

**CUSTOMER AGREEMENT  
TERMS AND CONDITIONS OF mPOWERED PROGRAM**

This Customer Participation Agreement (the "Agreement") governs in its entirety the terms and conditions of the NVE Home Area Network mPowered Program provided by NV Energy, Inc. ("NVE") to the Customer. This Agreement is comprised of the below Terms and Conditions and will take effect on the Installation Date (the "Effective Date") of the HAN System at the Customer premise as shown in an Equipment and Services Confirmation Form. Please carefully review the attached Terms and Conditions, which shall apply to and govern the relationship between the parties.

**1. Scope of mPowered Program.** The mPowered Program (the "Program") is a voluntary program made available by NV Energy ("NVE") to its Customers for the purpose of managing energy and demand in the pursuit of lowering energy costs. Program participants receive a Home Area Network System ("HAN System") and the "mPowered Customer Benefits" described below. The HAN System contains embedded Technology (as herein defined) essential to the use of the HAN System. This embedded Technology is owned by and licensed to you by a licensor, or its legal assignee or successor in interest ("**Licensor**"), a business partner of NVE and the manufacturer of the HAN System or provider of software for use with the HAN System.

**2. MPowered Customer Benefits.** By participating in the MPowered Program, NVE will provide the following services and cost incentives to you:

a. A standard HAN System at no charge or a premium HAN system at a discounted cost. Ownership of the HAN System is transferred to the Customer. Use of the HAN System is subject to your compliance with any applicable third-party End User License Agreement ("EULA"). There may be a fee for some types of peripheral equipment that is required in order to allow a HAN System to function properly (e.g. wireless routers or repeaters) at certain premises. Any applicable fees will be clearly stated on an Equipment and Services Confirmation Form and agreed to by the Customer;

b. No cost installation of the HAN System unless Customer elects the Customer-Install Option described below;

c. Use of automation and convenience software designed to help automate energy savings. Software or Software as a Service ("SaaS") offerings may be accompanied by one time or monthly subscription fees. Fees may be 100% waived for specific software applications SaaS services based upon current program design and regulatory approvals. Any applicable fees will be clearly stated on an Equipment and Services Confirmation Form and agreed to by the Customer.

d. MPowered enables voluntary participation in the Energy Event Participation Rebate. For Southern Nevada customers, full terms and conditions of the Participation Rebate are described in the currently applicable rate tariff rider, Schedule OLM or Schedule OLM-AS. For Northern Nevada customers, a Participation Rebate will be paid on a similar basis as Schedule OLM-AS with appropriate electricity market indices.

e. Additional benefits and incentives may be made available by NVE to Customer from time to time at NVE's sole discretion, including, by way of example only without obligation to NVE: optional plug load controllers, security and home automation features, third party software applications or services such as games, music, and other applications that interconnect with your HAN System. Any applicable fees will be clearly stated on an Equipment and Services Confirmation Form and agreed to by the Customer.

**3. Installation and Use of the HAN System.** Unless Customer elects the Customer-Install Option, an NVE employee or a designated agent of NVE will come to your home or business to install the HAN System, which requires that the Customer have always on broadband Internet service along with an open Ethernet port or, depending upon HAN System type, a wireless WiFi router. Customer agrees that only those named Authorized Users set forth on the Equipment and Services Confirmation Form shall have the right to use and access the HAN System. During the installation or internet login process, any applicable third-party EULA will be displayed. You must review the third-party EULA terms and conditions and indicate your acceptance when prompted by the HAN System or associated website. Your HAN System and/or associated services may not operate until you accept the terms of any applicable third-party EULA. The HAN System includes a two-way communication device which allows NVE to monitor your energy usage, including without limitation, use of a/c and heat, times of day when peak usage occurs, supply of a/c, set points, etc. You must allow communication between the HAN System and the Internet to occur uninterrupted in order for NVE to provide you with the Customer MPowered Benefits described herein. By executing this Agreement and using the HAN System, you hereby agree to the aforementioned communication. You further acknowledge and agree that NVE may, in its sole discretion, delegate its duty to provide the installation services and subsequent support services described herein to an independent contractor(s) of NVE's selection ("**Contractor**").

