUSTOMER") ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS END USER LICENSE AGREEMENT (THIS "EULA"), AND ARE HEREBY REPRESENTING AND WARRANTING THAT YOU ARE AUTHORIZED TO BIND THE CUSTOMER. YOUR USE OF ANY PORTION OF THE OFFERING SHALL ALSO CONSTITUTE ASSENT TO THE TERMS OF THIS EULA. IF THESE TERMS ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS TO THE EXCLUSION OF ALL OTHER TERMS.

#### 1. DEFINITIONS

In this EULA, capitalized terms shall have the meanings set out below and in the text of this EULA:

**"Confidential Information"** means all information disclosed by one party to the other party that is identified in writing as "confidential" or "proprietary" (or, in the case of oral disclosures is summarized in writing and delivered to the receiving party within 30 days or would be reasonably considered proprietary or confidential).

**"Customer Data"** means the customer-specific data available to Customer through the SaaS Application.

**"Contract Length"** means the 3-year Contract Length in the Services Agreement.

**"Devices"** means the Thermostat Hardware and temperature, CO<sub>2</sub> or humidity sensors, that are expressly authorized by EnerAllies or its Reseller, as applicable, for operation of the SaaS Application.

**"DIFM Service Package"** means the EnerAllies "Do-It-For-Me" service package selected by Customer in the Services Agreement.

**"Term"** means the period commencing on the date of the first Installation and activation of the SaaS Application at any Site and ending on the last day of the last Service Period.

**"Installation"** means the placement and activation of Devices in Customer locations.

**"Offering"** means the SaaS Application and the DIFM Service Package.

**"SaaS Application"** means the EnerAllies online, cloud-based software-as-a-service application.

**"SaaS Application Package"** means the SaaS Application Package selected by Customer in the Services Agreement.

**"Service Period"** means the period beginning on the date of installation and activation of the SaaS Application for each individual Site and continuing for the Contract Length.

**"Site"** means each of Customer's individual locations for which

the SaaS Application will be installed.

**"Territory"** means the United States and Canada.

**"Thermostat Hardware"** means an HVAC controls device used to adjust the temperature according to a series of programmed set-points.

**"Users"** means Customer's employees, representatives, consultants, contractors or agents who are authorized to use the SaaS Application and have been supplied with user identifications and passwords by Customer (or by EnerAllies or its Reseller at Customer's request).

#### 2. THE OFFERING

2.1 Subject to the terms and conditions of this EULA and payment to EnerAllies or its Reseller, as applicable, of all applicable fees and charges, EnerAllies grants Customer a non-exclusive, non-transferable, revocable, limited right and license during the Term to use the SaaS Application for Customer's internal, in-house business use only within the Territory and elsewhere as authorized by EnerAllies. EnerAllies reserves all rights in the SaaS Application not expressly granted herein.

2.2 EnerAllies will use commercially reasonable efforts to provide the DIFM Service Package.

2.3 EnerAllies reserves the right to perform maintenance of the SaaS Application as needed and, except in the event of emergency maintenance, will provide reasonable notice of any unavailability and the reasons therefore. Customer acknowledges that EnerAllies shall not be responsible for providing internet access or any equipment or services necessary to utilize internet access, including any WiFi equipment, local area network, internet connection operations & equipment, and security at each Site.

2.4 A user account is required to access the SaaS Application, which may be used only by Users. Each User must have a personal, non-transferable password to use his/her respective user account. User accounts shall not be "shared" or used by more than one User.

2.5 Customer is responsible for any and all activities that occur under Customer's User accounts, including without limitation any loss or damage which results from their misuse. IDs and passwords for the SaaS Application shall be reasonably protected and safeguarded by Customer to prevent unauthorized use of credentials. Customer shall: (a) notify EnerAllies immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to EnerAllies immediately and stop immediately any copying or distribution of any content contained in, or accessible through, the SaaS Application that is known or suspected by Customer or its Users; (c) ensure that use of the SaaS Application shall at all times comply with all applicable laws, regulations, and conventions.

2.6 Where Customer reports a failure in the SaaS

Application or any Thermostat Hardware or other Device, and upon investigation by EnerAllies, such failure: (a) is not capable of being replicated by EnerAllies; (b) arose in EnerAllies's reasonable opinion because of Customer's (or its employees' or agents') misuse, negligence or willful misconduct or; or (c) relates to computer or networking equipment or software that does not form part of the SaaS Application, then EnerAllies reserves the right to charge for the work undertaken in investigating the failure at its then standard rates.

2.7 Customer warrants that it has sought all necessary permissions and is legally entitled to allow EnerAllies to monitor each User and process the personal data.

### 3. **INSTALLATION OF DEVICES**

3.1 This EULA does not apply to Installation. Customer shall make the Sites available for Installation in accordance with the instructions of EnerAllies (or its Reseller) and shall provide EnerAllies (or its Reseller) with reasonable assistance and co-operation in connection with such Installation.

