

# Master Agreement

This Master Agreement (the “**Agreement**”) is made and entered into by and between EnergyWare, LLC, with its principal place of business located at 13450 West Sunrise Boulevard, Suite 190, Sunrise, Florida 33323 (hereinafter referred to as “**we,**” “**us,**” or “**our**”) and Customer (as defined below).

**Whereas,** we provide various building repair, maintenance, renovation, and upgrade services (e.g., LED lighting, solar panel installation, roof and/or window replacement) as well as other Products and services.

**Whereas,** you wish to purchase our Products and/or services subject to the terms and conditions set forth in this Agreement and any applicable Customer Service Order Agreement executed by both parties.

**THEREFORE,** in consideration of the mutual promises and subject to the terms and conditions of this Agreement, the parties, intending to be legally bound, agree as follows:

## **1. DEFINITIONS:** As used in this Agreement:

**1.1 “Affiliate”** means any entity that, directly or indirectly, Controls, is Controlled by, or is under common Control with such party. “Control”, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity or the power to direct or cause the direction of the management and policies of such entity.

**1.2 “Confidential Information”** means any non-public information that is confidential and proprietary to a party and is disclosed or becomes known pursuant to this Agreement or any Customer Service Order Agreement, subject to Section 10 below.

**1.3 “Customer”** or “**you**” or “**your**” means the person, firm, corporation, or entity which orders any Product and/or service as set forth in a signed Customer Service Order Agreement and/or is responsible for the payment of charges and for compliance with this Agreement.

**1.4 “Damages”** means all direct and indirect damages, costs, fees and expenses, including reasonable attorney fees and disbursements.

**1.5 “Laws”** means all applicable federal, state, local, and municipal laws, statutes, orders, codes, and regulations.

**1.6 “Product”** means any equipment, materials, and/or items provided and/or to be provided by us to you at your designated location(s) as listed in a Customer Service Order Agreement executed by both parties.

**2. SERVICES:** In consideration for and subject to your timely payment of the fees as set forth in any executed Customer Service Order Agreement (“Service Order”), we will provide to you the Product(s) and services described in the applicable Service Order. If applicable, the quantity of Products and the specific location(s) where they will be installed by us or our subcontractor will be mutually agreed to by the parties and specified in each Service Order. You agree that your execution of a Service Order is not contingent or dependent on the delivery or provision of any Product, equipment, material, item, and/or service, unless specifically stated in the Service Order.

**3. OUR RESPONSIBILITIES:** We will use commercially reasonable efforts to meet the estimated delivery, repair, and installation dates set forth in the Service Order. Unless agreed otherwise to in writing between the parties, the Products and any related products will be installed by us and/or our designated subcontractor.

**4. YOUR RESPONSIBILITIES: 4.1** To assist us to provide any Product and/or service as set forth in a Service Order, you will provide prompt access to your premises, working space, facilities, personnel, information, and materials that we may reasonably request or require. You will prepare each designated workspace and environment at your cost according to our commercially reasonable needs and any specifications we provide to you. You are also responsible for obtaining in a timely manner all building permits, licenses, any third party engineering and/or architectural approvals, zoning approvals, lease, landlord, and/or contract approvals, and all other approval(s) as required by applicable Laws for the full and complete installation and performance of all Products and/or services to be provided by us under this Agreement and any Service Order. You shall also comply with all obligations and responsibilities which are stated in any Service Order signed by both parties. You agree and acknowledge that we will need prompt and unobstructed access to the premises and workspace at all times when and where the Products are to be installed and/or services are to be provided. Accordingly, if you or any third party prevents us from accessing in a timely manner, or impede or obstruct our access to, the premises or workspace where the Products are to be installed and/or services are scheduled to be provided or performed, you shall pay to us one hundred (\$100) per hour, for up to a maximum of eight (8) hours per day, for each one of our employees and/or contractors who are present to provide or perform any of the services. You agree that such fee is a reasonable charge, and not a penalty, to offset the costs we incur for arranging and paying for our employees and/or contractors to show up to your premises to provide the Products and/or services.

