

## GREENBYTE GENERAL TERMS AND CONDITIONS

THESE GENERAL TERMS AND CONDITIONS (“GTC”) GOVERN THE CUSTOMER’S ACQUISITION AND USE OF GREENBYTE SERVICES.

CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN. GREENBYTE AND CUSTOMER MAY BE TOGETHER REFERRED TO AS THE “PARTIES” AND EACH INDIVIDUALLY AS A “PARTY.”

THE GTC IS CONSIDERED TO BE ACCEPTED BY EITHER (1) EXECUTING A MASTER SERVICES AGREEMENT, OR (2) EXECUTING A TRIAL SERVICES AGREEMENT THAT REFERS TO THE GTC. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING IT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS.

The terms of the GTC may be updated by Greenbyte from time to time in accordance with Clause 16.6.

The GTC was last updated on 1 June 2020.

### 1 DEFINITIONS

“**Activation Date**” means the date on which fees become payable for Platform Services, Add-On Services, and Success Services. This date shall be (a) the Completion Date, or (b) the date on which the Order Form is signed for the applicable service in the event that there is no Installation Service for a corresponding Platform Service, Add-On Service or Success Service,

“**Agreement**” shall have the meaning ascribed to it in the Master Services Agreement or the Trial Services Agreement as entered into by the Customer and Greenbyte.

“**Add-On Service**” means any application, integration or consulting work that interoperates with the Platform Services and is provided on a subscription basis.

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control of a Party, where control means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of such entity, whether through the ownership

of voting securities, by contract, or otherwise.

“**Annual Agreement Date**” means the first day of the month following the date on which the Agreement comes into effect, and the corresponding date occurring every twelve (12) months thereafter.

“**Beta Services**” means Greenbyte Services or functionality that may be made available to Customer to try at its option, which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

“**Commencement Date**” means the date on which an Installation Service starts.

“**Completion Date**” means the date on which the data being subject to the Installation Service is made available to the Customer in the Platform Service or Add-On Service.

“**Confidential Information**” means any oral, written, graphic, or machine readable information that is proprietary to the Party disclosing the Confidential Information (the

“Disclosing Party”) and not generally known to the public, whether in tangible or intangible form, whether marked or identified as confidential or proprietary at the time of its disclosure or not, whenever and however disclosed, including, but not limited to, that which relates to patents, patent applications, research, product plans, products, concepts, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, trade secrets, algorithms, business plans, agreements with third parties, services, financial projections, customers, suppliers, marketing or finances of the Disclosing Party, internal, non-public, proprietary, or technical information or know-how concerning the Disclosing Party and its business and assets, business plans, marketing plans, strategic alliances, data, photographs, specifications, samples, business information and any other material bearing or incorporating any such information. Confidential Information also includes, without limitation, any reports, analyses, compilations, studies or other documents, whether prepared by the receiving Party (“Receiving Party”) or otherwise, which contain or are based upon Confidential Information. For purposes of the Agreement, “Disclosing Party” and “Receiving Party” includes Affiliates, consultants, and contractors of a Party who disclose or receive Confidential Information respectively.

“**Customer**” means the legal entity which enters into the Agreement as customer, as defined in the Master Services Agreement or Trial Services Agreement.

“**Customer Data**” means the data, excluding Personal Data (defined below), or other information that Customer makes available to Greenbyte through the Services.

“**DPA**” means the Data Processing Agreement governing Personal Data (defined below) available at [www.powerfactors.com/legal](http://www.powerfactors.com/legal).

“**Documentation**” means Greenbyte’s technical and functional documentation for the Services, which are updated from time to time.

“**Fee Schedule**” means the list of services and fees provided by Greenbyte available at [www.powerfactors.com/legal](http://www.powerfactors.com/legal).

“**Greenbyte**” means the entity entering into the Agreement in accordance with Clause 17.1.

“**Greenbyte Website**” means [www.powerfactors.com](http://www.powerfactors.com).

“**Installation Services**” means the work associated with setting up the Platform Services and Add-On Services.

“**Marketplace**” means an online directory, catalog, or marketplace that lists Add-On Services and applications that interoperate with the Platform Services, for example the Greenbyte Marketplace at [www.powerfactors.com](http://www.powerfactors.com).

“**Material Change**” means any scheduled change to the Service Greenbyte deems likely to have a material, adverse impact on the Customer.

“**MW**” means (a) for wind: the name plate turbine capacity; (b) for solar: the  $MW_{pdc}$ ; (c) for hydro: the max instantaneous power across generators; or (d) for storage; the  $MW_{pdc}$ .

“**Non-Greenbyte Services**” means any software applications; information obtained by Greenbyte from publicly available sources or third party content providers; hardware; data; add-ons; integrations; consulting; or other service that interoperates with a Service, that is not developed by Greenbyte. In the case of Non-Greenbyte Services which are governed by third party terms of use, the Customer is responsible for informing itself of such terms of use.

