



Energy Management Agreement

This Energy Management Agreement (this "EMA"), entered into on _____ (the "Effective Date"), is made by and between EnerNOC, Inc., located at One Marina Park Drive, Suite 400, Boston, MA 02210 ("EnerNOC"), and Black Horse Pike Regional School District, located at 580 Erial Road, Blackwood, NJ 08012 ("Customer"). EnerNOC and Customer are referred to herein collectively as the "Parties" and each individually as a "Party" to this EMA.

WHEREAS, EnerNOC and Customer desire to establish this EMA relating to EnerNOC's provision of, and Customer's access to, certain clean and intelligent energy management software and other solutions (collectively, the "Solutions"), the scope of which are described more fully in applicable Statements of Work attached hereto (each a "SOW" and together with this EMA, the "Agreement").

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

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. EnerNOC will provide the Solutions in accordance with the Agreement. 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. Any modification to a fully executed SOW must be in writing and executed by an authorized representative of each Party. 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. Upon acceptance by EnerNOC of a SOW and for the duration of the Term of this EMA applicable to such SOW, Customer shall have the non-exclusive, non-assignable (except as set forth herein) limited right to use the EnerNOC System (as defined below) solely for Customer's internal business operations and subject to the terms of this EMA and the applicable SOW.
2. **Term.** This EMA shall commence on the Effective Date and continue until terminated in accordance with the terms herein (the "Term").
3. **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 and contractors (collectively, "Representatives") agrees not to, except as required by applicable law or regulation, 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 to: (i) limit dissemination of Confidential Information to only those Representatives having a "need to 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, which is disclosed, either orally or in written form, by either Party or its Representatives and shall be deemed to include: (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by either Party or its Representatives which 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 (b) any information concerning the business relationship between the Parties. Except as expressly permitted herein, each Party agrees that it shall not receive any right, title or interest in, or any license or right to use, any of the other Party's Confidential Information or any patent, copyright, trade secret, trademark or other intellectual property rights therein by implication or otherwise.
 - b. **Restrictions on Use.** Customer shall not alter, reverse engineer, disassemble, decompile or copy the EnerNOC site server ("ESS") or any other components, including the Solutions and any software, of the EnerNOC system ("EnerNOC System") and shall not allow any third party to use, access, or examine the ESS or any other components of the EnerNOC System.
 - c. **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 by the ESS and the EnerNOC System or otherwise, which may be used or disclosed by EnerNOC as necessary for the performance of the Agreement.
4. **Aggregate Data Collection and Usage.** Notwithstanding anything to the contrary contained in the Agreement, Customer acknowledges and agrees that EnerNOC may: (i) collect, process and aggregate any data used with, stored in, or related to the services by EnerNOC, 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 its 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

CONFIDENTIAL AND PROPRIETARY

Document Control #: 00076457.0



based on Aggregate Data.

5. **Logo Authorization.** In connection with the Agreement, Customer hereby consents to EnerNOC's use of Customer's name and logo in EnerNOC's promotional materials, including, but not limited to, website, presentations and other printed materials. EnerNOC acknowledges that Customer is the owner of all right, title and interest in and to Customer's name and logo and shall not take any action that is inconsistent with such ownership.
6. **Limitation on Liability.** EnerNOC's liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages shall not exceed \$100,000. 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.
7. **Warranty Limitations.** THE ENERNOC SYSTEM (AND ANY COMPONENT THEREOF) IS 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. SOME STATES, COUNTRIES, OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE FOREGOING EXCLUSIONS MAY NOT APPLY TO CUSTOMER.
8. **Choice of Law.** The Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey, without giving effect to choice of law rules.
9. **Fees Offset.** Customer hereby acknowledges and agrees that EnerNOC has the right to offset any fees owed by Customer to EnerNOC against any payments owed to Customer; provided that to the extent Customer's fees owed to EnerNOC exceed the amount of all such payments payable to Customer, Customer shall remit the balance of the fees to EnerNOC within thirty (30) days following invoice date.
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; 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. 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.
11. **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.
12. **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 receipt 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 so long as any SOW executed by EnerNOC and Customer hereunder remains in effect.
13. **Notices.** Any notices required or permitted to be given hereunder by either Party to the other Party shall be given in writing by: (1) personal delivery; (2) electronic facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) bonded courier or by a nationally recognized overnight delivery company; or (4) United States first class registered or certified mail, postage prepaid, return receipt requested, in each case, 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): EnerNOC, Inc., Attn: Deputy General Counsel, One Marina Park Drive, Suite 400, Boston, MA 02210; and to Customer at Black Horse Pike Regional School District, 580 Erial Road, Blackwood, NJ 08012; provided that insofar as notices are required in connection with the implementation of the Solutions provided hereunder, such notices may be given by electronic mail to the primary business and/or site contact e-mail address(es) provided by Customer to EnerNOC's operations team.



