

END USER LICENSE AGREEMENT

BY LOADING OR USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE.

This End User License Agreement (hereinafter referred to as the “Agreement” or “EULA”) has been presented to User in conjunction with User’s attempt to use, try out, or install a hosted or downloadable software application composed of several files, including but not limited to executables, knowledge files, data, configuration files, documentation, and other supporting files (collectively “Software.”) NRG Systems, its divisions, subsidiaries, and other affiliates (collectively referred to herein as “NRG” or the "Licensor") is the developer of and the exclusive source and owner of this Software. Licensor provides this Software and other products like it to be used exclusively by authorized Licensees. Licensee herein has five or fewer sites or has purchased or leased this Software either directly from Licensor or from a Licensor authorized dealer under a Master Agreement. Licensee has been made aware of and offered an opportunity prior to purchase or lease of the Software and prior to use of the Software to review the terms of this Agreement. Licensee assumes all responsibility for the selection of the Software to achieve the Licensee's intended results, and for the installation, use, and results obtained from the Software.

1. DEFINITIONS

The following terms, when used in this Agreement, have the following meanings:

- 1.1 **Authorized Facilities** mean (a) Licensee’s primary location as identified in writing by the Parties, where the Software may be located and operated (“Primary License Facility”) and (b) Licensee’s back-up location, as identified in writing by the Parties in the event of a failure of the Primary License Facility (“Emergency Back-up Facility”).
- 1.2 **Authorized Use** means Licensee’s limited use of the Software or the outputs and results derived therefrom in whatever form as specified expressly in writing by the Parties.
- 1.3 **Business Days** means any weekday other than a day designated as a US federal holiday.
- 1.4 **Confidential Information** means the terms and conditions of this Agreement, the Software and all of the software code (including, but not limited to, any third party software licensed with the Software), the Software performance information, Documentation, and any trade secrets, concepts, ideas, improvements, processes, plans, designs, specifications, architecture, database tables and structures, data record layouts, prototypes, models, methods, processes, algorithms, Content, data bases, and all other business operational, financial and Licensee information,

whether patentable or not, that is (a) provided, developed, conceived or in any way disclosed by either Party.

- 1.5 **Content** means any information, business data, and any other materials provided by Licensee and entered into and processed by the licensed Software.
- 1.6 **Documentation** means any and all manuals, written documents, or embedded documentation, whether original, complete, or partial copies, in electronic or paper form, provided by Licensor related to the Software, including but not limited to Product Manuals, training materials, requirements specifications, release notes, and any other correspondence related to the installation and implementation of the Software.
- 1.7 **EULA** means this NRG End User License Agreement, and all attachments and exhibits thereto.
- 1.8 **Environment** means the hardware, LAN, VPN and all third party operating and database systems, as specified in writing, that are required to run and utilize the Software including network applications, database servers, and the computer processor unit or workstation used to operate, gain access to, or view the Software or any outputs and results therefrom linked thereto.
- 1.9 **Intellectual Property Rights** means all patents, trademarks, service marks, registered designs, applications for any of the foregoing, trade and business names, unregistered trademarks and service marks, including goodwill in relation to the foregoing, Know-how, copyright, database rights, rights in designs (whether registerable or not), inventions, rights under licenses and consents in relation to any such rights and rights of the same or similar effect or nature that may be granted or recognized under United States, Canadian, or other foreign legislation in any part of the world.
- 1.10 **Know-how** means the trade secrets, processes, techniques, and methods of working, all of a secret, confidential or proprietary nature which have been or are being developed by Licensor and including without limitation all scientific, engineering, information, expertise and manufacturing design and software specifications designs or codes (whether object code or source code) in or to the Materials.
- 1.11 **Licensee** means an entity that is granted a license to use the Software pursuant to a transaction involving the purchase or lease of such Software from Licensor or from a Licensor authorized dealer.
- 1.12 **Licensor** has the meaning assigned to it in the first paragraph of this Agreement.

