

CONSULTING TERMS AND CONDITIONS

Following are the Terms and Conditions under which EnerCircle IP Ltd (Company) performs Consulting Services for Customer.

Services. Company agrees to perform the Services set forth in the accompanying engagement letter. Customer agrees to pay all amounts due for the Services in accordance with the engagement letter. If Customer requests changes in the scope of Services, Company shall be entitled to additional compensation. In the event Customer cancels an order for Services, Customer shall pay within thirty (30) days thereafter all costs and expenses incurred by Company (including labor and materials) prior to receipt of notice of cancellation. The Services provided by Company cannot be cancelled or terminated once Company has completed the Services.

Payment. Payment terms are net thirty (30) days from date of invoice unless otherwise agreed to in writing by Company. Company may charge interest on all overdue amounts. Prices listed do not include taxes, import/export duties or fees, or other similar taxes or duties assessed in connection with the provision of the Services, and Customer agrees to pay all such assessments. Taxes based upon Company's income shall be the sole responsibility of Company.

Default. Should either party default under these Terms and Conditions, the other party shall give the defaulting party ten (10) days written notice to enable the defaulting party to cure such default. If the defaulting party fails to cure such default within said period, the other party shall have the right to terminate this agreement and pursue all available remedies.

Protection of Intellectual Property. Company shall solely own all rights to Intellectual Property (inventions, patents, designs, copyrights and trade secrets) created by Company during the course of providing Consulting Services hereunder. Customer shall own exclusive rights to any Deliverables (such as data and reports) called for by the accompanying engagement letter once Customer has paid the fees for the Services. Each party agrees to protect the confidential information of the other that may be required to be disclosed under this agreement.

Patent and Copyright Indemnity. Company shall at its option defend or settle any claim brought against Customer alleging that a Service performed by Company in accordance with the accompanying engagement letter constitutes a direct infringement of a patent or copyright. Customer shall give prompt notice of any such claim to Company and shall give Company assistance in such defense. Company shall have no liability or obligation to Customer for claims of infringement where the claim is based on Company's compliance with Customer's specifications, or any alteration of the Services at the request of Customer, or Company's possession or use of Customer supplied proprietary information or data.

Limited Warranty. Company shall perform the Services in a professionally competent and workmanlike manner. Company will correct any errors or omissions regarding the Services that are brought to its attention within three (3) months after the Services are completed. Such corrections will be made at no additional charge to Customer. **EXCEPT FOR THE FOREGOING WARRANTY, COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH ITS PERFORMANCE OF THE SERVICES OR ANY DELIVERABLES HEREUNDER, OR THE USE OF THE SERVICES OR DELIVERABLES BY CUSTOMER. COMPANY DOES NOT GUARANTEE RESULTS. CUSTOMER HAS FULL RESPONSIBILITY FOR ITS USE OF THE DELIVERABLES AND ANY INTERPRETATIONS OR RECOMMENDATIONS PROVIDED BY COMPANY HEREUNDER. COMPANY DOES NOT WARRANT THE ACCURACY, CORRECTNESS OR COMPLETENESS OF ANY INTERPRETATION OR RECOMMENDATION.**

Limitation of Liability. Company's liability for any breach of the Agreement with Customer, or for personal injury (including death) or property damage arising from the performance of the Services, shall not exceed the aggregate amount paid by Customer for the Services. **COMPANY SHALL HAVE NO LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY ORDINARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES, INCLUDING ANY LOSSES OR DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFIT, LOSS OF BUSINESS WHETHER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES OR CUSTOMER'S USE OF THE DELIVERABLES OR ANY INTERPRETATIONS OR RECOMMENDATIONS PROVIDED BY COMPANY.**

Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from events or circumstances beyond the control of such party, such as acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental acts or regulations, fires, communication line failures, power failures, and earthquakes. Force Majeure cannot be used to excuse or delay any payment obligation.

Arbitration. Any controversy or claim arising out of or relating to this Agreement, the Services covered in the Agreement with Customer, or any breach thereof, shall be settled by arbitration to be held in the English language at a mutually agreeable location in accordance with the commercial arbitration Rules of the American Arbitration Association. The law of the state of Texas shall govern the construction and interpretation of this Agreement and the rights of the Parties hereunder. Any judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereover. Any award rendered by the Arbitrator(s) may include costs against either Party, but under no circumstances are the Arbitrator(s) authorized or empowered to award special, punitive or multiple damages against either Party.

Assignment. Neither Company nor Customer may assign this Agreement, except that either party may assign their rights and obligations under the Agreement to its successor in interest in the event of a merger or corporate reorganization.

Subcontracting. Company may at any time obtain the assistance of its affiliated companies in the performance of the Services. Company may subcontract any part of the Services to its selected sub-contractors upon consultation with Customer.

Independent Contractor. Company is an independent contractor and is not an employee, agent, partner or joint venturer of Customer.

Miscellaneous. This Agreement supersedes any previous agreements, whether verbal or written, relating to the Services. Any modification or amendment to this Agreement must be in writing and signed by the authorized representatives of Company and Customer.