“**Order Form**” means an ordering document specifying the Services to be provided under the Agreement including any addenda and supplements thereto.

“**Personal Data**” means any information relating to an identifiable person who can be directly or indirectly identified in particular with reference to a personal identifier. Examples of personal identifiers collected within the Services include, but are not limited to, first name and last name, title, phone number, mobile number, email address, location information, and company.

“**Platform Service**” means the Greenbyte Platform provided on a subscription basis.

“**Professional Services**” means any consulting, training, transition, configuration, administration, and similar services provided by Greenbyte based on an Order Form and a SoW (defined below).

“**Service(s)**” means any of the products and services ordered by the Customer under an Order Form.

“**Site**” means a renewable energy power plant.

“**SLA**” means the Greenbyte Support and Service Level Agreement.

“**SoW**” means Statement of Work describing Professional Services provided by Greenbyte, and which are referenced in an Order Form.

“**Success Services**” means support, availability and training plans provided on a subscription basis.

“**Trial Services**” means a Service which is provided on a trial basis, or which is under evaluation and is identified as a Trial Service.

“**User(s)**” means all individuals and/or corporate entities who are authorized by Customer to use the Services in accordance with the Agreement.

## **2 GREENBYTE RESPONSIBILITIES**

### **2.1 Provision of Services**

Greenbyte shall: (a) provide the Services to, and perform the agreed Services for the Customer in accordance with the terms and conditions of the Agreement in a professional manner; (b) provide support to Customer for the Services as set out in the SLA, and/or upgraded support if purchased; (c) use commercially reasonable efforts to make the Services available in accordance with the SLA; (d) ensure that the Services are free from viruses, Trojans, worms, or other malicious software code; and (e) provide the Services in accordance with the laws and government regulations applicable to Greenbyte’s provision of the Services, subject to Customer’s use of the Services in accordance with the Agreement, and the applicable Order Form and/or SoW. An Order Form shall not be binding upon the Parties until it is duly executed.

### **2.2 Protection of Customer Data and Personal Data**

Greenbyte will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data and Personal Data. Those safeguards will include, but not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data and Personal Data. The terms of the DPA are hereby incorporated by reference and shall apply for Personal Data.

### **2.3 Greenbyte Personnel**

Greenbyte will be responsible for the performance of its personnel and their compliance with Greenbyte’s obligations under the Agreement.

### **2.4 Engaging Subcontractors**

Greenbyte may engage a subcontractor to perform the Services and other obligations. Greenbyte is liable for a subcontractor’s work as if it had been performed by Greenbyte personnel. Any subcontractor engaged by Greenbyte shall protect the Customer Data and Personal Data with at least the same level of protections as those required under the DPA.

### **2.5 Location of Services**

Greenbyte may, while observing the provisions in the DPA, provide the Services, in whole or in part, from another country than Greenbyte’s domicile, provided that Greenbyte otherwise fulfils the terms and conditions of the Agreement.

### **2.6 Changes to Services**

Greenbyte may make changes to the Services or the method of providing them. If such change is a Material Change, Greenbyte will notify the Customer via e-mail at least sixty (60) days prior to such change coming into effect. In the event of a Material Change, the Customer shall be entitled to terminate the affected Service effective from the date the Material Change comes into effect by giving written notice to Greenbyte within thirty (30) days from receiving the notice of the Material Change from Greenbyte.

**2.7 Beta Services**

Greenbyte may make Beta Services available to Customer from time to time. Customer may choose to try such Beta Services or not in its sole discretion. Beta Services shall be governed by the Agreement.

**3 CUSTOMER RESPONSIBILITIES**

**3.1 Customer Right to Use**

Subject to the terms and conditions of the Agreement, Greenbyte grants Customer a limited, non-exclusive, non-transferable right during the time which the Agreement is effective to: (a) use the Services; and (b) implement, configure, and permit its Users to access and use the Services.

**3.2 Customer Obligations**

Customer is responsible for the following obligations with respect to the Services: (a) providing the information and resources necessary for Greenbyte to perform its obligations under the Agreement in an accurate and timely manner; (b) possessing the equipment and software that Greenbyte has informed Customer are required to use the Services, or which otherwise are clearly required for such use; (c) faults and defects in Customer's software and/or equipment; (d) ensuring that (i) Customer Data and software are free from viruses, Trojans, worms, or other malicious software or code; (ii) Customer Data is in the agreed format; (iii) Customer Data or software otherwise cannot damage or interfere with Greenbyte's system or the Services; and (iv) Customer holds free and clear title or the required third-party permission to access and/or use the data they provide to the Services; (e) notifying Greenbyte as soon as reasonably possible upon discovery of any infringements or attempted infringements that might affect the Services; (f) assist Greenbyte in its performance of the Installation Services as set out in [Appendix 1](#); (g) notify Greenbyte as soon as reasonably possible of circumstances that may impact Greenbyte's performance of the Services; and (h) ensure that Customer has a reliable internet connection.