- 1.13 **Master Agreement** means the document or set of documents which originate from Licensor and which contain the material business terms upon which Licensee purchases or leases the Software. The Master Agreement specifically excludes any documents which do not originate from or are signed by Licensor and specifically excludes any terms and conditions which may be attached to a purchase order originating from Licensee.
- 1.14 **Materials** means the Software and the Documentation.
- 1.15 **Modifications** includes any translation, abridgement, condensation, retrenchment, revision, correction, improvement, enhancement, customization, expansion, addition, update, upgrade, or other modification to the Materials.
- 1.16 **Open Source Software** or “OSS” means computer software components with its source code made available and licensed with an open-source license in which the copyright holder provides the rights to study, change, and distribute such software components for free to anyone and for any purpose. To the extent not expressly restricted or reserved by the applicable OSS license, OSS as used herein does not include any derivative works developed by Licensor.
- 1.17 **Permitted User** shall be limited to Licensee’s employees and agents.
- 1.18 **Product Manuals** mean the user guides and manuals for use of the Software.
- 1.19 **Significant Defect** is any reproducible and verifiable material error, defect, bug, virus, design flaw or other malfunction (taking into account the severity and technical difficulty in fixing the same) in the Software, which result from causes within NRG’s reasonable control and which have not resulted from the inoperability, incompatibility, action, or inaction when reasonably required under the circumstances, of material supplied by Licensee
- 1.20 **Software** has the meaning assigned to it in the first paragraph of this Agreement and as further defined in the applicable exhibit. This excludes any OSS, but includes all Modifications to such software which may be provided to the User by NRG at any time.
- 1.21 **Source Code** means a copy of the source code version of all parts of the Software in human-readable form and in machine-readable form on machine-readable storage medium and which, when compiled, will produce the object code version of the Software.

- 1.22 **Territory** shall mean worldwide usage, subject to any restrictions on Territory expressly stated on the face of the applicable purchase order, or in the applicable software license agreement, as the case may be.
- 1.23 **Third Party Resource** means a third party engaged by Licensee to integrate the Software into the Licensee's business.
- 1.24 **User** means any person who is authorized by Licensee to access or use the Materials.

2. INTELLECTUAL PROPERTY RIGHTS.

- 2.1 NRG Cloud (herein referred to as "Software") are proprietary products of Licensor and are protected by patent, copyright, trademark, trade dress, trade secret, and/or other intellectual property laws and international treaty. As between Licensee and Licensor, Licensee agrees that Licensor is the sole and exclusive owner of the Software and Documentation and the intellectual property represented thereby or contained therein.
- 2.2 Licensor or its suppliers retain ownership of the Materials, and any copies thereof, and all related Intellectual Property Rights, including, without limitation, all rights to any images, photographs, animations, videos, audio, text, and "applets" incorporated into the Materials.
- 2.3 Licensee and User are not permitted to create any modifications to or derivative works based upon any portion of the Materials unless such modification or derivative work has been expressly authorized by the Licensor in writing.
- 2.4 The Materials, including without limitation, the structure, organization, user interface, user experience, and code of the Software, contain information and valuable trade secrets that are not generally known to the public. Licensee and User will treat as confidential and preserve the confidentiality of the Materials and will not disclose any portion of the Materials to any third party. The foregoing obligation does not apply to any information that: (a) was already in Licensee's possession prior to acquiring any copy of the Materials, as shown by documentary evidence; (b) is or becomes publicly available through no fault of Licensee; or (c) is obtained by Licensee from a third person who through no inducement by Licensee and without breach by such third person of an obligation of confidence has obtained and disclosed such to Licensee. Information will not be deemed to be within the foregoing exceptions merely because it is: (i) embraced by more general information in the public domain or in the possession of the party receiving such information, or (ii) a combination of individual items of information that could be pieced together to reconstruct such combination from non-confidential information.

