



Consumers Energy 2017 Large Commercial and Industrial Demand Response Program Customer Agreement

This Demand Response Program Customer Agreement (this "Agreement"), entered into on October 19, 2016 (the "Effective Date"), is made by and between the Muskegon County Board of Public Works, which represents Muskegon County Wastewater Management system located at 698 N Maple Island Rd, Muskegon, MI, 49442 ("Customer"), and Consumers Energy Company, located at One Energy Plaza, Jackson, MI 49201 ("Consumers Energy"). Customer and Consumers Energy are referred to herein collectively as the "Parties" and each individually as a "Party" to this Agreement.

1. **Term.** This Agreement shall commence on the Effective Date and continue until May 31, 2018.
2. **Program Description.** Participants in the Consumers Energy 2017 Demand Response Program ("Program") help reduce peak demand when energy use is the highest and maintain a ready supply of energy for Michigan. The Program is offered to Consumers Energy customers with an energy demand greater than 100 kilowatts. Participants will receive monetary incentives after the load control season is complete, and the incentives will vary based on actual energy reductions.
3. **Administration Solutions.** In connection with this Agreement, Consumers Energy has engaged EnerNOC, Inc. as a contractor ("Contractor") to manage the Program. Customer agrees to work with Contractor (i) to develop an appropriate energy curtailment plan for Customer's business; and (ii) to provide or cause to be provided by Consumers Energy access and use of contact, billing and energy usage data, and facility information concerning each Site Address (as defined below) ("Customer Data"). Contractor shall manage Customer's curtailable electrical capacity in the Program and upon notification by Contractor and acceptance by Customer, provide real-time support to Customer during demand response events ("Demand Response Events"); and enable data transfer, monitoring and reporting of meter data through the Contractor system ("System") and provide technical assistance, maintenance, repair and hosting of the System. In addition, as necessary, Contractor will coordinate with Consumers Energy to capture kilowatt-hour (kWh) pulses from Customer's primary utility meter to provide Customer near real-time, Internet-enabled power monitoring.
4. **System.** Contractor or Consumers Energy may equip one or more of Customer facility addresses (each a "Site Address") as identified on the Site Address Attachment attached hereto with the System, which includes site devices owned by Consumers Energy that can enable direct load management, power metering, data collection, near real-time data communication, and Internet-based reporting and analytics. 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' electricity consumption and Demand Response Event performance. Subsequent to the Effective Date, Site Address Attachment may be updated in writing from time to time by the Parties to reflect additional Site Addresses.
5. **Customer Support Requirements.**
 - a. **Representations and Warranties.** Customer holds all applicable licenses and/or permits pursuant to the Agreement that are required for the proper participation in the Program
 - b. **Demand Response Performance.** Customer has the intent and ability to generate and/or reduce electrical demand to achieve Accepted Capacity (as defined below) at each Site Address when notified by Contractor during Demand Response Events. Customer understands that the curtailable electrical capacity identified in the Site Address Attachment does not represent Accepted Capacity and is solely Contractor's and Customer's best estimate of performance and that Accepted Capacity may vary.
 - c. **Acceptance Testing.** At each Site Address where the site devices are installed, Customer agrees to collaborate with Contractor and Consumers Energy in a timely manner in testing, enabling and maintaining the System.

6. **Program Rules.** The terms of this Agreement reflect the current Program terms and conditions, which may be amended from time to time by Consumers Energy. The current terms are summarized below:

