

# Efergy Terms and Conditions worldwide

Effective: October 24, 2016

Efergy Technologies Ltd and its affiliates, if any, (collectively referred to as 'Efergy', 'we', 'us' or 'our') manufacture, market and sell Efergy consumer electronics products (the "Product"). We also provide additional features such as (a) the website located at [www.efergy.com](http://www.efergy.com) and more generally all URL and websites administered by Efergy or within the [www.efergy.com](http://www.efergy.com) domain (the 'Site'), (b) services available on the Site and/or delivered through the Site (the 'Site Services'), (c) certain software that may be downloaded to your computer (the 'Computer Software'), and (d) certain software that may be downloaded to your mobile device (the 'Mobile Software'). As used herein, the term 'Software' means the Computer Software and Mobile Software; the term 'Services' means the Site, Site Services, Computer Software and Mobile Software. The terms 'you' or 'user' refer to all individuals and entities that access and/or use the Services. These Terms of Use govern your access to and use of the Services.

## **1.0 Scope and acceptance of the Terms of Use.**

**1.1** These Terms of Use and the applicable Privacy Policy available at <http://www.efergy.com> (the 'Privacy Policy'), which is hereby fully incorporated and constitutes, with the Terms of Use, one and single document, govern your access and use of the Services. Please read them carefully.

**1.2** By your affirmative actions of registering on the Site, of accessing and/or using all or part of the Services, you acknowledge that you have read, understood, and agree to be bound by the provisions of these Terms of Use and Privacy Policy. If you do not agree with all or part of these Terms of Use or Privacy Policy, do not register, access, browse or use all or part of the Services.

**1.3** We may change these Terms of Use at any time without prior notice. You may read the up to date and effective version of these Terms of Use at any time on the Site. The revised Terms of Use will become effective upon posting on the Site. Any use of the Services after such posting shall constitute your acceptance of any such changes. If you do not agree with all or part of the revised Terms of Use, do not continue to use the Services and cancel any registration you may have.

## **2.0 Use of the Services.**

**2.1** The Services are for use by users who are at least 13 years old. Users under the age of 13 are not permitted to use the Services without the consent of a parent or legal guardian. By registering, accessing or using the Services, you represent that the information provided about yourself, including your age or the consent of a parent or legal guardian, is accurate and complete.

**2.2** The Services contain all types of information and material, including but not limited to software, text, graphics, communications, measures, tests, results, opinions, photographs, drawings, profiles, messages, notes, websites links, music, video files or other animated or non-animated images, designs, music, audio files or other sounds, reports, charts and data files, and any other content, either owned by or licensed to Efergy by any third party, including other users of the Services, to the exclusion of your User Generated Content as defined hereinafter (collectively referred to as the 'Content').

**2.3** The Services and Content are protected by UK intellectual property laws and any other intellectual property law that may apply. You acknowledge and agree that Efergy (or its licensors) own all legal rights, title and interest in and to the Services and Content, including any intellectual property rights which subsist in the Services and Content (whether those rights happen to be registered or not, and wherever in the world those rights may exist). You further acknowledge that the Services may contain information which is designated confidential by Efergy and that you shall not disclose such information without Efergy's prior written consent.

**2.4** Efergy gives you a personal, worldwide, royalty-free, non-assignable, non-transferable and non-exclusive license to use the Content provided to you as part of the Services. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Product(s) you registered on the Site and, as long as you have the right to be registered, to access or to use the Services, in the manner permitted by these Terms of Use. You shall not, and you shall not permit anyone else to, copy, reproduce, modify, translate, broadcast, perform, display, distribute, transmit, frame, republish, download, display, perform, post, transmit, sell, make a commercial use, create a derivative work, reverse engineer, decompile or otherwise attempt to extract any code from the Services and Content unless Efergy has expressly agreed to it in writing. You agree not to use any data mining, robots, scraping or similar data gathering methods.

**2.5** No other use is permitted without our prior written consent. You must retain all copyright and other proprietary notices contained in the original Content on any copy you make of the Content.

