

Terms and Conditions

1.0 1. Services Description.

1.1 PwrSmart Service. New Boundary shall provide Subscriber with access to a web-based, browser-accessed service to manage PC power settings on Subscriber's computers (the "**Service**"). The Service includes access to the web-based PwrSmart application, hosting of Subscriber's historical PC power settings, and communications agents residing on subscribed computers. New Boundary may, in its sole discretion, expand or enhance service features as part of this Agreement or as a separate service offering for additional fees.

1.2 Technical Assistance. New Boundary will provide technical assistance by phone or email to Subscriber, Monday through Friday during the hours of 8:30 – 5:00 Central Time. Technical assistance includes support with the Service provisioning and set-up, configuration, usage, problem isolation and identification, and PC power management best practices.

1.3 Managed Computers. New Boundary is not responsible for the maintenance, repair or operation of the hardware, software, network, or communication systems required to manage a computer using the Service. New Boundary will endeavor to assist in troubleshooting situations where a problem has occurred at a computer that is limiting its interaction with the Service. To enable this assistance, Subscriber shall provide New Boundary the contact information for a designated person who is responsible for the maintenance of the installed components at each computer location.

1.4 Managed Computer Ownership. If any managed computer using the Service does not belong to Subscriber, Subscriber shall obtain permission from the owner(s) of the computer to manage them from the Service.

2. Term.

2.1 Initial Term and Renewal Term. The term for the Service shall commence upon the first date that the Service is made available for Subscriber's use (the "**Effective Date**") and shall continue in full force for the duration purchased through AWS Marketplace ("**Initial Term**"). Upon expiration of the Initial Term, this Agreement will automatically renew for additional terms of length equal to the Initial Term (each a "**Renewal Term**"), provided AWS Marketplace box is checked for automatic renewal. If automatic renewal box is unchecked upon expiration of any term, the Service will expire at the end of the current Initial Term or Renewal Term. Subscriber, at any time can increase the duration of the current and subsequent Renewal Terms by making a change to the current contract in AWS Marketplace.

2.2 Default. Either party may terminate this Agreement at any time if the other party breaches any material obligation set forth herein, which breach is incapable of cure or which, being capable of cure, has not been cured within days (30) days after receipt of written notice of such breach from the non-breaching party.

2.3 Acts of Insolvency, Bankruptcy, Etc. Either party may immediately terminate this Agreement by written notice to the other party if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. If any of the above events occurs, the affected party shall promptly notify the other party of its occurrence.

2.4 Rights and Obligations of Parties Upon Termination or Expiration. Upon the termination of this Agreement, Subscriber shall cease all use of the Service and any components thereof and remit payment of all fees to New Boundary as required hereunder. New Boundary shall provide means for Subscriber to remove communications agent on previously subscribed computers and restore power settings to original conditions.

3. Fees and Payment.

3.1 Fees. The Service is priced on a per computer monthly fee basis. The Service fee is based on the quantity of Managed Computers ("**Authorized Computers**") and contract duration purchased through AWS Marketplace. Subscriber may increase its Authorized Computer level at any time during an Initial Term or Renewal Term by making a change to the current contract in AWS Marketplace. Fees for upgrading contract for increased Authorized Computers or contract duration will be calculated by providing a prorated credit for the remaining existing contract when applying the fees for the new contract.

3.2 "No Fee" Trial Accounts. New Boundary may at times offer free, "no fee", trial accounts for Subscribers to manage computers with the Service. These accounts are provided at the discretion of New Boundary, and New Boundary makes no claim to the continued availability of these accounts, term, service level and warranty, data retention, and availability of technical support.

3.3 Payment. Payments are made through AWS Marketplace. Upon receipt, the Subscriber account is automatically set-up to enable the quantity of Authorized Computer to communicate through the Service for the Term duration purchased.

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3.4 Taxes. Subscriber is responsible for and shall pay any sales or use taxes which may be due as a result of this Agreement or its performance.

4. Proprietary Rights.

4.1 Rights to the Service. New Boundary owns all right, title, interest, ownership and proprietary rights in and to the Service, with the exception of Subscriber's name and/or logos that might appear in user interfaces or reports of the Service. New Boundary' rights include, but are not limited to, all copies of the Service (including any adaptations or copies) and any patent rights (including but not limited to patent applications and disclosures), copyrights, trademark rights, trade secret rights, and any other intellectual property right recognized in any country or jurisdiction in the world. The Service is protected both by United States law and international treaty provisions.

4.2 Restrictions on Use. Subscriber agrees to take all reasonable steps to protect the Service from unauthorized access or use. The Service source code represents and embodies trade secrets of New Boundary and/or its licensors. The source code and embodied trade secrets are not licensed to Subscriber and any modification, addition, or deletion is strictly prohibited. Subscriber agrees not to (nor to cause or permit any other person to): (a) copy, disassemble, decompile, reverse engineer, translate, sell, manufacture, sublicense, distribute, transfer, modify, adapt, creative derivative works from or time share the Service or any part thereof; (b) delete any copyright, trademark, patent or other notices of proprietary rights of New Boundary as they appear anywhere in or on the Service.

