

PORTAL SERVICES AGREEMENT

These terms and conditions, along with any other Exhibits and documents referenced below, together constitute the basis of a legal agreement (collectively, the “**Agreement**”), between the *Strategic Energy Management for Industry* (“**SEMI**”) Applicant legal entity (“**Applicant**” or “**You**” or “**Your**”) and the SEMI service provider Enerva Energy Solutions Inc. (“**Enerva**” or “**us**”), governing our provision of access to Enerva’s centralized application and energy management solution as a service to deliver the Strategic Energy Management for Industry program on behalf of Emissions Reduction Alberta.

1. Definitions. In this Agreement, capitalized terms have the meaning ascribed to them and the following words and expressions shall have the following meanings ascribed to them:

- (a) “**Authorized Users**” means Applicant employees and contractors who perform or provide services to Applicant or for your benefit who have access to the Services.
- (b) Authentication Credentials has the meaning set forth in Section 9.
- (c) “**Confidential Information**” means information of one party that has or will be disclosed or made available to the other, whether orally, in writing or any other form, which a reasonable person would consider, or which is clearly marked as being, confidential, secret or proprietary. Our Confidential Information is deemed to include this Agreement, Service Performance Data and any information about the Services, Professional Services, the Documentation or Our Systems. Your Confidential Information is deemed to include Your Data and any PII.
- (d) “**Documentation**” means the documentation (whether in paper, electronic or any other form) that Enerva makes generally available to users of the Services which describes the functionality and provides guidance on the usage of the Services.
- (e) “**ERA**” means Emissions Reduction Alberta.
- (f) “**Error**” means: any material failure of the Services to conform to the Specifications or to operate in accordance with its Documentation, as such Specifications or other Documentation exist immediately prior to when such Error is discovered.
- (g) “**Force Majeure Event**” means an event meeting both of the following criteria:
 - (i) the event is any of the following:
 - (A) catastrophic weather conditions or other extraordinary elements of nature or acts of God;
 - (B) acts of war (declared or undeclared), acts of terrorism, insurrection, pandemics, riots, civil disorders, rebellion or sabotage; or
 - (C) embargoes and other similar unusual actions of federal, state, provincial, local or foreign governmental authorities, that are outside the reasonable control of the affected party; and

- (ii) the non-performing Party is without fault in causing or failing to prevent the occurrence of such event, and such occurrence could not have been circumvented by the implementation of reasonable precautions and could not have been prevented or circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.
- (h) **“Intellectual Property Rights”** means all intellectual, industrial and other proprietary rights, including copyrights, trademarks, publicity rights, personality rights, moral rights (or rights to waivers thereof), patents, in or to all intellectual or industrial property, including software, compilations of data, computer databases (whether or not protected by copyright), specifications, designs (including industrial designs), know-how, confidential information, trade secrets, works of authorship, inventions and improvements, discoveries and systematic methods, techniques and approaches, and all applications, registrations, renewals and extensions pertaining to the foregoing, as applicable, and all rights and causes of action for infringement, violation, breach or misuse of any of the foregoing.
- (i) **“Our Systems”** means the proprietary software, third party software, hardware, equipment, systems and services, the setup, combination and configuration thereof, the methodologies, policies, procedures, techniques, domain names and IP addresses, Service Performance Data, application programming interfaces, data structures, stored procedures, metadata and application control tables contained within or automatically generated or created by the Services, including without limitation the Portal, and other intellectual property, all of which is used by Enerva to provide the Services.
- (j) **“Permitted Interfaces”** has the meaning as set forth in Section 4.
- (k) **“PII”** means information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means, as may be more particularly defined in Privacy Laws that is disclosed to Enerva by Applicant or on your behalf.
- (l) **“Portal”** means the website and software application owned and operated by Enerva, as described on the Strategic Energy Management for Industry portal web site found at semiprogramprogram.ca, the application management features and functions, and the energy management capabilities including energy modeling and analytics and data visualizations.
- (m) **“Privacy Laws”** means applicable data and privacy protection laws and regulations, including without limitation the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 (FIPPA).
- (n) **“Services”** means the provision to Participant, through the Portal, of access to the functionality of our proprietary platform and/or software and the access and use of Service Performance Data and Documentation, as facilitated using Our Systems and related hosting and support services, all as further described in Section 3.
- (o) **“Service Performance Data”** means benchmarks, averages and other statistical data or information created by Enerva using Your Data and similar data provided by other users of the Services (all of which is anonymized) and which is provided or made available to You through the Services as further set out in Section 7.