- 2.5 Licensee agrees to secure and protect the proprietary rights of Licensor in the Materials and all copies thereof (in whatever form), and to take appropriate action to secure and protect same by instruction to, or agreement with its Users who are permitted access to the Materials. Licensee will not take any action which adversely affects Licensor's Intellectual Property Rights or other proprietary rights in the Materials.
- 2.6 If Licensee plans to utilize the services of a Third Party Resource in connection with the implementation of the Materials in the Licensee's business, prior to disclosing the Materials or any portion thereof to such Third Party Resource, Licensee will require that such Third Party Resource enter into a written non-disclosure agreement containing terms at least as restrictive as those set forth in this Agreement with regard to maintaining the confidentiality of the Materials.
- 2.7 Open Source Software. In the event that the Software contains any OSS, this EULA is provided to the Licensee inclusive of the applicable OSS license(s), which are incorporated herein by reference. Licensee's use of such software shall be additionally and expressly subject to the terms and conditions of the applicable OSS. Licensee may contact NRG Systems for additional information.
- 2.8 The Licensee hereby expressly provides to the Licensor the rights, licenses, and permissions (collectively referred to as "Rights") that are necessary for the Licensor to access, use, and display the Licensee's data that it has uploaded to the Software under this EULA only up to, and not exceeding, the extent that the Licensor requires such Rights to perform its services to the Licensee in connection with this EULA and any validly executed purchase order.

3. CONFIDENTIALITY.

- 3.1 Licensor and Licensee may have a proprietary interest in certain Confidential Information furnished to each other pursuant to this Agreement. Licensee and Licensor shall keep in confidence and shall not disclose, without prior written consent of the other party, any such Confidential Information of the other party, provided it is identifiable in writing as Confidential Information, or if as a written follow-up to any oral disclosure by one party to the other that the subject matter disclosed was Confidential.
- 3.2 Licensor and the Licensee shall protect each other's Confidential Information with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which the receiving party utilizes for its own confidential information.

- 3.3 No party bears a responsibility for safeguarding information that is a) publicly available, b) demonstrably already in the receiving party's possession prior such receipt, c) obtained by either party from third parties not under a duty of nondisclosure, d) independently developed by either party without reference to the Confidential Information, or e) required to be disclosed by order of a court or other governmental entity, or per applicable law, including public disclosure law. If either party is so requested or required to disclose any Confidential Information, the party receiving the request will provide the other party with prompt notice of such request. Under no circumstances will either party have any responsibility or obligation whatsoever to initiate, defend against or otherwise cooperate or participate in any such action, claim, suit, arbitration or proceeding relating to the Confidential Information.
- 3.4 In the event either party knows or should reasonably know that any third party has gained unauthorized access to the Software, Documentation, or other Confidential Information hereunder, the knowing party shall immediately notify the other party in writing of the full particulars of such access or disclosure.
- 3.5 Upon the written request of a party, and in any event upon termination of the Agreement, each party, shall, at the request of the other, either return all of the Confidential Information of the other party in its possession, including all originals, copies, and records thereof, or furnish to the requesting party an officer's certificate of destruction of the other party's Confidential Information. Notwithstanding the aforementioned, Licensor shall be allowed to retain certain Licensee testing data solely for Licensor's internal, anonymized, and aggregated analysis purposes.
- 3.6 In the event that disclosure of a party's Confidential Information occurs or is threatened, the other party will be entitled (in addition to any and all other remedies) to seek injunctive relief, specific performance, and other equitable remedies upon posting a bond or other security.
- 3.7 THE LICENSOR will be permitted to retain technical data for the sole purpose of creation of statistical models showing representative characteristics of operating data, but without any specific links or identification to the Buyer, the Buyer's Assets or configuration in which the asset was originally linked.

4. PRIVACY POLICY.

- 4.1 The Licensor continually seeks to improve its product offerings, and generally improve the usage of the users of the Software. For that purpose, Licensor may incorporate third party analytics tools (collectively referred to as “cookies”) within the Software that track general user activities. These cookies are used to store anonymous, non-personally identifiable information. The cookies are utilized for the purpose of measuring general usage of the Software over time, continuity of the Software, and anti-fraud and information security purposes.
- 4.2 Licensor does not share any information with third parties. The cookies will be activated upon download or web-based access of the Software. Licensee will have the option to disable cookies at any time. Browser add-ons are available to users who wish to opt-out of this data collection, and users may also refer to the help information in their browser software for instructions on how to disable the cookies.
- 4.3 The internet protocol address of the electronic device accessing the software is obfuscated in the communication sent to the server. In addition, the data collected by the cookies is securely stored, remotely on a server in a secure warehouse. The data is aggregated and presented meaningfully for use by the Licensor and cannot be reverse engineered to access the identity of any one individual, entity, product, and/or associated private data.

