

SCHEDULE 3 Support

SCHEDULE 4

END USER AGREEMENT

1. Terms of Use

- 1.1 The Service (as defined below) is made available to you by EnergySys and may be accessed and used by you subject to the terms of this Agreement.
- 1.2 Your registration for the Service by signing an Entitlement Document with EnergySys or a third party shall be your acceptance of this Agreement.
- 1.3 This Agreement relates to the provision of the Service by EnergySys only. Any services which you receive from an Approved Partner will be subject to the terms of your Partner Agreement with that Approved Partner.

2. Definitions

- 2.1 As used in this Agreement or in any Entitlement Document:

"Agreement" means this end user agreement, any Entitlement Document and any materials specifically incorporated by reference herein, as updated from time to time;

"Approved Partner" means the third party set out in your Entitlement Document which is approved by EnergySys to distribute, implement, configure and maintain the EnergySys Technology;

"Business Day" means a day other than a Saturday, Sunday or bank or public holiday in Scotland;

"Confidential Information" means all information (whether in oral, written or electronic form) relating to a party's business which may reasonably be considered to be confidential in nature including information relating to that party's technology, business, management, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers;

"Configuration" refers to your application configuration or configurations of the EnergySys Technology or Content built by you or by the Approved Partner upon the Service;

"Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service;

"Customer Data" means any data, information, configuration settings, or material that you upload to or create within the Service in the course of using the Service;

"Effective Date" means the date you begin using the Service;

"EnergySys" means EnergySys Limited, registered in England and Wales under number 3487903 whose registered office is at Newtown House, 38 Newtown Road, Liphook, Hampshire, GU30 7DX, or such other entity as set out in the Entitlement Document;

"Entitlement Document" means the document signed by you and EnergySys in the form set out in Appendix 1, which evidences your subscription for the Service and which is incorporated into and governed by the terms of this Agreement;

"EnergySys Technology" means all of EnergySys' proprietary technology including software, hardware, products, processes, algorithms, user interfaces, know-how,

techniques, designs and other tangible or intangible technical material or information made available to you by EnergySys in providing the Service;

"**Fees**" means the fees for the Service;

"**Intellectual Property Rights**" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

"**Personal Data**" has the meaning given to that term in the Data Protection Act 2018;

"**Service**" means the standardised configuration of the EnergySys hosted application environment, including any associated "Module", identified in the Entitlement Document which is developed, operated, and maintained by EnergySys, to which you are being granted access under this Agreement, including the EnergySys Technology and the Content. The Service provided by EnergySys does not include any Configuration;

"**Partner Agreement**" means your agreement with the Approved Partner for the provision of services relating to the Service and any Configuration;

"**Term(s)**" means the period(s) during which you are entitled to use the Service as set out in the Entitlement Document;

"**Territory**" means the territory set out in the Entitlement Document;

"**User(s)**" means your employees, representatives, consultants, contractors or agents who are authorised by you to use the Service and have been supplied user identifications and passwords by the Approved Partner or by EnergySys;

"**User Documentation**" means any documentation provided or made available by EnergySys (directly or indirectly through the Approved Partner) setting out instructions regarding the configuration or other use of the Service, primarily in the form of online resources; and

"**You**" or "**Customer**" means the customer who is described in the Entitlement Document.

2.2 In this Agreement:

2.2.1 unless the context otherwise requires, reference to a "**clause**" shall be to a clause of the main body of this Agreement and reference to a "**paragraph**" shall be a reference to the relevant paragraph of a schedule. Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement;

2.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns; and a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns; and a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

2.2.3 a reference to a gender includes each other gender, and words in the singular include the plural and vice versa;

2.2.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall

not limit the sense of any word, phrase, term, definition or description preceding those words;

2.2.5 a reference to any law or legislation is a reference to that law or legislation as amended, recast, replaced, extended, re-enacted or consolidated from time to time, and a reference to legislation includes all subordinate legislation made from time to time under that legislation; and

2.2.6 in the case of any inconsistency between any provision of the Schedules to this Agreement and any term of this Agreement the latter shall prevail and in the case of any inconsistency between any provision of the Annexes or Appendices and any provision of the Schedules, the latter shall prevail.

3. Your Use of the Service

3.1 In consideration of your payment of the Fees, EnergySys hereby grants you a non-exclusive, non-transferable, right to allow the Users to use the Service for the Term in the Territory, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by EnergySys.

3.2 You may not access the Service if you are a direct competitor of EnergySys, except with the prior written consent of EnergySys and with such conditions as EnergySys deems appropriate.

3.3 You shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute, rent, lease, provide as a hosted service or otherwise make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features or functions, or (c) copy any ideas, features or functions of the Service.