### 4. **INTERNET CONNECTIVITY**

4.1 Customer shall provide and maintain a sufficient WiFi network and internet connection or cellular data service at all times at each Site; Customer shall provide EnerAllies access to utilize such WiFi and internet connection or cellular data service as reasonably requested by EnerAllies to support the communication of the SaaS Application for each Device at each Site.

### 5. **LIMITATIONS AND RESTRICTIONS**

5.1 Except as expressly set forth herein, Customer shall not (nor shall it permit others to), directly or indirectly, (a) copy, market, license, sublicense, sell, resell, transfer, assign, reproduce, distribute or otherwise make available to any third party the SaaS Application, (b) disassemble, reverse engineer, decompile, modify, create derivative works based upon, or translate the SaaS Application, (c) transfer or otherwise grant any rights in or access to the SaaS Application (including associated intellectual property rights) in any form to any other party, (d) modify, adapt or make derivative works based upon the software used in the SaaS Application, or (e) retransmit or link the SaaS Application (including "framing" or "mirroring" any content contained in, or accessible from the SaaS Application) to any other server, wireless or Internet-based device. Customer shall ensure and be responsible for all of its Users' compliance with the terms of this EULA.

5.2 Customer shall promptly report to EnerAllies any actual or suspected violation of Section 5.1 and shall take all further steps reasonably requested by EnerAllies to prevent or remedy any such violation.

### 6. **PROPERTY RIGHTS**

Customer shall remain the sole and exclusive owner of

the Customer Data, and EnerAllies is and shall remain the sole and exclusive owner of the SaaS Application and all software and documentation provided or made available by EnerAllies. Customer hereby grants to EnerAllies an irrevocable, perpetual, royalty-free, worldwide, assignable right and license to use, sublicense, reproduce, maintain, modify, display, create derivative works of, and otherwise fully exploit and commercialize the Customer Data; provided, however, that EnerAllies may not disclose to third parties the personally identifying information of the Users contained in the Customer Data except as may be provided in this EULA or as required by law, regulation or government authority.

### 7. **WARRANTIES, REMEDIES, LIMITATIONS OF LIABILITY, AND INDEMNIFICATIONS**

7.1 EnerAllies warrants to Customer that the Offering will be provided and performed in a professional and workmanlike manner. As Customer's exclusive remedy for breach of the foregoing warranty, EnerAllies shall, at its option, repair or replace the nonconforming elements of the SaaS Application. EnerAllies shall have no obligation hereunder if the Thermostat Hardware, Devices, third party cellular data network or software used in connection with the SaaS Application is modified, altered, merged or subjected to misuse, neglect, accident or improper use by Customer or any third party.

7.2 EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, ENERALLIES AND ITS SUPPLIERS EXCLUDE ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. ENERALLIES AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES OF DESIGN, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THAT THE SAAS APPLICATION, DEVICES, WIFI NETWORK AND INTERNET CONNECTION OR CELLULAR SERVICE PROVISIONED THROUGH A THIRD PARTY WILL MEET ALL OF CUSTOMER'S REQUIREMENTS, OR THAT THE SAAS APPLICATION WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS FREE, OR ERROR-FREE. NOR DOES ENERALLIES (OR ITS SUPPLIERS) MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SAAS APPLICATION OR THAT ALL ERRORS IN THE SAAS APPLICATION WILL BE CORRECTED.

7.3 ENERALLIES AND ITS SUPPLIERS ENTIRE LIABILITY FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT, WARRANTY, OR IN TORT (INCLUDING NEGLIGENCE) FOR ALL CLAIMS RELATING TO THIS EULA AND ITS PERFORMANCE, SHALL BE LIMITED IN AGGREGATE TO THE FEES PAID BY CUSTOMER TO ENERALLIES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM.

7.4 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY

LOST PROFITS, LOST REVENUE, INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF OR COULD HAVE REASONABLY FORESEEN THE POSSIBILITY OF SUCH DAMAGES.

7.5 Neither party's liability for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation is excluded or limited.

7.6 EnerAllies shall indemnify Customer from and against any third party liabilities, losses, damages, claims, suits, and expenses, including reasonable legal expenses, of whatever kind and nature ("Losses"), imposed upon, incurred by or asserted against Customer relating to or arising out of any third party claim brought against Customer alleging that the Offering violates any proprietary rights of any third person. The foregoing obligations do not apply with respect to portions or components of the Offering (i) not created by EnerAllies, (ii) resulting in whole or in part in accordance from Customer specifications, (iii) that are modified after delivery by EnerAllies, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of is not strictly in accordance with this EULA and all related documentation. This Section 7.6 states EnerAllies's entire obligations regarding infringement of a third party's intellectual property rights.

7.7 Customer shall indemnify EnerAllies and its suppliers from and against any and all Losses imposed upon, incurred by or asserted against EnerAllies relating to or arising out of: (a) Customer's use of the SaaS Application and/or the Devices, or WiFi network and internet connection or cellular data service; or (b) any claim alleging that EnerAllies's use of the Customer Data violates the proprietary rights of, or has caused harm to, any third party (including, without limitation, any User).

