



Energy Management Agreement

This Energy Management Agreement (this "EMA"), entered into on 6/1/2017 (the "Effective Date"), is made by and between EnerNOC, Inc., located at One Marina Park Drive, Suite 400, Boston, MA 02210 ("EnerNOC"), and City of Columbus Department of Public Utilities, located at 910 Dublin Road, Columbus, OH 43215 ("Customer"). EnerNOC and Customer are referred to herein collectively as the "Parties" and each individually as a "Party" to this EMA.

- 1. Solutions.** This EMA is a master agreement between the Parties and sets forth the terms and conditions that will govern the rights, responsibilities, and obligations of the Parties with respect to the provision of the solutions (the "Solutions"), the scope of which are described in the applicable statements of work attached hereto (each a "SOW" and together with this EMA, the "Agreement"). EnerNOC will provide the Solutions in accordance with the Agreement and the applicable SOW. Each time Customer desires to procure any of the Solutions from EnerNOC, EnerNOC and Customer will execute a SOW that specifies, among other things, a description of the Solutions to be provided, the compensation for those Solutions, and any other details related to the engagement.
- 2. Use and Access License.** For the duration of the term of any duly executed SOW, EnerNOC grants to Customer a limited, revocable, non-transferrable (except as set forth herein) and non-exclusive right to use and access (including through remote means) the Solutions solely for Customer's internal business operations and subject to the terms of this EMA and the applicable SOW. Without limiting the terms of the Agreement, Customer agrees not to decompile, disassemble, reverse engineer or otherwise attempt to perceive the source code relating to the Solutions or any web-based portal relating thereto or assign, sublicense, sell, resell, lease or otherwise transfer, convey, or pledge as security or encumber, any right in the Solutions. Except as expressly permitted herein, Customer agrees that it shall not receive any right, title or interest in, or any license or right to use or access, the Solutions or any patent, copyright, trade secret, trademark or other intellectual property rights therein by implication or otherwise.
- 3. Term.** This EMA shall commence on the Effective Date and continue until terminated in accordance with the terms herein (the "Term").
- 4. Confidentiality.**

 - a. Nondisclosure to Third Parties.** In providing the Solutions under the Agreement, each Party will be exposed to certain Confidential Information (as hereinafter defined) of the other Party. Each Party on its own behalf and on behalf of its employees, contractors and agents (collectively, "Representatives") agrees not to, except as required by applicable law or regulation or in accordance with this EMA, use or disclose such Confidential Information without the prior written consent of the other Party, either during or after the Term. To protect Confidential Information, each Party agrees, except to the extent otherwise required by law, to: (i) limit dissemination of Confidential Information to only those Representatives having a "need to

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know”; (ii) advise each Representative who receives Confidential Information of the confidential nature of such information; and (iii) have appropriate agreements, policies and/or procedures in place with such Representatives sufficient to enable compliance with the confidentiality obligations contained herein. The term “Confidential Information” means all information, including, without limitation, any trade secrets, that is not otherwise publicly available and is disclosed, either orally or in written form, by either Party or its Representatives and shall be deemed to include: (x) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by either Party or its Representatives that contain, reflect or are based upon, in whole or in part, any Confidential Information furnished to a receiving Party or its Representatives pursuant hereto; and (y) any information concerning the business relationship between the Parties. If a third party makes a request under applicable law for any document that includes information designated as Confidential Information, Customer will release the document(s) with the information designated as Confidential redacted, and the Customer will promptly notify EnerNOC of the request. It will be the responsibility of EnerNOC, not Customer, to defend the designation of any information as proprietary, including initiation of any court proceedings necessary to prevent disclosure as a public record. EnerNOC shall indemnify Client against all costs, expenses, and damages, including without limitation attorneys’ fees incurred by reason of that dispute. Parties’ responsibilities under this Section shall survive termination of this Agreement.

b. Use of Confidential Information. Customer acknowledges that EnerNOC may receive Confidential Information of Customer from the applicable independent system/grid operator and/or utility, through data collected through the Solutions or otherwise, which may be used or disclosed by EnerNOC as necessary for the performance of the Agreement. Customer further acknowledges that EnerNOC may receive Confidential Information through data collected by virtue of its performance of this Agreement, which EnerNOC may disclose to the applicable independent system operator/grid operator as solely necessary for the performance of this Agreement.

5. Aggregate Data Collection and Usage. Customer acknowledges and agrees that EnerNOC may: (i) collect, process and aggregate any data used with, stored in, or related to the Solutions, including, without limitation, end-user energy usage and demand data, and create aggregate data records (“Aggregate Data”) by removing any personally identifiable information (“PII”) from the underlying data; (ii) use such Aggregate Data to improve the Solutions, develop new solutions, understand actual energy usage and demand trends and general industry trends, develop white papers, reports, or databases summarizing the foregoing, and generally for any legitimate purpose related to EnerNOC’s business; and (iii) share Aggregate Data with third parties or publish any reports, white papers, or other summaries based on Aggregate Data.

6. [INTENTIONALLY OMITTED].

7. Limitation on Liability. Except for breaches of confidentiality, EnerNOC’s liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages under the



Agreement shall not exceed \$500,000. In no event shall either Party, its parent, officers, directors, partners, shareholders, employees or affiliates, or any contractor or subcontractor or its employees or affiliates, be liable to the other Party for special, indirect, exemplary, punitive, incidental or consequential damages of any nature whatsoever connected with or resulting from the Solutions or from performance or non-performance of obligations under the Agreement, including without limitation, damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability contract, operation of law or otherwise.