- (p) “**Specifications**” means with respect to the Services, the specifications and requirements of, and the functionality and performance characteristics described in, the Documentation.
- (q) “Strategic Energy Management for Industry” or “SEMI” means the Strategic Energy Management for Industry program as funded by the ERA.
- (r) “**Term**” has the meaning set forth in Section 17.
- (s) “**Territory**” means the Province of Alberta.
- (t) “**Your Data**” means data and records provided or input by Authorized Users or on Your behalf for processing through or use in connection with the Services.

2. Interpretation. The use of Sections and headings herein are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Section or other portion. Unless something in the subject matter or context is inconsistent therewith, references herein to Sections are to Sections of this Agreement. Wherever in this Agreement the context so requires, the singular shall include the plural and vice versa and any gender used shall be deemed to include the feminine, masculine or neuter gender and “**person**” shall include an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, or other entity or a government or any agency, department or instrumentality thereof. The term “**includes**” or “**such as**” shall be construed as meaning “includes without limitation” and “such as without limitation”, as the case may be.

3. The Services. In connection with the SEMI Program and subject to the provisions of this Agreement, Enerva will:

- (a) make the Services available for your access and use during the Term and in the Territory solely for your own business purposes to process and or analyze Your Data and solely for access and use by your Authorized Users through Permitted Interfaces; and
- (b) grant You a non-transferable, non-sublicensable (except to Authorized Users) right to access and use Service Performance Data solely for your own business purposes. You may only access and use Documentation or the Portal to facilitate your permitted use of the Services. You understand that You must procure and implement compatible hardware and other software, including but not limited to computers, operating systems and web browsers, all as identified in the Documentation, in order to access and use the Services.
- (c) The parties acknowledge and agree that: (i) the hosting Services are provided by Enerva’s third-party cloud services subcontractor Microsoft Corporation; (ii) Enerva is responsible for approving participation in the SEMI on behalf of ERA, which shall be memorialized via participation agreements executed between ERA and the Applicant (your “**Participant Agreements**”) and such approval may be withheld by ERA in its sole discretion; and (iii) in the event of any such approval, ERA shall be responsible for the payment of any SEMI related financial incentives to Applicant pursuant to the terms of your Participant Agreements.

4. Restrictions. You and Authorized Users may only use the Services as set forth herein and in the Documentation. You and Authorized Users must not:

- (a) use the Services except as expressly permitted by this Agreement;
- (b) misuse, abuse or otherwise use the Services in a manner that causes, or that You or a reasonable person knows or should know is likely to cause, harm or loss to ERA;
- (c) misuse, abuse or otherwise use the Services in a manner that causes, or that You or a reasonable person knows or should know is likely to cause, interruption, interference, disruption, loss, or degradation of the Services, their availability to other users or our operation thereof, or which would otherwise impose an unreasonable or disproportionate load on the Services or Our Systems;
- (d) interfere, breach or compromise the integrity or security of the Services, including unauthorized access or use of third-party Authentication Credentials, systems, data, or information;
- (e) use the Services in any manner that would reasonably be expected to expose Enerva to civil or criminal liability;
- (f) perform or simulate security probes, port scans, security breaches, denial of service attacks or any similar tests, attacks or hacks;
- (g) remove, destroy, cover, obfuscate or alter in any manner any notices or legends pertaining to proprietary rights;
- (h) modify, port, adapt, translate, reverse engineer, decompile, disassemble or convert into human readable form any software used to provide the Services, or create derivative works based on, or any software or service that is competitive or emulates, the Services;
- (i) except for permitted use by Authorized Users as expressly set out herein and in the Documentation, disclose, distribute, sell, resell, sublicense, distribute, assign, transfer, give away, loan, lend, lease, publish, pledge or create a security interest in the Services or Service Performance Data or provide or make available any functionality, use or benefit of the Services or Service Performance Data as an application service provider, a hosted service, a computer or processing service business, a service bureau, an outsourced facility or service or on a timesharing or similar basis or otherwise on behalf of any third party, including without limitation using the Services to convert, generate or otherwise process the work, documents or data of any third party (including, without limitation, your employees and contractors who are not Authorized Users);
- (j) use the Services in a manner or for a purpose that infringes or facilitates infringement upon the lawful rights of others (including privacy rights) or contravenes any applicable law;
- (k) upload, post, host, transmit or create any:
 - (i) file, document, diagram, graphic, material, data or information that is unlawful, offensive, abusive, fraudulent, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any third party intellectual property or other rights or any Privacy Laws;