**3.3 Customer Restrictions**

Customer shall not, and shall not permit others to, do the following with respect to the Services: (a) use the Services, or allow access to it, in a manner that circumvents contractual restrictions or that exceeds Customer's authorized use as set forth in the Agreement; b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, or otherwise make any portion of the Services, or Documentation available for access by third parties, except as otherwise provided in the Agreement or the SoW; (c) access or use the Services, or Documentation for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Services or allow access by a direct competitor of Greenbyte; (d) reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Services or technologies, unless and then only to the extent expressly permitted by applicable law, without consent; (e) use the Services or Documentation in a way that (i) violates or infringes upon the rights of a third party, including those pertaining to contract, intellectual property, privacy, or publicity; or (ii) effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene; (f) fail to use commercially reasonable efforts to not interfere with or disrupt the integrity, operation, or performance of the Services or interfere with the use or enjoyment of it by others; (g) access the Services for the purposes of monitoring the availability, performance and functionality of the Services through penetration tests, ping tests or other methods; or (h) use the Services to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumvent or disclose the user authentication or security of the Services or any host, network, or account related thereto.

**3.4 Feature Functionality**

Customer agrees that its purchases are not contingent on the delivery of any future functionality of features, or dependent on any oral or written public comments made by Greenbyte regarding future functionality of features.

**4 TRIAL SERVICES**

**4.1 Trial Services**

Customer may use a Trial Service for a limited time period in a manner consistent with the terms and conditions of the Agreement. Customer is aware that Trial Services may not include all features.

**4.2 Order Form for Trial Services**

Trial Services shall be administered under an Order Form, which shall state the Services provided, the start date, and the end date of the Trial Services.

**4.3 Trial Service Disclaimer**

Greenbyte disclaims all warranties, representations, and liabilities as set forth in the Agreement and Greenbyte shall not be liable for damages of any kind related to Customer's or User's use of a Trial Service.

**5 NON-GREENBYTE SERVICES**

**5.1 Use of Non-Greenbyte Services**

If Customer enables, accesses, or uses Non-Greenbyte Services, the access and use of such Non-Greenbyte Services are governed by the terms of use of the Non-Greenbyte Services. Support for Non-Greenbyte Services shall be provided by the Non-Greenbyte Service provider. Greenbyte makes no representations as to any aspect of Non-Greenbyte Services. Customer is solely responsible for its use of Non-Greenbyte Services, including without limitation any and all fixed term and other fees relating to Non-Greenbyte Services.

**5.2 Non-Greenbyte Services Waiver**

Customer irrevocably waives any claim against Greenbyte with respect to Non-Greenbyte Services. Greenbyte is not liable for any damage or loss caused or alleged to be caused by or in connection with the enablement, access or use of any Non-Greenbyte Services, or Customer's reliance on the terms, conditions, and policies of Non-Greenbyte Services.

**5.3 Add-On Services for Non-Greenbyte Services**

By purchasing or enabling an Add-On Service for integration with a Non-Greenbyte Service, Customer is expressly permitting Greenbyte to disclose Customer Data to the provider of the Non-Greenbyte Service, for the Sites to which the Add-On Service is relevant, as necessary to facilitate the use or enablement of specific Non-Greenbyte Services.

**5.4 Integration with Non-Greenbyte Services**

The Services may contain features designed to interoperate with Non-Greenbyte Services. Greenbyte cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of the Non-Greenbyte Services ceases to make the Non-Greenbyte Services available for interoperation with the corresponding Service features in a manner acceptable to Greenbyte.

**6 FEE SCHEDULE AMENDMENTS**

Greenbyte shall be entitled to amend the Fee Schedule from time to time. Fee Schedule amendments occur when (a) Greenbyte adds a new Service; or (b) fees are updated. In the event that a Fee Schedule amendment pursuant to (b) above increases the fee for a Service which the Customer has purchased in excess of 3% in any annum in relation to the preceding annum, then (i) Greenbyte shall notify the Customer via e-mail at least one hundred twenty (120) days in advance of such Fee Schedule amendment coming into effect; and (ii) the Customer shall be entitled to terminate the Service concerned from the date the increased fee comes into effect by giving written notice to Greenbyte within thirty (30) days from receiving the notice from Greenbyte. Where the Service is not terminated by Customer within the aforementioned time, Customer shall be deemed to have accepted the amendment.

Following the effective date of the Fee Schedule amendment, such amendments shall be reflected in any subsequent Order Forms and in the invoice issued at the next Annual Agreement Date.