**4.2.** You must inspect each Product immediately upon installation and services provided at your premises and, within five (5) business days after installation of any Product and/or provision of any services, give written notice to us if you believe that any Product and/or any service provided by us is defective. Each Product and/or service, as applicable, is presumed accepted by you unless we receive written notice of rejection from you explaining the basis for rejection within five (5) business days after installation of the Product and/or provision of any service, as applicable. Upon receipt of any such written notice, we will have a reasonable opportunity to repair or replace any defective Product and remedy any defective service, as applicable and at our option, in accordance with and subject to the terms and conditions of this Agreement. If you fail to give such written notice within the enumerated five (5) business day period, each service provided and each Product installed will be deemed to be properly installed and provided in all respects in accordance with this Agreement and you will be deemed to have accepted the Product and service in accordance with this Agreement and the applicable Service Order. You may reject a Product only if it is defective and not operating in accordance with its intended use and/or reject a service only if it was provided in a deficient manner. Except for any warranty claim during the Warranty Period (as defined below), all claims are deemed waived unless made in writing and received by us within five (5) business days after installation of the Product and provision of the service, as applicable, and in no event will credit be given for any alleged defect later than five (5) business days after installation of any Product or provision of the service.

**4.3** Unless stated otherwise in a Service Order signed by both parties, all Products will be shipped directly to you at the location designated in the Service Order. Risk of loss and/or damage to any Product will pass to you immediately when the Product is delivered to the location designated in the Service Order. Title to any Product and the associated payment obligation for such Product immediately pass to you once such Product has been delivered to the location designated in the Service Order; provided, however, that we retain a security interest in any Product that has not been fully paid for by you and you agree and acknowledge that we have the right to file a UCC statement as well as enforce such security interest until each Product has been fully paid for by you. For avoidance

of doubt, we are not responsible for any missing, stolen, and/or damaged Product once it has been delivered to any location designated in the Service Order. You agree to take appropriate steps to properly inventory, protect, and store any Product delivered to your location and acknowledge that you are responsible for paying for any missing, stolen, and/or damaged Product once it has been delivered to the location designated in the Service Order. Notwithstanding the foregoing, you are not responsible for any damage to a Product which is directly caused by us, our employee, or contractor.

**4.4** You and your employees, agents, and contractors shall not at any time, under any circumstance, directly or indirectly: (i) market, sell, resell, distribute, lease, or otherwise make available to any entity or commercially exploit any of our Products or services to or for any third party; (ii) allow any person or entity that offers or provides Products and/or services that are competitive to or with our Products and/or services to use or access any Product; (iii) tamper with any Product; or (iv) use any Product for residential or home use.

**5. TERM AND TERMINATION:** **5.1 Term:** This Agreement commences on the date Customer executes a Service Order and remains in effect until all of the services and Products as set forth in each Service Order have been provided, installed, and paid for by Customer. This Agreement shall also apply to any future Service Order executed by both parties. The initial term for each Service Order shall commence when executed by both parties and will remain in effect until the later of: (i) our completion of the services described in Service Order; or (ii) twelve (12) months. At the expiration of the initial term, each Service Order shall only renew upon the written consent of both parties.

**5.2 Termination.** Either party may terminate this Agreement and/or any Service Order if the other party (a) is in material breach of this Agreement and/or such Service Order and such breach is not cured within thirty (30) days after the breaching party's receipt of written notice thereof, or (b) becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, or if a receiver is appointed over such party's assets. Notwithstanding any other provision of this Agreement or any Service Order, we have the right to suspend provision of any service and/or any Product, and terminate this Agreement and any Service Order for your material breach, immediately upon written notice if any amount owed by you and not disputed in good faith within the enumerated payment deadline is delinquent for more than five (5) business days from the Payment Due Date (as defined below). If you terminate this Agreement or any Service Order for our uncured breach in accordance with this Section, you shall be entitled to a pro-rated refund of all pre-paid amounts for any services and Products paid for but not provided by us beyond the effective date of termination. If (i) this Agreement and/or any Service Order is terminated by you prior to our completion of the provision of the services and/or Products as set forth in each Service Order then in effect and such termination is not due to our uncured breach, or (ii) we terminate this Agreement and/or any Service Order due to your uncured breach pursuant to this Section, and you have not already paid in advance the applicable fees and charges for all of the services and Products listed in each Service Order, you shall pay to us an early termination charge, which you agree is reasonable and not a penalty, equal to the total unpaid remaining balance of the amount owed under each Service Order which would otherwise be due as if we provided all of the services and Products under each such Service Order then in effect including all applicable taxes and fees. For avoidance of doubt, you agree and acknowledge that the foregoing early termination charge shall apply even if you terminate the Agreement and/or any Service Order prior to commencement of our provision of any service and/or Product under any terminated Service Order. The parties agree that the precise damages resulting from an early termination by you or termination by us due to your uncured breach are difficult to ascertain and the early termination charge set forth in this Section is a reasonable estimate of anticipated actual damages and not a

penalty. The early termination charge shall be due and payable by you within ten (10) days of the effective date of termination.