5. U. S. GOVERNMENT END USERS.

- 5.1 The Materials are “commercial items” as that term is defined at 48 C.F.R. 2.101, and if Software is licensed hereunder, the Software consists of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the right to use and access the Materials with only those limited rights set forth herein.

6. HIGH RISK ACTIVITY.

- 6.1 Licensee is solely responsible for the accuracy and adequacy of the Materials for Licensee’s intended use. The Materials are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the direct operation of nuclear facilities, air or space travel, power plant design or operation, communication systems, weapons systems, life support or medical operations or machines, or any other application in which the failure of the Materials could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). Licensor expressly disclaims any express or implied warranty of fitness for High Risk Activities and will have no liability for any such activities.

7. EXPORT CONTROL.

7.1 The Materials are subject to the U.S. Export Administration Regulations, Canadian export laws, as well as the comparable export laws of any and all other nationality that may have jurisdiction over the transaction(s) contemplated by this Agreement. Licensee and User may not export, import, or transfer the Materials contrary to U.S. or other applicable laws, whether directly or indirectly, and will not cause, approve, or otherwise facilitate others such as agents or any third parties in doing so. Licensee and User agree not to use or transfer the Materials for end use relating to any nuclear, chemical, or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license. Additionally, Licensee and User acknowledge that the Materials are subject to export control regulations in the European Union and Licensee and User hereby declare and agree that the Materials will not be used for any other purpose than civil (non-military) purposes. The parties agree to cooperate with each other with respect to any application for any required licenses and approvals, however, Licensee acknowledges that it is its responsibility to comply with any and all export and import laws and that Licensor has no responsibility within the original country of sale. If the Software is identified as an export-controlled item under the applicable export laws, Licensee represents and warrants that it is not a citizen, or otherwise located within an embargoed nation, and that it is not otherwise prohibited under the applicable export laws from receiving the Software. All rights to use the Software are expressly contingent and conditioned upon the previously stated representations and warranties, and a breach of the same shall result in Licensee immediately forfeiting all such rights.

8. INDEMNIFICATION.

8.1 *Infringement Claims.* Licensor will indemnify and hold Licensee harmless and will defend or settle any claim, suit or proceeding brought against Licensee that is based upon a claim that the Software infringes the Intellectual Property Rights of a third party ("**Claim**"), but only to the extent that such Claim arises directly out of the use of the Software except for any infringement claim resulting from (a) adherence to Licensee's specifications, drawings or instructions; (b) a combination of the Software with other equipment, software, or processes; (c) modifications of the Software; or (d) Licensee's willful, knowing or deliberate infringement of any Intellectual Property Rights. In the excepted cases stated above, Licensee will indemnify and hold Licensor harmless against any losses, damages, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees), which may be incurred by Licensor as a result of such excepted cases. Licensee must notify Licensor in writing of any Claim within ten (10) business days after Licensee first receives notice of the Claim, and Licensee must cooperate with Licensor as Licensor may reasonably request from time to time in connection with the defense of the Claim. Licensor will have sole control over any Claim (including, without

limitation, the selection of counsel and the right to settle on Licensee's behalf on any terms Licensor deems desirable in the sole exercise of its discretion). Licensee may, at Licensee's sole cost, retain separate counsel and participate in the defense or settlement negotiations. Licensor will pay actual damages, costs, and legal fees awarded against Licensee (or payable by Licensee pursuant to a settlement agreement) in connection with a Claim to the extent such damages and costs are not reimbursed to Licensee by insurance or a third party, to an aggregate maximum equal to Licensee's purchase price for the Software.