- (ii) unsolicited commercial message; or
 - (iii) virus, Trojan horse, backdoor, bot, script or similar harmful or malicious element;
- (l) except for manually operated web-browsers expressly identified as compatible in the Documentation and permitted application programming interfaces for which You have acquired usage rights from us (“**Permitted Interfaces**”), use any robot, spider, software, plug-in, extension, script or other automated equipment, device, process or means to use, access, interact with, control, retrieve, present, publish or display the Services or to input, inject, skim, extract, query, compile, process or display any data stored or information input, processed, stored or calculated using the Services directly or indirectly in any manner whatsoever, including without limitation any software, machine or application programming interface, any user interface (other than a Permitted Interface), or any screen-scraping or similar technique;
- (m) except as expressly set out in the Documentation or through the functions provided through the Services, obscure, hide, mask, modify or alter the user interface of the Services or any reports or statements generated or created using the Services (including, without limitation, any of our trade-marks or proprietary notices or legends) in any manner whatsoever, including, without limitation, through the use of overlays, frames, filters, pop-up windows or scripts or through any other user interface layer;
- (n) directly or indirectly through any act or omission, allow or provide access to or use of the Services by, or disclose any of our Confidential Information to, any person who provides, performs or sells services, software or solutions which are similar to or competitive with the Services; or
- (o) attempt, or authorize, cause, permit or encourage any other person to do any of the foregoing.

Enerva may restrict, limit, suspend or immediately terminate access or use of the Services without notice if we know, or reasonably suspect or believe that You have breached or will breach, or any Authorized User has breached or will breach, any of the foregoing.

5. Your Responsibilities. You agree to cooperate with and assist us by providing to us such information and such access to your personnel, facilities, equipment, data or other resources in a timely and reasonable manner as are reasonably required by us to perform our obligations hereunder. You are solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of all Your Data. You will comply with all applicable laws in the course of using the Services. You will ensure that Authorized Users acknowledge and agree to all terms of this Agreement that may be applicable to their use of the Services. You will indemnify and hold us harmless from and against any claims, losses, damages or expenses that we suffer or incur to the extent You fail to obtain such agreement. You will promptly notify us of any breach of such terms by any Authorized User to the extent such breach would reasonably be expected to have a material adverse effect upon us or the Services. You are responsible and liable for the actions of Authorized Users as if such actions were your own, including their compliance or non-compliance with this Agreement.

6. Support Services. During the Term, we will provide or make available support services as specified in our support policy (the “**Support Policy**”) attached as Exhibit 1. We may amend our Support Policy provided we give You at least thirty (30) days’ notice and such amendment does not materially reduce the level of support provided.

7. Ownership of Services. The Services, the Documentation, the Service Performance Data and Our Systems are protected by Enerva’s and/or its licensors Intellectual Property Rights. By acquiring the right to access and use the Services, You do not become the owner of the Services, the Documentation, the Service Performance Data or Our Systems. Except for the rights expressly granted to You under this Agreement, as between the parties, all right, title and interest (including all Intellectual Property Rights) in and to the Services, the Service Performance Data and Our Systems and all patches, revisions, updates, upgrades, additions, enhancements, translations, ports, conversions, modifications, customizations and derivative works and all copies thereof (regardless of the form or media upon which such copies are recorded) are and shall remain at all times exclusively owned by Enerva and/or our licensors, as applicable. All trade names, company names, trademarks, service marks and other product and service names and logos in or displayed by the Services are the proprietary marks of Enerva or our licensors and are protected by law and may not be copied, imitated or used, in whole or in part, without the consent of their respective owners. Where copies are permitted by us in writing, You must include all proprietary rights legends or notices on all copies in the same form and location as on or in the originals. You agree that any feedback, input, suggestions, recommendations, improvements, changes, specifications, test results, or other data or information provided or made available to us arising from or related to the Services or your or your Authorized Users’ use, testing or evaluation thereof, including in the course of using support or other services, shall become our exclusive property and may be used by us to modify, enhance, maintain, improve and create the Services or other products or services without any obligation or payment to You whatsoever, provided however, that the foregoing does not apply to Your Data. We may:

