

END USER ACCESS AGREEMENT (EFFECTIVE 2/1/19)

This End User Access Agreement ("Agreement") is made between you ("User") and Greater Cincinnati Energy Alliance, Inc., an Ohio nonprofit corporation ("GCEA").

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICES CONTEMPLATED HEREBY. BY CLICKING THE ACCEPTANCE BUTTON OR ACCESSING, USING, OR INSTALLING ANY PART OF THE SERVICE CONTEMPLATED BY THIS AGREEMENT, USER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF USER DOES NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN USER MAY NOT ACCESS, USE, OR INSTALL ANY PART OF THE SERVICE.

Background

- A. GCEA has provided this online informational tool ("Informational Tool") as a service to the User. The Informational Tool provides information on various potential energy savings solutions including, without limitation, information on contacting GCEA for advice on home energy saving solutions and information on third party contractors that may be able to assist the User with implementing these solutions for a separate fee. The term "Informational Tool" includes any advice or information provided by GCEA, including information on potential contractor leads, and all other services associated with access to such tool.
- B. GCEA may provide information and education on the Informational Tool through certain governmental entities, individuals, and private employers or entities (*collectively*, "Information Channel Providers").

Accordingly, the parties agree as follows:

1. Service and Limitations.

- 1.1. *Description.* Subject to the terms and limitations set forth in this Agreement, GCEA agrees to provide User with access to the Informational Tool at no cost; provided that the User acknowledges that the contractors listed on the Informational Tool will charge a separate fee if engaged by the User. User agrees that the Informational Tool is provided to User to provide an additional source of information to consider when evaluating energy savings solutions and User should conduct User's own independent diligence. User understands that the information provided by the Informational Tool is estimated based on the information provided by User and may not be entirely accurate.
- 1.2. *Access.* In all instances, the Informational Tool is not being sold to User; rather, User is being granted limited, non-exclusive, and revocable access to the Informational Tool. Except where GCEA otherwise authorizes in writing, the Informational Tool is provided, and User may only use the Informational Tool, for User's personal, non-commercial use. User acknowledges that GCEA reserves the right to discontinue provision of the Informational Tool, in whole or in part, at any time and for any reason. User acknowledges and agrees that from time to time the Informational Tool may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs; or (iii) causes beyond the control of GCEA.
- 1.3. *Equipment.* User shall be solely responsible for providing, maintaining, and ensuring compatibility with the Informational Tool, all hardware, software, electrical, and other physical requirements for

EXHIBIT A

User's use of the Informational Tool, including, without limitation, telecommunications and internet access connections and links, web browsers, or other equipment, programs, and services required to access and use the Informational Tool.

2. **User Representations.** User represents and warrants to GCEA that: (i) User is over the age of eighteen (18) and has the power and authority to enter into and perform User's obligations under this Agreement; (ii) all information provided by User to GCEA is truthful, accurate, and complete; (iii) User has provided and will provide accurate and complete information; and (iv) User is accessing the Informational Tool for his or her own, personal, non-commercial use and not for or on behalf of any other person or entity.
3. **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL GCEA OR ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, PARTNERS, SUCCESSORS, AGENTS, REPRESENTATIVES, AFFILIATES, SUBSIDIARIES, INFORMATION CHANNEL PROVIDERS OR THE AFFILIATES OF ANY OF THE FOREGOING (COLLECTIVELY, THE "GCEA AFFILIATES") BE LIABLE TO USER FOR ANY SPECIAL, REMOTE, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (EVEN IF GCEA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH THE INFORMATIONAL TOOL, THE SERVICES CONTEMPLATED BY THIS AGREEMENT, OR THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF TIME, MONEY, OR DATA. IT IS A MATERIAL CONDITION PRECEDENT TO GCEA'S ENTERING INTO THIS AGREEMENT THAT THIS LIMITATION OF LIABILITY APPLY IN ALL EVENTS. SUCH LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF SERVICES OR PRODUCTS RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE INFORMATIONAL TOOL, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED IN CONNECTION WITH THE INFORMATIONAL TOOL. IN ACCORDANCE WITH SECTION 6 (ASSUMPTION OF RISK), UNDER NO CIRCUMSTANCES SHALL GCEA OR THE GCEA AFFILIATES BE LIABLE FOR ANY CLAIMS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS, OR COSTS AND EXPENSES UNDER THIS AGREEMENT OR ARISING FROM THE INFORMATIONAL TOOL OR ANY USE THEREOF, WHETHER IN CONTRACT OR TORT, IN STRICT LIABILITY OR OTHERWISE. FURTHERMORE, USER AGREES THAT ANY CAUSE OF ACTION ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH USER'S USE OF THE INFORMATIONAL TOOL OR THIS AGREEMENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION SHALL BE PERMANENTLY BARRED. IF MANDATORY LAW IN AN APPLICABLE JURISDICTION PREVENTS APPLICATION OF THIS LIMITATION OF LIABILITY IN ANY WAY, THIS LIMITATION OF LIABILITY WILL BE APPLIED TO THE MAXIMUM EXTENT POSSIBLE CONSISTENT WITH SUCH APPLICABLE MANDATORY LAW.
4. ~~**Indemnification.** User agrees to indemnify and hold harmless GCEA and the GCEA Affiliates from and against any and all claims, liabilities, losses, damages, obligations, costs and expenses (including reasonable attorneys' fees and costs) arising out of, related to, or that may arise in connection with: (i) User's access to or use of the Informational Tool; (ii) any actual or alleged violation or breach of any representation, warranty, or covenant that User has made; or (iii) User's acts or omissions. User agrees to fully cooperate with GCEA in the defense of any claim that is the subject of Users obligations hereunder.~~
5. **Lawful Use Only.** User may use the Informational Tool only as expressly provided in, or contemplated by, this Agreement. User shall not use the Informational Tool in any way that violates any applicable

