

USA - Terms and Conditions

These Terms and Conditions (“**Terms and Conditions**”) are an integral part of the EnerStar Solutions Inc. (“**EnerStar**”) Communications Customer Agreement or any other form of agreement between you and EnerStar relating to EnerStar’s provision of Starlink’s two-way satellite-based data service, on-site Wi-Fi service and any additional services and products that we provide (collectively, the “**Service**” or “**Services**”), and describes additional terms and conditions between EnerStar and the Customer that are a part of and incorporated by reference into EnerStar’s Communications Customer Agreement or any other form of agreement between you and EnerStar for our Services. The terms “**Agreement**” and “**Customer Agreement**” mean the Communications Customer Agreement, or any other form of agreement between you and EnerStar for our Services, which include these Terms and Conditions (which are incorporated into and form part of the Customer Agreement), and the Starlink Policies and Agreements, defined below.

For purposes of these Terms and Conditions, EnerStar may be referred to herein as “**EnerStar**”, “**Us**” or “**We**”, and Customer may be referred to herein as “**Customer**” or “**You**” or “**Your**”. In addition, EnerStar and Customer may be referred to herein individually as a “**Party**” or together as the “**Parties**”.

These Terms and Conditions may be physically or digitally attached as an appendix to a Customer Agreement, and are also available online via our [website](#). In the event of any inconsistency between a version of these Terms and Conditions attached to a Customer Agreement and the version on our website, the version on our website will govern to the extent of the inconsistency.

This version of the Terms and Conditions is applicable to our United States Customers. You can find EnerStar’s terms and conditions that are applicable to Canadian Customers, [here](#).

READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ENGAGING ENERSTAR TO PERFORM THE SERVICES OR MAKING ANY USE OF THE SERVICES. BY ENGAGING ENERSTAR TO PERFORM THE SERVICES OR BY MAKING ANY USE OF THE SERVICES, YOU AGREE AND CONSENT TO BE BOUND BY THESE TERMS AND CONDITIONS.

1. EnerStar ‘LEO’ Satellite Communication Service.

1.1 **Services.** EnerStar will provide to You Starlink’s two-way satellite-based data service, on-site Wi-Fi service and additional communication services and products (collectively, the “**Service**” or “**Services**”). EnerStar will provide You with the service package that You selected and which are set forth on the Customer Agreement, subject to the terms and conditions of the Customer Agreement. The Customer Agreement sets forth the specifics of the Services you have selected and the Equipment You have purchased or leased, as well as such other terms and conditions as are specific to You.

1.2 **Starlink Policies and Agreements.** EnerStar’s relevant Services and the Equipment are supplied to EnerStar by Starlink. The Services and your use of the Equipment is thus also subject to the Starlink Terms of Service, Starlink Acceptable Use Policy, Data Allowance Privacy, Privacy Policy, Starlink Specifications, Software License & Usage Terms, Intellectual Property and Supplemental CCPA (“**Starlink Policies and Agreements**”) and the Starlink Limited Warranty, Disclaimers, Remedies, and Liabilities, current versions of which are available at <https://www.starlink.com/legal> and which also form part of the Customer Agreement and which are also incorporated herein by reference. You also agree that You are bound by and will comply with all of the covenants and agreements set forth in the Starlink Policies and Agreements. In the event of any inconsistency between the Customer Agreement or these Terms and Conditions and the Starlink Policies and Agreements with respect to the Services, the Customer Agreement and these Terms and Conditions will govern to the extent of the inconsistency.

1.3 **Fees for Services.** In consideration for EnerStar providing the Services to You according to the terms of the Customer Agreement, You agree to pay to EnerStar the fees for the Services as set forth on the Customer Agreement (the “**Service Fees**”). The Service Fees may be updated from time-to-time upon not less than 30 days advance written notice to You, and will be applicable from the billing period immediately following that 30-day notice period.

1.4 **Limitations.** Anticipated service speed and latency are dependent on the service plan You choose. Although it is anticipated that service speed and latency will meet any specifications set out in the Customer Agreement or elsewhere, You acknowledge and agree that the stated speeds and uninterrupted use of the Services are not guaranteed, represented, or warranted by Starlink or EnerStar, and that actual speeds may be lower than any specifications set out in the Customer Agreement or elsewhere.