- (a) use data and information about You, and your Authorized Users’ interaction with the Services to generate anonymized and aggregated statistical and analytical data, provided that such data and information do not record any of Your Data (“**Service Performance Data**”);
- (b) use Service Performance Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
- (c) use third party tools and services to collect and process Service Performance Data for the purposes discussed in this Section 7.

Our rights under this Section 7 will survive termination of this Agreement; and title to, and all Intellectual Property Rights subsisting in, Service Performance Data is and remains our property. For greater certainty, any PII within the Service Performance Data shall be anonymized in an irreversible manner.

8. Ownership of Data / Data Handling. As between the parties, all right, title and interest in and to Your Data is and shall remain owned by You, provided however You grant to us the right to use, copy, modify, process, transmit and disclose Your Data:

- (a) as reasonably required for the purposes for which it is provided to us, including without limitation the provision of the Services and assisting with the administration of SEMI;
- (b) to understand and meet your and Authorized Users' needs and preferences;
- (c) to manage and develop our business and relationship with You;
- (d) for any other purpose or any other manner that You request of us;
- (e) to defend any claim against us; and
- (f) to provide reporting to Emissions Reduction Alberta, the Government of Alberta, the Office of the Justice and Solicitor General of Alberta, the Government of Canada or the Office of the Attorney General of Canada or their respective successors, provided that such reporting notifies the recipient of the confidentiality of any Confidential Information.

You represent and warrant that You have obtained all rights, consents and permissions necessary to grant us such right.

9. Authentication. In order to use the Services, You and your Authorized Users will be required to select one or more user identifications and passwords ("**Authentication Credentials**"). For clarity, each Authorized User must possess Authentication Credentials and no person who is not an Authorized User may use the Services or have information related to such person processed by the Services. You are responsible for authenticating and verifying the identity of Authorized Users and for the issuance, management, secure delivery and cancellation of Authentication Credentials and the specific use rights associated with each set of Authentication Credentials. We will use the Authentication Credentials, through automated means, to validate access to the Services and Your Data. You agree that we may rely on all communications, instructions, transactions and changes which have been provided through the use of Authentication Credentials as having been authorized by You. One unique user identification and password must be issued to each individual accessing the Services. It is your responsibility to ensure that Authentication Credentials are kept safe and secure and ensure that they are only used by the individual to which they are issued and to ensure that they not shared disclosed to any other person. You are solely responsible for properly securing, and for any actions taken using, your Authentication Credentials. If You believe that the security of any Authentication Credentials has been compromised or suspect unauthorized use, You must notify us immediately. You will be responsible for all actions taken using Authentication Credentials, whether by You, an Authorized User or anyone else, until You notify us and we have a reasonable opportunity to suspend such Authentication Credentials or take other protective measures. You agree that if we suspect fraudulent or unauthorized activity, we may immediately suspend Authentication Credentials and will contact You.

10. Security. Enerva will maintain appropriate security measures to protect the security and confidentiality of Your Data, including commercially reasonable physical, technological and administrative measures, at a level equal to or better than industry standards. However, You acknowledge that security measures are not infallible and may be circumvented, which may result in unauthorized access. We will not be liable for any such unauthorized access and such access will not constitute a breach of this Agreement, provided such access did not result from our failure to adhere to the aforementioned security measures.