law, rule, or regulation. Except as GCEA otherwise expressly permits in writing, User may not use, reproduce, duplicate, distribute, create derivative works based upon, publicly display, publicly perform, publish, transmit, or otherwise exploit the Informational Tool or any content derived therefrom for any purpose whatsoever without obtaining prior written consent from GCEA.

6. **Assumption of Risk; Disclaimers.** USER EXPRESSLY AGREES THAT USE OF THE INFORMATIONAL TOOL IS AT USER'S OWN RISK. THE INFORMATIONAL TOOL AND SERVICES CONTEMPLATED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING AND TO THE FULLEST EXTENT PERMITTED BY LAW, GCEA AND THE GCEA AFFILIATES **DISCLAIM ANY AND ALL WARRANTIES** INCLUDING ANY: (I) WARRANTIES THAT THE INFORMATIONAL TOOL OR INFORMATION PROVIDED THEREBY WILL MEET USER'S REQUIREMENTS; (II) WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, SECURITY, USEFULNESS, TIMELINESS, OR INFORMATIONAL CONTENT OF THE INFORMATIONAL TOOL OR INFORMATION PROVIDED THEREBY; (III) WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE; (IV) WARRANTIES FOR SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON OR BY THE INFORMATIONAL TOOL OR ACCESSED THROUGH THE INFORMATIONAL TOOL; (V) WARRANTIES CONCERNING THE ACCURACY OR RELIABILITY OF THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE INFORMATIONAL TOOL; (VI) WARRANTIES THAT USER'S USE OF THE INFORMATIONAL TOOL WILL BE SECURE OR UNINTERRUPTED; AND (VII) WARRANTIES THAT ERRORS IN THE INFORMATIONAL TOOL WILL BE CORRECTED.

7. **Miscellaneous.**

7.1. *Severability.* If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify the Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

7.2. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. User may not assign his or her rights or obligations hereunder without the prior written consent of GCEA. Any such purported assignment or delegation by User without the appropriate prior written consent will be null and void and of no force and effect. GCEA shall be permitted to assign its rights and obligations hereunder without the prior written consent of User and without notice.

7.3. *Entire Agreement.* This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes any and all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

7.4. *No Third-Party Beneficiaries.* This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to

or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

7.5. *Waiver.* No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

7.6. *Governing Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction). Any legal suit, action, or proceeding arising out of or based upon this Agreement or the services contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in the city of Cincinnati and county of Hamilton, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

7.7. *Waiver of Jury Trial.* Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

~~7.8. *Attorneys' Fees.* If either party to this Agreement institutes any action or proceeding against the other party arising out of or based upon this Agreement, or by reason of any default hereunder, then the prevailing party in such action or proceeding is entitled to recover from the other party all costs of such action or proceeding, including reasonable attorneys' fees and court costs.~~

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(REV. 12/2018)