7.8 The indemnity obligations set forth in this Section 7 are contingent upon (a) the indemnified party giving prompt written notice of any indemnified claim, (b) the indemnified party allowing the indemnifying party the sole control of the defense and related settlement negotiations for such claim; and (c) the indemnified party providing reasonable assistance and cooperating in the defense and settlement negotiations as requested by the indemnifying party and at the indemnifying party's expense.

## 8. CONFIDENTIALITY AND DATA PROTECTION

By virtue of this EULA, each party may have access to the Confidential Information of the other party. The parties expressly acknowledge that the Customer Data shall be governed by Section 6 and shall not constitute

Confidential Information. Each party agrees to keep confidential all Confidential Information disclosed to it by the other party or a third party, and to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information). This Section 8 shall not apply to anything which: (i) is or becomes (through no improper action or inaction by the receiving party) generally available to the public, or (ii) was in its possession or known by it prior to receipt from the disclosing party, or (iii) was rightfully disclosed to it by a third party, or (iv) is required to be disclosed by a subpoena, request for documents, or other validly issued judicial or administrative process, provided that the party so required promptly notifies the other party of the receipt of process and permits the other party a reasonable opportunity to respond to such process; or (v) is necessary to be disclosed by a party in order to meet its obligations under this EULA. If a party wishes to rely on one of these exclusions it shall give prompt written notice to the other party detailing the relevant information and the reason for disclosure.

## 9. TERM AND TERMINATION

9.1 This EULA shall commence on the date of the first Installation and activation of the SaaS Application at any Site and shall remain in effect through the Term unless earlier terminated as set forth below.

9.2 Either party may terminate this EULA upon notice to the other party if the other party materially breaches this EULA and such breach is not remedied within 30 days of such notice.

9.3 Either party may terminate this EULA immediately upon notice if the other party becomes subject to any proceeding under any statute of any governing authority relating to insolvency or the rights to creditors which is not dismissed within sixty (60) days, or the equivalent occurs in any jurisdiction.

9.4 Upon termination of this EULA for any reason, EnerAllies shall cease providing the Offering and all licenses shall immediately terminate and each party shall promptly return (or, if requested by the other party, destroy) all Confidential Information of the other party in its possession.

9.5 Sections 2.5, 2.7, 5, 6, 7, 8 and 10 shall survive termination of this EULA in accordance with their terms.

## 10. MISCELLANEOUS

10.1 Neither party shall be liable for any delay or failure in performing any of its obligations under this EULA if such delay or failure is caused by circumstances outside the reasonable control of the party concerned. The Offering may be subject to limitations, unavailability, delays and other problems inherent in the use of the internet, third party cellular data

networks, Customer's WiFi networks and electronic communications. EnerAllies is not responsible for any delays, delivery failures, or any loss or damage resulting from the same.

10.2 EnerAllies may reference Customer's status as a user of the Offering on EnerAllies's website, in marketing materials and in sales presentations.

10.3 The waiver by either party of any default or breach of this EULA shall not constitute a waiver of any other or subsequent default or breach.

10.4 Customer may not assign or transfer any of its rights or obligations under this EULA in whole or in part without EnerAllies's prior written consent. EnerAllies may freely assign, transfer and sub-contract this EULA and any or all of its obligations herein.

10.5 This EULA shall not be amended or modified except in a writing executed by the duly authorized representatives of EnerAllies and Customer.

10.6 If any provision of this EULA is held to be invalid or unenforceable, the parties shall substitute an enforceable provision that preserves the original intent and economic positions of the parties and the remaining provisions of this EULA will remain in full force and effect.

10.7 All notices which are required to be given under this EULA shall be in writing and shall be effective (a) on the date of delivery if sent by recorded delivery; (b) three business days after being delivered to an internationally recognized express courier (with

express delivery specified); or (c) immediately if delivered personally or by electronic mail to the relevant address. EnerAllies shall deliver notices to Customer's address or electronic mail address as provided to EnerAllies by Customer (or the Reseller, if applicable). Customer shall deliver notices to EnerAllies as follows: 1525 Miramonte Ave, #3129, Los Altos, CA 94024 or rob@enerallies.com.

10.8 This EULA forms the entire understanding of the parties in respect of the matters dealt within it and supersedes all previous agreements, understandings, proposals and negotiations between them.

10.9 This EULA shall be governed by the laws of the State of California, without regard to its conflicts of laws principles. The federal and state courts having jurisdiction in Santa Clara County, California, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this EULA.

10.10 The parties hereto are independent contractors and this EULA does not create a joint venture or partnership, and neither party has the authority to bind the other party to any third party.

10.11 If the Services Agreement is made between Customer and a Reseller, Customer acknowledges and agrees that EnerAllies is intended by Customer and EnerAllies to be a third-party beneficiary of this EULA.