3.4 You shall: (i) be responsible for your Users' compliance with this Agreement; (ii) be responsible for the accuracy, quality and legality of your Customer Data and of the means by which you acquired your Customer Data; (iii) use commercially reasonable efforts to prevent unauthorised access to or use of the Service, and notify EnergySys promptly of any such unauthorised access or use; (iv) take full responsibility for the care of passwords, and not share these; and (v) use the Service only in accordance with any User Documentation, applicable laws and government regulations.

3.5 You shall not: (i) make the Service available to anyone other than your Users; (ii) sell, resell, rent or lease the Service; (iii) use the Service to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (iv) use the Service to store or transmit malicious code; (v) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein; or (vi) attempt to gain unauthorised access to the Service or related systems or networks.

3.6 The Service may be subject to other limitations as set out in the Entitlement Document, such as, for example, limits on disk storage space, on the number of calls you are permitted to make against our application programming interface, and, for services that enable you to provide data to public websites or Intranets, on the number of page views by visitors to those websites.

4. Service Availability

4.1 EnergySys shall use commercially reasonable efforts to make the Service available 99.95% of each calendar month of the Term except for:

- 4.1.1 planned downtime (of which EnergySys shall give Users at least 8 hours notice via email and/or the Service and which EnergySys shall schedule outside working hours in your time zone; or
 - 4.1.2 any unavailability caused by: (a) circumstances beyond the reasonable control of EnergySys, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving EnergySys employees), Internet service provider failures or delays, or denial of service attacks; (b) any misconfiguration of the Service by the Approved Partner; (c) your use of the Service in conjunction with any items furnished by you or a third party on your behalf; or (d) issues arising out of operating conditions outside those that could reasonably be expected.
- 4.2 EnergySys shall provide the Service with reasonable skill and care and in accordance with applicable laws and government regulations.
- 4.3 The Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. EnergySys is not responsible for any delays, delivery failures, or other damage resulting from such problems.
- 4.4 In the event that EnergySys reasonably believes that the security of the Service is compromised by your continued access to it, EnergySys reserves the right to:
 - 4.4.1 interrupt or suspend your right to access the whole or any part of the Service; and/or
 - 4.4.2 alter, interrupt or suspend the provision of the whole or any part of the Service.
- 4.5 EnergySys will use reasonable endeavours to resume your access to the Service as soon as reasonably possible after the event giving rise to the suspension or interruption of your access to the Service is cured.
- 4.6 EnergySys will not be liable to you for any loss that you may suffer as a result of any interruption, suspension or alteration which occurs in accordance with clause 4.4.
- 4.7 Support services should be provided to you by the Approved Partner under the terms of the Partner Agreement.
- 5. **Warranties and Limitations**
 - 5.1 EnergySys warrants that: (i) it has the right, power and authority to enter into this Agreement and to perform its obligations under this Agreement; (ii) the Service shall perform materially in accordance with any User Documentation; and (iii) the functionality of the Service will not be materially decreased during the Term.
 - 5.2 You warrant that you have the right, power and authority to enter into this Agreement and to perform your obligations under this Agreement. If you are entering into this Agreement on behalf of an entity, you represent that you have the right, authority, and capacity to bind such entity to this Agreement.
 - 5.3 Except as expressly provided herein, EnergySys does not make any warranties of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.
- 6. **Fees**
 - 6.1 You shall pay the Fees to the Authorised Partner in accordance with the terms of your Partner Agreement.

7. Confidential Information

- 7.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.
- 7.2 The parties acknowledge and agree that all information relating to the Service and any other technical or operational specifications or data relating to the Service are all part of the EnergySys's Confidential Information.
- 7.3 Each party undertakes to:
- 7.3.1 disclose the other party's Confidential Information only to those of its officers, employees, agents, sub-contractors and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and
 - 7.3.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause 7.
- 7.4 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 7.5 The provisions of this clause 7 shall not apply to information which:
- 7.5.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents, sub-contractors or contractors;
 - 7.5.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 7.5.3 is independently developed by the recipient, without access to or use of such information; or
 - 7.5.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 7.6 The obligations under this clause 7 shall survive the variation and expiry or termination of this Agreement.

8. Data Security

- 8.1 EnergySys shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your Customer Data.
- 8.2 EnergySys shall not: (a) modify your Customer Data; (b) disclose your Customer Data except as compelled by law or as expressly permitted in writing by you; or (c) access your Customer Data except to provide the Service and prevent or address service or technical problems, or, at your request, in connection with customer support matters.
- 8.3 EnergySys' privacy and security policies may be viewed at <http://www.energysys.com>. EnergySys reserves the right to modify its privacy and security policies at our discretion by giving thirty (30) days notice to you. EnergySys occasionally may need to notify all Users of the Service (whether or not they you have opted out of email notifications) of important announcements regarding the operation of the Service. EnergySys will retain User email addresses for this purpose.