1.5 **Data Usage.** Data and Service availability is subject to provisions of the service plan You selected. Data usage beyond the thresholds outlined in Your plan will be subject to network traffic management restrictions. Should data usage exceed limits provided for in Your plan and if You desire to secure additional priority data usage beyond such thresholds, you agree to pay EnerStar for such excess priority data usage. Such charges will be determined by the Customer Agreement. The data service will be prebilled and automatically renews each calendar month. There is no allowance for rollover of unused data to a subsequent month.

1.6 **LEO Network System Access.** You agree that the LEO Network System can and may be accessed by Starlink and EnerStar to perform support actions, request diagnostic information, monitor performance, and provide research for improvement purposes.

2. **Term.**

2.1 **General.** Unless defined otherwise in the Agreement, the term of the Customer Agreement commences on the date Your Service is activated and continues for the duration of the Minimum Service Term (defined below). After the Minimum Service Term expires, the term of the Customer Agreement will automatically renew on a month-to-month basis, unless You have agreed to a new Minimum Service Term under another service plan offered by EnerStar (collectively, the “**Term**”).

2.2 **Minimum Service Term.** Unless the Agreement specifies otherwise, for the purposes of the Agreement, “**Minimum Service Term**” means a 30-day period commencing on the date Your Service is activated. If You terminate your Service prior to the expiration of the applicable Minimum Service Term, You shall continue to be obligated to remit your monthly Service Fee for the portion of the Minimum Service Term which follows the termination of Your Service. In addition, unless the Agreement specifies otherwise, you may be obligated to promptly remit to EnerStar a transfer fee in the amount of \$500.00 USD (the “**Transfer Fee**”).

3. **Equipment and Installation.**

3.1 **Equipment.** Unless expressly set forth in the Customer Agreement for Your Service, Your purchase of the Starlink Services require the use of Starlink dishes, Wi-Fi routers, power supplies, and other equipment listed in the Customer Agreement (“**Starlink Equipment**”), which you are required to purchase upon the terms and conditions set forth in the Customer Agreement. To enhance the utility of the Starlink Services, certain ancillary equipment identified in the Customer Agreement “**Ancillary Equipment**” have been made available to You to purchase or lease. For purposes of the Customer Agreement, “**Purchased Equipment**” means the Starlink Equipment and those Ancillary Equipment items which You have chosen to purchase, “**Leased Equipment**” means those Ancillary Equipment items which You have chosen to lease, and “**Equipment**” means the Purchased Equipment and the Leased Equipment. EnerStar will provide the Leased Equipment to You for such period as You and EnerStar agree upon from time-to-time on a separate ticket to Your prescribed job and the Leased Equipment will be billed to You at the rate which has been agreed upon. The Purchased Equipment and the Leased Equipment will be provided to You for the price and upon the other terms and conditions set forth in the Customer Agreement.

3.2 **Replacement and Return of Leased Equipment.** Unless expressly set forth in the Customer Agreement, EnerStar has the right, in its sole discretion, to provide or replace items of Leased Equipment with new or reconditioned similar items of Leased Equipment. EnerStar also has the right to remove, or require the return of, any or all items of Leased Equipment (whether in working order or not) upon cancellation or disconnection of Your Service for any reason. Provided that You are in compliance with all of the terms and conditions of the Customer Agreement including these Terms and Conditions, during the Term and while You receive Services, EnerStar will, at no additional charge to You, replace Leased Equipment that EnerStar, in its sole discretion, determines to be defective (“**Defective Equipment**”). Notwithstanding the foregoing, however, unless EnerStar agrees to the contrary in writing, You agree to pay all service charges incurred in installing Leased

Equipment and replacing items of Leased Equipment, including, but not limited to, travel time and service time charges. Moreover, You acknowledge and agree that You shall bear the sole cost and expense of replacing Defective Equipment (including the cost of replacement Leased Equipment), where any defect is caused by your misuse, damage or destruction of the Leased Equipment. You shall notify us promptly of any defect in, damage to, destruction of, or accident involving Your Leased Equipment by calling Your designated EnerStar representative. All maintenance and repair of Equipment shall be performed by us or our designee(s). EnerStar will charge You and You agree to pay for any repairs that are necessitated by your damage to, or destruction or misuse of, the Leased Equipment, and You shall be responsible for any associated shipping costs.

3.3 **Ownership of the Leased Equipment by EnerStar.** As between the Parties, title to, and ownership of the Leased Equipment shall at all times remain with EnerStar. You shall not pledge, sell, mortgage, otherwise encumber, give away, remove, relocate, tamper with, or alter the Leased Equipment (or any notice of our ownership thereon) at any time.