**4. Customer-Installation Option. Customer may elect to install the HAN System either by itself or its contractor. The following terms govern any such install as well as all other sections of this Agreement.**

a. If Customer has not completed a successful installation of the HAN System within thirty days of the delivery of the HAN System to Customer, NVE may at its sole discretion either (i) designate an NVE Employee or contractor to install the HAN System, with Customer's consent; or (ii) require Customer to return the HAN System to NVE, in which case Customer will return HAN System in original packing materials and with all documentation as directed by NVE.

b. ASSUMPTION OF THE RISK AND WAIVER. CUSTOMER UNDERSTANDS THAT THE INSTALLATION OF THE HAN SYSTEM MAY EXPOSE CUSTOMER TO RISK OF PHYSICAL INJURY OR DAMAGE TO PROPERTY. CUSTOMER KNOWINGLY AND VOLUNTARILY ASSUMES ALL RISKS, INCLUDING BUT NOT LIMITED TO RISK OF BODILY INJURY AND PROPERTY DAMAGE, ASSOCIATED WITH THE INSTALLATION OF THE HAN SYSTEM AND WAIVES ANY RIGHT CUSTOMER MAY HAVE WHETHER IN CONTRACT TORT OR OTHERWISE, TO BRING ANY CLAIM OF ANY KIND AGAINST NVE FOR DAMAGES OF ANY KIND ASSOCIATED WITH CUSTOMER'S INSTALLATION OF THE HAN SYSTEM.

**5. Ownership of Proprietary Technology and Data.**

a. NVE and its licensors are the owners of the Technology embedded in the HAN System, and the User Documentation (defined herein). The technical procedures, processes, systems, methods of operation, and concepts which are embodied within the HAN System and User Documentation, and all data stored or maintained by NVE are trade secrets and shall be deemed Confidential Information (as defined herein), of NVE or its

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licensors and may not be modified, copied, reproduced, distributed, publicly displayed, or otherwise disclosed by Customer or its Authorized Users, except as otherwise expressly permitted in this Agreement, without NVE's prior written consent. Ownership of the information transferred between the HAN System and NVE servers or contracted servers, and data stored and maintained by NVE on those servers, together with any and all components, modifications, derivative works and copies thereof (collectively, "NVE IP"), shall at all times remain with NVE, regardless of your ownership rights in the HAN System and your license rights in the embedded Technology pursuant to any applicable third-party EULA, and regardless of who may be deemed the owner of the tangible media in or on which the NVE IP may be copied, encoded or otherwise fixed. Under this Agreement you are being provided ownership solely in and to the HAN System, and a license to all other components thereof. No other rights or licenses are being provided to you under this Agreement, and your use of the HAN System does not result in the transfer or license to you of any proprietary or intellectual property rights to any NVE IP, the licensed Technology embedded in the HAN System, the User Documentation or any copyrights, patents, trademarks arising therefrom. NVE reserves all rights not expressly granted to Customer in this Agreement.

b. Customer will not disassemble, decompile or otherwise attempt to "reverse engineer" the HAN System, in whole or in part, nor will Customer permit any other person to do so. Customer will make reasonable efforts (including, for those Customers who are businesses, the monitoring of its employees) to prevent any unauthorized copying or disclosure of the Technology embedded in the HAN System, User Documentation and any of the NVE IP or Confidential Information and trade secrets. Customer will be liable for any unauthorized copying, reverse engineering, disclosure and/or use by its family members, employees and/or agents.

c. Customer will provide NVE with prior written notice of its intent to lease, rent, sell, pledge, assign, sublicense, loan or otherwise transfer to a third party Customer's rights in the HAN System, User Documentation, MPowered Benefits. NVE shall have the right, at its option, to cease providing MPowered Benefits to a third party transferee.

**6. Customer Equipment and Remote Connect Charges.** Customer shall be responsible for obtaining and maintaining, at its own expense, all computer hardware, software, communication equipment and broadband Internet access lines required by NVE as necessary to access and utilize the HAN System and to receive the Customer MPowered Benefits.