**5.3 Effect of Termination.** Upon termination or expiration of this Agreement or any Service Order for any reason: (i) we shall have the right to enter the applicable premises during normal business hours to retrieve any tools, items, equipment, materials, documents, and Products (unless such Products are already paid for by you) which were being stored by us and/or our subcontractor at your premises; and (ii) except as permitted under Section 10.4, upon written request, each party will promptly return the other party's Confidential Information or destroy such Confidential Information in all forms and types of media, and provide written confirmation of such destruction.

**6. FEES AND EXPENSES:** **6.1 Fees.** All fees are set forth in each Service Order executed by both parties and shall be paid by you in United States dollars. Unless otherwise agreed to in a Service Order signed by both parties, fifty percent (50%) of the total amount owed as set forth in each Service Order shall be paid by you within fifteen (15) days of the invoice date. Unless otherwise agreed to in a Service Order signed by both parties, the remaining fifty percent (50%) balance as set forth in the Service Order shall be paid by you within fifteen (15) days of our completion of the provision of the Products and services at the location designated in the Service Order. Each payment deadline date as described in this Section is referred to as a "Payment Due Date". Unpaid invoices are subject to a late payment charge of 1.5% per month on any outstanding balance or the maximum permitted by law, whichever is lower, plus all reasonable expenses and fees of collection including, without limitation, any attorney's fees and expenses we incur. Notwithstanding the cure period set forth in 5.2 above, and in addition to any other rights and remedies (including the termination rights set forth in this Agreement), if you are delinquent in paying any invoice in a timely manner, we have the right to suspend provision of all Products and services without liability to us until such invoice is paid in full, withhold future sale and/or installation of any Product, declare your performance to be in breach and terminate any Service Order, repossess any Product for which payment has not been made, and/or deliver future Products and/or services on a payment-in-advance basis. Except as otherwise expressly set forth in this Agreement, all fees are non-refundable and all Service Orders are non-cancelable. We may, in our sole discretion at any time, modify or withdraw credit terms including, but not limited to, requiring advance payment, guarantees, or any other form of security. The above remedies are in addition to all other remedies available at law or in equity.

**6.2 Additional Fees and Taxes.** You further agree to pay a ten percent (10%) surcharge of the entire amount owed in the applicable Service Order if any of the following arises: (i) you fail to comply with any of your obligations and/or responsibilities as set forth in Section 4.1 above including, without limitation, you fail to obtain any required approval and/or you fail to prepare the worksite according to our commercially reasonable needs and any specifications we provide to you or delay our ability to access the worksite to provide any Product and/or service as set forth in the Service Order; and/or (ii) after we commence installing any Product or providing any service at a designated site, you subsequently delay or postpone our ability to complete our installation of any Product and/or provide any service. Our fees are exclusive of any Special Service Call as described in Section 8.3 below and all shipping costs. You are also required to pay any applicable sales, use, GST, value-added, withholding, import, or similar taxes, surcharges, or levies, whether domestic or foreign, other than taxes based on our income. If you are exempt from paying any applicable taxes, you shall promptly provide written evidence reasonably satisfactory to us of your tax exempt status, and we will not include such taxes in your invoices.

**6.3 Billing Disputes.** Any billing dispute must be in writing and submitted within ten (10) business days of the invoice date and include a reasonably

detailed statement describing the nature and amount of the disputed charge(s) as well as the reason(s) why a credit or refund is being requested. You shall cooperate fully with us to promptly address and attempt to resolve any disputed charge(s). If you fail to provide written notice of a billing dispute within the enumerated ten (10) business day deadline, the charges and invoice will be deemed to be correct and binding on you. Irrespective of the foregoing, you shall pay in a timely manner the undisputed portion of any disputed invoice.