3.4 **Care and Return of the Leased Equipment.** You agree to be solely responsible for preventing the loss, damage, or destruction of the Leased Equipment. Unless expressly set forth in the Customer Agreement for Your Service, if You cease to be an EnerStar Customer for any reason, You must call Your designated EnerStar representative at within seven (7) days after the termination of Your Service to arrange for the return of all of the Leased Equipment. You acknowledge that You must return the Leased Equipment to EnerStar in good working order, normal wear and tear excepted. If any item of Leased Equipment is stolen or otherwise removed from the installed location without Your authorization, You must immediately so notify EnerStar in writing. If You notify EnerStar in writing of the theft or removal within three business days after such theft or removal, You will not be liable for unauthorized use that occurs after we have received Your notification.

3.5 **Installation.**

3.5.1 **Authority.** You hereby authorize EnerStar or its designated service provider to perform the installation of the Equipment at the installed location. It is Your responsibility to ensure compliance with all applicable building codes, zoning, ordinances, business district or association rules, covenants, conditions, and restrictions, and lease obligations, landlord/owner approval/requirements related to the Service and the installation of the Equipment and Service, to pay any fees or other charges, and to obtain any permits or authorizations necessary for the Service and the installation of the Equipment (collectively, “**Legal Requirements**”). You are solely responsible for any fines or similar charges for violation of any applicable Legal Requirements. You are also solely responsible for paying any associated fees or other charges, and to obtain any permits and other authorizations necessary for the Services and the installation of the Equipment. We will not be required to execute any agreements with any third party in connection with the installation. Should use of the Services require any construction or alteration to property, EnerStar shall not be obligated and shall have no liability to reimburse any expenses to restore property to the same physical state as prior to delivery of the Services. If You approve a roof mount installation, You acknowledge the potential risks associated with this type of installation (including, without limitation, with respect to any warranty that applies to Your roof or roof membrane). If You do not approve EnerStar’s suggested Equipment installation location, You understand that alternative locations may impact the data accessibility and performance of the Services.

3.5.2 **Access to Your Location and Network.** You acknowledge and agree that EnerStar or its designated service provider must have complete access to all Equipment necessary to utilize the Service, wherever located, and, in certain circumstances, Your computer, network or other devices to install and maintain the Leased Equipment, including the receiver (which may require roof access). This will include attaching the Leased Equipment to Your computer or other devices, and, if applicable, installing software on Your network, computer or other network devices, and configuring Your network, computer or other network devices to optimize the performance of the Service. You confirm that You have reviewed the installation plan set out in the Agreement and have agreed to any and all associated charges. You are responsible for backing up the data on Your computer or other network devices and we highly recommend that You do so prior to permitting access to Us or to one of our designated service providers. EXCEPT AS ARISES FROM THE GROSS NEGLIGENCE OF ENERSTAR OR ITS DESIGNATED SERVICE PROVIDERS, NEITHER ENERSTAR NOR ITS DESIGNATED SERVICE PROVIDERS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY

LOSSES RESULTING FROM THE EQUIPMENT OR ANY INSTALLATION, REPAIR, OR OTHER SERVICES ASSOCIATED WITH THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, DAMAGE TO THE CUSTOMER LOCATION OR LOSS OF SOFTWARE, DATA, OR OTHER INFORMATION FROM YOUR COMPUTER, NETWORK OR OTHER DEVICES. Time frames for installation, if any, are not guaranteed and may vary depending on the types of installation services requested and other factors. If we determine in our sole discretion that there are unacceptable hazards associated with the installation, we may discontinue the installation at any point and terminate the Customer Agreement without liability.

3.5.3 **Software License for Equipment.** The Equipment does or may contain software and/or other intellectual property that are subject to license agreement(s), including as set out in Starlink's Software License & Usage Terms. Any breach of such license agreement(s) constitutes a breach of the Agreement and these Terms and Conditions.

3.6 **Service Calls.** Unless EnerStar agrees to the contrary in writing, You agree to pay all service charges with respect to all service calls necessary to activate, maintain and de-activate Your Service and to install, maintain, replace and/or re-take possession of the Equipment, including, but not limited to, travel time and service time charges, at EnerStar's then-standard service call charges.