- 8.2 If the Software, any portion thereof, or the use thereof, becomes the subject of a Claim or if use of the Software or any portion thereof is enjoined, or if in the opinion of Licensor's legal counsel the Software is likely to become the subject of a Claim, Licensor may attempt to resolve the Claim by using commercially reasonable efforts to modify the Software or obtain a license to continue using the Software. If in Licensor's opinion the Claim, the injunction or potential Claim cannot be resolved through reasonable modification or licensing, Licensor, at its own election, may terminate this Agreement (including all rights granted hereunder) without penalty, and refund to Licensee on a pro rata basis (calculated over three years) any fees paid in advance by Licensee to Licensor. THE FOREGOING OBLIGATIONS SET FORTH IN SECTIONS 8.1 AND 8.2 CONSTITUTE LICENSOR'S SOLE AND EXCLUSIVE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.
- 8.3 Licensee will defend, indemnify, and hold Licensor and its directors, officers, agents, employees, members, subsidiaries, and affiliates harmless from and against any claim, action, proceeding, liability, loss, damage, cost, or expense (including, without limitation, legal fees and expenses), arising out of or in connection with Licensee's or User's use of the Materials (except with regard to any indemnification obligations of Licensor as provided in Section 8.1), including without limitation, any damages Licensor may suffer or incur by reason of the breach of any of the provisions of this Agreement by the Licensee, its employees, agents or sub-contractors howsoever caused or the acts, omissions or negligence of Licensee, its employees, agents and sub-contractors

9. LIMITATION OF LIABILITY.

- 9.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT IS LICENSOR LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE MATERIALS OR THE PROVISION OF OR FAILURE

TO PROVIDE SUPPORT SERVICES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE MATERIALS. Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to Licensee. In such states and jurisdictions, Licensor's liability is limited to the greatest extent permitted by law.

10. FORCE MAJEURE.

10.1 Licensor will not be responsible for any failure in the performance of its obligations under this Agreement to the extent that such failure is due to causes beyond Licensor's control including, but not limited to, acts of God, war, acts of any government or agency thereof, fire, explosions, strikes, delivery services, telecommunication providers, strikes, labor difficulties, lockouts, embargoes, severe weather conditions, delay in transportation, or delay of suppliers or subcontractors. In addition, Licensor shall not be liable or responsible to the extent Licensor's performance under these terms and conditions is prevented, delayed or hindered by any pandemic, epidemic or outbreak of widespread illness on a local, national or international scale, or any new or escalated circumstances related thereto outside of Licensor's reasonable control, including without limitation quarantines, transportation disruptions, government imposed restrictions, labor shortages or delays or failures of performance by Licensor's suppliers or carriers.

11. Contract Interpretation.

11.1 **Captions; Section Number.** Article, section and paragraph numbers and captions are provided for convenience of reference and do not constitute a part of this Agreement. Any reference to a particular Section of this Agreement shall be deemed to include reference to any and all subsections thereof.

11.2 **Singular and Plural.** The use herein of the singular number shall be deemed to include the plural and vice versa, and the use hereof of the masculine shall be deemed to mean the feminine or neuter and vice versa, wherever the sense of this Agreement so requires.

12. Authority to Enter Into Agreement. Each party warrants that it has all necessary power and authority to enter into this Agreement.

13. Drafting. This Agreement shall be deemed to have been drafted by all parties, since all parties have been assisted by their counsel in reviewing and agreeing thereto (or have chosen not to be so assisted), and no ambiguity shall be resolved against any party because of its participation in the drafting of this Agreement.

- 14. Notice.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class certified mail, or air mail, as appropriate, (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth below, or (d) sent by email or similar electronic communication. Either party may change its address for notice by notice to the other party given in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, certificate of confirmed receipt via mail as set forth above, one (1) day after delivery to an overnight air courier service or confirmed receipt of electronic communication.

If to Licensor:
NRG Systems Inc
110 Riggs Road
Hinesburg, VT 05461
Attn: Legal Department

15. SEVERABILITY.

- 15.1 If any provision of this Agreement is found to be invalid or unenforceable by any court, such provision will be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of the Agreement.

16. ASSIGNMENT.

- 16.1 Neither this Agreement nor any interest in this Agreement may be assigned by Licensee without the prior express written approval of Licensor. Any attempted assignment of rights in violation of this Agreement is void.

17. WAIVER.

- 17.1 All waivers under this Agreement must be in writing to be effective. No failure or delay by a party to exercise any right it may have by reason of the default of the other party will operate as a waiver of default or as a modification of this Agreement or will prevent the exercise of any right of the non-defaulting party under this Agreement.