**2.6** The trademarks, service marks, logos, domain names and other distinctive brand features of Efergy (the 'Efergy Trademarks') used and displayed on those Services are registered and unregistered trademarks or service marks of Efergy. Other products and services names available through the Services may be trademarks or service marks owned by third-parties (the 'Third-Party Trademarks', and, collectively with Efergy Trademarks, the 'Trademarks'). Apart from the licenses and rights hereby expressly granted as part of these Terms of Use, nothing in the Services, Content or in these Terms of Use should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of the Trademarks displayed on the Services, without the prior written consent of Efergy. The Trademarks may not be used to disparage or harm in any manner Efergy or the applicable third-party, Efergy's or third-party's products or services, or in any manner (using commercially reasonable judgment) that may damage any goodwill in the Trademarks. Use of any Trademarks as part of a link to or from any web site is prohibited without Efergy's prior written consent. All goodwill generated from the use of any Efergy Trademark shall inure to Efergy's benefit.

**2.7** You agree not to: (a) take any action that imposes an unreasonable load on the Services' infrastructure, (b) use any device, software or routine to interfere or attempt to interfere with the proper working of the Services or any activity being conducted on the Services, (c) attempt to decipher, decompile, disassemble or reverse engineer any of the software comprising or making up the Services, (d) delete or alter any material posted on the Site by Efergy or any other person or entity, and/or (e) frame or link to any of the materials or information available on the Services.

**2.8** Certain elements of the Services are protected by trade dress, trademark, unfair competition, and other laws and may not be copied or imitated in whole or in part, by any means, including but not limited to, the use of framing or mirrors, except as otherwise expressly permitted by Section 2.4 of these Terms of Use. None of the Content for the Services may be retransmitted without the express written consent from Efergy for each and every instance.

**2.9** If you believe in good faith that materials on the Services provided by Efergy infringe your copyright or author's rights, you (or your agent), may send us a notice requesting that the material be removed, or access to it blocked. Notices and counter notices with respect to the Services should be sent to Efergy at:

- By Mail: Copyrights Agent, 320 Main Road, S94QL Sheffield, UK
- By Email: [copyright@efergy.com](mailto:copyright@efergy.com)

### **3.0 User Generated Content**

**3.1** The User Generated Content (the 'UGC') is all types of information and material, including but not limited to software, text graphics, communications, measures, tests, results, opinions, photographs, drawing, profiles, messages, notes, website links, music, videos files or other animated or non-animated images, designs, music, audio files or other sounds, reports, charts and data files, and any other content, including the Feedbacks and Submissions as defined hereinafter, that you publish, display, upload, disclose, transmit, store, share or otherwise make available ("post") on or through the Services or the use of your Product. This includes all data transmitted by your Efergy Product.

**3.2** By publishing, displaying, uploading, disclosing, transmitting, storing, sharing, "posting," or otherwise making available your UGC on or through the Services, you hereby grant to Efergy a perpetual, irrevocable, non-exclusive, worldwide, royalty-free license, with the right to sublicense, to copy, reproduce, modify, translate, broadcast, perform, display distribute, transmit, frame, republish, download, display, perform, post, sell, make a commercial use and commercially exploit, create derivative works, reverse engineer, decompile, extract any code on any of your UGC, in any media now existing or hereafter developed, including without limitation on websites, in audio format, and in any print media format. You hereby waive any rights of publicity and privacy with respect to the UGC and any other legal or moral rights that might preclude Efergy's use of the UGC or require your permission for Efergy to use the UGC. You agree not to assert any claim, whether based on tort, contract, or other legal theory, against Efergy or its sublicensees relating to Efergy's its sublicensees' use of the UGC, and you hereby release Efergy and its sublicensees from any such claims.

**3.3** You represent that your UGC : (i) will not infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights; (ii) will not violate any law, statute, ordinance or regulation; (iii) will not be obscene or contain child pornography; (iv) will not contain any viruses, worms, time bombs or other computer programming code that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; (v) will not violate any third party's rights of publicity or privacy; and (vi) will not be defamatory, unlawfully threatening or harassing, harmful to minors in any way, or otherwise offensive or inappropriate. You are responsible for complying with all laws applicable to your UGC.