**7 TERM AND TERMINATION**

**7.1 Term**

The Agreement shall commence upon signing and shall be valid until all Services under the Agreement have expired or until it is terminated. A Party may terminate the Agreement by giving the other Party at least ninety (90) days written notice prior to each Annual Agreement Date.

**7.2 Partial Termination**

A Party may terminate specific Services.

Notice of the partial termination of Services shall be sent in writing ninety (90) days prior to the Annual Agreement Date. If the notice of termination is executed later than ninety (90) days prior to the Annual Agreement Date, the Services will be terminated at the following Annual Agreement Date.

**7.3 Immediate Effect Termination**

Each Party is entitled to terminate the Agreement with immediate effect if: (a) the other Party materially breaches its obligations under the terms of the Agreement and such Party has not cured (if curable) the breach within thirty (30) calendar days after a written request has been sent to the other Party with reference to this clause; (b) the other Party is placed in bankruptcy, liquidation, or can otherwise be deemed to be insolvent; (c) the Service infringes on third-party right(s) as set out in 8.3 or; (d) force majeure events as described in 15.2 occur.

**7.4 Early Termination**

The Customer shall be entitled to terminate the Services provided under the Agreement if: (a) Greenbyte makes changes to the GTC or SLA as set out in Clause 16.6; (b) Greenbyte makes a Material Change to the Service as set out in Clause 2.6 or (c) Greenbyte makes changes to the Fee Schedule as set out in Clause 6.

**7.5 Termination Activities**

If the Agreement or the Service(s) is/are terminated for any reason or expire: (a) Customer will pay to Greenbyte any amounts that have accrued before, and remain unpaid as of the effective date of the

termination within sixty (60) days after the effective date of the termination; (b) in case of Customer's termination pursuant to Clause 7.3 or Clause 7.4, Greenbyte will refund Customer any prepaid but unused fees for the Services on a prorated basis within sixty (60) days after the effective date of the termination; (c) any and all liabilities of either Party to the other Party that have accrued before the effective date of the termination will survive; (d) Customer shall be given thirty (30) days after the effective date of termination to download Customer Data, in a csv format, after which all use rights granted to Customer with respect to the Services and intellectual property will immediately terminate; (e) Greenbyte's obligation to retain Customer Data or Personal Data or provide any further Services to Customer under the Agreement will immediately terminate, except any such Services that are to be expressly provided following the termination of the Agreement; (f) upon Customer request Greenbyte shall delete all Customer Data thirty (30) days after the effective date of termination; and (g) provisions of this Agreement, which by their nature or regulations of the Agreement extend beyond the term of Agreement, shall continue to be in force until fulfilled or no longer relevant due to their nature. Such provisions shall include, but not be limited to Clauses 8, 13 and 17.

**7.6 Termination for breach**

In case of premature termination of the Agreement by Customer, or termination by Greenbyte due to Customer's breach of the Agreement or pursuant to Clause 7.3 (a)-(b), without limiting the Customer's obligations and responsibilities set forth herein, Customer shall pay for the Platform Services, Add-On Services and Success Services for the period from the effective date of termination until the next Annual Agreement Date, calculated based on the Activation Date occurring at the latest at the date of effective date of termination for the relevant Service(s).

**8 INTELLECTUAL PROPERTY AND OWNERSHIP**

**8.1 Intellectual Property Ownership and Use**

Greenbyte shall retain any and all of its intellectual property rights and technical solutions associated with the Services. Such intellectual property rights may only be used

by Customer in the manner stated in the Agreement. Under no circumstances shall Customer or a third party acquire any intellectual property rights to the Services or to the software or technical solutions used in the Services, or to any trademark or any other business mark belonging to or used by Greenbyte through their use of the Services.

**8.2 Third Party Rights**

Customer is liable for and shall indemnify and hold Greenbyte harmless from and against any infringement by Customer's Data of any third-party right or any other non-compliance with applicable law.

**8.3 Procurement of Rights**

Where a third party alleges that the Services infringe upon their rights, Greenbyte undertakes to obtain any necessary rights or procuring other non-infringing software without any cost and as few operational interruptions as possible to Customer, or amend it so that it no longer causes infringement, or terminate the Agreement with ninety (90) days' written notice, in which case Customer, during the notice period, is entitled to a deduction of the fee that corresponds to the reduction of the value of the Services as a result of the infringement.

**8.4 Customer Data Ownership**

Customer Data processed using the Services is and will remain the property of the Customer.

**8.5 Greenbyte Data Usage**

Greenbyte may, by rendering the Customer Data anonymous, in a manner that ensures that the Customer can never be identified, use the Customer Data to improve the Services, or to provide statistical and analytical compilation information to third parties.

**8.6 User Logs**

Greenbyte is permitted to keep logs of Customer's use of the Services, for which purpose Greenbyte may use these logs for development, improvements, performance, clarification of misuse, or analysis of infringements.