4 Users of the Service; Responsibility and Supervision.

4.1 **Account Set-Up.** We may, in our discretion, provide one or more administrative portals or websites available to You in connection with Your use of the Service and Your usage of data ("**Account Access**") or, as applicable to the Service selected, so You can administer end users' access to the Service and review data usage reports. In connection with Account Access and discussions with us regarding Your account, we may furnish You with one or more user identifications or passwords. You are responsible for maintaining the confidentiality of such user identifications passwords, by Your employees, representatives, and end users. You are also responsible for verifying and maintaining the account, options, settings, and other parameters under which the Service are used. We may discontinue Account Access at any time in our discretion.

4.2 **Customer Responsibility.** Unless the Customer Agreement expressly provides otherwise, it is Your responsibility, at Your expense, to obtain, maintain, and operate suitable and fully compatible computer equipment required to access the Service. You are responsible for all access to and use of the Service and Account Access through Your account or password(s) and for any fees incurred for the Service, for software or other merchandise purchased through the Service, and for any other expenses incurred under the Agreement, including, without limitation, Account Access and use by Your employees, agents, contractors, patrons or customers, end users, and representatives. You are responsible for backing up (a) any data You submit, receive, or transfer over the Service, including, without limitation, Your email, and (b) any data, files, programs, or applications on any device You connect to the Service. You acknowledge that You are aware that content accessible on or through the Service may contain material that is unsuitable for minors. You are responsible for supervising usage of Your account and Account Access by minors. You acknowledge that you shall be responsible for any obligations incurred by a minor using Your account.

5 Fees and Payment

5.1 **Fees, Taxes and Other Charges.** You agree to timely pay all fees due and owing to EnerStar under the Agreement, including without limitation, the activation fee, monthly Service fees, the purchase price for Purchased Equipment, rental fees for Leased Equipment, installation fees, data usage fees, customer service calls and costs for repair or replacement of damaged Equipment, Transfer Fees, if any, and any and all other amounts due and payable under the Agreement. You also agree to pay as and when due (i) all applicable taxes with respect to the Equipment and Services purchased and/or leased under the Agreement, including, but not limited to, value added, consumption, sales, use, gross receipts, excise, access, and bypass (for which we do not collect and remit on Your behalf), (ii) all other fees and surcharges related to Your use of the Service, Your purchase of the Starlink Equipment and the Purchased Equipment, Your lease of Leased Equipment, Your use or purchase of software or hardware, if any, and (iii) all additional government fees, rights of way fees or charges, license or permit fees, and any other duties, fees, charges or surcharges imposed on, incident to, or based upon the

sale or lease of Equipment, the installation of Equipment, and your use of the Services. The rates for the Services and the Equipment are as provided in the Customer Agreement, as such rates are updated from time-to-time in the manner provided herein (the “Rates”). The purchase price for the Purchased Equipment is likewise set forth in the Customer Agreement, and the schedules thereto. The Rates for the Leased Equipment will be billed to the site where used.

5.1.1 **Commencement; Billing Policies.** Unless otherwise set forth in the Customer Agreement, You will pay the Rates for the Services and the Leased Equipment, if any, each month during the Term and for so long as You are an EnerStar Customer, commencing on the date we activate the Service, and we may bill other applicable Service and Leased Equipment charges and fees in advance or arrears as We determine appropriate in our sole discretion. In addition, We may, in our discretion, bill You for some aspects of the Service or the lease of the Leased Equipment individually after they have been provided to You, which may include, but may not be limited to, charges for priority data usage above Your data allowance. You acknowledge that EnerStar shall have the right, but not the obligation, to offset any amounts owed to You by EnerStar, against any amounts You owe to EnerStar. Your account will continue and You will be responsible for all activity through your account, until You cancel Your account in accordance with these Terms and Conditions.

5.1.2 **Billing and Charges.** We will send Your billing statements to the email address You provide to us. Additional integral terms relating to pricing are specified in the Customer Agreement. EnerStar reserves the right to correct and charge under-billed or unbilled amounts for a period of 180 days after (i) any incorrect statement was issued or (ii) a statement should have been issued. Payment of the outstanding balance is due in full within fifteen (15) days of the date of each invoice issued to You.

5.1.3 **Administrative Fees.** If we do not receive Your payment by its due date or Your payment is returned, we may charge You administrative late fees or non-payment fees. Such late fees or non-payment fees may be charged monthly until all delinquent amounts are paid in full. If Your bank or other financial institution fails to honor the electronic funds transfer out of Your bank account (“EFT Payment”) or credit card or debit card payment (“Card Payment”), we may charge You a collection fee. You acknowledge that these fees are not interest or finance charges and are reasonably related to the actual expenses we incur due to non-payment.