11. Confidentiality. Each party will protect Confidential Information of the other party using the same means it uses to protect its own similar Confidential Information, but in any event no less than reasonable means. Each party will use such Confidential Information solely for the purposes set out in this Agreement. Neither party shall, in the course of performing its obligations hereunder, use or disclose to the other party any information of any third party which it is under a duty not to so use or disclose, provided that You may disclose our Confidential Information to Authorized Users who have a need to know to use the Services as permitted hereunder, and that we may disclose your Confidential Information to our service providers and subcontractors with a need to know in order to facilitate the provision of Services or to perform our obligations hereunder. Notwithstanding the foregoing, neither party will have any obligation of confidentiality in respect of Confidential Information (other than PII) which:

- (a) is publicly available at the time of its disclosure, or becomes publicly available through no fault of the recipient;
- (b) is lawfully obtained by the recipient from a third party without restriction and not in violation of any duty owed to the disclosing party or to others;
- (c) can be demonstrated by documented evidence to be rightfully known by the recipient prior to the date of disclosure; or
- (d) can be demonstrated by documented evidence to have been developed by the recipient prior to disclosure of, or without reference or reliance upon, the Confidential Information of the disclosing party.

Either party may disclose Confidential Information solely to the extent permitted hereunder or as required by law, judicial or arbitral process, provided reasonable efforts are made to notify the disclosing party. The recipient of any Confidential Information will promptly notify the disclosing party of any misuse, misappropriation, or disclosure of such Confidential Information in contravention of this Agreement which may come to the recipient's attention. Consistent with the provisions of Section 26 below, the parties agree that breach by either party of obligations related to Confidential Information will cause the other party irreparable harm and that the other party will be entitled to seek injunctive or other equitable relief in respect thereof, in addition to any other remedies which such party may have hereunder, at law or in equity.

12. Privacy. The parties acknowledge and agree that it is their intention that PII not be disclosed by Applicant to Enerva under this Agreement. However, in the event PII is, with Enerva's prior written consent, so disclosed, each party agrees to comply with its respective obligations under Privacy Laws. Enerva will not use PII for any purpose other than to perform our obligations hereunder or, as reasonably required to defend or advance a legal claim and will treat and safeguard PII as Confidential Information. You agree that You have the authority and have obtained all consents required to provide us PII and to permit us to use it in accordance with this Agreement. If we believe, acting reasonably, that your provision or our permitted usage of any PII does or is likely to constitute a violation of Privacy Laws, we will be relieved of our obligations to the extent of such violation and the parties will cooperate to determine a method of performing such obligations without such violation.

13. Warranty. If the Services or Professional Services do not function materially in accordance with the applicable Documentation during the Term, we will, upon notice from You of such failure (which must include reasonable details regarding the nature of the failure) and

verification of reproducibility, diagnose, correct or provide a reasonable workaround for same in accordance with our Support Policy. The foregoing constitutes your sole and exclusive remedy and our sole obligation for any such failure. We have no obligation or liability whatsoever to the extent any failure arises or results from improper or unauthorized use, modifications of the Services or Professional Services made by anyone other than us, your breach of this Agreement, your negligence or wilful misconduct, failures in hardware or equipment not owned or controlled by us, or failures, errors, or misconfigurations of third-party products. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET OUT IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT OR POSSESSION AND THOSE ARISING BY STATUTE, IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. WE HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY LOSS, DAMAGE OR CLAIM ARISING FROM FAILURES, INTERRUPTIONS OR DISRUPTIONS OF THE INTERNET, ANY SHARED NETWORK OR COMMON CARRIER FACILITIES OR ANY THIRD-PARTY PRODUCTS OR SERVICES OR ANY MISUSE OR MISCONFIGURATION BY YOU OR ANY THIRD PARTY OF THE SERVICES OR PROFESSIONAL SERVICES OR ANY OTHER PRODUCT OR SERVICE. WE DO NOT GUARANTEE THAT THE SERVICES AND PROFESSIONAL SERVICES WILL MEET YOUR REQUIREMENTS, WILL BE FREE OF MINOR FLAWS OR THAT ALL MINOR FLAWS WILL BE CORRECTED OR FOUND TO BE CORRECTED.

14. Limitation of Liability. EACH PARTY'S MAXIMUM LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SERVICES AND PROFESSIONAL SERVICES PROVIDED HEREUNDER WILL BE LIMITED TO SUCH PARTY'S DIRECT DAMAGES, **NOT TO EXCEED IN AGGREGATE FOR ALL CLAIMS FIFTY CANADIAN DOLLARS (CAD\$50).** NEITHER PARTY WILL HAVE LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF EXPECTED SAVINGS, BUSINESS INTERRUPTION, LOSS OF DATA OR INFORMATION OR OTHER PECUNIARY LOSS, EVEN IF SUCH PARTY FORESEES OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS AND EXCLUSIONS WILL NOT APPLY TO THE INDEMNITY OBLIGATIONS PURSUANT TO SECTIONS 5, 15 OR 16. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS IN THIS AGREEMENT APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, INCLUDING BREACH FOR CONTRACT, NEGLIGENCE, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY, AND WILL SURVIVE A FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY REMEDY, INCLUDING ANY EXCLUSIVE REMEDY. THESE LIMITATIONS WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