18. GOVERNING LAW; DISPUTE RESOLUTION.

- 18.1 This Agreement and the privileges, responsibilities, obligations, and liabilities of the parties shall be governed by laws of the State of Vermont, U.S.A. This Agreement shall be deemed to have been entered into, wholly performed in, and executed in the State of Vermont, without regard to any conflict of law

principles. The parties agree that the United Nations (U.N.) Convention for the Sale of Goods does not apply to this Agreement. This Agreement must be interpreted solely in the English language, and no translation into any foreign language will have any effect.

- 18.2 Upon any dispute, controversy or claim between the parties, either with respect to the interpretation of any provisions of the Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, or with respect to the performance of the parties under the Agreement, as well as non-contractual claims related to this Agreement (a “Dispute”), at the request of either party, each of the parties will designate a representative from its senior management who (to the extent practicable) does not devote substantially all of his or her time to performance under the Agreement to attempt to resolve such matter. The designated representatives will negotiate in good faith in an effort to resolve the Dispute for a period of thirty (30) days after the date of the notice of the Dispute. In the event that the parties’ designated representatives are unable to resolve the Dispute within such thirty (30) day period, or any additional extension of time that is mutually agreed upon by the parties in writing, then either party may by written notice request arbitration in accordance with the following provision.
- 18.3 Upon written notice from either party that a Dispute has not been settled following the resolution process set forth above, then either Party may initiate binding arbitration before the American Arbitration Association (“AAA”) in accordance with AAA’s Commercial Arbitration Rules. The Parties will share equally in the costs of the arbitration, including, but not limited to, the arbitrator’s time charges and travel expenses. Each Party shall bear its own attorney’s fees and costs related to the arbitration as well as any time charges or travel expenses for its own personnel who attend the arbitration. The arbitrator(s) shall not award any punitive, exemplary, or consequential damages. The arbitration is to be conducted in Vermont before one (1) arbitrator with at least ten years of experience resolving international business disputes. The arbitrator shall provide detailed written findings of fact and conclusions of law in support of any award. Judgment upon any such award may be enforced in any court of competent jurisdiction. Each party shall be limited to 5 depositions per side. Each party shall only be allowed to advance a maximum of 5 witnesses in any such proceeding. Upon initiating arbitration, the parties will enter into a scheduling order with the arbitrator within one month. Thereafter discovery shall begin. The arbitration will be concluded within 4 months. The arbitrator must agree to enter the ruling within two months of the arbitration.
- 18.4 Notwithstanding the foregoing, Licensor may seek injunctive relief to enforce or protect any of its intellectual property rights or any of its interests that may be subject to irreparable harm in any court of competent jurisdiction without

reference to the arbitration proceedings set forth herein. Any such action or proceeding arising from or relating to this Agreement may also be brought in a court of the State of Vermont or the United States District Court for the District of Vermont and each party irrevocably submits and waives any objections to the jurisdiction and venue of any such court in any such action or proceeding.

18.5 Licensee and User hereby agrees that acceptance of the terms and conditions of this Agreement may, in lieu of execution of a hard copy, be made by opening the software product package, by means of an electronic signature, or installation or use of the software product (whichever occurs first).

19. TAXES.

19.1 Prices do not include any federal, state, or local property, license, privilege, sales, use, excise, import, export, transport, VAT, gross receipts, or other like taxes which may now or hereafter be applicable (collectively referred to herein as "Taxes"). Customer shall be responsible for the payment of all such Taxes of any nature whatsoever now or hereafter levied by any governmental authority anywhere in the world. In the event that Customer and/or any of the Services are considered tax-exempt, Customer shall provide to NRG a certificate of any such tax-exempt status.

20. ENTIRE AGREEMENT.

20.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all other prior and contemporary agreements, understandings, trade usage, courses of dealing, and commitments between the parties regarding the subject matter of this Agreement. This Agreement may not be modified or amended except by a written instrument executed by the parties. In particular, any provisions, terms, or conditions contained in Licensee-provided documents including without limitation any purchase order issued by Licensee, that are in any way inconsistent with or in addition to the terms and conditions of this Agreement will not be binding upon Licensor.

Exhibit A

NRG Software End User License Agreement

WHEREAS NRG is the developer of Software;

WHEREAS Licensee is desirous of licensing certain of NRG's Software according to the terms set out herein and NRG is desirous of granting such license; and,

NOW, THEREFORE, in consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1.0 DEFINITIONS

1.1 Capitalized terms used herein without definition shall have the meanings ascribed to them in the body of the Agreement.