- 8. Warranty Limitations.** IF THE SOLUTIONS BECOME OR ARE LIKELY TO BECOME THE SUBJECT OF ANY THIRD PARTY INTELLECTUAL PROPERTY INFRINGEMENT CLAIM OR ACTION, ENERNOC MAY, AT ENERNOC'S SOLE OPTION, EITHER: (I) REPLACE SUCH SOLUTIONS WITH AN EQUALLY SUITABLE SOLUTION FREE OF INFRINGEMENT; (II) MODIFY OR OBTAIN A LICENSE FOR THE SOLUTIONS SO THAT THEY NO LONGER INFRINGE ON ANY RIGHTS; OR (III) AFTER ENERNOC HAS DEMONSTRATED ITS GOOD FAITH EFFORTS TO ACHIEVE THE FOREGOING WITHOUT SUCCESS, TERMINATE THE APPLICABLE SOW. EXCEPT AS PROVIDED HEREIN, THE SOLUTIONS (AND ANY SOFTWARE, HARDWARE, OR OTHER COMPONENT THEREOF) ARE PROVIDED AS IS WITHOUT ANY WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.
- 9. Choice of Law.** The Agreement shall be governed by and construed and enforced in accordance with the laws of State of Ohio, without giving effect to choice of law rules.
- 10. Miscellaneous.** Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of EnerNOC, which shall not be unreasonably withheld, conditioned or delayed; except that Customer may assign the Agreement to its successor or any entity acquiring all or substantially all of the assets of Customer by providing EnerNOC with written notice promptly following the acquisition date. The Agreement, including all exhibits, attachments and SOWs, constitutes the entire agreement between Customer and EnerNOC and may only be amended in writing signed by each of the Parties. In the event of any conflict between this EMA and a SOW, the terms of this EMA shall control with respect to the applicable SOW. If any of its provisions shall be held invalid or unenforceable, the Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. The Agreement shall be binding upon the Parties together with their successors and permitted assigns. Each Party shall be responsible for its Representatives' compliance with the Agreement. Customer shall promptly notify EnerNOC in writing of any changes occurring during the Term to the Customer address(es) set forth in this EMA.
- 11. Taxes.** Fees, costs, and expenses described in the Agreement do not include any sales, use, personal property, duty, levy, or similar governance charge, value added or good/services taxes. EnerNOC may include applicable taxes as separate items on Customer's invoice, and Customer shall be responsible to pay and/or reimburse EnerNOC for all taxes (other than taxes based on EnerNOC's income), unless Customer has provided adequate evidence of exemption upon execution of this EMA or the applicable SOW. If withholding of taxes is required by any government, Customer shall

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remit such taxes in accordance with applicable law, gross up the applicable payment amounts so that EnerNOC receives the full amount of fees invoiced, and provide EnerNOC with applicable evidence of withholding. Notwithstanding the foregoing, the Parties understand that the Customer does not pay sales tax and, as such, EnerNOC shall not charge Customer for any sales tax.

- 12. Force Majeure.** The Parties shall be excused for any failure or delay in the performance of their obligations hereunder due to acts of God or any other legitimate cause beyond their reasonable control, and that, by the exercise of due diligence, the claiming party is unable to overcome in a commercially reasonable manner.
- 13. Termination.** Either Party may terminate this EMA (i) in the event of the other Party's material breach of this EMA or any SOW, provided that the breaching Party fails to cure the specific breach within thirty (30) days following date of written notice from the non-breaching Party specifying the purported breach; (ii) immediately upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other Party's debts; or (iii) for convenience by giving the other Party sixty (60) days prior written notice; provided, however, that neither Party may terminate this EMA under subsection (iii) herein so long as any SOW executed by the Parties hereunder remains in effect.
- 14. Notices.** Any notices required or permitted to be given hereunder by either Party to the other Party shall be given in writing by: (i) personal delivery; (ii) bonded courier or nationally recognized overnight delivery company; or (iii) electronic mail. If notice is given by personal delivery, bonded courier or nationally recognized overnight delivery company, such notice shall be addressed to the Parties as follows (or to such other addresses as the Parties may request in writing by notice given pursuant to this Section): to EnerNOC at EnerNOC, Inc., Attn: Legal Department, One Marina Park Drive, Suite 400, Boston, MA 02210; and to Customer at City of Columbus Department of Public Utilities, 910 Dublin Road, Columbus, OH 43215. If notice is sent by electronic mail, such notice shall be sent to EnerNOC at contractmanagement@enernoc.com; and/or to Customer at paaustin@columbus.gov for Ms. Patricia Austin, Administrator of the Division of Power, or any successor.
- 15. Insurance.** EnerNOC shall maintain the following insurance:

Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate;

Automobile Liability Insurance with limits of \$1,000,000 per occurrence combined single limit; and

Workers' Compensation and Employers' Liability Insurance with limits of not less than \$500,000.

All insurance carriers must have an AM Best rating of A-VIII or better. Customer shall be listed as a certificate holder and additional insured on the Commercial General Liability policy. Customer shall be notified in writing at least thirty (30) days prior to cancellation of any insurance policy.



16. **Audit Rights.** Each Party shall have the right, at its sole expense and upon prior written notice, to examine annually during normal business hours the records of the other Party to verify the accuracy of any payment statement, charge notice or computation made pursuant to this Agreement. Notwithstanding the foregoing, if Customer audit reveals a deficiency in any payments due to Customer, EnerNOC shall forthwith pay to Customer the amount of the deficiency from the due date until payment.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this EMA by their authorized representatives as of the Effective Date.

EnerNOC, Inc.

City of Columbus Department of Public Utilities

Name: Michael Berdik

Name: _____

Title: General Counsel, VP and Secretary

Title: _____

Signature: 

Signature: _____

Approved as to form:

Richard C. Pfeiffer, Jr.
Columbus City Attorney



Demand Response

Statement of Work for the Division of Sewage and Drainage

This Statement of Work (this "SOW"), entered into on 6/11/2017 (the "SOW Effective Date"), is made by and between EnerNOC, Inc., located at One Marina Park Drive, Suite 400, Boston, MA 02210 ("EnerNOC"), and City of Columbus Department of Public Utilities, located at 910 Dublin Road, Columbus, OH 43215 ("Customer"). Unless otherwise defined herein, capitalized terms in this SOW shall have the meanings given to them in the Energy Management Agreement by and between the Parties effective as of 6/11/2017 (the "EMA"), the terms and conditions of which are hereby incorporated by reference.

