



## ENERGY INTELLIGENCE CENTER, LLC

Sales Channel Agreement – v 2021.03.19

(Please return this to our National Sales Director, Tom Cleary [Tom.Cleary@EICteam.com](mailto:Tom.Cleary@EICteam.com))

This AGREEMENT is made as of the date of execution by and between Energy Intelligence Center, LLC (“EIC”), and the undersigned Sales Channel Partner (“Channel Partner”), with respect to business development for the sale of EIC’s energy efficiency technologies. EIC and Channel Partner are hereinafter referred to individually as “Party” and collectively as “Parties.”

### BACKGROUND

EIC offers a range of energy efficiency products and services including but not limited to Consulting, Platform (Algorithm), Monitoring, Diagnostics, and Training. Channel Partner is eligible for Business Development Fees and/or Reseller opportunities on a case-by-case basis for the current as well as ongoing offerings provided by EIC.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Engagement of Channel Partner. EIC hereby engages Channel Partner as a business development partner and agrees to either:
  - 1.1 Pay a Business Development Fee to Channel Partner for products and services provided by EIC for each Client identified by Channel Partner and approved by EIC in the Annex attached hereto or via subsequent submissions.
  - 1.2 Allow Channel Partner to resell EIC’s technology on a mutually agreed case-by-case basis relative to the wholesale cost, that will allow Channel Partner to collect the project costs from the Client directly and pay EIC as a sub-contractor / supplier.
  
2. The Annex. The Annex may be modified periodically and approved by EIC. For the Business Development Fee option, Channel Partner agrees to use its best efforts to introduce EIC to the most appropriate contact people at any of the potential Clients listed on the Annex. If and when a lead, provided by Channel Partner and approved by EIC, is non-responsive to emails, phone calls, or meeting appointments over a **6 month period**, the lead will be deemed dormant, and ineligible for the Business Development Fee. The Channel Partner may re-submit the Client to the Annex for review by EIC.
  
3. Support. During the engagement, EIC will provide support information to the Channel Partner to the best of EIC’s ability as it relates to Product/Service Technical information and support, marketing materials, warranty, savings analysis, and products guarantees.

4. **Independent Contractor.** Channel Partner is an independent contractor. Channel Partner agrees that nothing contained herein shall be construed to create the relationship partnership or of employer and employee between EIC, Channel Partner, or any of EIC's strategic partners. Channel Partner has no authority to bind EIC or its strategic partners to any contract, agreement or commitment.

5. **Business Development Fee COMMISSIONS:** The Business Development Fee shall consist of sales commissions. Commissions are paid by the end of the month following receipt of payment from the Client to EIC. Deposit payments or phased payments for large scale development projects are commissionable as EIC receives payment. If and when a Client chooses a payment structure with EIC that is based on monthly or quarterly energy saving performance payments, Channel Partner may request an upfront commission payment upon mutually agreed terms, rather than receiving payments over time. In many cases, when Clients choose to pay over multiple months or years, EIC will work with its third-party financing partners so that EIC receives the compensation at the completion of project. The third-party financing path will expedite the commission payments to Channel Partners.

**5.1 The Commissions are paid on the total project revenue received by EIC based on the level of work that the Channel Partner provides:**

- **Lead Provider: 2.5%**
- **Sales Representative: 5%**
- **Account Manager: 10%**

#### **Lead Provider**

Commission: 2.5%

Services to Earn the Commission:

1: Setting an Appointment with a Prospective account. An Appointment may take the form of a conference call or meeting scheduled by the Channel Partner with the Prospect and including one or more members of EIC, at a mutually convenient day and time. Lead Providers may choose to focus their time on End Users and/or attracting the interest of Energy Service Companies (ESCOs) or HVAC contractors, where EIC would serve as a sub-contractor. Prospects that have many accounts within their client list, give the Lead Provider the opportunity to earn commissions on the ripple effect of the business generated for EIC within that Prospect.