5.2 **Disputes and Partial Payments.** If You think a charge is incorrect or You need more information on any charges applied to Your account, You should promptly contact Your designated EnerStar representative, in any event within sixty (60) days of receiving the statement on which the error or problem appeared. We will make a statement available to You for each billing cycle showing payments, credits, purchases, and other charges. We will not pay You interest on any overcharged amounts later refunded or credited to You. We may, but are not required to, accept partial payments from You. If You make a partial payment, we will apply it to amounts owed by You starting with the oldest outstanding amount. If we choose to use a collection agency or attorney to collect money that You owe us, You agree to pay the reasonable costs of collection, including, without limitation, collection agency fees, reasonable attorney’s fees, and court costs.

5.3 **Reactivation.** To reactivate a suspended Service, You must bring Your account current through the month of reactivation, by making payment in full of all outstanding balances. In addition, We may, in our discretion, require a deposit before reactivating Your Service and We may charge a fee to reactivate Your Service. The amount of the deposit will not exceed an amount equal to six times the monthly Service Fee.

5.4 **Credit Inquiries and Reporting.** You authorize us to make inquiries and to receive information about Your credit experience from others, including, without limitation, credit reporting agencies, to enter this information in Your file, and to disclose this information concerning You to third parties for reasonable business purposes, including for the purposes of collection of any amounts owing. You authorize EnerStar to report both positive and negative information about Your payment history to any credit reporting agencies.

6 Modifications, Rights of Cancellation or Suspension.

6.1 **Modification of these Terms and Conditions.** We may update, revise, supplement, replace, and/or otherwise modify these Terms and Conditions (each an “Amendment”), including as needed to comply with amendments to Starlink’s services and the Starlink Policies and Agreements. Such Amendments will

be effective upon the Amendments being posted to the website version of these Terms and Conditions or by Us otherwise making them available to You (as the case may be). It is your responsibility to periodically review these Terms and Conditions to stay informed of updates. Please advise us if any Amendments to the Terms and Conditions are unacceptable to You.

6.2 **Modification of the Service.** We may add or make changes to aspects of the Service, including changes to the Service that are necessary by virtue of changes to services offered to Us by Starlink. We reserve the right in our sole discretion to modify, supplement, or otherwise change any software, file, publications, information, communication, or other content that we or one of our vendors provide to You in connection with the Service. We reserve the sole right to manage and configure the Service signals, frequencies, and channels broadcast by Starlink and the Equipment.

6.3 **Termination by Customer for Convenience.** Unless otherwise provided by the Customer Agreement, You may cancel Your account and terminate the Customer Agreement at any time upon thirty (30) days prior written notice to EnerStar, provided, however, that You pay all amounts due and payable to EnerStar hereunder, including, without limitation, all amounts due under the Section in these Terms and Conditions entitled “Minimum Service Term”, contemporaneously with the cancellation of Your account and termination of the Customer Agreement. If you cancel your account pursuant to the terms of this Section, You will not be entitled to a refund of any prepaid fees or deposits, You will be obligated to remit to EnerStar the Transfer Fee (if any), any applicable amounts due under the Section of these Terms and Conditions entitled “Minimum Service Term” and You will be obligated to remit to EnerStar all other amounts due under the Customer Agreement as of the cancellation of Your account. The monthly fee for the Services (and any other recurring fees for the Services) shall cease to apply for any months commencing on the first day of the calendar month following the expiration of the thirty (30) day written notice of the cancellation in accordance with these Terms and Conditions. Notwithstanding the foregoing, however, the monthly fee for the Leased Equipment shall apply until the Leased Equipment has been returned to EnerStar.

6.4 **Termination by Customer “For Cause”.** Unless otherwise provided by the Customer Agreement, each Party shall have the right to terminate the Customer Agreement due to the other Party’s material breach of the Customer Agreement, if the other Party fails to cure such a material breach upon thirty (30) days’ prior written notice specifying the nature of the alleged breach. Moreover, notwithstanding the foregoing, however, the monthly fee for the Leased Equipment shall apply until the Leased Equipment has been returned to EnerStar.

6.5 **Suspension of the Service.** You may by written notice to EnerStar request that EnerStar temporarily suspend your Service. EnerStar shall have a reasonable period of time to process and give effect to Your request for such suspension.