1. **Term.** This SOW shall commence on the SOW Effective Date and continue until 5/31/2020, unless earlier terminated in accordance with the terms herein (the "SOW Term").
2. **Enablement.** If required by EnerNOC for Customer's use and access to the Solutions, Customer shall, within twelve (12) days following execution by the Parties of this SOW, provide EnerNOC with reasonable access to install an EnerNOC site server ("ESS") that allows for Internet-based power metering, data collection, near real-time data communication, and Internet-based reporting and analytics for each Customer facility address identified on the Site Address Attachment attached hereto (each a "Site Address"). Customer agrees to collaborate with EnerNOC in a timely manner in testing, enabling and maintaining the installed ESS, the Solutions, and any other components of the EnerNOC system ("EnerNOC System"). If required for any Site Address(es), as determined solely by EnerNOC and indicated on the Site Address Attachment, the Parties shall execute an EnerNOC System enablement plan ("Enablement Plan") for such Site Address(es), the terms of which shall be attached to this SOW.
3. **Demand Response Solutions.** EnerNOC agrees to provide Customer with the following Solutions at each Site Address:
 - a. **Demand Response.** EnerNOC will manage Customer's participation in the demand response programs further described in the Program Rule Attachment(s) attached hereto ("Programs") by:
 - working with Customer to develop an appropriate energy curtailment plan for Customer's business;
 - working with Customer to facilitate necessary air regulatory filings on Customer's behalf as required by federal or national law, as applicable, in order to utilize on-site generation in connection with Customer's participation in the Program(s);
 - registering Customer's Accepted Capacity (as defined in the Program Rule Attachment(s));
 - managing Customer's curtailable electrical capacity in the Programs and upon notification by EnerNOC, pursuant to Program rules, and acceptance by Customer, provide real-time support to Customer during demand response events ("Demand

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Response Events");

- reconciling all Program payments;
- enabling data transfer, monitoring and reporting of meter data through the EnerNOC System and providing technical assistance, maintenance, repair and hosting of the EnerNOC System; and
- as necessary, coordinating with Customer's host utility to capture kilowatt-hour (kWh) pulses from Customer's primary utility meter to provide Customer near real-time, Internet-enabled power monitoring.

4. Payments.

a. **Enablement Fee.** For each Site Address, Customer shall pay to EnerNOC a one-time enablement fee equal to the following (the "Enablement Fee"):

- i. If the Site Address does not have an associated Enablement Plan, then the Enablement Fee shall be the amount set forth opposite each Site Address on the Site Address Attachment. Such Enablement Fee is calculated according to the number of electric utility meters to be installed as listed in the Site Address Attachment. If additional meters are required to provide the Solutions herein, then the Enablement Fee shall be increased by \$5,000.
- ii. If the Site Address does have an associated Enablement Plan, then the Enablement Fee shall be the amount agreed to in such Enablement Plan and both Parties acknowledge and agree that the Enablement Fee listed in the Site Address Attachment is a good faith best estimate only.

b. **Demand Response Payments.** In connection with Customer's participation in the Programs, EnerNOC shall make payments to Customer in the amounts and in accordance with the payment terms set forth in the Program Rule Attachment(s); provided that the Enablement Fee shall be amortized in equal monthly installments over the SOW Term and offset against any demand response payments owed by EnerNOC to Customer, and provided further that, upon termination or expiration of this SOW, Customer shall remit the balance, if any, of the Enablement Fee to EnerNOC within thirty (30) days following date of invoice.

5. Customer Support Requirements.

- a. **Representations and Warranties.** Customer holds all applicable licenses and/or permits not otherwise facilitated by EnerNOC pursuant to the Agreement that are required for the proper participation in the Program, including any local licenses and/or permits necessary to utilize on-site electric generation.
- b. **Demand Response Performance.** Customer has the intent and ability to generate and/or reduce electrical demand to achieve Accepted Capacity at each Site Address when notified by EnerNOC during Demand Response Events. Customer and EnerNOC understand that the curtailable

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electrical capacity identified in the Site Address Attachment does not represent Accepted Capacity and is solely the Parties' best estimate of performance and that Accepted Capacity may vary.

- c. **General Support Requirements.** Customer agrees to provide or cause to be provided to EnerNOC contact, billing and energy usage data, and facility information concerning each Site Address ("Customer Data") as is necessary to support the Solutions, including, but not limited to: (i) any account/supply point data including, without limitation, account numbers, meter serial numbers, meter identifiers, and change of tenancy information; (ii) square footage, operating hours (including holiday schedules) and average occupancy for each Site Address; (iii) major heating ventilation and air conditioning equipment, lighting type used, and any other significant equipment for each Site Address; (iv) a contact list for all key personnel; and (v) a letter of authorization or such other form as may be necessary for EnerNOC to act on behalf of Customer and interface directly with Customer's utility companies. Customer (x) represents that it has the right to provide Customer Data to EnerNOC and will provide Customer Data to EnerNOC in compliance with applicable legal requirements; (y) authorizes EnerNOC to use, copy, store, modify and display Customer Data for Customer's benefit and as expressly set forth in Section 5 of the EMA; and (z) authorizes EnerNOC to access Customer Data to provide quality assurance, perform software maintenance, and deliver customer service and technical support. During the SOW Term and for thirty (30) days following expiration or termination of this SOW, EnerNOC will preserve and maintain Customer Data. Thereafter, EnerNOC will have no obligation to preserve or return any Customer Data.