2.0 LICENSE GRANT.

2.1 Licensor provides this Software and other products like it to be used exclusively by authorized Licensees. Licensee herein has purchased or leased this Software either directly from Licensor or from a Licensor authorized dealer under a Master Agreement. Licensee has been made aware of and offered an opportunity prior to purchase or lease of the Software to review the terms of this EULA. Licensee assumes all responsibility for the selection of the Software to achieve the Licensee's intended results, and for the installation, use, and results obtained from the Software.

2.2 *License Grant.* Subject to the terms and conditions of this EULA, Licensor hereby grants Licensee a non-exclusive, revocable, perpetual (subject to termination as set forth herein), personal, non-transferable license to:

2.2.1 Use, or have any User use, the Software on any applicable web browser.

2.2.2 Authorize Users to use the Software so long as Users comply with the terms of this EULA.

2.3 *Compliance with Laws and Instructions.* Licensee and User will comply with applicable law and Licensor's instructions regarding the use, reproduction, and distribution of the Software as dictated by this EULA. Licensee agrees to notify Users who may have access to the Software of the restrictions contained in this EULA and to ensure their compliance with these restrictions.

2.4 *Reservation of Rights.* Licensor reserves all rights in and to the Software not expressly granted to Licensee, and no other licenses or rights are granted by implication, estoppel or otherwise. In addition, and without limiting the foregoing reservation of rights, Licensee's and User's use of the Software is subject to the following restrictions:

- 2.4.1** Licensee and User may not reverse engineer, decompile, or disassemble the Software, except to the extent the foregoing restriction is expressly prohibited by applicable law.
- 2.4.2** Licensee and User may not modify, or create derivative works based upon, or merge into another program the Software in whole or in part.
- 2.4.3** Licensee may only make the Software available for access or use by Users.
- 2.4.4** Licensee and User may not loan, rent, lease, sublicense, distribute or otherwise transfer all or any portion of the Software to any third party except as expressly permitted herein and understands that any such unpermitted action shall immediately terminate all rights to the Software.
- 2.4.5** Licensee and User may not, directly, or indirectly, encumber or suffer to exist any lien or security interest of any nature on the Software, or take any action that would cause the Software to be placed in the public domain.
- 2.4.6** Licensee and User may not remove any proprietary notices, labels, trademarks, or markings on or contained in the Software.
- 2.4.7** Licensee and User may not disclose, reproduce, transmit, use, distribute, make available, modify, or store the Materials in any retrieval system, in any form or by any means (electronic, photocopying, recording, scanning, or otherwise) for any purpose, except as expressly permitted by Section 2.2.
- 2.4.8** Licensee and User must reproduce and include any Licensor copyright notice in every copy of the Software.

2.5 *Third Party Software.* It is understood that certain software owned by third parties (“Third Party Software”) may be necessary or beneficial in order to use the Software. The License granted herein does not include a license with respect to use of such Third Party Software. Licensor agrees that it is responsible to license such Third Party Software under separate agreements with the providers of such Third Party Software.

3.0 LICENSE FEES AND PAYMENT TERMS.

3.1 Licensee will pay Licensor the license fees set forth in the Master Agreement for the Materials (the “**Fees**”). The Fees are due and payable to Licensor upon completion of

delivery of the Materials to Licensee, and are owed by Licensee regardless of the early termination of this EULA for any reason. If Software is licensed by Licensee pursuant to this EULA and Licensee has elected to purchase maintenance and support pursuant to the Master Agreement, the applicable Fees therefore are payable as set forth in the Master Agreement.

3.2 Each invoice from Licensor will state the basis for any Fees included therein. Licensee will pay all amounts set forth on each such invoice in immediately available U.S. funds within fifteen (15) days of the date of invoice. Amounts not paid within thirty (30) days of the date of invoice will be subject to a late charge of one and one-half percent (1.5%) per month (eighteen percent (18%) per year) or any applicable legal maximum, whichever is less. Late charges are intended as reasonable estimates of the amounts necessary to compensate Licensor for costs and losses associated with delays in payment, and not as penalties. In addition, Licensee must immediately reimburse Licensor for all costs and expenses (including any attorney fees) Licensor incurs collecting any past due amounts owed by Licensee.