6.6 **Written Notices of Termination, Material Breach and Suspension.** No notice of termination, material breach or request for suspension by you shall be effective unless (i) given by e-mail addressed to your designated representative (receipt electronically confirmed), (ii) by written notice given to Your designated EnerStar representative by reputable express courier service (charges prepaid) and delivery confirmed, or (iii) three business days after the date when mailed to Your designated representative by certified or registered mail, return receipt requested and postage prepaid and such receipt is confirmed.

6.7 **Termination of Access to the Services.** Upon cancellation of Your EnerStar account and termination of the Customer Agreement, You will no longer have access to the Service and You agree to promptly return, at Your expense, all Leased Equipment pursuant to the terms and conditions of the Customer Agreement.

6.8 **Termination or Suspension by EnerStar.** In the event that our ability to provide the Services is materially impacted, including by any changes to services provided by Starlink, we reserve the right to terminate Your Service and the Customer Agreement or suspend Your Service. Notwithstanding the termination of the Customer Agreement or suspension of Your Service, You will remain responsible for all payment and other obligations under the Customer Agreement, including, without limitation, the obligation to pay all charges that may be due as a result of or in connection with such termination or suspension up to the effective date of the termination or suspension.

6.9 **Security.** You agree to take reasonable measures to protect the security of any devices You connect to the Service, including, without limitation, maintaining at Your cost an up-to-date version of anti-virus and/or firewall software to protect Your devices from malicious code, programs, or other internal components (such as a computer virus, computer worm, computer time bomb or similar component). You expressly agree that if Your computer or another connected device becomes infected and causes any non-compliance with any Starlink Policies and Agreements including the Acceptable Use Policy, EnerStar may immediately suspend the Service until such time as Your computer or device is sufficiently protected to prevent further prohibited activities. You will be fully liable for all monthly fees, and other charges under the Customer Agreement during any period of suspension pursuant to this Section 6.9. Although EnerStar has no obligation to monitor the Service or its network, EnerStar and its authorized suppliers reserve the right to monitor bandwidth, usage, and transmissions, from time to time in order to operate the Service, identify violations of the Customer Agreement, or protect the LEO Network System, the Service, and other users of the Service. In all cases, You are solely responsible for the security of any device(s) You choose to connect to the Service, including, without limitation, the security of any data stored or shared on such device(s).

7 Warranties and Limitation of Liability.

7.1 **DISCLAIMER OF WARRANTIES.** ENERSTAR AND ITS SUBSIDIARIES AND AFFILIATES AND EACH OF THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, WHOLESALERS, DEALERS, DISTRIBUTORS, SUPPLIERS, LICENSORS, AND THIRD-PARTY CONTENT PROVIDERS (COLLECTIVELY, “ENERSTAR PARTNERS”) PROVIDE THE SERVICES, EQUIPMENT AND INSTALLATION AND OTHER RELATED SERVICES “AS IS” AND WITHOUT ANY WARRANTIES, CONDITION, OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY PURPOSE, OR NON-INFRINGEMENT. YOU ACKNOWLEDGE AND AGREE THAT ENERSTAR DOES NOT PROVIDE AND IS NOT RESPONSIBLE FOR ANY CONTENT, AND ALL CONTENT IS PROVIDED BY ENERSTAR’S CONTENT PROVIDERS AND LICENSORS.

7.2 **ASSUMPTION OF RISK.** YOU AGREE THAT USE OF THE SERVICES AND EQUIPMENT IS AT YOUR SOLE RISK AND THE SOLE RISK OF YOUR GUESTS, PATRONS, VENDORS, EMPLOYEES AND OTHER USERS.

7.3 **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THE CUSTOMER AGREEMENT AND THESE TERMS AND CONDITIONS, NEITHER ENERSTAR NOR THE ENERSTAR PARTNERS SHALL BE LIABLE FOR ANY LOSS OF GOODWILL OR BUSINESS PROFITS, LOST REVENUE, WORK STOPPAGE, LOSS OR CORRUPTION OF DATA, COMPUTER FAILURE, DATA SECURITY BREACH, MALFUNCTION OR ANY OTHER INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES RESULTING FROM USE OF THE SERVICE AND/OR EQUIPMENT OR FROM INSTALLATION, REPAIR, MAINTENANCE, SERVICE CALLS, REPLACEMENT SERVICES OR REMOVAL OF THE EQUIPMENT OR FOR OTHER RELATED SERVICES. ENERSTAR’S AND ENERSTAR PARTNERS’ LIABILITY UNDER THESE TERMS AND CONDITIONS FOR ANY INDIVIDUAL CLAIM OR ALL CLAIMS IN THE AGGREGATE WILL NOT EXCEED THE TOTAL AMOUNT PAID BY YOU TO ENERSTAR OR THE APPLICABLE ENERSTAR PARTNERS UNDER THE CUSTOMER AGREEMENT FOR THE THREE MONTHS PRECEDING THE CLAIM GIVING RISE TO THE LIABILITY. THE PARTIES ACKNOWLEDGE THAT THIS SECTION HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR ENERSTAR TO ENTER INTO THE CUSTOMER AGREEMENT AND THAT ENERSTAR WOULD NOT HAVE ENTERED INTO THE CUSTOMER AGREEMENT BUT FOR THE LIMITATIONS OF LIABILITY SET FORTH HEREIN.