#### **4.0 Advertising, Linking and Framing.**

The Site and Softwares may contain information about, links to and/or advertisements for web sites operated by other parties (the 'Third Party Sites'). In addition, emails sent to users of the Services may contain information about, links to and/or advertisements for Third Party Sites. The information provided about, links to and advertisements concerning Third Party Sites are provided for your convenience only. We do not control such Third Party Sites and we are not responsible for the content and performance of these Third Party Sites and/or for any transactions you may choose to conduct with the operators of any Third Party Sites. Efergy suggests that you carefully read the terms of use and privacy policy (if any) applicable to the Third Party Sites. You recognize and agree that Efergy is not responsible for the content of linked Third Party Sites, sites framed within the Site or third party advertisements on the Site and/or in emails sent from this Site, and Efergy does not make any representations regarding their content or accuracy. Your use of Third Party Sites is at your own risks and subject to the terms and conditions of use of such sites.

#### **5.0 Unsolicited Ideas and Feedback.**

5.1 Efergy appreciates your interest in our products and our company and understands that you may have comments and suggestions. However, Efergy does not want you to, and you should not, send any confidential or proprietary information to Efergy through its Services, or through any other means. Please note that you have no confidentiality agreement with Efergy and any unsolicited information or material sent to Efergy will not be regarded by Efergy as confidential or proprietary information. You may wish to consult with an attorney before making any unsolicited submission to Efergy so that you can understand what will be consequences of making an unsolicited public submission to Efergy. If, however, you submit unsolicited information and feedback, including, without limitation, ideas for new advertising campaigns, new promotions, new or improved products or technologies, product enhancements, processes, materials, marketing plans or new product names (collectively, the 'Feedback'), please be aware that regardless of what your letter and/or any other accompanying documentation may say, you are agreeing that the following terms shall apply to your Feedback: (1) Efergy, and our designees, may use or redistribute the Feedback and/or any portions thereof for any purpose, including commercial purposes, and in any way; without compensation to you; (2) there is no obligation for Efergy to review the Feedback and/or provide you with any commentary regarding the same; and (3) there is no obligation to keep any Feedback confidential.

**5.2** Upon submitting Feedback you (1) warrant that you are the original developer and/or creator of the Feedback and are legally free to make such a disclosure and you shall be solely liable for any damages arising from your submission of any information that is protected through copyright, trade secret law, patent law or other proprietary rights and (2) understand our feedback policy as set forth in this Section and accept this policy without reservation.

## **6.0 Submissions Policy.**

**6.1** The Services may provide you with an opportunity to post publicly comments, articles and other submissions (collectively, the 'Submissions'). By posting and/or otherwise providing Submissions to the Services, you fully understand and agree to grant us with the rights described in Section 5 above. You also permit any other users to access, display, view, store and reproduce such Submissions for personal use. You acknowledge that to the extent that you include personally identifiable information in your Submissions, we may republish such information. Efergy furthermore reserves the right to alter and edit any Submission or refuse to accept, post, display or transmit any Submission in its sole discretion.

**6.2** Although Efergy has no obligation to monitor the Submissions, you acknowledge and agree that we may do one or all of the following: (i) monitor the Submissions; (ii) alter, edit, or remove any Submission in whole or in part; or (iii) disclose any Submissions. The Submissions posted on the Site by users do not indicate any approval or endorsement by Efergy of such Submissions. Efergy is not responsible for, and hereby disclaims any and all liability that may arise from the Submissions.

**6.3** You agree that you are responsible for your own use of the Services, for any Submission you make, and for any consequences thereof. You agree that you will use the Services in compliance with all applicable local, state, national, and international laws, rules and regulations, including any laws regarding the transmission of technical data exported from your country of residence. To provide a forum where ideas can be shared in a productive and safe environment, you agree NOT to:

- (i) Post any private information, or otherwise harvest, collect or disclose information, about another without his or her express consent;
- (ii) Post any content to the Site that is unlawful, racist, hateful, libelous, defamatory, obscene, or that intentionally discriminates against or harasses particular individuals or groups;
- (iii) Post any content to the Site that infringes any third party's intellectual property or other rights;
- (iv) Use the Services for any unlawful purpose, or transmit or otherwise make available in connection with the Services any material that would give rise to criminal or civil liability;
- (v) Use the Services for advertisements, chain letters, spam, survey solicitations, junk mail or solicitations;
- (vi) Impersonate any person or entity, including any Efergy employees, or falsely state or otherwise misrepresent your affiliation with any person or entity;
- (vii) Imply that Efergy endorses any of your statements or positions;
- (viii) Take any action that imposes an unreasonable load on the server;
- (ix) Use any device, software or routine to interfere or attempt to interfere with the proper working of the Services or any activity being conducted on the Services;
- (x) Attempt to decipher, decompile, disassemble or reverse-engineer any of the software comprising or making up the Services; and/or
- (xi) Delete or alter any material posted by any other person or entity.