**7. LIMITATION OF LIABILITY. 7.1 WE SHALL NOT HAVE ANY LIABILITY BEYOND THE SPECIFIC REMEDIES SET FORTH IN THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR ANY DELAY IN RECEIVING OR PROVIDING ANY PRODUCT AND/OR SERVICE, ANY DEFECTIVE PRODUCT OR PRODUCT NOT BEING AVAILABLE FOR USE, AND ANY DEFICIENT SERVICE, EXCEPT FOR ANY AMOUNTS OWED TO US BY YOU AS SET FORTH IN THIS AGREEMENT AND/OR ANY SERVICE ORDER, A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, AND ANY DAMAGES ARISING FROM DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY, ITS SUPPLIERS, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND/OR CONTRACTORS SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CAUSE OF ACTION, DAMAGE, OR CLAIM RELATED TO OR ARISING OUT OF THIS AGREEMENT OR ANY SERVICE ORDER IN ANY MANNER, WHETHER IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR UNDER ANY OTHER THEORY OF LIABILITY, IN EXCESS OF THE LESSER OF: (1) FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) OR (2) THE TOTAL FEES AND CHARGES ACTUALLY PAID BY YOU TO US FOR ALL PRODUCTS AND SERVICES UNDER A SPECIFIC SERVICE ORDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OR ACT GIVING RISE TO THE CAUSE OF ACTION. THE FOREGOING LIMITATION OF LIABILITY FOR DIRECT DAMAGES APPLIES ON AN AGGREGATE, NOT PER OCCURRENCE, BASIS.**

**7.2 NOTWITHSTANDING ANY OTHER SECTION OR PROVISION OF THIS AGREEMENT OR ANY SERVICE ORDER, EXCEPT FOR ANY AMOUNTS OWED TO US BY YOU AS SET FORTH IN THIS AGREEMENT AND/OR ANY SERVICE ORDER AND A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, RELIANCE, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND HOWEVER CAUSED AND WHETHER IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR UNDER ANY OTHER THEORY OF LIABILITY. THIS LIMITATION OF LIABILITY APPLIES IRRESPECTIVE OF WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITY INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, REVENUE, GOODWILL, ANTICIPATED SAVINGS, AND/OR PROFITS OR THE COST OF PURCHASING ANY REPLACEMENT AND/OR SUBSTITUTE PRODUCTS AND/OR SERVICES, LOSS OF USE OF OR ACCESS TO ANY PREMISES, OR FOR ANY OTHER COST, DAMAGE, AND/OR LOSS OF A SIMILAR TYPE.**

**7.3 Commencement of Actions; Mitigation of Damages.** No party may commence any action under this Agreement or any Service Order more than one (1) year after the occurrence of the breach or event giving rise to the claim for damages. The claiming party shall use commercially reasonable efforts to mitigate and avoid any damages.

**8. WARRANTIES AND DISCLAIMER: 8.1 Mutual Representations and Warranties.** Each party represents and warrants to the other party as follows: (a) it as well as the person signing on its behalf have full authority to enter into this Agreement and any Service Order and to carry out its obligations hereunder; and (b) it shall comply with all applicable Laws including, without limitation, all laws, regulations, and industry norms pertaining to bribery, corruption, and prohibited business practices; (c) it has neither offered nor given and will not offer or give any employee, agent, or representative of the other party any gratuity (in the form of entertainment, gift, cash, or any other item of value or consideration of any kind) as an inducement or reward with a view toward securing any business from such other party with respect to the transaction of business between parties; and (d) it has not engaged in any unethical practice to induce anyone to influence any decision in its favor with respect to any business transaction between the parties.

**8.2 Warranty Period.** Except as otherwise stated in this Agreement, we warrant that, to the best of our information and belief at time of Product installation and provision of services, as applicable, and for a period of ninety (90) days from the date of Product installation and/or provision of services, as applicable ("Warranty Period"), the Product will be free from material defect and suitable for its intended purpose at the time of installation and the services are performed in accordance with applicable industry standards. You must promptly notify us in writing during the Warranty Period of any defect in any Product and/or services. Our only obligation and your sole and exclusive remedy under this warranty is to pass through to you the applicable unexpired manufacturer's warranty with respect to any defective Product and to re-perform any deficient services.