**7. Third-Party EULA.** Your HAN System contains proprietary software source code, object code, and other embedded technology (collectively, "Technology") owned by Licensor which enables your HAN System to run properly, and which also allows you to control the web-programmable thermostat. You are being granted rights and a license, subject to your compliance with the terms of any applicable third-party End User License Agreement ("EULA"), to use the proprietary Technology embedded in your HAN System and the user instructions prepared by Licensor and provided to you with the HAN System ("User Documentation"). The terms of the EULA will be visible to you either on your HAN System during the installation process or on the associated HAN System website. They are also available to NVE MPowered Program Customers at the NVE website page located at: [www.nvenergy.com/mPowered](http://www.nvenergy.com/mPowered). You will be prompted to review the terms and conditions of the EULA and to accept such terms and conditions in order to activate your HAN System. Customer agrees that it is responsible for ensuring that its Authorized Users comply with the terms of this Agreement and with the third-party EULA when using the HAN System. Customer further acknowledges and agrees that Customer will be held solely liable to NVE under this Agreement and to the Licensor under the EULA for damages arising from any breach by Customer or its Authorized Users of the terms herein or in the third-party EULA. All warranties, indemnities and other remedies made available under the third-party EULA are made by Licensor to Customer through acceptance of the EULA. Under no circumstances is NVE responsible or liable to Customer for warranties, indemnities or other remedies provided to Customer by Licensor through its EULA.

**8. Conduct of Customer.** Customer agrees to use the HAN System and User Documentation and receive the Customer MPowered Benefits solely for its personal (residential) or internal business purposes and only for lawful purposes. Customer will not interfere with the transmission of data through the HAN System to the Internet, nor engage in any conduct involving the HAN System, or its receipt of the Customer MPowered Benefits that would constitute a criminal offense or give rise to civil liability under any local, state, federal or other law or regulation. Customer will not, through its use and access to the HAN System, upload, post, reproduce or distribute to or through the HAN System any destructive code or software routines, including, without limitation, "back door," "time bomb," "Trojan horse," "worm," "drop dead Devices," "virus," or code or software routines designed to (i) permit access or use of either the NVE Module or HAN System by persons other than Authorized Users, (ii) disable or damage some or any portion of the HAN System, including any embedded Technology, hardware portions, or data collected or transmitted through the HAN System (iii) perform any other such actions in contravention of this Agreement or the third-party EULA. Customer will not access or permit others to access the HAN System other than Authorized Users.

**9. Monitoring of the HAN System, Data, and Customer MPowered Benefits.** NVE may, in its sole discretion at any time during which this Agreement is in effect and without obligation to you, monitor your use of the HAN System and the extent to which you participate in the MPowered Program, the Customer MPowered Benefits you do and do not earn, the levels of your energy usage, and perform any other tracking procedures relevant to your participation in the MPowered Program and your use of the HAN System. Data gathering and tracking procedures under the MPowered Program, include the right of NVE to create baseline readings of your energy consumption, your consumption during peak energy days and time periods, alterations made by you to your energy consumption with the HAN System, and other methods, such as fans and compressors, which are used to lower your energy consumption. You agree that NVE may use such data to automatically adjust your heating and cooling system in the pursuit of energy savings through participation in the MPowered Program. NVE may additionally track usage and participation in the MPowered Program in order to ensure compliance with this Agreement, measure the effectiveness of the MPowered Program, develop future Customer MPowered Benefits, and to protect NVE and other customer participants in the MPowered Program from fraudulent, unlawful or abusive use thereof. NVE may also intercept and disclose any content, record, use or other information to the extent reasonably necessary to protect the rights of NVE and its customers for mechanical or service quality control as permitted by law, or to comply with any law, regulation, or governmental request. NVE shall be under no obligation to monitor, review, screen, edit or otherwise control any information or material contributed by any third party.

**10. Privacy and Security.** Notwithstanding NVE's rights to monitor, or actual monitoring of, Customer's use of the HAN System and/or participation in the MPowered Program, Customer hereby acknowledges that NVE has no obligation to assure or maintain the privacy of Customer's data during transmission between the HAN System and the Internet. Customer acknowledges and agrees that there is no guarantee that transmissions made over the Internet are secure from third parties with the capability of accessing such transmissions. In the event a transmission is "hacked" by a third party, Customer shall seek recourse and available remedies through Customer's Internet Service Provider. The foregoing notwithstanding, to the extent it has control over data transmitting over NVE networks, NVE agrees to implement industry standard protections, include data encryption and other such measures, to protect against security breaches and third party access to Customer data during the transmission process. Except to the extent such protections may be implemented by NVE and are under NVE's control, NVE disclaims all liability for damages arising from a breach of security during the transmission process. Upon receipt of a transmission from the HAN System, NVE agrees to use commercially reasonable efforts to maintain the privacy of Customer data received and subsequently used, maintained and/or stored by NVE, and to protect such data against disclosure to third parties and any NVE employees and Contractors who are not involved in the MPowered Program.