#### **Sales Representative**

Commission: 5%

Services to Earn the Commission:

1: Setting an Appointment with a Prospective account.  
2: Securing a completed Preliminary Assessment data sheet. The data sheet must have a minimum of 12 months of electricity kWh consumption and enough information on the existing cooling system equipment, that EIC is able to analyze and prepare a savings assessment.

#### **Account Manager**

Commission: 10%

Services to Earn the Commission:

- 1: Setting an Appointment with a Prospective account.
- 2: Securing a completed Preliminary Assessment data sheet.
- 3: Preparing a Preliminary Assessment from the data sheet. EIC works with its Account Managers on training and provides review and refinement to the savings reports before sending them to Prospects.
- 4: Ongoing account support and communications from sales through to project implementation. This level of commission is significantly higher than the “Lead Provider” and “Sales Representative” levels, because the Account Manager takes a more active role in the deliverables and ongoing communications as a member of the EIC, in many cases with EIC business cards and an EIC email account.

Sales Member may work at different commission levels on different accounts, rather than choosing just one of the three paths included above in this agreement.

5.2 If and when the Channel Partner would like to “recruit” sales support individual people or companies, the Channel Partner may pay them out of the commissions earned or request that EIC provide a commission structure to the support sales members at a lower rate to leave an override percentage for the primary Channel Partner.

5.3. If and when Channel Partner would like to resell EIC’s technology and services directly to its Clients, EIC will review the costs and profit margins with the Channel Partner on a case-by-case basis to ensure mutual benefits for both Parties and a cost-effective solution for the end user, Client.

6. Other CLEAN-TECH: If and when EIC develops relationships with other energy efficiency product or service providers related to commercial air conditioning and refrigeration or other technologies including LED Lighting, Channel Partners will have the opportunity to earn commissions or resell the technology on a case-by-case basis, with compensation and/or cost mutually agreed by both Parties. EIC has worked diligently to develop a growing “eco-system” of strategic partnerships across the clean-technology landscape, and Channel Partner may not circumvent relationship that EIC has with other providers in an effort to introduce those accounts directly to end users or wholesale buyers.

7. Indemnification. Each party (“indemnitor”) shall indemnify and hold harmless the other party (“indemnitee”) for all actions taken by indemnitor and for all failures to take action (regardless of the date of any such action or failure to take action) in connection with this Agreement and/or with Clients or potential Clients which give rise to claims by third parties against indemnitee. Such indemnification shall be to the fullest extent permitted by Pennsylvania law for all expense, liability and loss (including without limitation attorneys’ fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by indemnitee by reason of indemnitor’s actions or inaction. Excluding product warranty and savings, EIC shall indemnify Channel Partner. The Channel Partner customers remain the customers of the Channel Partners during the agreement and into perpetuity following the termination of this agreement.

8. Term. The Term of this Agreement shall be **five (5) years, followed by optional one (1) year renewals, subject to mutual approval by the Parties.** If either party hereto terminates

this Agreement, such party shall give the other party a minimum of **30 days notice**. If EIC terminates with Channel Partner, EIC will pay Channel Partner the earned commissions in addition to any commissions if any of the leads convert into projects within one (1) year following termination. Other than the consideration for the one year follow on commissions, there will be no Business Development Fees payable with respect to Client revenue received by EIC subsequent to the termination of this Agreement. EIC may terminate this Agreement at any time if there is a change in control of Channel Partner during the term of this Agreement. EIC retains the right to renegotiate this Agreement if there is a change in control of EIC during the term of this Agreement. "Control" for this purpose means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. EIC may also terminate this Agreement if in any of the successive 365-day periods following the date hereof Channel Partner has not produced at least 3 projects for EIC. While the term of this agreement is for 5 years, the Channel Partner's Clients remain the customers of the Channel Partners into perpetuity from the perspective of EIC.