4.3 Data Rights. Subscriber may print reports and analyses and make copies or adaptations of information captured in the Service for its business purposes. All proprietary rights and copyright notices must be faithfully reproduced and included on all copies and adaptations. New Boundary will maintain as confidential all specific Subscriber data captured by or embedded in the Service.

4.2 Data Retention. New Boundary will retain and enable Subscriber access to historical PC power settings for a period of 15 consecutive months for computers continuously subscribed to the Service. Historical PC power settings are not retained for computers upon term expiration or for unsubscribed computers.

5. Service Level and Warranties.

5.1 Service Levels. New Boundary expects to have the Service available for access 99.8% of the time ("**Availability**"). Availability is measured as twenty-four (24) hours per day in a calendar month. New Boundary is not

responsible in the event that it experiences a lack of Availability due to (a) scheduled maintenance from time to time per notice to Subscriber, (b) failure of Subscriber's equipment, facilities, or applications, or (c) circumstances beyond the reasonable control of New Boundary including, without limitation, storms floods, or other acts of nature, fires, explosions, riots, war, civil disturbance, strikes or other labor unrests, embargoes and other government actions or regulations that would prohibit either party from performing any aspects of the obligations hereunder. Standard scheduled maintenance windows are weekly on Sundays 00:00 - 03:00 CT and on Saturdays 10:00 – 13:00 CT.

5.2 Service Credits. In the event that the Availability of the Service in a calendar month is below the expected level, a credit of the monthly service fee will be issued based on the actual availability during the month per the following schedule:

<u>Service Availability</u>	<u>Credit</u>
99.8% and above	No Credit
97.0% to 99.7%	10%
95.0% to 96.9%	20%
90.0% to 94.9%	30%
Below 90.0%	40%

If requested within 6 months of a quarter-end, New Boundary will submit a report of quarterly service availability that includes days and hours that the Service was unavailable. Requests for credit must be made within 30 days of receipt of such quarterly report from New Boundary. Credits will be applied to the next invoice for Subscriber.

5.3 Warranty Disclaimer. NEW BOUNDARY DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. NEW BOUNDARY MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE. THE SERVICE IS PROVIDED "AS IS" AND NEW BOUNDARY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5.4 Location Availability. Subscriber acknowledges that the Service may not be available at every geographic location. Subscriber is responsible for determining whether the Service is available and of a quality sufficient to meet Subscriber requirements.

6. Limitation of Liability and Indemnification.

6.1 Indemnification. Subscriber agrees to indemnify and hold harmless New Boundary, its officers, directors, representatives, employees and agents against any

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damages, losses, liabilities, settlements and expenses (including, without limitation, costs and attorneys' fees) in connection with a claim or action against New Boundary that arises from or is based on an alleged violation of this Agreement by Subscriber or otherwise from Subscriber's use of the Service.

6.2 Liability Limitations. NEW BOUNDARY, ITS OFFICERS, AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY CLAIM OR ACTION RELATED TO THE SERVICE UNDER ANY THEORY, WHETHER UNDER THE LAWS OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANOTHER THEORY. UNDER NO CIRCUMSTANCES SHALL NEW BOUNDARY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. NEW BOUNDARY SHALL NOT BE LIABLE (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND NEW BOUNDARY'S REASONABLE CONTROL, EVEN IF NEW BOUNDARY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES; OR (D) FOR PHYSICAL ATTACKS OR CYBER-ATTACKS UPON THE SERVICE OR NETWORK. If, contrary to the limitation in this Section 6.2, liability is imposed by an entity exercising jurisdiction over a dispute between the parties, it is understood and agreed that New Boundary's liability shall not exceed the aggregate amount of charges over the prior twelve (12) month period. The price stated for the Service is a consideration in limiting New Boundary's liability. No action arising out of this agreement may be brought by Subscriber more than one year after the cause of action has accrued.

7. General.

7.1 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery Services; and upon receipt, if sent by certified or registered mail, return receipt requested.

7.2 Assignment. This Agreement may be assigned by either party to successor corporations with written notification. Within thirty (30) days of receiving notice for such assignment, the party receiving notice has an option to terminate the agreement by providing at least one hundred twenty (120) day written notice.

7.3 Severability. If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain unaffected.

7.4 Attorney Fee Recovery. In an action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

7.5 Jurisdiction. This Agreement shall be governed by the laws of the State of Minnesota, without regard to its conflict of laws provisions. Any action or proceeding arising out of or related to this Agreement may only be brought in the state or federal courts in Minneapolis, Minnesota.

7.6 Entire Agreement. This Agreement sets forth the entire understanding and agreement between Subscriber and New Boundary and may be amended only in writing signed by both parties. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THE REPRESENTATIONS OR PROMISES OF THIS AGREEMENT ABOUT THE SERVICE.