**11. Term and Termination.** This Agreement shall be effective commencing on the Effective Date and shall continue in effect in perpetuity unless or until terminated by either party for convenience or by NVE for cause as set forth herein. Either NVE or Customer may terminate this Agreement for convenience upon providing not less than thirty (30) days' prior written notice to the other party, subject to the terms of Section 11. NVE may terminate this Agreement upon the occurrence of any of the following events ("**Termination Events**"):

- a. Customer refuses to accept any applicable third-party EULA or breaches any terms of the EULA pursuant to notification received by NVE from Licensor;
- b. Customer materially breaches Sections 4 or 7 of this Agreement, which breaches are deemed non-curable; or
- c. Customer is in material breach of any other term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after NVE's receipt of written notice of such breach; or
- d. If Customer is a business, rather than a residential Customer, Customer (i) terminates or suspends its business activities, (ii) becomes insolvent, (iii) admits in writing its inability to pay its debts as they mature, (iv) makes an assignment for the benefit of creditors, (v) becomes subject to direct control of a trustee, receiver or similar authority, or (vi) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes not dismissed within sixty (60) days of the date the petition in bankruptcy was filed.

**12. Effects of Termination.** Upon the termination of this Agreement for any reason, Customer shall have the right to keep the HAN System but will be immediately disconnected from NVE mPowered services, and Customer's eligibility to receive Customer MPowered Benefits will immediately cease. Subject to the termination terms set forth in the third-party EULA, Customer's use of the HAN System may be severely limited by Licensor in its sole and absolute discretion. If Customer terminates this Agreement prior to the third (36 month) anniversary of the Effective Date, Customer shall pay NVE an early termination fee that shall be the depreciated value (using straight line depreciation) of \$300.00; depreciated over the 36 month term of the agreement. NVE shall waive any early termination fee if Customer notifies NVE of early termination and returns the HAN System in good working order to the designated NVE locations in 30 days or less after early termination. If Customer cancels the agreement within 60 days or less after installation, NVE will waive any early termination fee and NVE or its Contractor will remove HAN System from Customer Premise, including re-installation of original thermostat(s) at no cost to Customer.

**13. Installation Support Warranty.** If any part of your HAN System fails to properly work within 30 days from the date of installation by NVE or its Contractor ("Installation Warranty Period"), NVE or its Contractor will correct all installation errors at Customer's premises and will continue to reconfigure and adjust the installation as needed during the Installation Warranty Period until NVE confirms that the HAN System operates in accordance with the User Documentation.

**14. Post Warranty Support Services.** NVE will be Customer's first contact for all HAN System errors and inquiries. After the end of the Installation Warranty Period, NVE shall provide, without cost to the Customer, "Tier 1" support consisting of basic technical trouble-shooting and problem identification and resolution with respect to the HAN System. NVE will provide Customer with a toll-free support number to be used during regular business hours (Monday-Friday, 8:00 a.m. to 5:00 p.m.), User Documentation with support guidelines, and 24 hour website support with troubleshooting guides and FAQ. Subject to continued regulatory approval of the mPowered Program, if the HAN System hardware fails to function properly for reasons attributable to a manufacturing defect, NVE will repair or replace the HAN System with a system that provides customer substantially similar functionality as the HAN System, as long as the Customer continues to participate in the mPowered Program. NVE will not replace HAN Systems that cease to function properly due to the negligence or willful misconduct of the Customer or third-parties (e.g. visitors, service contractors contracted by Customer, etc.). If the failure of the HAN System requires technical assistance at the Customer's premises or NVE discovers the problem is unrelated to the HAN System (e.g. the Customer's Internet connection or Customer-owned equipment and software), or the HAN System was damaged by the Customer or a third-party, NVE shall have the right to charge for the any repair or replacement of the HAN System and the on-site visit, or support time provided at NVE's then standard rates, plus materials and out of pocket expenses. Such amounts will be due and payable thirty (30) days after the NVE invoice date for such support services. NVE reserves the right to engage a Contractor to provide the support services. Certain support services may also be made available to Customer pursuant to the terms of the third-party EULA.