6. General Terms.

- a. **Provider Limitation.** EnerNOC shall be Customer's exclusive provider for the Solutions, including for any demand response program, during the SOW Term for the Site Addresses listed on the Site Address Attachment.
- b. **Payments to Utilities or Other Suppliers.** In no event shall EnerNOC or its affiliates, directors, employees and agents (collectively, the "Indemnified Parties") be responsible or liable for payment of any utility bill of Customer or any amount Customer may owe to any utility or other supplier. To the fullest extent permitted by law, Customer shall defend and indemnify, at its own expense, any third party claim against the Indemnified Parties, that arise due to any allegation that the Indemnified Parties are responsible for payment of any utility bill of Customer or a portion thereof, or any other amounts due by Customer to any utility or other supplier. In connection with the foregoing indemnification obligations, Customer shall pay reasonable legal fees as incurred and such damages or costs as are finally awarded against EnerNOC or agreed to in settlement for such claim. In all aspects, and notwithstanding the foregoing, Customer's obligations under this Section are subject to the maximum financial obligation of the City of Columbus and limited to those funds annually appropriated and authorized by its City Council to be expended pursuant to the contract.



c. **Termination.** Either Party may terminate this SOW (i) in the event of the other Party's material breach of this SOW, provided that the breaching Party fails to cure the specific breach within thirty (30) days following date of written notice from the non-breaching Party specifying the purported breach; (ii) immediately upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other Party's debts; (iii) if the Program is materially altered, suspended or ended; or (iv) with respect to a Program in accordance with the terms set forth in the Program Rule Attachment for such Program.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this SOW by their authorized representatives as of the SOW Effective Date.

EnerNOC, Inc.

City of Columbus Department of Public Utilities

Name: Michael Berdik

Name: _____

Title: General Counsel, VP
and Secretary

Title: _____

Signature: 

Signature: _____

Approved as to form:

Richard C. Pfeiffer, Jr.

Columbus City Attorney



Program Rule Attachment A

Emergency Load Response Program

- 1. **Program Description.** The "Program" means EnerNOC's enrollment and management of Customer's Accepted Capacity (as defined below) in the PJM Interconnection ("PJM") Emergency Load Response Program ("ELRP"). The Program enables participants to receive recurring payments for being available and reducing electricity consumption when called upon to do so by EnerNOC. Unless otherwise defined herein, capitalized terms in this Program Rule Attachment shall have the meanings given to them in the "PJM Open Access Transmission Tariff."
- 2. **Accepted Capacity.** "Accepted Capacity" shall represent the best estimate of Customer's expected curtailment based on EnerNOC's analysis of consumption data. Customer agrees that the Accepted Capacity may be adjusted by EnerNOC in the future, in consultation with Customer, to reflect changes including but not limited to, Customer's actual performance, facility operations, Program and/or ELRP rules, applicable regulations, Customer's PLC applicable to each Program Period (as defined herewith), and/or other relevant information. Customer and EnerNOC understand that the curtailable electrical capacity identified in the Site Address Attachment is solely the Parties' best estimate of performance and does not represent Accepted Capacity. Customer also reserves the right to adjust the Accepted Capacity 120 days before the start of each Delivery Year during the Term.
- 3. **Payments.**
 - a. **Payments to Customer.**
 - i. **Capacity Payments.** EnerNOC will pay Customer capacity payments ("Capacity Payments") equal to (a) the product of Accepted Capacity times a Capacity Payment Rate (as further defined herewith), less (b) Underperformance Adjustments if any. The "Capacity Payment Rate" shall be 80.00% of the clearing price established for the PJM Base Residual Auction set forth in the table below ("Price") for the relevant Delivery Year for the applicable Demand Response Product(s).

Delivery Year	Price (\$/MW/Year)	Product
2017-18	38,697	Limited Demand Response
2017-18	43,800	Extended Demand Response
2018-19	54,742	Base Capacity
2019-20	29,280	Base Capacity

- ii. **Energy Payments.** EnerNOC will pay Customer 80.00% of the energy payments available from PJM to EnerNOC based on the applicable strike price in connection



with Customer responding to a Demand Response Event when notified by EnerNOC ("Energy Payments").

iii. **Underperformance Adjustment Payments.** In no event shall Customer be required to return previously distributed payments to EnerNOC. EnerNOC will reduce EnerNOC's future payments to Customer to account for any Underperformance Adjustment. If the Underperformance Adjustment exceeds EnerNOC's payments to Customer for a given Delivery Year (as further defined herewith), that adjustment may be carried over by EnerNOC to any subsequent Delivery Year.

b. **Payment Timing.** EnerNOC shall make all payments associated with Customer's participation in the Program to Customer on a quarterly basis, and such payments shall be made within forty-five (45) days of EnerNOC's receipt of total payment from PJM. However, in no event shall EnerNOC be responsible for payments to Customer if PJM defaults on its payments to EnerNOC

4. **Program Rules.** The Program terms and conditions are summarized in the table below:

<p><i>Program Availability and Enrollment</i></p>	<p>Customer has the intent and ability to respond to Demand Response Events called by EnerNOC. Customer will be enrolled in the Limited DR Product, the Extended DR Product, and/or the Base Capacity Product, as referenced below (each a "Demand Response Product") for a given delivery year (June 1 – May 31) (the "Delivery Year") with the periods defined below (each, individually a "Product Period" and collectively the "Program Period"). Demand Response Product availability to Customer varies by Delivery Year and PJM Zone.</p> <ol style="list-style-type: none"> 1. Limited DR Product ("LDR"): 12:00 PM to 8:00 PM (Eastern Prevailing Time) during non-holiday weekdays for the period of June 1 – September 30 2. Extended DR Product ("XDR"): 10:00 AM to 10:00 PM (Eastern Prevailing Time) during all days for the period of June 1 – October 31, as well as the following May of a Delivery Year 3. Base Capacity Product ("BC"): 10:00 AM to 10:00 PM (Eastern Prevailing Time) during all days for the period of June 1 – September 30 <p>For purposes of Underperformance Adjustments defined below, (a) 12:00 PM - 8:00 PM during non-holiday weekdays for the period of June 1 – September 30 is considered the "Peak Period" for LDR and XDR; and (b) 10:00 AM to 10:00 PM during all days for the period of June 1 –</p>
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	<p>September 30 is considered the "Peak Period" for BC. All other times in a Product Period are considered the "Off-Peak Period".</p> <p>EnerNOC may call Demand Response Events outside the Peak Period and Off-Peak Period; Customer's performance during such Demand Response Events will not impact Capacity Payments, but will be included in Customer's Energy Payments. EnerNOC shall notify Columbus when such participation is under these terms, including the voluntary nature of performance relative to Underperformance Adjustments.</p> <p>Customer authorizes EnerNOC to enroll Customer in the LDR, XDR and/or BC Services offered by PJM in ELRP during the SOW Term. Before the start of each Delivery Year, EnerNOC will provide Customer with an annual enrollment notification email that provides confirmation of enrollment in the Program, the applicable Demand Response Product(s) in which Customer will be enrolled, the applicable PJM market clearing price for the Base Residual Auction for the Delivery Year, the applicable lead time notification window and any additional relevant terms for the given Delivery Year. Customer has the right to request adjustments, including but not limited to the Product type in which Customer will be enrolled.</p>
<i>Event Trigger</i>	EnerNOC will initiate Demand Response Events during PJM defined system events and in accordance with ELRP terms and conditions.
<i>Advanced Notification</i>	EnerNOC will use commercially reasonable efforts to provide Customer with advanced notification of a Demand Response Event in accordance with ELRP terms and conditions, which is currently thirty (30) minutes.
<i>Testing Requirement</i>	<p>If Customer is not called to respond to a Demand Response Event during the Customer's enrolled Product Period, EnerNOC will conduct a test event (a "Test Event") during the Customer's enrolled Product Period. In the event a Test Event is required, EnerNOC will use best efforts to coordinate with Customer to schedule a Test Event. EnerNOC will also provide Customer advance notice of the business day and hour of such Test Event. Customer shall have the right to request another Test Event.</p> <p>A Test Event shall not contribute to Customer's Capacity Payments if a Demand Response Event is called during the Customer's enrolled Product Period after the Test Event has occurred.</p>
<i>Underperformance Adjustment</i>	<p>The "Underperformance Adjustment" for LDR and XDR will, in the case of:</p> <p style="text-align: center;">(i) Demand Response Event(s) during the Peak</p>



	<p>Period, any Demand Response Event(s) spanning both the Peak Period and any period outside of the Peak Period, or a Test Event, equal the product of (a) Customer's average MW shortfall, times (b) Customer's Capacity Payment Rate; and</p> <p>(ii) Each Demand Response Event occurring entirely during the Off-Peak Period, if applicable, equal the product of (a) Customer's MW shortfall, time (b) 1/52, times (c) Price.</p> <p>The "Underperformance Adjustment" for BC will, in the case of Demand Response Event(s) during the Peak Period, be calculated hourly and is additive across all Demand Response Event hours. For each hour of such Demand Response Event(s), the Underperformance Adjustment for BC will equal the product of (a) Customer's MW shortfall, times (b) 1/30 (or 3.3%), times (c) Price. The adjustment for a test event will equal the product of (a) Customer's average MW shortfall, times (b) Customer's Capacity Payment Rate.</p> <p>The MW shortfall is the difference between the Customer's actual aggregated metered load and their enrolled aggregated drop-to MW level, capped at their Accepted Capacity. The shortfall may take into account electric loss factors. No Underperformance Adjustment shall be assessed if EnerNOC did not initiate a Demand Response Event.</p>
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The foregoing reflects the current terms and conditions of the Program, which terms and conditions may change during the SOW Term. In the event PJM amends, supplements or modifies the terms or conditions of the ELRP, or any current or future Demand Response Product offered in the ELRP, in any way, EnerNOC reserves the right to amend the Program terms set forth herein by providing written notice to Customer and with no further act required by EnerNOC or Customer.

5. **Miscellaneous.**

- a. **Termination.** In the event that capacity is not available in the Program for a given Delivery Year, Customer may terminate this Program Rule Attachment.
- b. **Curtailed Service Provider.** Customer hereby designates EnerNOC as its exclusive agent to manage its participation in the Program during the SOW Term.



Site Address Attachment

Site Addresses

Site Name	Site Address	Enablement Fee	# of Electric Utility Meters	Enablement Plan Required (Yes/No)?	Demand Response Program Attachment	Estimated Capacity (kW)
City of Columbus Department of Public Utilities - 6977 S High Str	6977 S High Street Lockbourne, 43137	\$0	0	No	A	895
City of Columbus Department of Public Utilities - 2104 Jackson Pi	2104 Jackson Pike Columbus, 43223	\$0	0	No	A	2,643



Demand Response

Statement of Work for the Division of Water

This Statement of Work (this "SOW"), entered into on 6/11/2017 (the "SOW Effective Date"), is made by and between EnerNOC, Inc., located at One Marina Park Drive, Suite 400, Boston, MA 02210 ("EnerNOC"), and City of Columbus Department of Public Utilities, located at 910 Dublin Road, Columbus, OH 43215 ("Customer"). Unless otherwise defined herein, capitalized terms in this SOW shall have the meanings given to them in the Energy Management Agreement by and between the Parties effective as of 6/11/2017 (the "EMA"), the terms and conditions of which are hereby incorporated by reference.