<i>Program Availability</i>	During the Program period of June 1 – September 30 (“Program Period”), Demand Response Events may be called between the hours of 11 am – 7 pm, excluding nationally recognized holidays (Fourth of July and Labor Day).
<i>Event Frequency and Duration</i>	Emergency Events – Up to five (5) events during the Program Period, each with a duration of four hours. Economic Events – Up to ten (10) events during the Program Period, each with a duration of four hours.
<i>Advanced Notification</i>	Emergency Events – Customer will receive at least a thirty (30) minute notice in advance of an Emergency Event. Economic Events – Customer will receive “day-ahead” notice of an Economic Event.
<i>Notification Audit</i>	Consumers Energy may call one (1), one-hour notification audit (“Notification Audit”) per Program Period to confirm Accepted Capacity. (as defined below)
<i>Economic Events</i>	Consumers Energy may, in its sole discretion, initiate certain economic Demand Response Events under the Program (“Economic Event(s)”). The dispatch notification will state the energy rate for the event. Such Economic Events shall have no impact on Delivered Capacity or Capacity Payments (each, as defined below).
<i>Emergency Events</i>	Consumers Energy may call certain emergency Demand Response Events under the Program in response to MISO grid operator reliability triggers (“Emergency Event(s)”).

Customer shall be considered enrolled in the Program and eligible to earn demand response payments as of the date indicated in the Program enrollment notification email sent by Contractor to Customer.

7. **Customer capacity.**

- a. **Accepted Capacity.** For purposes of this agreement, “Accepted Capacity” shall represent the best estimate of Customer’s performance (in kW) based on analysis of consumption data and pre-enrollment testing. Customer agrees that the Accepted Capacity may be adjusted by Contractor or Consumers Energy in the future to reflect actual performance; changes in facility operations, Program rules, or regulations; and/or other relevant information.
- b. **Delivered Capacity.** For purposes of this Agreement, “Delivered Capacity” shall be defined as the average difference between the measured energy demand (in kW) and baseline energy usage over each hourly interval in a Demand Response Event.

For Emergency Events, Delivered Capacity is capped at 120% of Accepted Capacity for each Demand Response Event hour. If Delivered Capacity is less than 70% of Accepted Capacity in a single Demand Response Event hour, then the Delivered Capacity for that Demand Response Event hour will equal zero (0) kW.

Consumers or Contractor may, at their sole discretion, remove minimum and maximum caps on a case-by-case basis. If there is more than one (1) Emergency Event hour during the Program Period, then Delivered Capacity for that Program Period will equal the average of the Delivered Capacity from each Emergency Event hour. If there are no Emergency Event hours during the Program Period, then Delivered Capacity for that Program Period will equal the Accepted Capacity, as confirmed in the Notification Audit.

For Economic Events, if Delivered Capacity is less than 100 kW in a single Demand Response Event hour, then the Delivered Capacity for that Demand Response Event hour will equal zero (0) kW.

8. **Payments to customer.**

- a. **Capacity Payments.** Consumers Energy will pay Customer a capacity rate of \$25/kW of Delivered Capacity per Program Period (“Capacity Rate”). In the event that Customer becomes eligible to participate in the Program after June 1, then the customer’s Capacity Rate shall be set as \$25/kW multiplied by the fraction of the days remaining in the Program Period after commencement of eligibility divided by the total days in the Program Period (122 days). Capacity payment levels (“Capacity Payments”) will be determined at the end of the Program Period, by multiplying the applicable Capacity Rate by the Customer’s Delivered Capacity for the Program Period.

- b. **Emergency Event Energy Payments.** In Program Periods when one or more Emergency Events are called, Consumers Energy will pay to Customer an Emergency Event energy payment for Customer participation during any Emergency Event equal to \$50/MWh multiplied by Delivered Capacity.
 - c. **Economic Event Energy Payments.** Consumers Energy will pay to Customer an Economic Event energy payment for Customer participation during any Economic Event equal to \$300/MWh multiplied by Delivered Capacity for each such event.
 - d. **Underperformance.** In no event shall Customer be penalized for underperformance or non-performance, other than to have future Accepted Capacity and/or payments reduced to reflect Delivered Capacity as described in Section 7(b) above.
9. **Payment Timing.** Consumers Energy shall make all payments associated with Customer's participation in the Program after the Program Period is over and the Delivered Capacity has been verified.
10. **Confidentiality.**
- a. **Nondisclosure to Third Parties.** In performing 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, contractors and agents (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: (w) 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; (x) any information concerning the business relationship between the Parties; and (y) Customer Data.
 - b. **Exclusions from Confidential Information.** Notwithstanding the obligations in Section 9(a) above, Confidential Information does not include an information that:
 - i. is or becomes generally known to the public without breach of any obligation owed to the disclosing Party;
 - ii. was known to the receiving Party prior to its disclosure by the disclosing Party without breach of any obligation owed to the disclosing Party;
 - iii. is received from a third party without the receiving party having any knowledge of any breach by such third party of any obligation owed to the disclosing Party; or
 - iv. was independently developed by the receiving Party without reference to or reliance upon the disclosing Party's Confidential Information.
11. **Limitation of Liability.** Except for breaches of confidentiality, Consumers Energy's and its contractors' and subcontractors' liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages under the Agreement shall not exceed \$100,000 or the total amounts paid to Customer under the Agreement, whichever is less. 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 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.
12. **Additional Terms.**
- a. Customer also agrees, with respect to Contractor's management of the System, it:

- (i) hereby releases Contractor from any obligations with respect to monies owed Customer in connection with its participation in the Program and further agrees to defend and indemnify Contractor, its affiliates, directors, employees and agents from any and all claims that arise or may arise out of the Agreement;
- (ii) receives a limited, revocable, non-transferrable and non-exclusive right to use and access during the Term the System and shall use the System solely for its internal use subject to the terms of the Agreement and not for the benefit of any third party. Except as expressly permitted in the Agreement, Customer agrees that it shall not receive any right, title or interest in, or any license or right to use or access, the System or any patent, copyright, trade secret, trademark or other intellectual property rights therein by implication or otherwise;
- (iii) shall use the System in accordance with all applicable law;
- (iv) shall not and shall prohibit causing or permitting, the copying, reverse engineering, disassembly, decompilation or attempting to derive the source code of the System, or other intellectual property of Contractor or creation of any derivative work thereof;
- (v) expressly disclaims any passing of title to the System, any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos and/or any other intellectual property of Contractor to Customer;
- (vi) disclaims any and all direct warranties, express or implied, or liabilities of Contractor to Customer for all damages, whether direct or indirect, incidental or consequential, arising from the use of the System or participation in the Program;
- (vii) disclaims any liability of Contractor for delays, limitations or other problems inherent in the use of the Internet to which the System may be subject;
- (viii) shall protect Contractor's Confidential Information as though Contractor and Customer are the Parties in Section 10 of the Agreement; and
- (ix) shall not delete, alter, cover, or distort any copyright or other proprietary notices or trademarks from the System and to use reasonable care to prevent the System and Contractor's intellectual property rights contained in the software from damage and unauthorized use.
- (x) authorizes Consumers Energy to share Customer Data collected by any equipment with Contractor for purposes of providing the System to Customer and Consumers Energy, and further authorizes Contractor to use, copy, store, modify and display Customer Data for purposes of providing the System to Consumers and Customer.

b. Miscellaneous. Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of Consumers Energy; 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 Consumers Energy with written notice promptly following the acquisition date. The Agreement, including all exhibits, attachments and SOWs, constitutes the entire agreement between Customer and Consumers Energy and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, this 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. This 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. Customer shall promptly notify Consumers Energy in writing of any changes occurring during the Term to the Customer address(es) set forth in this Agreement. The parties agree Contractor is a third party beneficiary to this Agreement.

c. Force Majeure. The Parties and Contractor 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.

d. Warranty Limitations. THE SYSTEM (AND ANY SOFTWARE, HARDWARE, OR OTHER COMPONENT THEREOF) ARE 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.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the Effective Date.

Consumers Energy



Signature

Andrew Brinkley 11/28/16

Name

Date

Muskegon County Board of Public Works



Signature

Ben Cross, Board Chair 11-10-16

Name

Date

**Site Address Attachment
Site Addresses**

Site Name	Site Address	Estimated Capacity (kW)
Muskegon County Wastewater Management	698 N Maple Island Rd Muskegon, MI, 49442 1000 0021 9921	1000