IN WITNESS WHEREOF, the Parties have executed this EMA as of the Effective Date.

EnerNOC, Inc.

Black Horse Pike Regional School District

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____



DemandSMART Solution Statement of Work

This Statement of Work (this "SOW"), entered into on _____ (the "SOW Effective Date"), is made by and between EnerNOC, Inc., located at One Marina Park Drive, Suite 400, Boston, MA 02210 ("EnerNOC"), and Black Horse Pike Regional School District, located at 580 Erial Road, Blackwood, NJ 08012 ("Customer"). EnerNOC and Customer are referred to herein collectively as the "Parties" and each individually as a "Party" to this SOW. Unless otherwise defined herein, capitalized terms in this SOW shall have the meanings given to them in the Energy Management Agreement by and between EnerNOC and Customer effective as of _____ (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 5/31/2025, unless earlier terminated in accordance with the terms herein (the "SOW Term").
2. **DemandSMART Solution.** EnerNOC agrees to provide Customer with the following DemandSMART solution (the "Solution") for the demand response program(s) (collectively the "Programs" and each individually a "Program") further described in Attachment(s) A-1 attached hereto: (i) working with Customer to develop an appropriate energy curtailment plan for Customer's business; (ii) completing all required permits and associated reporting on Customer's behalf; (iii) registering Customer's Accepted Capacity (as defined in Attachment(s) A-1); (iv) managing Customer's curtailable electrical capacity in the Programs and upon notification by EnerNOC and acceptance by Customer, providing real-time support to Customer during demand response events ("Demand Response Events"); (v) reconciling all Program payments; (vi) 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; (vii) providing enhanced energy consumption and efficiency dashboards, benchmarking and reports, and real-time usage alerts through the EnerNOC System; and (viii) 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.
3. **Payment Terms.** The payment terms in connection with the provision of the Solution are set forth in Attachment(s) A-1 to this SOW.
4. **Customer Support Requirements.**
 - a. **EnerNOC System.** Within fourteen (14) days following execution by the Parties of this SOW, Customer shall provide EnerNOC with reasonable access to install an 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 (each a "Site Address") identified on Attachment(s) A-2. Subsequent to the SOW Effective Date, Attachment(s) A-2 may be updated in writing from time to time by the Parties to reflect additional Site Addresses. If cellular connectivity is not feasible, Customer shall provide either a static or non-static, as applicable, Internet Protocol (IP) address and Local Area Network (LAN) access that allows for Internet-based communication of a Site Address' energy consumption and Demand Response Event performance.
 - b. **Acceptance Testing.** Customer agrees to collaborate with EnerNOC in testing the installed ESS at each Site Address in a timely manner prior to enrollment in a Program(s).
 - c. **Event 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 Attachment(s) A-2 does not represent Accepted Capacity and is solely the Parties' best estimate of performance and that Accepted Capacity may vary.
 - d. **Customer and Billing Data.** Customer agrees to provide or cause to be provided to EnerNOC billing and energy usage data concerning each Site Address ("Customer Data") as may reasonably be requested by EnerNOC from time to time. Customer: (i) 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; (ii) authorizes EnerNOC to use, copy, store, modify and display Customer Data for Customer's benefit and as expressly set forth in Section 4 of the EMA; and (iii) 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) calendar 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.
5. **General Terms.**
 - a. **Provider Limitation.** Customer agrees not to contract with any other demand response solution provider during the SOW Term.
 - b. **Termination.** Either Party may terminate this SOW 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 receipt of written notice from the non-breaching Party specifying the purported breach. Notwithstanding the foregoing, in the event that capacity is not available in the Program for a given Program Period (as defined in Attachment(s) A-1), EnerNOC may reduce Customer's Accepted Capacity (as defined in Attachment(s) A-1) to zero and/or terminate this SOW. In addition, EnerNOC may terminate this SOW immediately (i) upon the institution by or against Customer of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Customer's debts, or (ii) if the Program(s) is materially altered, suspended or ended.