**8.7 Customer Feedback License**

Greenbyte encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to the Services. To the extent Customer provides such feedback, Customer grants to Greenbyte a royalty-free, fully paid, transferable, sub-licensable, non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import, and otherwise exploit such feedback without restriction; provided that such feedback does not identify Customer, its Affiliates, Users, or include any Customer Data without Customer's prior written consent.

**9 PERSONAL DATA, PRIVACY, AND DISCLOSURE**

**9.1 Personal Data**

In order for Customer to be able to use the Services, Customer must provide certain Personal Data to Greenbyte regarding Customer and its Users. Following receipt of such data, Greenbyte will process the same using automatic data processing in order to administer and perform its obligations within the scope of the Services and to ensure that unauthorized persons do not gain access to the Services. Detailed information regarding the handling of Personal Data is contained in the DPA.

**9.2 Cookies Policy**

Greenbyte stores and retrieves session information through the use of "cookies". A cookie is a small file placed on your device that enables Service features and functionality. Cookies allow Greenbyte to identify Users' devices, secure User access to the Services, and track usage of the Services. The purpose of such storage and retrieval of information is to enable the necessary login/logout procedures used in the Services, to gain a better understanding of how Users engage with the Services, save User preferences, and to ensure that unauthorized persons do not gain access to the Services.

**9.3 Non-Greenbyte Services Use of Personal Data**

If Customer utilizes Non-Greenbyte Services, or if a User initiates or accepts to copy or export content or Personal Data from

the Services to Non-Greenbyte Services, Customer consents to Greenbyte allowing the Non-Greenbyte Service provider access to Customer's Personal Data as required for the interoperation of such embedded, linked, or interacted applications pursuant to the provisions of the DPA.

**9.4 Customer List Disclosure**

Excluding Customer's only using Trial Services, Customer agrees that Greenbyte may disclose the fact that Customer is a customer of Greenbyte. Customer agrees that Greenbyte may use Customer's name and logo to identify Customer as a customer of Greenbyte on the Greenbyte Website, and as part of a general list of Greenbyte's customers for use and reference in Greenbyte's promotional and marketing literature.

**9.5 Infringement Disclosure**

Greenbyte shall notify Customer without delay upon discovery of any infringements or attempted infringements or unauthorized access that might affect the Services or the confidentiality of the Customer Data accessible via the Services.

**10 USER ACCOUNTS, PASSWORDS, AND SECURITY**

**10.1 Customer and User Log In Information Security**

Customer and Users are entirely responsible for maintaining the confidentiality of the information they hold for their account(s), including its password, and for any and all activity that occurs under an account as a result of Customer or User failing to keep this information secure and confidential. Customer agrees to notify Greenbyte immediately of any unauthorized use of an account or password, or any other breach of security. Customer and User may be held liable for losses incurred by Greenbyte or any other User of the Services due to someone else using their password or account as a result of their failing to keep their account information secure and confidential.

**10.2 Greenbyte Waiver of Liability**

Greenbyte cannot and will not be liable for any loss or damage arising from Customer

or User's failure to comply with the obligations set out in this Clause 10.

**11 REPRESENTATIONS AND WARRANTIES**

**11.1 Representations**

Each Party represents that it has validly entered into the Agreement and that it has the legal power to do so.

**11.2 Warranties**

Greenbyte warrants that while the Agreement is in effect: (a) Greenbyte will not materially decrease the overall security of the Services; and (b) the Services will perform materially in accordance with the terms of the SLA.

**11.3 Disclaimers**

Except as stated in Clause 11.2, the Services are provided on an "as is" and "as available" basis, without any warranties of any kind to the fullest extent permitted by law, and Greenbyte expressly disclaims any and all warranties, whether express or implied, including, but not limited to, any implied warranties of merchantability, title, fitness for a particular purpose, and non-infringement. Customer acknowledges that Greenbyte does not warrant that the Services will be uninterrupted, free of error, free from viruses or other malicious software at all times, and no information or advice obtained by Customer from Greenbyte or through the Services shall create any warranty not expressly stated in the Agreement. See Clause 13.3 regarding indemnity in case of infringement of third party intellectual property rights.

**12 SERVICE INTERRUPTION AND RESTRICTED ACCESS**

**12.1 Interruption of Services**

Greenbyte shall be entitled, with immediate effect, to disable Customer's or a User's access to the Services or to terminate the Agreement at any time in writing where: (a) Customer or a User uses the Services in a manner that entails the perpetration of a crime; (b) Customer or a User uses the Services in a manner that occasions losses or the risk of loss for Greenbyte or any third party; or (c) Customer or a User uses the

Services in a manner whereby Customer utilizes resources or seeks unauthorized access to Greenbyte's systems which are not intended for Customer.