#### 9. Mediation and Arbitration.

(a) Mediation. Neither party shall commence an arbitration proceeding pursuant to the provisions of Section 9(b) below unless such party shall first give a written notice (a "Dispute Notice") to the other party setting forth the nature of the dispute. The parties shall attempt in good faith to resolve the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association in effect on the date of this Agreement. If the parties cannot agree on the selection of a mediator within fifteen (15) days after delivery of the Dispute Notice, the mediator will be selected by the President of the Philadelphia Bar Association. If the dispute has not been resolved by mediation as provided above within thirty (30) days after the delivery of the Dispute Notice, then the dispute shall be determined by arbitration in accordance with the provisions of Section 9(b) hereof.

(b) Arbitration. Any controversy, claim or dispute of whatever nature arising between the parties, including but not limited to those arising out of or relating to this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity of this agreement or the arbitration provisions contained in this agreement, whether such claim existed prior to or arises on or after the date of this Agreement, including the determination of the scope of this agreement to arbitrate, which is not settled through mediation as provided in Section 19(a) above shall be determined by arbitration in Philadelphia, Pennsylvania by a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except that (a) every Person named on all lists of potential arbitrators shall be a neutral and impartial lawyer with excellent academic and professional credentials (i) who has practiced law for at least 15 years, specializing in either general commercial litigation or general corporate and commercial matters, and (ii) who has had experience, and is generally available to serve, as an arbitrator, and (b) each party shall be entitled to strike on a peremptory basis, for any reason or no reason, any or all of the names of potential arbitrators on any list submitted to the parties by the AAA as well as any Person selected by the AAA to serve as an arbitrator by administrative appointment. In the event the parties cannot agree on the selection of the arbitrator(s) from the one or more lists submitted by the AAA within 30 days after the AAA transmits to the parties its first list of potential arbitrators, the President of the Philadelphia Bar Association shall nominate three Persons for each vacancy in the arbitration panel who, in his or

her opinion, meet the criteria set forth herein, which nominee may not include Persons named on any list submitted by the AAA. Each party shall be entitled to strike one of such three nominees on a peremptory basis within 10 days after its receipt of such list of nominees, indicating its order of preference with respect to the remaining nominees. If two of such nominees have been stricken by the parties, the unstricken nominees shall be the arbitrator. Otherwise, the selection of the arbitrator shall be made by the AAA from the remaining nominees in accordance with the parties' mutual order of preference, or by random selection in the absence of a mutual order of preference. The arbitrators shall base their award on applicable law and judicial precedent, shall include in such award the findings of fact and conclusions of law upon which the award is based and shall not grant any remedy or relief that a court could not grant under applicable law. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The award of the arbitrators shall be final and binding on the parties.

(c) Award of Costs and Attorneys' Fees Against Party Breaching ADR Provisions. If either party fails to proceed with mediation or arbitration as provided herein or unsuccessfully seeks to stay such mediation or arbitration, or fails to comply with any arbitration award, or is unsuccessful in vacating or modifying the award pursuant to a petition or application for judicial review, the other party shall be entitled to be awarded costs, including reasonable attorneys' fees, paid or incurred by such other party in successfully compelling such mediation or arbitration or defending against the attempt to stay, vacate or modify such mediation or arbitration award and/or successfully defending or enforcing the award.

10. Enforcement Costs. To further deter breaches of this Agreement, and to deter specious claims of breach, the parties agree that any party successfully defending or asserting any claim of breach of this Agreement shall be entitled to recover reasonable attorney's fees expended in defending or prosecuting any claim hereunder, the parties agree that in any suit, action or proceeding between the parties seeking enforcement of any terms or provisions of this Agreement or relating to any transaction contemplated by this Agreement (or otherwise seeking to obtain any other remedy regarding any breach of this Agreement), the prevailing party in such suit, action or proceeding shall be entitled to recover, and the non-prevailing party shall pay (in addition to all other remedies to which the prevailing party may be entitled) the prevailing party's reasonable attorneys' fees and costs (including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs), including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, arbitrator fees and mediator fees.

11. Miscellaneous.

11.1 Indulgences, Waivers, Etc. Neither the failure nor any delay on the part of either party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

11.2 Controlling Law. This Agreement and all questions relating to its validity, interpretation, performance, remediation and enforcement (including, without limitation, provisions concerning limitations of actions) shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Pennsylvania, notwithstanding any choice-of-laws doctrines of such jurisdiction or any other jurisdiction which ordinarily would cause the substantive law of another jurisdiction to apply, without the aid of any canon, custom or rule of law requiring construction against the draftsman.