**8.3 Service Calls.** Subject to Sections 8.2 and 8.4(b), there will be no charge for a service call for us to repair or replace any defective Product installed by us and/or re-perform any deficient services, as applicable, during the Warranty Period. Any other service call (referred to as a "Special Service Call") will be charged at our then-current site visit and service fee rate then in effect at the time plus any cost for replacement of any Product not covered under the applicable manufacturer's warranty. A Special Service Call includes, without limitation, any repair or replacement of any Product and/or service after the first ninety (90) days of the Warranty Period, relocation or reinstallation of any equipment and/or Product, any service needed as a result of any damage or adjustment to any Product or resulting from misuse, abuse, and/or failure to follow operating instructions, any use of non-approved replacement parts or components, corrective work performed because of any service not performed by us, and any service call where the problem is not due to any defective Product or service provided by us (e.g., power outage, etc.).

**8.4 Exclusions.** (a) We will not be liable or responsible under this warranty and the warranties set forth in this Section 8 shall not apply if the Product and/or any service provided by us has been exposed or subjected to: (i) any maintenance, alteration, modification, repair, installation, handling, packaging, and/or transportation by anyone other than us or our designated contractor; (ii) any operation or use that is improper or otherwise not in compliance with our instructions or the manufacturer's instructions; (iii) any accident, foreign object damage, abuse, misuse, neglect, or negligence after installation; (iv) damage caused by failure of any product or service not provided by us; (v) use of any counterfeit or replacement part that is not provided by us; (vi) an unsuitable operating environment; (vii) unusual and/or frequent power outage(s) or power surge(s); and/or (viii) any force majeure event as set forth in Section 11 below and/or outside of our control.

**(b) YOU ACKNOWLEDGE AND AGREE THAT WE ARE NOT THE MANUFACTURER OF ANY PRODUCT AND ANY CLAIM FOR ANY DEFECTIVE PRODUCT MUST BE MADE BY YOU DIRECTLY AGAINST THE PRODUCT MANUFACTURER.**

**8.5 Additional Warranties.** We further warrant as follows with respect to each Product we sell to and install for you: (i) the title to any Product conveyed under this Agreement or any Service Order will be good working order and its transfer rightful; (ii) subject to any lien, security interest, or any other encumbrance applicable to Customer, the Product will be delivered by us free from any security interest or other lien or encumbrance; and (iii) we will provide the services in a workmanlike manner in accordance with generally accepted industry standards.

**8.6. Warranty Claim.** To make a valid warranty claim, you must promptly submit a written claim to us at the following email address: info@energywarellc.com.

**8.7. Exclusive Product and Service Warranty Remedy.** You agree that your sole and exclusive remedy for breach by us of any Product and/or service warranty provided herein will be as follows: (i) with respect to any defective Product, during the Warranty Period, we will, at our sole option, either pass through to you the applicable unexpired manufacturer's warranty for the affected Product(s) or refund the actual, net purchase price paid by you for the defective Product(s); and (ii) with respect to any deficient service, during the Warranty Period, we will re-perform any deficient service. Subject to applicable Law, this Product and service warranty sets forth the sole and exclusive remedy available to you against us with respect to any defective Product(s) and/or service, and is the complete agreement between the parties with respect to such subject matter and any defective Product and/or service. The foregoing warranty is not assignable or transferable, by operation of law or otherwise.

**8.8 WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 8.1, 8.2, 8.5 AND 8.7, WE DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE MAXIMUM EXTENT PERMITTED BY LAW. WE SHALL NOT BE RESPONSIBLE FOR LIMITATIONS, DELAYS, AND/OR ANY OTHER PROBLEMS INHERENT IN THE USE OF ELECTRIC LIGHTING AND/OR SOLAR POWER INCLUDING, WITHOUT LIMITATION, ANY POWER OUTAGE OR POWER SURGE. WE DO NOT WARRANT THAT ANY PRODUCT AND/OR SERVICE WILL OPERATE UNINTERRUPTED OR ERROR FREE AND ARE NOT RESPONSIBLE FOR ANY MANUFACTURER'S WARRANTY AND/OR HOW ANY MANUFACTURER HANDLES ANY WARRANTY CLAIM. WE DO NOT GUARANTEE ANY COST SAVINGS AND/OR EXPENSE REDUCTIONS IN ANY MANNER.** All of our warranties are solely to and for the benefit of you and for no other entity or third party.