**12.2 Access Restriction**

If Customer's use of the Service results in a risk of more than insignificant damage to Greenbyte or another customer of the Service, for example if the use results in an overload of the system or servers being part of the Services, Greenbyte may block or restrict access to the Service. Greenbyte may not adopt more far-reaching measures than is justified in the circumstances. Customer shall be informed as soon as is reasonably possible if the access to the Service is restricted.

**12.3 Greenbyte Access to Information**

Greenbyte has the right to immediately prevent information in the Service from spreading further, if it is reasonable to believe that continuing to spread the information contravenes applicable legislation. Greenbyte is entitled to access any information transferred or submitted to the Services if necessary in its performance of its obligations under the Agreement. If Greenbyte exercises this right, it shall notify Customer without undue delay. Notification shall include a detailed statement justifying the suspicion and shall make an express reference to the legislation justifying the intended interruption.

**13 LIMITATION OF LIABILITY AND MUTUAL INDEMNIFICATION**

**13.1 Limitation of Liability**

In no event shall the aggregate liability arising out of or related to the Agreement of each Party, together with all of its Affiliates, in any calendar year exceed the total amount paid by Customer and its Affiliates for the Services in that calendar year. The foregoing limitation shall apply whether an action is in contract or tort, and regardless of the theory of liability, but will not limit Customer's and its Affiliates' payment obligations under the Agreement.

**13.2 Exclusion of Consequential and Related Damages**

In no event will either Party or its Affiliates have any liability arising out of the Agreement for any lost profits, revenues, goodwill, or indirect, special, incidental, consequential, liquidated, cover, business interruption, or punitive damages, whether an action is in contract or tort, and regardless of the theory of liability, even if a Party or its Affiliates have been advised of the possibility of such damages or if a Party's or its Affiliates' remedy otherwise fails of its essential purpose. The foregoing disclaimer will not apply to the extent prohibited by law.

**13.3 Indemnification by Greenbyte**

Greenbyte will defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that any part of the Service(s) infringes upon or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees, and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Greenbyte in writing of, a Claim Against Customer, provided Customer (a) promptly gives Greenbyte written notice of the Claim Against Customer; (b) allows Greenbyte sole authority in the defense and settlement of the Claim Against Customer; and (c) gives Greenbyte reasonable assistance, at Greenbyte's expense. The above defense and indemnification obligations do not apply if a Claim Against Customer arises from Customer's breach of the Agreement or applicable Order Forms, or if the Customer has used a third party's data in its use of the Services without obtaining sufficient permission.

**13.4 Indemnification by Customer**

Customer will defend Greenbyte and its Affiliates against any claim, demand, suit or proceeding made or brought against Greenbyte by a third party alleging (a) that any Customer Data or Customer's use of Customer Data with the Services; (b) Customer's Site(s) or software systems; or (c) the combination of any software provided by Customer and used with the Services, infringes or misappropriates such third party's intellectual property rights, or arising from Customer's use of the Services in an unlawful manner or in violation of the

Agreement or Order Form (each a "Claim Against Greenbyte"), and will indemnify Greenbyte from any damages, attorney fees, or costs finally awarded against Greenbyte as a result of, or for any amounts paid by Greenbyte under a settlement approved by Customer in writing of, a Claim Against Greenbyte, provided Greenbyte (i) promptly gives Customer written notice of the Claim Against Greenbyte; (ii) allows Customer sole authority in the defense and settlement of the Claim Against Greenbyte; and (iii) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against Greenbyte arises from Greenbyte's breach of the Agreement or applicable Order Forms.

**13.5 Exclusive Remedy**

This Clause 13 states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any third-party claim described in this Clause 13.

**14 MUTUAL CONFIDENTIALITY**

**14.1 Protection of Confidential Information**

During and for the three (3) years following termination of the Agreement, the Receiving Party will: (a) use the Confidential Information of the other Party solely for the purpose for which it is provided; (b) not disclose such Confidential Information to a third party, except on a need-to-know basis to its attorneys, auditors, consultants, and service providers who are under confidentiality obligations at least as restrictive as those contained herein; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

**14.2 Disclosure by Law**

If the Receiving Party is required by law to disclose Confidential Information of the other Party or the terms of the Agreement, the Receiving Party will give prompt written notice to the other Party before making the disclosure, unless prohibited from doing so by the legal or administrative process, and cooperate with the Disclosing Party to obtain where reasonably available an order

protecting the Confidential Information from public disclosure.

**14.3 Ownership of Confidential Information**

The Receiving Party acknowledges that, as between the Parties, all Confidential Information it receives from the Disclosing Party, including all copies thereof in the Receiving Party's possession or control, in any media, is proprietary to and exclusively owned by the Disclosing Party. Nothing in the Agreement grants the Receiving Party any right, title or interest in or to any of the Disclosing Party's Confidential Information. Receiving Party's incorporation of the Disclosing Party's Confidential Information into any of its own materials will not render Confidential Information non-confidential.