3.3 In the event Licensee fails to pay Licensor any sum when due, Licensor may, without prior notice and without waiving or limiting any other remedies to which it may be entitled to hereunder, in law or in equity, terminate the licenses granted in Section 2 and/or discontinue all further training, support, maintenance or other services including, without limitation, issuing software upgrades and enhancements until such time as all amounts due have been paid in full.

3.4 The Fees exclude all Taxes, and Licensee will be responsible for payment of all such Taxes (other than taxes based on Licensor's income) and any penalties or charges that accrue with respect to the non-payment of any Taxes.

3.5 Except as otherwise expressly set forth in this EULA, (a) the Fees are non-refundable, and (b) upon any termination of this EULA for any reason, all remaining amounts of the Fees not paid by Licensee will immediately become due and payable.

4.0 TERM AND TERMINATION.

4.1 Term. This EULA is effective for the duration of Licensor's copyrights in the Software and the Materials, unless and until earlier terminated as set forth herein.

4.2 Termination upon Event of Default. Licensor will be entitled to terminate this EULA immediately upon written notice to Licensee if the Licensee:

- 4.2.1** breaches any covenant, obligation, representation, or warranty under this EULA and fails to cure such breach within thirty (30) days after Licensee's receipt of written notice thereof from Licensor;
 - 4.2.2** breaches any covenant, obligation, representation, or warranty under this EULA relating to confidentiality, scope of use, use restrictions, or proprietary rights (including Intellectual Property Rights), it being agreed that any such breach will be deemed a material breach of this EULA;
 - 4.2.3** fails to pay any sum due to Licensor within ninety (90) days after the due date set forth on any invoice from Licensor; or
 - 4.2.4** assigns or purports to assign the whole or any part of this EULA other than as expressly permitted by this EULA.
- 4.3** Either party may terminate this EULA upon written notice to the other party if the other party voluntarily or involuntarily suspends, terminates, winds-up, or liquidates its business, becomes subject to any bankruptcy or insolvency proceeding or its equivalent under applicable law; or becomes insolvent or subject to direct control by a trustee, receiver, or similar authority upon the occurrence of such event and/or may exercise any and all other rights and remedies under this EULA, at law, or in equity.
- 4.4** *Effect of Termination.* On and after the effective date of any termination of this EULA, Licensee and User shall cease all use of the Materials. Within ten (10) days of the effective date of termination of this EULA by either party, Licensee will, at its own expense: (a) return to Licensor (or destroy) all Documentation and other tangible Materials provided by Licensor hereunder; (b) erase and delete all copies of any non-tangible Materials from all computer memories or other electronic devices in Licensee's possession or control; and (c) provide a certificate signed by one of Licensee's officers attesting to such return, destruction, and deletion. Each party shall remain liable to the other party for all charges, obligations, and liabilities that accrue or arise under this EULA from any event, occurrence, act, omission, or condition transpiring or existing prior to the effective date of such termination.
- 4.5** *Limitation of Actions.* Licensee hereby waives its right to bring any action against Licensor arising out of or related to this EULA or the subject matter hereof more than one (1) year after the occurrence of the event which gave rise to such action.

4.6 Licensee agrees that, in the event of any termination of this EULA or in the event Licensee seeks to terminate this EULA immediately, Licensee shall destroy the Software together with all copies in any form.

4.7 *Survival.* Sections 2.6, 3, 4, 8.2, 8.3, 9.1, 10, 11.4, 11.5, 11.6, 12, 13, 14, 15, 16, 17, and 18 will survive termination of this EULA for any reason.

5.0 WARRANTY.

5.1 All services sold and/or performed by Licensor in connection with this EULA are warranted to be free from any material defects for a period of one (1) year after performance. During the one-year warranty period, upon receipt of prompt written notice of a defect by Licensee to Licensor, Licensor will, at its option, re-perform the service at no additional charge to Licensor, or refund the purchase price to Licensee for such defective service; provided that Licensee has provided Licensor with such notice within the warranty period.