## **7.0 Disclaimer of Content and Warranties.**

**7.1** The warranty for the product is set forth in the limited warranty available on <http://www.efergy.com>.

**7.2** EFERGY, ITS AFFILIATES, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, OR LICENSORS (COLLECTIVELY, THE 'EFERGY PARTIES') MAKE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, ABOUT THE CONTENT AND SERVICES, INCLUDING BUT NOT LIMITED TO THEIR OPERATION, ACCURACY, RELIABILITY, COMPLETENESS, TIMELINESS OR RELIABILITY. THE EFERGY PARTIES DO NOT WARRANT THAT THE SERVICES WILL OPERATE ERROR FREE, WILL BE UNINTERRUPTED OR AVAILABLE AT ANY TIME OR FROM ANY PARTICULAR LOCATION, OR THAT THE SERVICES, ITS SERVER, OR THE CONTENT, ARE FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES. IF YOUR USE OF THE SERVICES OR THE CONTENT CAUSES THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR DATA, NO EFERGY PARTY SHALL BE RESPONSIBLE FOR THOSE COSTS. THE SERVICES AND CONTENT ARE PROVIDED ON AN 'AS IS' AND 'AS AVAILABLE' BASIS WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. THE EFERGY PARTIES DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF TITLE, MERCHANTABILITY, NON INFRINGEMENT OF THIRD PARTIES RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE.

**7.3** The Content on the Services is presented in a summary fashion, and is intended to be used for informational purposes only. The data, measurements as well as any other kind of content provided through the Services are supplied without any warranty of accuracy and should not be used as a source to make any decision.

## **8.0 Limitation of Liability.**

**8.1** IN NO EVENT SHALL ANY EFERGY PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OR INABILITY TO USE, OR RESULTING FROM USE OF THE SERVICES AND THEIR CONTENT, WHETHER SUCH DAMAGES ARE BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ANY EFERGY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EFERGY PARTIES SHALL NOT BE SUBJECT TO LIABILITY FOR THE TRUTH, ACCURACY OR COMPLETENESS OF THE CONTENT AND SERVICES, OR ANY OTHER INFORMATION CONVEYED TO THE USER, OR FOR ERRORS, MISTAKES OR OMISSIONS THEREIN, OR FOR ANY DELAYS OR INTERRUPTIONS OF THE DATA, OR INFORMATION STREAM FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE SERVICES AND THEIR CONTENT AT YOUR OWN RISKS. THE AGGREGATE LIABILITY OF THE EFERGY PARTY, TAKEN INDIVIDUALLY OR COLLECTIVELY, ARISING OUT OR RELATING TO THE SITE AND SERVICES (REGARDLESS OF THE FORM OF ACTION OR CLAIM, E.G. CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER LEGAL THEORY) IS LIMITED TO \$100.

**8.2** Some countries applicable law do not allow certain of the above limitations or exclusions, in which case they may not apply to you. IN SUCH COUNTRIES, THE LIABILITY OF THE EFERGY PARTIES SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

## **9.0 Indemnification of Efergy.**

Upon simple request by us, you agree to defend, indemnify, and hold harmless Efergy from and against any losses, liabilities, damages and costs, including without limitation, reasonable legal and accounting fees, arising or resulting from any claims, actions or demands related to (i) your use or misuse of the Services, including any UGC ; (ii) your breach of these Terms of Use ; or (iii) any breach of any intellectual property or other third party rights, or any applicable law in connection with the use of the Services. Efergy shall provide notice to you of any such claim, suit, or proceeding. Efergy reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting Efergy's defense of such matter.

## **10.0 Termination of the Services.**

**10.1** These Terms of Use will continue to apply until terminated by either you or Efergy as set out below.

**10.2** If you want to terminate your legal agreement with Efergy, you may do so by (a) notifying Efergy at any time and (b) closing your accounts for the Services which you use.