- 8.4 You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or Personal Data.
- 8.5 You shall: (i) notify EnergySys immediately of any unauthorised use of any password or account or any other known or suspected breach of security; (ii) report to EnergySys immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another EnergySys user or provide false identity information to gain access to or use the Service.
9. **Intellectual Property Ownership**
- 9.1 Subject to clause 9.3, EnergySys shall own all right, title and interest, including all related Intellectual Property Rights, in and to the EnergySys Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service.
- 9.2 This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the EnergySys Technology or the Intellectual Property Rights owned by EnergySys. The EnergySys name, logos, and the product names associated with the Service are trademarks of EnergySys or third parties, and no right or license is granted to use them.
- 9.3 EnergySys does not own any of your Customer Data. You, not EnergySys, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and EnergySys shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data, except where this can be demonstrated to be the direct result of the negligence of EnergySys. You acknowledge and agree that you are not required to and will not include any Personal Data in the Customer Data when using the Service. EnergySys shall not be responsible for or liable in respect of any Personal Data which you or your Users upload to the Service as part of the Customer Data.
10. **Limitation of Liability**
- 10.1 Nothing in this Agreement shall limit or exclude either party's liability: (i) under clause 11; or (ii) for:
- 10.1.1 death or personal injury resulting from negligence;
- 10.1.2 fraud or fraudulent misrepresentation; or
- 10.1.3 any other liability the exclusion or limitation of which is not permitted by applicable law.
- 10.2 Subject to clauses 10.1 and 10.4, in no event shall either party's aggregate liability exceed one hundred thousand pounds (£100,000) in any (12) month period.
- 10.3 Subject to clauses 10.1 and 10.4, neither party shall be liable to the other for any indirect, consequential or special loss or damage.
- 10.4 The limitations and exclusions of liability set out in clauses 10.2 and 10.3 shall not apply in respect of any indemnities given by either party under this Agreement.

11. **Mutual Indemnification**

11.1 You shall indemnify and keep EnergySys indemnified from and against any and all claims, costs, damages, losses, liabilities and expenses (including legal fees and costs) arising out of or in connection with:

11.1.1 a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; or

11.1.2 a claim arising from the breach by you or your Users of clauses 3, 7 and 9 of this Agreement,

provided in any such case that EnergySys: (a) give written notice of the claim promptly to you; (b) give you sole control of the defence and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release EnergySys of all liability and such settlement does not affect our business or Service); (c) provide to you all available information and assistance; and (d) have not compromised or settled such claim.

11.2 EnergySys shall indemnify and keep you indemnified from and against any and all claims, costs, damages, losses, liabilities and expenses (including legal fees and costs) arising out of or in connection with a claim alleging that the use of the Services infringes any copyright, database right or registered trade mark, registered design right or registered patent provided that you: (a) promptly give written notice of the claim to us; (b) give us sole control of the defence and settlement of the claim (provided that we may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to us all available information and assistance; and (d) have not compromised or settled such claim.

11.3 EnergySys shall have no indemnification obligation, and you shall indemnify EnergySys pursuant to this Agreement, for claims arising from any infringement arising from:

11.3.1 any software other than the EnergySys Technology;

11.3.2 any modification of the EnergySys Technology without our express written approval; or

11.3.3 use of the Services in combination with any software, hardware or data that has not been supplied or expressly authorised by EnergySys.

12. **Term and Termination**

12.1 This Agreement commences as of the Effective Date and will continue in full force and effect for the duration of the term stated on the Entitlement Document, unless terminated earlier in accordance with this Agreement.

12.2 Each party may terminate this Agreement immediately upon written notice to the other party:

12.2.1 if the other party commits a material breach under this Agreement and, if curable, fails to cure that breach within thirty (30) days after receipt of written notice specifying the material breach (except that for payment defaults, such cure period will be seven days); and/or

12.2.2 if the other party makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, scheme of arrangement, receivership, administration, liquidation, bankruptcy or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of a distraint, execution, event of insolvency or event of bankruptcy or any similar process or event, whether in the United Kingdom or otherwise.

- 12.3 In the event that your Partner Agreement with the Approved Partner terminates or expires, this Agreement will: (a) continue for a period of 90 days from the date on which the Partner Agreement terminates or expires; and (b) will terminate immediately at the end of such 90 day period. EnergySys may agree to enter into a separate agreement with you for the provision of similar subscription services upon your request.