IN WITNESS WHEREOF, the Parties have executed this SOW as of the SOW Effective Date.

EnerNOC, Inc.

Black Horse Pike Regional School District

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Attachment A-1 Emergency Load Response Program

1. **Program Description.** PJM Interconnection's ("PJM") Emergency Load Response Program ("ELRP") enables Program participants to receive revenue for being available to reduce electricity consumption when the reliability of the electric grid is in jeopardy and voltage reductions and rolling brownouts are imminent.
2. **Program Rules.** The terms of this SOW will reflect ELRP Program terms and conditions which may be amended from time to time by PJM, the current terms of which are summarized in the table below:

<i>Program Availability</i>	During the Program period June 1st - September 30th ('Program Period'), Customer must be able to respond during non-holiday weekdays from 12:00 p.m. to 8:00 p.m. (Eastern Prevailing Time). PJM may call events outside of the Program Period; Customer's performance during such events shall not impact Capacity Payments, but will be included in Customer's Energy Payments as defined in Section 4(a)(ii) below.
<i>Program Enrollment</i>	Enrollment for each Program Period takes place annually between January 1st and May 31st preceding the start of the Program Period.
<i>Event Trigger</i>	PJM will initiate Demand Response Events in ELRP in the case of a defined system emergency.
<i>Advanced Notification</i>	EnerNOC will use commercially reasonable efforts to provide Customer with approximately one hundred twenty (120) minutes advanced notification of a Demand Response Event.
<i>Event Frequency & Duration</i>	Maximum of ten (10) Demand Response Events in a year, with event duration ranging from a minimum of one (1) hour to a maximum of six (6) hours.
<i>Testing Requirement</i>	If no Demand Response Event occurs, PJM requires EnerNOC to hold a Test Event ('Test Event') prior to the completion of the Program Period.

3. **Paid Capacity.** "Paid Capacity" will be Customer's (i) Accepted Capacity, if a Demand Response Event or a Test Event has not yet been initiated during the Program Period; (ii) Delivered Capacity during a Test Event, if a Demand Response Event is not initiated during the Program Period; or (iii) average Delivered Capacity for all Demand Response Events initiated during the Program Period, if any.
 - a. **Accepted Capacity.** "Accepted Capacity" shall represent the best estimate of Customer's expected curtailment based on analysis of consumption data and pre-enrollment testing. Customer agrees that the Accepted Capacity may be adjusted by EnerNOC in the future to reflect actual performance, changes in facility operations, Program rules, regulations, Customer's PLC applicable to each Program Period, and/or other relevant information.
 - b. **Delivered Capacity.** "Delivered Capacity" will be Customer's actual performance as calculated by EnerNOC in accordance with the Program baselines following either a Test Event or Demand Response Event(s), applicable, up to 100% of Accepted Capacity. Customer's Delivered Capacity may be adjusted by EnerNOC in the future following PJM approval of performance data from a Test Event or Demand Response Event(s), as applicable.
4. **Payments.**
 - a. **Payments to Customer.**
 - i. **Capacity Payments.** EnerNOC will pay Customer 50.00% of the established PJM market clearing price obtained by EnerNOC multiplied by Paid Capacity ("Capacity Payments").
 - ii. **Energy Payments.** In months when one or more Demand Response Events are called, EnerNOC will pay Customer \$500.00 per Megawatt-hour in connection with Customer responding to a Demand Response Event when notified by EnerNOC ("Energy Payments").
 - iii. **Underperformance.** In no event shall Customer be penalized for underperformance by being required to return previously distributed payments to EnerNOC. If Customer underperforms, adjustments will be made to future payments so that total payments made to Customer for the Program Period will reflect Paid Capacity for such Program Period.
 - b. **Payments to EnerNOC.**