5. **Term.** This SOW shall commence on the SOW Effective Date and continue until 5/31/2020, unless earlier terminated in accordance with the terms herein (the "SOW Term").
6. **Enablement.** If required by EnerNOC for Customer's use and access to the Solutions, Customer shall, within twelve (12) days following execution by the Parties of this SOW, provide EnerNOC with reasonable access to install an EnerNOC site server ("ESS") that allows for Internet-based power metering, data collection, near real-time data communication, and Internet-based reporting and analytics for each Customer facility address identified on the Site Address Attachment attached hereto (each a "Site Address"). Customer agrees to collaborate with EnerNOC in a timely manner in testing, enabling and maintaining the installed ESS, the Solutions, and any other components of the EnerNOC system ("EnerNOC System"). If required for any Site Address(es), as determined solely by EnerNOC and indicated on the Site Address Attachment, the Parties shall execute an EnerNOC System enablement plan ("Enablement Plan") for such Site Address(es), the terms of which shall be attached to this SOW.
7. **Demand Response Solutions.** EnerNOC agrees to provide Customer with the following Solutions at each Site Address:
 - b. **Demand Response.** EnerNOC will manage Customer's participation in the demand response programs further described in the Program Rule Attachment(s) attached hereto ("Programs") by:
 - working with Customer to develop an appropriate energy curtailment plan for Customer's business;
 - working with Customer to facilitate necessary air regulatory filings on Customer's behalf as required by federal or national law, as applicable, in order to utilize on-site generation in connection with Customer's participation in the Program(s);
 - registering Customer's Accepted Capacity (as defined in the Program Rule Attachment(s));
 - managing Customer's curtailable electrical capacity in the Programs and upon notification by EnerNOC, pursuant to Program rules, and acceptance by Customer, provide real-time support to Customer during demand response events ("Demand

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Response Events”);

- reconciling all Program payments;
- enabling data transfer, monitoring and reporting of meter data through the EnerNOC System and providing technical assistance, maintenance, repair and hosting of the EnerNOC System; and
- as necessary, coordinating with Customer’s host utility to capture kilowatt-hour (kWh) pulses from Customer’s primary utility meter to provide Customer near real-time, Internet-enabled power monitoring.

8. Payments.

- Enablement Fee.** For each Site Address, Customer shall pay to EnerNOC a one-time enablement fee equal to the following (the “Enablement Fee”):
 - If the Site Address does not have an associated Enablement Plan, then the Enablement Fee shall be the amount set forth opposite each Site Address on the Site Address Attachment. Such Enablement Fee is calculated according to the number of electric utility meters to be installed as listed in the Site Address Attachment. If additional meters are required to provide the Solutions herein, then the Enablement Fee shall be increased by \$5,000.
 - If the Site Address does have an associated Enablement Plan, then the Enablement Fee shall be the amount agreed to in such Enablement Plan and both Parties acknowledge and agree that the Enablement Fee listed in the Site Address Attachment is a good faith best estimate only.
- Demand Response Payments.** In connection with Customer’s participation in the Programs, EnerNOC shall make payments to Customer in the amounts and in accordance with the payment terms set forth in the Program Rule Attachment(s); provided that the Enablement Fee shall be amortized in equal monthly installments over the SOW Term and offset against any demand response payments owed by EnerNOC to Customer, and provided further that, upon termination or expiration of this SOW, Customer shall remit the balance, if any, of the Enablement Fee to EnerNOC within thirty (30) days following date of invoice.

7. Customer Support Requirements.

- Representations and Warranties.** Customer holds all applicable licenses and/or permits not otherwise facilitated by EnerNOC pursuant to the Agreement that are required for the proper participation in the Program, including any local licenses and/or permits necessary to utilize on-site electric generation.
- Demand Response Performance.** Customer has the intent and ability to generate and/or reduce electrical demand to achieve Accepted Capacity at each Site Address when notified by EnerNOC during Demand Response Events. Customer and EnerNOC understand that the curtailable



electrical capacity identified in the Site Address Attachment does not represent Accepted Capacity and is solely the Parties' best estimate of performance and that Accepted Capacity may vary.

- c. **General Support Requirements.** Customer agrees to provide or cause to be provided to EnerNOC contact, billing and energy usage data, and facility information concerning each Site Address ("Customer Data") as is necessary to support the Solutions, including, but not limited to: (i) any account/supply point data including, without limitation, account numbers, meter serial numbers, meter identifiers, and change of tenancy information; (ii) square footage, operating hours (including holiday schedules) and average occupancy for each Site Address; (iii) major heating ventilation and air conditioning equipment, lighting type used, and any other significant equipment for each Site Address; (iv) a contact list for all key personnel; and (v) a letter of authorization or such other form as may be necessary for EnerNOC to act on behalf of Customer and interface directly with Customer's utility companies. Customer (x) represents that it has the right to provide Customer Data to EnerNOC and will provide Customer Data to EnerNOC in compliance with applicable legal requirements; (y) authorizes EnerNOC to use, copy, store, modify and display Customer Data for Customer's benefit and as expressly set forth in Section 5 of the EMA; and (z) authorizes EnerNOC to access Customer Data to provide quality assurance, perform software maintenance, and deliver customer service and technical support. During the SOW Term and for thirty (30) days following expiration or termination of this SOW, EnerNOC will preserve and maintain Customer Data. Thereafter, EnerNOC will have no obligation to preserve or return any Customer Data.

8. General Terms.

- a. **Provider Limitation.** EnerNOC shall be Customer's exclusive provider for the Solutions, including for any demand response program, during the SOW Term for the Site Addresses listed on the Site Address Attachment.
- b. **Payments to Utilities or Other Suppliers.** In no event shall EnerNOC or its affiliates, directors, employees and agents (collectively, the "Indemnified Parties") be responsible or liable for payment of any utility bill of Customer or any amount Customer may owe to any utility or other supplier. To the fullest extent permitted by law, Customer shall defend and indemnify, at its own expense, any third party claim against the Indemnified Parties, that arise due to any allegation that the Indemnified Parties are responsible for payment of any utility bill of Customer or a portion thereof, or any other amounts due by Customer to any utility or other supplier. In connection with the foregoing indemnification obligations, Customer shall pay reasonable legal fees as incurred and such damages or costs as are finally awarded against EnerNOC or agreed to in settlement for such claim. In all aspects, and notwithstanding the foregoing, Customer's obligations under this Section are subject to the maximum financial obligation of the City of Columbus and limited to those funds annually appropriated and authorized by its City Council to be expended pursuant to the contract.