**10.3** Efergy may, at any time, terminate its legal agreement with you if:

- a) you have breached any provision of these Terms of Use (or have acted in manner which clearly shows that you do not intend to, or are unable to, comply with the provisions of the Terms of Use); or
- b) Efergy is required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful); or
- c) the relationship between Efergy and partner with whom Efergy offered the Services to you has been terminated or the partner has decided not to offer the Services anymore; or
- d) Efergy is transitioning to no longer providing the Services to users in the country in which you are resident or from which you use the Services, for example in case the Services, in Efergy's sole opinion, is no longer commercially viable.

**10.4** Without prejudice to the above, Efergy reserves the right, in its sole discretion, to restrict, suspend, or terminate parts of the Services or their Content at any time and for any reason without prior notice or liability. Efergy reserves the right to change, suspend, or discontinue all or any part of the Services or their Content at any time without prior notice or liability.

You understand and agree that some of your UGC, such as that displayed outside your profile, in any part of the Site, or on any social platforms, may continue to appear on the Site or on other social platforms even after your UGC is removed from the Site or your account is terminated.

**10.5** Sections 2 (Use of the Services), 7 (Disclaimer of Content and Warranties), 8 (Limitation of Liability), 9 (Indemnification of Efergy), 10 (Termination of Terms of Use), and 13 (Miscellaneous) shall survive the termination of this Terms of Use.

## **11.0 User Must Comply with Applicable Laws.**

**11.1** Those Services are hosted in the UK. We make no claims concerning whether the Content may be downloaded, viewed, or be appropriate for use outside of the UK. If you access the Content or Services from outside of the UK, you do so at your own risk. Whether inside or outside of the UK, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction.

**11.2** UK controls the export of certain products and information. You expressly agree to comply with such restrictions and not to export or re-export any of the Content to countries or persons prohibited under the export control laws. By downloading the Content, you are expressly agreeing that you are not in a country where such export is prohibited or are a person or entity for which such export is prohibited. You shall be liable for compliance with the laws regarding the import, export, or re-export of the Content.

## **12.0 Credits.**

Apple, the Apple logo, iPhone, iPad and iPod touch are trademarks of Apple Inc., registered in the U.S. and other countries. App Store is a service mark of Apple Inc.

### **13.0 Miscellaneous.**

These Terms of Use are governed by UK law. Any dispute resulting from these Terms of Use will fall within the exclusive jurisdiction of the competent UK courts.

If any provision of these Terms of Use is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Use, which shall remain in full force and effect.

Failure of Efergy to act on or enforce any provision of these Terms of Use shall not be construed as a waiver of that provision or any other provision in these Terms of Use. No waiver shall be effective against Efergy unless made by an authorized officer of Efergy in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance.

Except as expressly agreed by Efergy and you, these Terms of Use constitutes the entire Terms of Use between you and Efergy with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the you and Efergy with respect to the subject matter.

The section headings are provided merely for convenience and shall not be given any legal import.

These Terms of Use will inure to the benefit of our successors, assigns, licensees, and sublicensees.

Any information submitted or provided by you to the Services might be publicly accessible. Important and private information should be protected by you. Efergy is not liable for protection of privacy of electronic mail or other information transferred through the Internet or any other network that you may use.

All personal information that we may collect (including, but not limited to, your name and address) will be collected, used and held in accordance with the provisions of the Data Protection Act 1998, the EU General Data Protection Regulation and your rights under applicable legislation. To comply with the law, personal information will be collected and used fairly, stored safely and not disclosed to any other person unlawfully. For more information on privacy please read the 'Privacy Policy'.

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### **EFERGY TWO (2) YEARS LIMITED WARRANTY.**

Effective: October 24, 2016

Efergy Technologies Ltd warrants the product hardware components ('Product') against defects in material and workmanship when used in accordance with Efergy's documentation ('Documentation') for a period of TWO (1) YEARS after the date of original retail purchase ('Warranty Period') from Efergy or Efergy's authorized reseller by the end-user purchaser ("Customer" or "you").

#### **1. APPLICABLE PROVISIONS IN THE EVENT OF A BREACH OF LIMITED WARRANTY**

If the Product fails to conform to the Limited Warranty, Efergy will, at its sole discretion and upon your submission of a valid claim to Efergy (i) use commercially reasonable efforts to repair the defective Product with new or refurbished hardware functionally equivalent to the Product being repaired; (ii) replace the defective Product with a Product equivalent to new in performance and reliability; or (iii) exchange the defective Product for a refund of the Product's purchase price. A returned or repaired Product will be replaced under the terms of the Limited Warranty for the remaining Warranty Period, or ninety (90) days, whichever period is longer. This Limited Warranty is not transferable from Customer to subsequent Product owners, and the Warranty Period will not be extended for any such transfer.