7.4 **Applicability and Exceptions.** The foregoing exclusions or limitations of liability apply to the maximum extent permitted by law, regardless of the form of action or theory of liability (including, without limitation, negligence) and whether or not EnerStar or any EnerStar Partner was informed or was aware of the possibility of such loss or damage.

7.5 **Service Interruptions.** The Service may be interrupted from time-to-time for a variety of reasons. The Service is not fail safe and is not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Service could lead to a severe injury to persons, property, or the environment. You expressly assume, and shall indemnify, defend, and hold us and the EnerStar Partners harmless from, all claims, liability, damages, costs, risks, liabilities and expenses associated with Your use of the Service in situations requiring fail-safe performance.

7.6 **Indemnity.** You agree to indemnify, defend, and hold us and the EnerStar Partners harmless against all claims, liability, damages, costs, risks, liabilities and expenses, including, without limitation, reasonable attorneys' fees, arising out of, related to or incurred in connection with (i) any and all uses of Your account (collectively, "**Losses**"), (ii) any claim brought by any third party relating to your use or inability to use the Services, (iii) Your breach of Your representations, warranties, covenants, agreements and other obligations under the Customer Agreement, (iv) any act or omission committed or alleged to have been committed by You or any employee, agent, subcontractor, or other representative of Yours, or (v) Your failure to perform any obligation owed or alleged to be owed by You to any third party.

7.7 **Third-Party Beneficiaries.** The provisions of this Article 7 are for the benefit of EnerStar and the EnerStar Partners, and each shall have the right to assert and enforce such provisions directly on its own behalf against You. Other than as expressly stated in the Customer Agreement including these Terms and Conditions, the Customer Agreement shall not be deemed to create any rights in third parties and no other party shall be deemed a third-party beneficiary under the Customer Agreement.

8 **General.**

8.1 **Confidential Information.** Each Party may receive confidential information about the other Party and its business ("**Confidential Information**"). Confidential Information of EnerStar may include the terms of the Customer Agreement, the Service, sales methods, strategies and plans, costs and other non-public information. You agree that all Confidential Information of EnerStar will be and remain the property of EnerStar. Confidential Information of Customer may include end-user information including personal and confidential information. Each Party agrees not to directly or indirectly disclose, divulge, reveal, report, publish, transfer or use the other Party's Confidential Information except to the extent necessary to carry out its obligations under the Customer Agreement. Each Party shall maintain all Confidential Information in accordance with all applicable laws and shall be responsible for the security of such information in its possession.

8.2 **Law, Jurisdiction and Venue.** The Customer Agreement and all matters and issues collateral thereto shall be construed according to the laws of the State of Colorado. The parties agree that the District Court of the County of Jefferson, Colorado, shall have exclusive jurisdiction, including in personam jurisdiction, and shall be the exclusive venue for any and all controversies and claims arising out of or relating to the Customer Agreement or a breach thereof, except as otherwise unanimously agreed upon by the parties. If any party shall commence any action or proceeding against another party in order to enforce the provisions of the Customer Agreement, or to recover damages as the result of the alleged breach of any of the provisions hereof, the prevailing party therein shall be entitled to recover all reasonable costs incurred in connection therewith, including, but not limited to, reasonable attorneys' fees. Any cause of action brought by You, or by users of Your account, with respect to the Service or the Customer Agreement must be instituted within one year after the claim or cause of action has arisen or it will be barred.