**14.4 Remedies for Disclosure**

The Receiving Party acknowledges that any actual or threatened breach of this Clause 14 may cause irreparable, non-monetary injury to the Disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the Disclosing Party is entitled to (but not required to) seek injunctive relief in addition to all remedies available to the Disclosing Party at law and/or in equity, to prevent or mitigate any breaches of the Agreement or damages that may otherwise result from those breaches. Absent written consent of the Disclosing Party to the disclosure, the Receiving Party, in the case of a breach of this Clause 14, has the burden of proving that the Disclosing Party's Confidential Information is not, or is no longer confidential or a trade secret and that the disclosure does not otherwise violate this Clause 14.

**15 FORCE MAJEURE**

**15.1 Release from Liability**

A Party shall be released from liability in damages and other sanctions where the performance of a specific obligation (other than for delay in the payment of amounts due and payable hereunder and the maintenance of confidentiality) is prevented or rendered onerous due to circumstances beyond a Party's control and which could not reasonably have been foreseen. Such force majeure events include lightning, fire, flooding, decisions of public authorities or other public regulations, errors in another operator's network, delays in services from subcontractors due to events as stated

above, general scarcity of transport, goods, or energy, or other similar circumstances.

**15.2 Termination Due to Force Majeure**

Where a Party's performance is prevented for a period in excess of three (3) months due to an event as stated in Clause 15.1 above, either Party shall be entitled to terminate the Agreement in accordance with Clause 7.3.

**16 GENERAL PROVISIONS**

**16.1 Relationship of the Parties**

The Parties are independent entities. Nothing herein or in the Agreement shall be considered to create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. Except as set forth in the Agreement, nothing in the Agreement, expressed or implied, is intended to give rise to any third-party beneficiary.

**16.2 Assignment of Agreement**

Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other Party's prior written consent (not to be unreasonably withheld); provided, however, either Party may assign the Agreement in its entirety (including all Order Forms and SOWs), without the other Party's consent if such assignment is in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, and Supplier shall have the right to assign or transfer any part of its rights to receive payments hereunder. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

**16.3 Waiver**

The waiver by either Party of any breach of any provision of the Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation in accordance with the Agreement will not be a waiver of such Party's right to demand strict compliance in the future, nor will the same be construed as a novation of the Agreement.

**16.4 Severability**

In the event that any term or clause in the Agreement is found to be invalid, unenforceable, or illegal, such term or clause shall not have an impact on the other terms or clauses in the Agreement. Such term or clause may be revised to reflect the original intention of the Parties.

**16.5 Notice**

All notices related to the Agreement will be in writing and will be effective upon (a) personal delivery upon proof of delivery; (b) the second business day after sent by registered mail; or (c) upon automatic or manual confirmation from the receiver when sent by email.

Notice to Greenbyte shall be sent by email to: [notice@greenbyte.com](mailto:notice@greenbyte.com). Notice to the Customer shall be sent to the address or email address set out in the Master Services or Trial Services Agreement.

**16.6 Amendments**

Greenbyte shall be entitled to amend the GTC and the SLA from time to time by notifying the Customer via e-mail at least one hundred twenty (120) days prior to such change coming into effect. In the event that an amendment is not acceptable to the Customer, the Customer shall be entitled to terminate the Agreement effective from the date the amendment comes into effect by giving written notice to Greenbyte within thirty (30) days from receiving the notice of the amendment from Greenbyte. Where the Agreement is not terminated by Customer within the aforementioned time, Customer shall be deemed to have accepted the amendment.

**17 GOVERNING LAW, JURISDICTION, AND ARBITRATION**

**17.1 Greenbyte Contracting Entity, Notices, Governing Law and Venue**

The Greenbyte entity entering into the Agreement, the address to which Customer should direct notices under the Agreement, the law that will apply in any dispute arising out of or in connection with the Agreement, and the seat of arbitration shall depend on where Customer is domiciled, organized, or

incorporated in accordance with the following:

If Customer is domiciled, organized, or incorporated in the United States of America	
<b>The Greenbyte entity entering into the Agreement is:</b>	Greenbyte Inc, an Illinois corporation
<b>Notices should be addressed to:</b>	20 W Kinzie Street, Floor 17, Chicago, IL, 60654 USA
<b>Governing law is:</b>	Delaware State Law and United States Federal Law, excluding its conflict of law provisions
<b>Seat of Arbitration is:</b>	Chicago, Illinois
<b>Arbitration Administration:</b>	JAMS

If Customer is domiciled, organized, or incorporated in any other country	
<b>The Greenbyte entity entering into the Agreement is:</b>	Greenbyte AB, a Swedish corporation
<b>Notices should be addressed to:</b>	Östra Hamngatan 16, 411 09 Gothenburg, Sweden
<b>Governing law is:</b>	The laws of Sweden, excluding its conflict of law provisions
<b>Seat of Arbitration is:</b>	Gothenburg, Sweden
<b>Arbitration Administration:</b>	Stockholm Chamber of Commerce (SCC)