11.3 Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when personally delivered, or one day following the day when deposited with an overnight courier service such as UPS or Federal Express, for delivery to the intended addressee on the following day, or two days following the day when deposited in the United States mails, registered or certified mail, postage prepaid, return receipt requested. Notice shall be addressed as follows:

To the Company  
Energy Intelligence Center, LLC  
1001 Conshohocken State Rd. Suite 106  
Conshohocken, PA 19428  
Attn: Charlie Szoradi, CEO

To Channel Partner: (See the Signature Page)

Either party may alter the address to which communications or copies are to be sent by giving notice of such change of address to the other party in conformity with the provisions of this Section for the giving of notice.

11.4 Annex. The Annex attached hereto is hereby incorporated by reference into, and made a part of, this Agreement.

11.5 Binding Nature of Agreement; No Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, except that no party may assign or transfer its rights or obligations under or interest in this Agreement except in conformity with the provisions of this Agreement.

11.6 No Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and [permitted] assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person.

11.7 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. If executed in multiple counterparts, this Agreement shall become binding when two or more counterparts hereto, individually or taken together, bear the signatures of all of the parties reflected hereon as the signatories.

11.8 Provisions Separable. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or



unenforceable by virtue of the fact that any other provision may be invalid or unenforceable in whole or in part for any reason. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

11.9 Entire Agreement; Amendment, Modification and Termination; Reliance.

This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may be amended, modified or terminated at any time or times by the unanimous agreement in writing of the parties hereto. In entering into this Agreement, no party is relying on any representation, warranty, inducement or other statement made by or on behalf of any other party except as contained herein. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

11.10 Section Headings. The Section headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

11.11 Section References. Unless otherwise stated specifically, references herein to Sections shall be to Sections of this Agreement.

11.12 Gender, Etc. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate.

11.13 Number of Days. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which national banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.

11.14 Expenses of the Parties. Each party shall bear the expenses incurred by such party in connection with the negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby, except in instances where the Agreement provides otherwise.

11.15 Waiver of Jury Trial. THE PARTIES HEREBY EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY OR AGAINST EITHER OF THEM RELATING TO THIS AGREEMENT. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX TRANSACTIONS ARE MORE QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON, THE PARTIES PREFER, BASED ON THE ADVICE OF THEIR COUNSEL, THAT ANY DISPUTE BE RESOLVED BY A JUDGE APPLYING

APPLICABLE LAW. This provision shall only be applicable if for some unanticipated reason the arbitration provisions of this Agreement become inapplicable.

11.16 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties only in the courts of the Commonwealth of Pennsylvania, County of Philadelphia, or, if it has or can acquire the necessary jurisdiction, in the United States District Court for the Third Circuit, Eastern District, and each of the parties consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and irrevocably waives any objection based upon inconvenience of the forum or otherwise to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world. Notwithstanding the foregoing, nothing in this Section is intended to prevent either party from instituting an action in any jurisdiction for the sole and exclusive purpose of enforcing a judgment by a court in the jurisdictions referred to in the preceding sentence. This provision shall only be applicable if for some unanticipated reason the arbitration provisions of this Agreement become inapplicable.

11.17 Construction. The construction of this Agreement shall not take into consideration the party who drafted or whose representative drafted any portion of this Agreement, and no canon of construction shall be applied that resolves ambiguities against the drafter of a document. [The parties acknowledge that they were advised by competent counsel selected by them and each party has had a full opportunity to comment upon and negotiate the terms of this Agreement.] [The provisions of this Agreement and their legal effect have been fully explained to Seller and Purchaser and Seller and Purchaser each acknowledge that it or she has received or has had the opportunity to receive independent legal advice from counsel of its or her selection, and that Seller and Purchaser each has determined to complete this Agreement, and Seller and Purchaser each fully understands the facts, and has been fully informed as to its or her legal rights and obligations, and Seller and Purchaser each acknowledge and accept that this Agreement is, in the circumstances, fair and equitable, and that it is being entered into freely and voluntarily, and that the execution of this Agreement is not the result of any duress or undue influence, and that it is not the result of any collusion or improper or illegal agreement or agreements.]