**9. INDEMNIFICATION:** At your expense, you will defend, indemnify, and hold us, and our officers, employees, directors, shareholders, Affiliates, contractors, agents, successors, and assigns (hereinafter the "Indemnified Parties"), harmless from and against any and all claims, actions, suits, proceedings, demands, Damages, and liabilities of whatever nature, and all costs and expenses, including, without limitation, the Indemnified Parties' reasonable attorneys' fees and expenses, relating to or in any way arising out of: (i) any negligent or wrongful act committed by you and/or any of your employees, contractors, or agents, including, without limitation, any abuse or misuse of any Product or failure to adhere to any applicable operating instructions; (ii) your failure to obtain in a timely manner any and all building permits, licenses, and/or all other approval(s) including, without limitation, as required by contract and/or applicable Laws for the provision of any services provided by us and/or provision, installation, operation, and use of each Product; and/or (iii) the negligence, willful misconduct, or violation of Law by you, your

employee, agent, and/or contractor (excluding us); provided that: (1) we must give you timely written notice of the assertion or pendency of any such claim, (2) you will have the right to control the defense of any such claim, and (3) you will have the right of approval prior to any settlement or compromise of any such claim.

**10. CONFIDENTIALITY: 10.1 Confidentiality Obligation.** Each party shall use the other party's Confidential Information only for the purposes of this Agreement and/or any Service Order. Each party shall maintain the confidentiality of the other party's Confidential Information in the same manner in which it protects its own Confidential Information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized access to, disclosure, or use of the other party's Confidential Information. We can, however, disclose your Confidential Information to our employees, agents, and contractors who need to know the information in order to perform any obligation under this Agreement and/or any Service Order and have agreed to be bound by a confidentiality obligation not less protective than that contained in this Agreement. The disclosing party's Confidential Information will be used only as needed for performance of the receiving party's obligations under this Agreement and/or any Service Order and for no other reason.

**10.2 Exclusions.** The confidentiality provisions of this Agreement do not apply to information that is or becomes generally available or known to the public through no act or omission of the receiving party; was received lawfully from a third party through no breach of any obligation of confidentiality owed to the disclosing party; or created by a party independently of its access to or use of the other party's Confidential Information.

**10.3 Enforcement.** The parties acknowledge and agree that, due to the unique nature of the disclosing party's Confidential Information, any breach of this Agreement could cause irreparable harm to the disclosing party. Accordingly, the disclosing party shall have the right to seek to enforce this Agreement and any of its provisions by injunction, without prejudice to any other legal or equitable rights or remedies the disclosing party may have.

**10.4 Retention.** Notwithstanding anything to the contrary contained herein, (i) the receiving party will be entitled to retain copies of Confidential Information for internal record keeping purposes and compliance with any applicable regulation and/or industry standard or for the purposes of defending or maintaining litigation and (ii) the receiving party will not be obligated to erase Confidential Information that is contained in its archived data storage.

**11. FORCE MAJEURE:** Neither party shall be liable to the other party for any failure or delay in performance (except for failure to meet payment obligations) by any circumstance or unavoidable cause beyond its control including, without limitation, acts of God, fire, flood, strikes or labor difficulties, transportation or shipping delay, epidemic or pandemic, natural disaster, embargoes, accidents, loss or damage of any Product in transit, if reasonably expected to cause injury to people or property, shortages or inability to obtain materials or components, any governmental action, directive, or order, and/or electricity power outage, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party and uses reasonable efforts to overcome such circumstances. A force majeure event does not include economic hardship.

**12. GOVERNING LAW AND DISPUTE RESOLUTION: 12.1** This Agreement and any claim, controversy, right, obligation, or dispute arising under or related to this Agreement and/or any Service Order, the relationship of the parties, and the interpretation and enforcement of the rights, performance obligations, and duties of the parties shall be governed

by and construed in accordance with the laws of the State of Florida, without regard to conflicts of laws principles.

**12.2** If any controversy, dispute, or claim arises out of or relating to this Agreement and/or any Service Order, or the breach thereof, the aggrieved party shall promptly notify the other party in writing of the dispute or claim. If the parties fail to resolve the dispute or claim within ten (10) business days after receipt of such written notice, each party shall, within five (5) business days thereafter, escalate such dispute to a member of its executive management team who shall conduct a meeting or call with five (5) business days of any such escalation.