15. Our Indemnity. We will defend or settle any claim brought against You to the extent that it is based on a claim that the Services infringe the Intellectual Property Rights enforceable in Canada of any third party that is not affiliated with or related to You and will indemnify You against all damages and costs awarded against You by a court of competent jurisdiction by final

order from which no appeal is taken or for which the time for appealing has expired, provided You:

- (a) promptly notify us; and
- (b) give us all authorization, information, co-operation and assistance to defend, compromise or settle the claim.

We have no liability for any compromise or settlement made, or legal fees incurred, by You without our prior written consent. You have no authority to settle any such claim on our behalf. We will have no liability for any claim to the extent it is based on:

- (a) the use of other than the current unaltered release of the Services if the claim could be avoided by using the current unaltered release;
- (b) misuse, including use in breach of this Agreement or use inconsistent with the applicable Documentation; or
- (c) the use or combination of the Services with other software, hardware or systems not provided by us or identified as compatible in the applicable Documentation.

If any part of the Services is in our opinion likely to or does become the subject of a claim of Intellectual Property Rights infringement, we will:

- (a) replace or modify it to become non-infringing;
- (b) procure the right for You to continue using the Services, or
- (c) if neither of the foregoing are reasonably practicable, immediately terminate your rights to use the Services.

This Section 15 states our entire liability and your sole and exclusive remedy with respect to any and all such claims.

16. Your Indemnity. You shall indemnify us against all damages arising from or related to any claim by a third party in respect of your misuse of the Services, use in combination with other software, hardware or systems not provided by Enerva or identified as compatible in the applicable Documentation, use for any purpose other than set forth in this Agreement or the applicable Documentation, or failure to obtain any necessary rights, consents or permissions in respect of Your Data.

17. Term and Termination.

The Term of this Agreement (i.e., the period during which You will have access to the Services) will commence on the date of its acceptance by You and shall continue until terminated in accordance with the provisions of this Section or Sections 4 [Restrictions] or 15 [Our Indemnity] above.

Either party may terminate this Agreement upon written notice:

- (a) at any time, on a without cause basis, on at least 10 Business Days notice;
- (b) upon the commencement by or against the other party of any proceeding under the bankruptcy laws of any jurisdiction or otherwise seeking the liquidation, dissolution

or winding-up of the other party, or a reorganization, arrangement or composition of the other party or any of its property or the making of any proposal under any bankruptcy, insolvency or reorganization laws or other similar laws; provided such proceedings or proposals have not been vacated, dismissed or set aside within thirty (30) days from the date of commencement, except that Enerva may avoid the application of this provision by assigning its rights to this Agreement, in their entirety, to ERA or another service provider of ERA's choice;

(c) upon the appointment of a receiver for the other party, any assignment for the benefit of creditors by the other party, or the levy, seizure, assignment or sale for or by any creditor or governmental agency of all or substantially all of the other party's property which is not released or satisfied within ten (10) days thereafter. Neither the expiration nor the termination of this Agreement shall release either party from any obligation or liability accrued until such expiration or termination.

The parties hereto agree that the provisions of Sections 5, 7, 8, 10, 11, 14, 15, 16, 18, 19, 23, 24, and 25 shall survive and remain in full force and effect after the termination of this Agreement.

If your Participant Agreement is terminated, this Agreement may be terminated in the discretion of Enerva.

You further acknowledge that: (a) should You terminate this Agreement for any reason, the underlying Participant Agreement will automatically terminate; and (b) should Enerva terminate this Agreement for any reason, the underlying Participant Agreement may be terminated in the discretion of ERA.

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements governing the same subject matter. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement. You confirm that You have not been induced to enter into this Agreement by any statement not contained in this Agreement.