## 12. Non-Circumvent and Mutual Confidentiality.

12.1 Channel Partner agrees that it will not circumvent EIC in working directly with any of its other Channel Partners or Strategic Partners during the term of this Agreement or for two (2) years following the termination of this Agreement. EIC agrees that it will not circumvent Channel Partner in working directly with any of the Channel Partner's prospective Clients/Customers during the term of this Agreement or for two (2) years following the termination of this Agreement.

12.2 Both parties agree that they will not solicit employment or consulting services from employees or consultants of the other Party during the term of this Agreement or for two (2) years following the termination of this Agreement.

12.3 Both Parties agree to hold in confidence any non-public proprietary information, and the Party providing the information will mark it CONFIDENTIAL for clarification when submitting information to the receiving party. The confidentiality applies to verbal communications, wherein EIC may describe to Channel Partner certain patent innovations under development and



or training sessions that include proprietary information regarding EIC's technology. Channel Partners may provide information from prospective Clients, such as utility bills and equipment specifications, and EIC will hold that information in confidence as well as case study reporting information, until such time as the Client approves it for release, at their discretion.

13. Geographic or Category Exclusivity: This Agreement does not limit Channel Partner from pursuing prospective Clients across any geography or category worldwide, and it does not grant Channel Partner exclusivity in any geography or category for the sale of EIC's technology. Channel Partner may request exclusivity for a particular category such as a property type, business association network, or national chain. Channel Partner may also request exclusivity for a particular metro market, state, or country. The Company will review the request(s) accordingly, and may set exclusivity costs with mutually agreeable target sales benchmarks to maintain the exclusivity. If and when a Channel Partner submits a lead that has a channel conflict with another Channel Partner, the Company may recommend a shared commission to align the Channel Partners for the highest and best use of their contacts and time to secure the business.

**The Agreement execution on the following page.**

# ENERGY INTELLIGENCE CENTER, LLC

Sales Channel Agreement – v 2021.03.19

(Please return this to our National Sales Director, Tom Cleary [Tom.Cleary@EICteam.com](mailto:Tom.Cleary@EICteam.com))

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written.

## CHANNEL PARTNER

Company Name/ or Individual: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Email: \_\_\_\_\_

Tel#: \_\_\_\_\_

Address: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company website: \_\_\_\_\_

## ENERGY INTELLIGENCE CENTER, LLC

Signature: \_\_\_\_\_

Name: Thomas Cleary

Title: National Sales Director

Date: \_\_\_\_\_

**ANNEX – PROSPECTIVE CLIENT LIST**

Channel Partner may add additional prospective Clients to this list at any time, for review and approval by Energy Intelligence Center (EIC). EIC will not unreasonably withhold approval, and EIC will provide the reason for conflicts if and when submissions are not approved. Channel Partner may submit the information in a separate file and format, such as excel, so long as the content is included per below. Within the sales process, Channel Partner is expected to assist in coordinating calls/site visits and securing the information in the one page Preliminary Assessment Data Sheet as well a year of utility bills.

*On a case-by-case basis EIC may approve prospective Clients names submitted by Channel Partner via email to add to the Channel Partners account, without the support information included below.*

Channel Partner: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Prospect Company Name: \_\_\_\_\_

Contact Person Name: \_\_\_\_\_

Contact Person Title: \_\_\_\_\_

Company website: \_\_\_\_\_

Potential Energy Saving technology interests:

- Air Conditioning optimization: (Yes/No)
- Refrigeration optimization (Yes/No)

Optional Notes: \_\_\_\_\_

(e.g. relationship between the Prospect and the Channel Partner, years of communications, order of magnitude such as property sq ft or number of buildings, etc.,)