- i. **Solution Fee.** Customer shall pay to EnerNOC a monthly Solution fee of \$750.00 (the "Solution Fee") in connection with the provision of the Solution; provided that the Solution Fee shall not begin to accrue and/or amortize until Customer is enrolled in the Program.
 - c. **Payment Offset.** Customer hereby acknowledges and agrees that EnerNOC will offset the Solution Fee owed by Customer to EnerNOC against the demand response payments owed by EnerNOC to Customer ("DR Payments") for each given quarter under this SOW; provided that in the event the accrued monthly Solution Fee exceeds the total amount of DR Payments, Customer shall remit the balance of the Solution Fee to EnerNOC within thirty (30) days following date of annual invoice. Upon termination or expiration of this SOW, Customer shall remit the balance, if any, of the Solution Fee to EnerNOC within thirty (30) days following date of invoice.
 - d. **Payment Timing.** With the exception of any payment offsets as defined in Section 4(c), EnerNOC shall make all payments associated with Customer's participation in the ELRP 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.
5. **Additional Terms.**
- a. **Curtailment Service Provider.** Customer hereby designates EnerNOC as its sole curtailment services provider for the limited purpose of participating in PJM's Emergency Load Response Program.



Attachment A-2

Site Address	Estimated Capacity (kW)
580 Erial Road Blackwood NJ 08012	321
501 Jarvis Road Erial NJ 08081	476
450 Erial Road Blackwood NJ 08012	312

Customer Usage Information Authorization

Regional Load Response Programs

Black Horse Pike Regional School District hereby authorizes its electric distribution companies ("EDC") listed on the Attached to release its electric usage information, including hourly or sub-hourly usage history (kWh/kW), EDC loss factors, and peak load contribution assignments for the current and the upcoming delivery year, to **EnerNOC**, the curtailment service provider ("CSP") which may be retained by Customer to act on its behalf in their Regional Load Response Programs. The CSP is authorized to make arrangements for purchase of KYZ Pulse Initiators and installation of load control devices at facilities listed below.

1. Customer hereby advises CSP that all information obtained pursuant to this Authorization to be confidential and not be divulged to any third party, except as required to participate in their Load Response Programs.
2. This Authorization shall terminate 60 months from the date of authorization.
3. The undersigned affirms that he/she has authority to execute this Authorization on behalf of Black Horse Pike Regional School District, and this Authorization to be effective as of the date written below.

Company Name: Black Horse Pike Regional School District

Mailing Address: 580 Erial Road

City/State/Zip: Blackwood, NJ 08012

Contact Name: Jean Grubb

Title: Business Administrator

Phone: (856) 227-4106

Email: jgrubb@bhprsd.org

Fax:

Signature: _____ Date: _____

CONFIDENTIAL AND PROPRIETARY

Document Control #: 00076463.0

Attachment A-1

Account Number	Service Address	Utility
4200202808	580 Erial Road Blackwood, NJ 08012	PSE&G
94227799981	501 Jarvis Road Sicklerville, NJ 08081	Atlantic City Electric
38904499993	450 Erial Road Blackwood, NJ 08012	Atlantic City Electric

CONFIDENTIAL AND PROPRIETARY

Document Control #: 00076463.0