19. Notices. Any notice or other communication to be given in connection with this Agreement will be given via e-mail: (i) by Enerva to the e-mail address You have provided to us during the account activation process; and (ii) by Applicant to: contact@enerva.ca or to such other address, or recipient as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be deemed to have been given on the day of actual delivery thereof.

20. Force Majeure. Neither party shall be liable if it is unable to perform any of its obligations under this Agreement as a result of a Force Majeure Event. If either party is prevented from performing any of its obligations under this Agreement by a Force Majeure Event, it shall promptly notify the other party of the occurrence of a Force Majeure Event and describe, in reasonable detail, the circumstances constituting the Force Majeure Event and of the obligations, the performance of which are not performed or performance is delayed. If Enerva is the party claiming relief as a result of a Force Majeure Event, we shall continue to perform Services that are unaffected by the Force Majeure Event, use commercially reasonable efforts to mitigate the impact

or consequence of the Force Majeure Event on You, and recommence our performance whenever and to whatever extent possible without delay.

21. Severability. If any provision of this Agreement is declared or found to be invalid, illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is invalid, illegal, unenforceable or void. If the remainder of this Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the extent permitted by law.

22. Independent Contractors. The parties are independent contractors. Nothing in this Agreement creates a partnership, joint venture or a relationship of principal and agent, employer-employee, master-servant, or franchisor-franchisee. Except as expressly set out in this Agreement, neither party has the power or authority, directly or indirectly, or through its employees or agents, to bind the other party, incur obligations on the other party's behalf, or otherwise represent or act on behalf the other party, without the other party's prior written consent and neither party shall represent to any other person that is has any such power or authority and no officer, director or employee of either party shall hold himself out as an officer, director, employee or agent of the other party.

23. Assignment. Except as otherwise permitted by this Section 23, none of this Agreement or any rights granted to You under this Agreement may be transferred or assigned by You, in whole or in part, whether voluntarily, by operation of law or otherwise, without our prior written consent. Any such attempted assignment or transfer shall be null and void. Either party may assign this Agreement, upon reasonable notice and without the consent of the other party, in connection with an asset sale, merger, amalgamation or similar transaction, provided the assignee agrees in writing to assume the obligations of the assigning party, and Enerva may assign its rights under this Agreement to ERA (or another service provider of ERA's choosing) without notice to You. Enerva has subcontracted the provision of the hosting Services as set out in Section 3 above; however, such subcontracting does not relieve us of our responsibility to Applicant for the fulfilment of such obligations as set out in this Agreement.

24. Waiver and Amendments. No modification, amendment, addition to or waiver of any rights, obligations or defaults shall be effective unless in writing and signed by the parties. One or more waivers of any right, obligation or default shall be limited to the specific right, obligation or default waived and shall not be construed as a waiver of any subsequent right, obligation or default. No delay or failure in exercising any right hereunder and no partial or single exercise thereof will be deemed of itself to constitute a waiver of such right or any other rights hereunder.

25. Governing Law. The parties hereby agree to exclude the application of the UN Convention on the International Sale of Goods (CISG) to this Agreement. This Agreement will be deemed to have been made and performed exclusively in the Province of Alberta and will be governed by and construed under the laws of the Province of Alberta without giving effect to its conflict of laws principles. Each party hereby irrevocably attorns to the exclusive jurisdiction of the courts situated in the city of Toronto for any claim related to this Agreement or the Services. The parties will endeavour to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement, any controversy, claim, or

dispute arising under or relating to this Agreement shall be resolved in accordance with applicable law in accordance with the provisions of this Section. EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

26. Cumulative Remedies. The rights and remedies under this Agreement are cumulative, may be exercised singularly or concurrently, and are in addition to and not in substitution for any rights or remedies available at law or in equity.

27. Authority. Each party represents and warrants that it has all power and authority necessary to enter into this Agreement and to perform fully and completely its obligations under this Agreement.

EXHIBIT 1
SUPPORT POLICY

- If You have any questions or issues, please contact us at techsupport@semiprogram.ca or at another email address that we have designated for technology support.
- A User Guide, once available, will be uploaded onto the SEMI program website or Portal as PDF documents for view and download. This is an additional resource that may help You.
- For the launch release, Enerva will provide You some program services via email. In subsequent releases of the SEMI Portal, these services and other features will be integrated within the Portal.
- Additional support services will be provided within the Portal as they come available.