## **2. CONDITION OF APPLICATION**

Efergy's warranty obligations are conditioned on Customer (i) notifying Efergy through the contact information available at <http://www.efergy.com> during the Warranty Period of any failure of the Product to meet the Limited Warranty, including a detailed description of the alleged failure, (ii) otherwise complying with Efergy's then-current return policy (see General Sales Conditions section "Right to cancel and return policy"), (iii) shipping, at Customer's cost, the affected Product to Efergy for repair or replacement, and (iv) providing Efergy with valid proof of purchase.

If Efergy determines, after analysis of a returned Product, that the Product is an Ineligible Product (see Document and Section of Included Documentation), Efergy will no longer have warranty obligations. Efergy will bear all costs of return shipping to Customer, except with respect to any Ineligible Product, for which Customer will bear all shipping costs.

## **3. EXCLUSIONS**

Efergy will have no warranty obligation with respect to the following circumstances ('Exclusions') ('Ineligible Products'): (i) a Product that has no defects in materials or workmanship, (ii) Products with defects that are not reproducible by Efergy, (iii) Products marked as 'sample' or sold 'AS IS', (iv) Products whose serial number has been defaced or removed, or (v) Products that have been subject to: (a) any modifications, alterations, repair, or servicing by any party other than Efergy or Efergy's authorized representatives; (b) handling, storage, installation, testing, or use not in accordance with the applicable Documentation; (c) abuse, negligence, neglect, accidents, abuse or misuse; (d) any breakdowns, fluctuations, or interruptions in electric power or the telecommunications network; or (e) any Acts of God, including fire, flood, tornado, earthquake, hurricane, excessive snow, lightning, riot, insurrection, act of war or other disaster.

## **4. WARRANTY DISCLAIMER**

EXCEPT TO THE EXTENT SET FORTH ABOVE IN THIS LIMITED WARRANTY, THE PRODUCTS ARE PROVIDED ON AN 'AS IS' BASIS, AND EFERGY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCTS, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, QUIET ENJOYMENT, AND ACCURACY. EFERGY DOES NOT WARRANT THAT OPERATION OF THE PRODUCTS WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT THE PRODUCTS WILL IN EVERY CASE PROCESS ALL DATA CORRECTLY.

## **5. LIMITATION OF LIABILITY**

**5.1** IN NO EVENT WILL (a) EFERGY BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY DAMAGES FOR LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THIS LIMITED WARRANTY OR THE PRODUCTS, EVEN IF EFERGY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, AND (b) EFERGY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS LIMITED WARRANTY AND THE PRODUCTS, WHETHER IN CONTRACT OR TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO EFERGY OR EFERGY'S AUTHORIZED RESELLER FOR THE PRODUCT AT ISSUE IN THE PRIOR 12 MONTHS (IF ANY). THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE



EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM. EFERGY DISCLAIMS ALL LIABILITY OF ANY KIND OF EFERGY'S SUPPLIERS.

**5.2** THE EFERGY ONLINE SERVICES ('SERVICES') PROVIDE YOU INFORMATION ('PRODUCT INFORMATION') REGARDING INDOOR AND OUTDOOR MEASUREMENTS. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMERS ABOVE, ALL PRODUCT INFORMATION IS PROVIDED FOR YOUR CONVENIENCE, 'AS IS', AND 'AS AVAILABLE'. EFERGY DOES NOT REPRESENT OR WARRANT THAT PRODUCT INFORMATION WILL BE AVAILABLE, ACCURATE, OR RELIABLE. YOU USE ALL PRODUCT INFORMATION, THE SERVICES, AND THE PRODUCT AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR (AND EFERGY DISCLAIMS) ANY AND ALL LOSS, LIABILITY, OR DAMAGES RESULTING FROM YOUR USE OF THE PRODUCT INFORMATION, SERVICES, OR PRODUCT.

## **6. CONSUMER PROTECTION**

SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS LIMITED WARRANTY WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.