- c. **Termination.** Either Party may terminate this SOW (i) in the event of the other Party's material breach of this SOW, provided that the breaching Party fails to cure the specific breach within thirty (30) days following date of written notice from the non-breaching Party specifying the purported breach; (ii) immediately upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of the other Party's debts; (iii) if the Program is materially altered, suspended or ended; or (iv) with respect to a Program in accordance with the terms set forth in the Program Rule Attachment for such Program.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this SOW by their authorized representatives as of the SOW Effective Date.

EnerNOC, Inc.

City of Columbus Department of Public Utilities

Name: Michael Berdik

Name: _____

Title: General Counsel, VP and Secretary

Title: _____

Signature: 

Signature: _____

Approved as to form:

Richard C. Pfeiffer, Jr.
Columbus City Attorney



Program Rule Attachment A

Emergency Load Response Program

6. **Program Description.** The “Program” means EnerNOC’s enrollment and management of Customer’s Accepted Capacity (as defined below) in the PJM Interconnection (“PJM”) Emergency Load Response Program (“ELRP”). The Program enables participants to receive recurring payments for being available and reducing electricity consumption when called upon to do so by EnerNOC. Unless otherwise defined herein, capitalized terms in this Program Rule Attachment shall have the meanings given to them in the “PJM Open Access Transmission Tariff.”

7. **Accepted Capacity.** “Accepted Capacity” shall represent the best estimate of Customer’s expected curtailment based on EnerNOC’s analysis of consumption data. Customer agrees that the Accepted Capacity may be adjusted by EnerNOC in the future, in consultation with Customer, to reflect changes including but not limited to, Customer’s actual performance, facility operations, Program and/or ELRP rules, applicable regulations, Customer’s PLC applicable to each Program Period (as defined herewith), and/or other relevant information. Customer and EnerNOC understand that the curtailable electrical capacity identified in the Site Address Attachment is solely the Parties’ best estimate of performance and does not represent Accepted Capacity. Customer also reserves the right to adjust the Accepted Capacity 120 days before the start of each Delivery Year during the Term.

8. **Payments.**

a. **Payments to Customer.**

i. **Capacity Payments.** EnerNOC will pay Customer capacity payments (“Capacity Payments”) equal to (a) the product of Accepted Capacity times a Capacity Payment Rate (as further defined herewith), less (b) Underperformance Adjustments if any. The “Capacity Payment Rate” shall be 80.00% of the clearing price established for the PJM Base Residual Auction set forth in the table below (“Price”) for the relevant Delivery Year for the applicable Demand Response Product(s).

Delivery Year	Price (\$/MW/Year)	Product
2017-18	38,697	Limited Demand Response
2017-18	43,800	Extended Demand Response
2018-19	54,742	Base Capacity
2019-20	29,280	Base Capacity

ii. **Energy Payments.** EnerNOC will pay Customer 80.00% of the energy payments available from PJM to EnerNOC based on the applicable strike price in connection



with Customer responding to a Demand Response Event when notified by EnerNOC ("Energy Payments").

iii. **Underperformance Adjustment Payments.** In no event shall Customer be required to return previously distributed payments to EnerNOC. EnerNOC will reduce EnerNOC's future payments to Customer to account for any Underperformance Adjustment. If the Underperformance Adjustment exceeds EnerNOC's payments to Customer for a given Delivery Year (as further defined herewith), that adjustment may be carried over by EnerNOC to any subsequent Delivery Year.

b. **Payment Timing.** EnerNOC shall make all payments associated with Customer's participation in the Program to Customer on a quarterly basis, and such payments shall be made within forty-five (45) days of EnerNOC's receipt of total payment from PJM. However, in no event shall EnerNOC be responsible for payments to Customer if PJM defaults on its payments to EnerNOC

9. **Program Rules.** The Program terms and conditions are summarized in the table below:

<p><i>Program Availability and Enrollment</i></p>	<p>Customer has the intent and ability to respond to Demand Response Events called by EnerNOC. Customer will be enrolled in the Limited DR Product, the Extended DR Product, and/or the Base Capacity Product, as referenced below (each a "Demand Response Product") for a given delivery year (June 1 – May 31) (the "Delivery Year") with the periods defined below (each, individually a "Product Period" and collectively the "Program Period"). Demand Response Product availability to Customer varies by Delivery Year and PJM Zone.</p> <p>4. Limited DR Product ("LDR"): 12:00 PM to 8:00 PM (Eastern Prevailing Time) during non-holiday weekdays for the period of June 1 – September 30</p> <p>5. Extended DR Product ("XDR"): 10:00 AM to 10:00 PM (Eastern Prevailing Time) during all days for the period of June 1 – October 31, as well as the following May of a Delivery Year</p> <p>6. Base Capacity Product ("BC"): 10:00 AM to 10:00 PM (Eastern Prevailing Time) during all days for the period of June 1 – September 30</p> <p>For purposes of Underperformance Adjustments defined below, (a) 12:00 PM - 8:00 PM during non-holiday weekdays for the period of June 1 – September 30 is considered the "Peak Period" for LDR and XDR; and (b) 10:00 AM to 10:00 PM during all days for the period of June 1 –</p>
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	<p>September 30 is considered the "Peak Period" for BC. All other times in a Product Period are considered the "Off-Peak Period".</p> <p>EnerNOC may call Demand Response Events outside the Peak Period and Off-Peak Period; Customer's performance during such Demand Response Events will not impact Capacity Payments, but will be included in Customer's Energy Payments. EnerNOC shall notify Columbus when such participation is under these terms, including the voluntary nature of performance relative to Underperformance Adjustments.</p> <p>Customer authorizes EnerNOC to enroll Customer in the LDR XDR and/or BC Services offered by PJM in ELRP during the SOW Term. Before the start of each Delivery Year, EnerNOC will provide Customer with an annual enrollment notification email that provides confirmation of enrollment in the Program, the applicable Demand Response Product(s) in which Customer will be enrolled, the applicable PJM market clearing price for the Base Residual Auction for the Delivery Year, the applicable lead time notification window and any additional relevant terms for the given Delivery Year. Customer has the right to request adjustments including but not limited to the Product type in which Customer will be enrolled.</p>
<p><i>Event Trigger</i></p>	<p>EnerNOC will initiate Demand Response Events during PJM defined system events and in accordance with ELRP terms and conditions.</p>
<p><i>Advanced Notification</i></p>	<p>EnerNOC will use commercially reasonable efforts to provide Customer with advanced notification of a Demand Response Event in accordance with ELRP terms and conditions, which is currently thirty (30) minutes.</p>
<p><i>Testing Requirement</i></p>	<p>If Customer is not called to respond to a Demand Response Event during the Customer's enrolled Product Period, EnerNOC will conduct a test event (a "Test Event") during the Customer's enrolled Product Period. In the event a Test Event is required, EnerNOC will use best efforts to coordinate with Customer to schedule a Test Event. EnerNOC will also provide Customer advance notice of the business day and hour of such Test Event. Customer shall have the right to request another Test Event.</p> <p>A Test Event shall not contribute to Customer's Capacity Payments if a Demand Response Event is called during the Customer's enrolled Product Period after the Test Event has occurred.</p>
<p><i>Underperformance Adjustment</i></p>	<p>The "Underperformance Adjustment" for LDR and XDR will, in the case of:</p> <p style="text-align: center;">(i) Demand Response Event(s) during the Peak</p>



	<p>Period, any Demand Response Event(s) spanning both the Peak Period and any period outside of the Peak Period, or a Test Event, equal the product of (a) Customer's average MW shortfall, times (b) Customer's Capacity Payment Rate; and</p> <p>(ii) Each Demand Response Event occurring entirely during the Off-Peak Period, if applicable, equal the product of (a) Customer's MW shortfall, time (b) 1/52, times (c) Price.</p> <p>The "Underperformance Adjustment" for BC will, in the case of Demand Response Event(s) during the Peak Period, be calculated hourly and is additive across all Demand Response Event hours. For each hour of such Demand Response Event(s), the Underperformance Adjustment for BC will equal the product of (a) Customer's MW shortfall, times (b) 1/30 (or 3.3%), times (c) Price. The adjustment for a test event will equal the product of (a) Customer's average MW shortfall, times (b) Customer's Capacity Payment Rate.</p> <p>The MW shortfall is the difference between the Customer's actual aggregated metered load and their enrolled aggregated drop-to MW level, capped at their Accepted Capacity. The shortfall may take into account electric loss factors. No Underperformance Adjustment shall be assessed if EnerNOC did not initiate a Demand Response Event.</p>
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The foregoing reflects the current terms and conditions of the Program, which terms and conditions may change during the SOW Term. In the event PJM amends, supplements or modifies the terms or conditions of the ELRP, or any current or future Demand Response Product offered in the ELRP, in any way, EnerNOC reserves the right to amend the Program terms set forth herein by providing written notice to Customer and with no further act required by EnerNOC or Customer.

10. **Miscellaneous.**

- a. **Termination.** In the event that capacity is not available in the Program for a given Delivery Year, Customer may terminate this Program Rule Attachment.
- b. **Curtailment Service Provider.** Customer hereby designates EnerNOC as its exclusive agent to manage its participation in the Program during the SOW Term.



Site Address Attachment

Site Addresses

Site Name	Site Address	Enablement Fee	# of Electric Utility Meters	Enablement Plan Required (Yes/No)?	Demand Response Program Attachment	Estimated Capacity (kW)
City of Columbus Department of Public Utilities - 940 Dublin Road	940 Dublin Road Columbus, 43215	\$0	0	No	A	1,874
City of Columbus Department of Public Utilities - 3119 Fisher Road	3119 Fisher Road Columbus, 43204	\$0	0	No	A	257
City of Columbus Department of Public Utilities - 5585 Cleveland	5585 Cleveland Avenue Unit B Columbus, 43231	\$0	0	No	A	256
City of Columbus Department of Public Utilities - 4250 Morse Road	4250 Morse Road Columbus, 43230	\$0	0	No	A	2,268
City of Columbus Department of Public Utilities - 932 Old Henders	932 Old Henderson Road Columbus, 43220	\$0	0	No	A	240



City of Columbus Department of Public Utilities - 4678 / 4748 Mor	4678 / 4748 Morse Road Columbus, 43230	\$0	0	No	A	362
City of Columbus Department of Public Utilities - 355 E WILSON BR	355 E WILSON BRIDGE Road Columbus, 43085	\$0	0	No	A	128
City of Columbus Department of Public Utilities - 5600 Parsons Av	5600 Parsons Avenue Lockbourne, 43137	\$0	0	No	A	236
City of Columbus Department of Public Utilities - 1637 S Hamilton	1637 S Hamilton Road Columbus, 43227	\$0	0	No	A	23
City of Columbus Department of Public Utilities - 1385 E 5th Aven	1385 E 5th Avenue Columbus, 43219	\$0	0	No	A	137
City of Columbus Department of Public Utilities - 1547 W MOUND St	1547 W MOUND Street Columbus, 43223	\$0	0	No	A	91

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