**17.2 Arbitration**

In case of arbitration in the US under JAMS in accordance with Clause 17.1, except for disputes under Clause 17.5, the following shall apply:

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Chicago, IL before three arbitrators. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be

entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Within 15 days after the commencement of arbitration, each party shall select one person to act as arbitrator, and the two so selected shall select a third arbitrator within 30 days of the commencement of the arbitration. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator within the allotted time, the third arbitrator shall be appointed by JAMS in accordance with its rules. All arbitrators shall serve as neutral, independent and impartial arbitrators. Each party shall communicate its choice of a party-appointed arbitrator only to the JAMS Case Manager in charge of the filing. Neither party is to inform any of the arbitrators as to which of the parties may have appointed them. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding any provision with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Clause shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

In case of arbitration in any other country under the SCC in accordance with Clause 17.1, except for disputes under Clause 17.5, the following shall apply: Any dispute, controversy, or claim arising out of or in connection with the Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal shall be composed of three arbitrators. The seat of arbitration shall be Gothenburg, Sweden.

**17.3 Language of Arbitration**

The language to be used in the arbitral proceedings shall be English.

**17.4 Confidentiality**

The Parties undertake and agree that all arbitral proceedings conducted with reference to the Agreement's arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this

confidentiality undertaking may not, in any form, be disclosed to a third party without the written consent of the other Party. This notwithstanding, a Party shall not be prevented from disclosing such information in order to safeguard in the best possible way his rights towards the other Party in connection with the dispute, or if the Party is obliged to disclose pursuant to statute, regulation, a decision by an authority, a stock exchange contract or similar.

**17.5 Unpaid Invoice Disputes; Venue; Waiver of Jury Trial**

Greenbyte may bring disputes regarding overdue unpaid claims for the Services before Swedish ordinary courts, in the first instance the District Court of Gothenburg (Göteborgs Tingsrätt). In the event Customer is domiciled, incorporated, or otherwise organized in the United States of America, Greenbyte may bring an action to enforce overdue unpaid claims for the

Services in any state or federal court sitting in the State of Illinois, United States. Customer hereby consents to personal jurisdiction in such courts and waives (i) any and all objections to any such action based on venue, including any objections for *forum non conveniens*, and (ii) any and all claims that such venue of the suit, action or proceeding is improper. EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**17.6 Third Party Consent**

In case the Agreement or any part of it is assigned or transferred to a third party, such third party shall automatically be bound by the provisions of this arbitration clause.

## APPENDIX 1 – INSTALLATION SERVICES FOR SITES AND DEVICES

### 1 DEFINITIONS

“**Central Connection Point**” means one connection point per Site that transmits data for Power Generating Units.

“**Core Device**” means (a) for wind: wind turbines, met mast, primary site power meter, wind turbine OEM control unit; or (b) for solar: inverters, irradiance sensors, primary site power meter. Core Devices transmit data through the Central Connection Point.

“**Device**” means a Core Device or Peripheral Device (defined below).

“**Additional Connection Point**” means a secondary or tertiary connection point for a Site that transmits data for Peripheral Devices.

“**Peripheral Device**” means is physical piece of hardware with one specific function, or a third-party data provider transmitting data through a Central Connection Point or an Additional Connection Point. Examples include (a) for wind: blade sensors, production forecasts, grid meters, electricity prices; or (b) for solar: trackers, production forecasts, combiner boxes, UPS, intrusion alarms, power meters.

“**Power Generating Unit**” means a physical piece of hardware generating power and transmitting data though the Central Connection Point to the Platform Service. For example: wind turbines and inverters.

All other definitions used in the GTC are hereto adopted in their entirety.

### 2 INSTALLATION SERVICES

#### 2.1 Installation of Sites)

Installations of Site(s) in the Platform Service are delivered per Site.

Installations include connection to the Site through one Central Connection Point, installation of Core Devices as available through the Central Connection Point, import of historical data on the format of which the Central Connection Point provides historical data, configuration of availability contracts, configuration of budget figures, configuration of power curves (where applicable), configuration of geographical locations.

To complete the Installation Service, Customer to supply following materials:

- (a) Communication details to Central Connection Point

- (b) Meta data such as geographical coordinates of Power Generating Units, budget figures, power curve (if applicable) etc. through Greenbyte's standard means of meta data collection.
- (c) Availability and performance contracts
- (d) Status codes and signal lists
- (e) Historical data on the format of which the Central Connection Point provides historical data

## 2.2 **Installation of Peripheral Devices**

For Peripheral Devices to be installed, it is required that data can be provided through a connection point i.e. either a Central Connection Point, or an Additional Connection Point.