**12.3 Mediation.** Except for any unpaid fees as set forth in any Service Order, if a settlement is not achieved within five (5) business days after a meeting or call between executive management representatives, then the parties agree to attempt to resolve the dispute through mediation by submitting the dispute to mediation in accordance with the then current rules for mediation promulgated by the American Arbitration Association ("AAA"), including the Optional Rules for Emergency Measures of Protections which provide for injunctive relief and measures for the protection or conservation of property and disposition of perishable goods. The mediation proceedings shall be held in Ft. Lauderdale, Florida, and each party shall bear its own expenses and an equal share of the expenses of the mediator and the fees of AAA. Such mediation will be held within thirty (30) business days of submission to AAA.

**12.4 Arbitration.** If the dispute, controversy, and/or claim is not resolved by mediation, the dispute involves any unpaid fees, or the parties agree in writing to waive mediation, then the parties agree to resolve the dispute, controversy, and/or claim by binding arbitration before a panel of one (1) arbitrator administered in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect. This provision shall not limit either party's right to seek interim judicial relief, such as an injunction or similar action. Any such arbitration shall proceed in accordance with and be governed by the laws of the State of Florida and the exclusive venue of any such arbitration proceeding shall be in the Ft. Lauderdale, Florida metropolitan area. Within ten calendar days after the arbitration demand is served upon a party, the parties must jointly select an arbitrator with at least five years of experience with arbitrating commercial contract disputes. If the parties do not agree on an arbitrator within ten calendar days, a party may petition the AAA in order to appoint an arbitrator. The arbitrator shall allow for a limited scope of discovery as is appropriate for the purposes of arbitration in accomplishing fair, speedy, and cost-effective resolution of disputes. In allowing limited discovery, the arbitrator shall be governed by the Federal Rules of Civil Procedure then in effect in defining the scope and direction of such discovery and the admissibility of evidence. The arbitrator shall be required to make written findings of fact and render a written opinion of law. Any award of damages pursuant to such arbitration shall be included in a written decision signed by the arbitrator which shall state the reasons upon which the award was based, including all the elements involved in the calculation of any award of damages. The arbitrator's decision and award shall be final and binding on both parties, and judgment thereon may be entered in any court having jurisdiction over the party against which enforcement is sought; provided that any such award rendered by the arbitrator shall be strictly in conformance to and in accordance with the terms and conditions of this Agreement including, without limitation, the limitation of liability provisions contained herein. Subject to Section 7 above, the arbitrator shall neither be empowered to award damages in excess of direct compensatory damages nor authorized to award any special, exemplary, indirect, punitive, incidental, or consequential damages. In the arbitrator's discretion, the arbitrator may award attorneys' fees and related expenses (and the amount of such fees and expenses) to the prevailing party. Other than those matters involving injunctive relief as a remedy or any action necessary to enforce the award of the arbitrator, the parties agree that the provisions of Section 12 are a complete defense

to any suit, action, or other proceeding instituted in any court or before any administrative tribunal with respect to any dispute, claim, or controversy arising under or relating to this Agreement and/or any Service Order. The parties undertake and agree that all arbitration proceedings conducted under this Section 12.4 shall be kept strictly confidential, and all information, documentation, and materials in whatever form disclosed in the course of such arbitration proceeding shall be used solely and exclusively for the purpose of such proceeding. **In agreeing to the mediation and arbitration process described in this Section 12, the parties agree and acknowledge that they are waiving any right to a jury trial in connection with any claim, controversy, dispute, action, or litigation in any way arising out of or related to this Agreement and/or any Service Order.**

**13. ENFORCEABILITY:** If any provision of this Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable, or shall be severed from this Agreement, and all other provisions of this Agreement shall remain in full force and effect.

**14. ENTIRE AGREEMENT:** This Agreement, including any Service Order executed by the parties and any amendments thereto signed by both parties, constitutes the entire agreement between the parties with respect to the subject matter and there are no representations, understandings, or agreements that are not fully expressed. This Agreement supersedes and merges all prior statements, proposals, quotes, understandings, and all other agreements, whether verbal and/or written, between the parties relating to the subject matter of this Agreement and/or any Service Order. The terms of this Agreement shall control over and supersede any different or additional terms of any purchase order or any other of your ordering documents, and no standard or preprinted terms or conditions contained in any purchase order, acknowledgement, invoice, vendor allowance form, or any other form or counteroffer or any other of your ordering documents shall apply to the services and/or Products or equipment provided by us. We will not be deemed to have waived any provision of this Agreement or any Service Order if we fail to object to any contract provision submitted by you. In addition, any terms and conditions on your internet site to which agreement by us is deemed or required in any manner, whether through an online electronic agreement, site use, or otherwise, will be null and void and of no legal effect on us. Headings contained in this Agreement are inserted for convenience of reference only and shall not in any way define or affect the meaning or interpretation of any provision of this Agreement or any Service Order. This Agreement and each Service Order shall be binding on and inure to the benefit of each party and its successors and permitted assigns. The terms and conditions of the main body of the Agreement shall govern any conflict or inconsistency with the terms of any Service Order.