8.3 **Delinquent Payment Fee.** Any fee, reimbursement or other payment due and owing from Customer which is not paid within 30 calendar days from the date when it is due shall accrue interest at the rate of two (2) percent per month or the highest rate permitted by applicable law, until all delinquent payments and accrued interest are paid in full. Payments, when made, shall be applied first to accrued interest to date of payment computed upon the outstanding unpaid balances and the remainder applied to the delinquent payment(s).

8.4 **Export Laws.** You agree that You will at all times comply with the terms of Section 8.4 of the Starlink Terms of Service, requiring your compliance with all applicable International Trade Controls, in

connection with Your access to and use of the Service and the Equipment. You further acknowledge and agree that Your covenants hereunder are for the benefit of EnerStar and may be enforced by EnerStar.

8.5 **Notices, Disclosures and Other Communications.** Unless otherwise provided in the Customer Agreement, where notification by EnerStar is contemplated by or related to the Customer Agreement, notice may be made by any reasonable means, including, without limitation, e-mail or publication over the Service or the EnerStar website.

8.6 **Construction and Delegation.** If any term of the Customer Agreement is found by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable, it shall be construed in such a way as to eliminate the offending aspects while still giving as much effect as possible to the intentions of such term. If this cannot be done and the entire term is invalid, illegal, or unenforceable and cannot be so repaired, then the term shall be considered to be stricken from the Customer Agreement as if it had not been included from the beginning. In any such case, the balance of the Customer Agreement shall remain in effect in accordance with its remaining terms notwithstanding such invalid, illegal, or unenforceable term. Neither the course of conduct between the parties nor trade practice shall act to modify the provisions of the Customer Agreement. We may authorize or allow our contractors and other third parties to provide the services necessary or related to making the Service available and to perform obligations and exercise our rights under the Customer Agreement, and we may collect payment on their behalf, if applicable.

8.7 **Miscellaneous.** We may enforce or decline to enforce any or all of the terms of the Customer Agreement in our sole discretion. In no event shall we be required to explain, comment on, suffer liability for, or forfeit any right or discretion based on, the enforcement, non-enforcement, or consistency of enforcement of these terms. Captions used in the Customer Agreement and these Terms and Conditions are for convenience only and shall not be considered a part of the Customer Agreement or be used to construe its terms or meaning. The provisions of any Sections of the Customer Agreement that by their nature should continue shall survive any termination of the Customer Agreement. The Parties are independent contractors and nothing in the Customer Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. Neither Party shall have the authority to act or create any binding obligation on behalf of the other Party.

8.8 **Assignment of Account.** The Customer Agreement is not assignable by You without EnerStar's prior written consent. Unauthorized assignment of the Customer Agreement shall be void *ab initio*, but shall provide EnerStar with the right to terminate the Customer Agreement. The Customer Agreement shall be binding upon and shall inure to the benefits of the Parties' successors and permitted assigns. You may not assign or transfer Your Service without our prior written consent. We may sell, assign, pledge, or transfer the Customer Agreement, Your account, Your Service, or an interest in Your account to a third party without notice to You. In the absence of a notice of such sale or transfer, You must continue to make all required payments to us in accordance with Your billing statement.

8.9 **Entire Agreement.** The Customer Agreement (including all documents and writings identified in the Customer Agreement as being part of the Customer Agreement), including these Terms and Conditions and all other documents incorporated by reference therein, constitutes the entire and only agreement with respect to its subject matter between You and EnerStar, applicable also to all users of Your account. The Customer Agreement supersedes all representations, proposals, inducements, assurances, promises, agreements, and other communications with respect to its subject matter. Either party may, in writing, waive any provision of the Customer Agreement intended for its benefit, provided, however, such waiver shall in no way excuse the other party from performance of any of its other obligations under the Customer Agreement unless expressly provided in such written waiver. Failure of any party to exercise the right or option arising out of a breach of the Customer Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuation of any existing breach.

8.10 **Counterparts and Electronic Signatures.** For the convenience of the Parties, any number of counterparts of the Customer Agreement may be executed by any one or more Parties hereto, and each such executed counterpart shall be, and shall be deemed to be, an original, but all of which shall constitute, and shall be deemed to constitute, in the aggregate but one and the same instrument. The Customer Agreement may be circulated for signature through electronic transmission, including, without limitation, facsimile and email, and

all signatures so obtained and transmitted shall be deemed for all purposes under the Customer Agreement to be original signatures until such time, if ever, as original counterparts are exchanged by the Parties.

These Terms and Conditions are incorporated in full into the Customer Agreement and are binding upon and enforceable against the Parties to such Agreement.