



AGREEMENT OF CONFIDENTIALITY

This Agreement, made effective as of the Date day of Month, Year, by and between **CONSUMERS ENERGY COMPANY**, a Michigan corporation, One Energy Plaza, Jackson, Michigan 49201, hereinafter called **CONSUMERS**, and Company Name, a _____, _____ whom is an Approved Energy Optimization Service Company in the state of Michigan hereinafter called **COMPANY**.

In consideration of the mutual promises contained herein, **CONSUMERS** and **COMPANY** agree as follows:

1. Description of Confidential Information. This Agreement shall apply to customer electricity usage, peak demand, energy efficiency projects, customer operations, financial information, marketing plans/strategies and other business data and information clearly marked "Confidential" (hereinafter called "Confidential Information") that the parties must have access to in order to design, implement, and administer Self-directed Energy Optimization plans.
2. Protection of Confidential Information. **COMPANY** and **CONSUMERS** agree (a) to disclose such Confidential Information only to their employees, agents, contractors and consultants who have a need to know such Confidential Information, (b) to use such Confidential Information only for the purpose stated above and (c) to exercise all due care in safeguarding the Confidential Information against loss, theft or other inadvertent disclosure and to generally take all other steps to ensure maintenance of said confidentiality. **COMPANY** and **CONSUMERS** shall require any such agents, contractors and consultants who will either assist them or participate in discussions on their behalf to execute a confidentiality agreement with terms similar to this Agreement.
3. Exclusions from Protection of Confidential Information. The obligations under Paragraph 2 shall not apply to Confidential Information which is already known to the receiving party at the time that it is disclosed to such party, or which: (a) becomes publicly known through no wrongful act of the receiving party; (b) is rightfully received from a third party without restriction on disclosure and without breach of this Agreement; (c) is independently developed by the receiving party; (d) is approved for release by written authorization of the disclosing party; (e) has been furnished by the disclosing party to a third party without similar restriction on disclosure; or (f) is required to be disclosed pursuant to law, governmental agency requirement or court order, so long as the party required to disclose the information provides the other party with prior written notice of any required disclosure pursuant to such law, governmental agency requirement or court order.
4. Term. The parties may make disclosures under this Agreement for the longer of one (1) year or the term of the **COMPANY'S** self-directed plans with **CONSUMERS**, ("the Term"). This Agreement may be terminated at any time during the Term by mutual agreement of the parties or upon sixty (60) days' written notice by a party to the other party; provided that early termination of this Agreement will not relieve a party of its obligations under this Agreement with respect to Confidential Information exchanged prior to the effective date of termination. All of the obligations undertaken by each party as a recipient of Confidential Information hereunder will survive and continue after any termination of this Agreement.
5. Ownership. **COMPANY** and **CONSUMERS** recognize and agree that nothing contained in this Agreement shall be construed as granting any intellectual property rights, by license or otherwise, to any Confidential Information disclosed pursuant to this Agreement.
6. Obligations of the Parties upon Termination or Expiration of this Agreement. At such time as **COMPANY** and **CONSUMERS** no longer require the use of the Confidential Information or upon the expiration or termination of this Agreement, the parties shall return all such Confidential Information and all copies thereof to their respective owners.

7. Governing Law and Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. Whenever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Agreement is intended for the benefit of the parties hereto and does not grant any rights to third parties unless otherwise specifically stated herein. Captions are for the ease of reference in this Agreement only and should not be considered in the construction of this Agreement. Failure by a party to enforce or exercise any provision, right or option contained in this Agreement will not be construed as a present or future waiver of such provision, right or option.

8. Irreparable Harm. The parties agree that they would be irreparably injured by a breach of the provisions of this Agreement and that the injured party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies in the event of a breach but shall be in addition to all other remedies at law or equity. No failure or delay by a party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

9. Relationship between the parties. Nothing in this Agreement shall grant to either party the right to make commitments of any kind for or on behalf of the other party without the prior written consent of the other party. This Agreement is not intended to constitute, create, give effect, or otherwise recognize a joint venture, partnership or formal business entity of any kind, and the rights and obligations of the parties shall be limited to those expressly set forth herein.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and shall supersede all previous communications, understandings and representations, whether oral or written. Amendments thereto shall not be valid unless in writing and signed by both parties. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. References to **CONSUMERS** and **COMPANY** shall be deemed to include their affiliates, if any.

11. Counterparts and Electronic Documents. This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

IN WITNESS WHEREOF, this Agreement has been executed by duly authorized representatives of the parties as of the day and year first above written.

CONSUMERS ENERGY COMPANY _____

By: _____

By _____

Title: _____

Title: _____