**15. GENERAL TERMS: 15.1 Independent Contractors.** The relationship between the parties is that of independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the parties. Neither party will have the power to bind the other party or incur obligations on the other party's behalf without the other party's prior written consent.

**15.2 Employee Solicitation.** While this Agreement is in effect and for one (1) year thereafter, you shall not, directly or indirectly, solicit for employment or engage (whether as an employee, independent contractor, or consultant) any of our employees or subcontractors who is or was involved in providing any Product or service to you under this Agreement or any Service Order.

**15.3 Modifications and Waiver.** No modification of, or amendment or addition to, this Agreement or any Service Order is valid or binding unless set forth in writing and fully executed by both parties. Any waiver of any

right or remedy under this Agreement or any Service Order must be in writing and signed by each party. No delay in exercising any right, remedy, obligation shall operate as a waiver of such right, remedy, obligation or any other right, remedy, or obligation. A waiver on one occasion shall not be construed as a waiver of any right, remedy, or obligation on any future occasion.

**15.4 Assignment.** This Agreement and any rights or obligations hereunder, shall not be assigned or otherwise transferred by either party without the prior written consent of the non-assigning party except that either party may assign or transfer this Agreement and/or any Service Order upon a change of control of a party, a sale of all or substantially all of its assets, or by operation of law by providing the non-assigning party with written notice thereof provided that the assignee agrees in writing to be bound by all terms and conditions of this Agreement and any Service Order.

**15.5 Publicity.** Notwithstanding any other provision of this Agreement, Customer grants us the right to issue a press release or any other public statement announcing that Customer has signed an agreement for the purchase and/or use of our products and services. Customer further agrees that we may publicly disclose Customer as a customer of EnergyWare, LLC and may also include Customer's name and logo on a list of customers on our website and in our marketing materials.

**15.6 Survival.** Sections 1, 2, and 4 through 17 shall survive the termination or expiration of this Agreement and/or any Service Order for any reason. Furthermore, any provision of the Agreement including any Service Order which would, by its nature, be deemed to survive termination or expiration of this Agreement (whether or not so expressly stated), will survive the termination or expiration of this Agreement and any Service Order for any reason.

**15.7 Interpretation of Agreement; English Language.** This Agreement as well as any Service Order will be construed and interpreted fairly, in

accordance with the plain meaning of its terms, and there will be no presumption or inference against the party drafting this Agreement or any Service Order in construing or interpreting any of the provisions. English shall be the governing language of this Agreement and any Service Order and any translation of this Agreement and/or any Service Order into any other language shall be secondary to the original English version.

**15.8 Subcontractors.** We may use the services of subcontractors for the provision of any services and/or Product at any time under this Agreement and any Service Order, provided that we remain responsible for (i) compliance by any such subcontractor with the terms of this Agreement and (ii) for our overall performance as required under this Agreement.

**16. WRITTEN NOTICE.** Unless otherwise provided in this Agreement, all notices (except for routine business communications, e.g., delivery or installation dates) shall be in writing and sent by hand delivery, via certified or registered mail, return receipt requested, or by overnight courier service. Notices to us shall be addressed to the Chief Executive Officer at our principal place of business set forth above in the first paragraph of this Agreement. Notices to you shall be addressed to your signatory on your Service Order at your principal place of business set forth in any executed Service Order.

**17. COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement and any Service Order may be executed and delivered in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. This Agreement and any Service Order may be executed and delivered by facsimile, emailed PDF, or electronic signatures, and the parties agree that such facsimile/PDF/electronic execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such facsimile/PDF/electronic signatures as evidence of the execution and delivery of this Agreement and any Service Order by all parties to the same extent that an original signature could be used.