13. **Effect of Termination**

- 13.1 Upon expiration or the effective date of termination of this Agreement (as the case may be):

13.1.1 your authority to use the Service shall automatically cease and you must immediately stop using the Service;

13.1.2 you must immediately stop using any confidential information. You must either return all copies (or partial copies) of documents containing confidential information in your possession or control or, if requested by EnergySys, delete or make permanently unusable the same; and

13.1.3 each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon, or remain in force following, the termination or expiration of this Agreement shall survive any termination or expiration of this Agreement.

- 13.2 In the event this Agreement is terminated, and if you so request at the time of termination, EnergySys will make a file of your Customer Data available to you within 30 days of such termination in a format chosen by EnergySys.

14. **Local Laws and Export Liability**

- 14.1 The Service provides services and uses software and technology that may be subject to United States export controls administered by the U.S. authorities and the export control regulations of the European Union. You acknowledge and agree that the site shall not be used within, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National.

- 14.2 You agree to comply strictly with all U.S. and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

- 14.3 The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations and Council Regulation (EC) No. 1334/2000. Company and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America and/or the European Union, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries.

- 14.4 Any diversion of the Content contrary to United States or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is, will or may be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically

authorised by the United States government or appropriate European body for such purposes.

15. Modification of Terms

- 15.1 EnergySys reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at the time of annual renewal, effective upon providing thirty (30) days' notice in writing. Such changes will not materially change or diminish your rights and entitlements enjoyed prior to the application of any such modification.

16. Assignment

- 16.1 Neither party may assign, transfer or encumber any right or obligation under this Agreement, in whole or in part, without the other party's prior written consent (such consent not to be unreasonably withheld or delayed), save that EnergySys will not require such consent in the event of an assignment or transfer of its rights under this Agreement to an affiliate.

- 16.2 This Agreement shall be binding upon, and enure to the benefit of, each of the parties, their respective personal representatives and their respective successors in title.

17. No Other Relationship/Obligations

- 17.1 Neither party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other party, except as expressly provided herein. This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership, or other form of a business organization or agency relationship.

18. Governing Law and Jurisdiction

- 18.1 This Agreement shall be construed and the legal relations between us determined in accordance with the laws of England and Wales, and the parties hereby accept the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with this Agreement.

19. General

- 19.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 19.2 Nothing in this Agreement affects any statutory rights that cannot be waived or limited by contract.

- 19.3 In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

- 19.4 The parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

- 19.5 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

- 19.6 Any notice or other communication given by a party under this Agreement shall: (a) be in writing and in English; (b) be signed by, or on behalf of, the party giving it (except for

notices or communications by email); and (c) be sent to the relevant party at the address set out in the Entitlement Document. Notices may be given, and are deemed received: (i) by hand, on receipt of a signature at the time of delivery; (ii) by Royal Mail Recorded Signed For post, on the second Business Day after posting; (iii) by Royal Mail International Signed post, on the fourth Business Day after posting; and (iv) by email, on receipt of a delivery receipt email from the correct address.

Appendix 1

Entitlement Document Template

Entitlement Document

Dated:

This Entitlement Document and the terms of the End User Agreement form the terms of the Agreement between:

EnergySys:	EnergySys Limited, registered in England and Wales under number 3487903 whose registered office is at Newtown House, 38 Newtown Road, Liphook, Hampshire, GU30 7DX
Customer:	[customer name] (a company registered in [insert country], with number [insert number]) whose registered office is at [insert address]

For the purposes of the Agreement, the parties agree the following terms:

Approved Partner:	[partner name] (a company registered in [insert country], with number [insert number]) whose registered office is at [insert address]
-------------------	---

Effective Date:	[insert date]
Term:	[The Agreement will continue for the duration of your Partner Agreement with the Approved Partner plus, if required, a further 90 days.] OR [insert term]

Service:	<div>[insert applicable service description and scope]</div> <div>Description:<ul style="list-style-type: none">[EnergySys Cloud Platform and Production Allocation Standard applicationUse of the web services API for point to point integration with third-party systemsUse of the PI historian adaptorUnlimited users, subject to a fair use maximum of 250One TB of storageBackups and disaster recovery]</div>
----------	---

	Scope: Production allocation and reporting for the following assets:
--	--

Additional Terms:	[insert any additional terms which are agreed with the Customer]
--------------------------	--

Notices:	Customer	EnergySys
	[customer name and address]	For the attention of The Managing Director EnergySys Limited10 South St. Andrew's Street Edinburgh EH2 2AZ With a copy to: peter.black@energysys.com
Operational Point of Contact	[insert customer technical contact details]	Stuart Brown stuart.brown@energysys.com

SIGNED by NAME: _____

duly authorised to sign for and on behalf of
EnergySys

Date: _____

SIGNED by NAME: _____

duly authorised to sign for and on behalf of
Customer

Date: _____