**15. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE HAN SYSTEM, USER DOCUMENTATION AND THE MPOWERED PROGRAM, AND ALL RELATED INSTALLATION AND SUPPORT SERVICES COLLECTIVELY MADE AVAILABLE BY NVE OR ITS CONTRACTORS PURSUANT TO THIS AGREEMENT ARE ACCEPTED BY CUSTOMER "AS IS" AND "AS AVAILABLE," AND TO THE FULLEST EXTENT OF THE LAW ARE PROVIDED WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE DOCUMENTS AND SERVICES. ALL OTHER WARRANTIES, EXPRESS, IMPLIED AND STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT ARE SPECIFICALLY EXCLUDED AND DISCLAIMED. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ENTIRE RISK AS TO THE INTEGRITY AND AVAILABILITY OF THE HAN SYSTEM IS WITH CUSTOMER. NVE DOES NOT WARRANT: (i) THAT THE HAN SYSTEM WILL OPERATE IN COMBINATION WITH CUSTOMER'S HARDWARE, SOFTWARE OR SYSTEMS THAT DO NOT MEET RECOMMENDED STANDARDS IN THE USER DOCUMENTATION OR AS OTHERWISE RECOMMENDED BY NVE; (ii) THAT THE HAN SYSTEM WILL OPERATE OR CONNECT WITH THE INTERNET IN A MANNER THAT IS SECURE, UNINTERRUPTED, ERROR-FREE, OR FREE FROM VIRUSES OR OTHER DESTRUCTIVE CODE TRANSFERRED, EMBEDDED OR OTHERWISE TRANSMITTED BY THIRD-PARTIES, OR (iii) THAT THE USER DOCUMENTS, INSTALLATION AND/OR SUPPORT SERVICES WILL BE ERROR FREE. YOU ACKNOWLEDGE THAT TRANSMISSIONS OF DATA OVER THE INTERNET MAY NOT BE SECURE AND THAT USE OF THE HAN SYSTEM AND TRANSMISSION OF DATA OVER THE INTERNET IS AT YOUR SOLE RISK.

**16. Limitation of Liability.** IN NO EVENT WILL NVE, ITS EMPLOYEES, AGENTS, AFFILIATE OR SUBSIDIARY COMPANIES, OR ITS CONTRACTORS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR DELAYS, INACCURACIES, FAILURES, ERRORS, OMISSIONS, INTERRUPTIONS, DELETIONS, DEFECTS, VIRUSES, COMMUNICATION LINE FAILURES OR UNAUTHORIZED ACCESS TO YOUR COMPUTER SYSTEM OR NETWORK, OR FOR BODILY OR PROPERTY DAMAGE DUE TO CUSTOMER'S INSTALLATION OF THE HAN DEVICE OR FOR ANY "CONSEQUENTIAL DAMAGES." CONSEQUENTIAL DAMAGES MEANS AND INCLUDES LOST PROFITS, LOST SAVINGS, LOSS OF GOODWILL, LOSS OF USE, BUSINESS INTERRUPTION, LOST DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, YOUR USE OF THE HAN SYSTEM OR YOUR PARTICIPATION IN THE MPOWERED PROGRAM, EVEN IF NVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE AGGREGATE LIABILITY OF

NVE AND ITS CONTRACTOR UPON ANY CLAIMS WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY INFORMATION, PRODUCTS OR SERVICES FURNISHED OR TO BE FURNISHED BY NVE AND/OR ITS CONTRACTOR UNDER THIS AGREEMENT WILL IN ANY EVENT BE ABSOLUTELY LIMITED TO \$1000.00.

**17. Indemnity.** You agree to defend, indemnify and hold harmless NVE, its parents and affiliates together with their respective employees, agents, directors, officers and shareholders, from and against any and all liabilities, claims, damages and expenses (including reasonable attorney's fees and costs) arising out of (a) your use of the HAN System and participation in the MPowered Program, and/or (b) your infringement or misappropriation of the NVE IP NVE trade secrets, or your infringement or misappropriation of the copyright, trademark, proprietary rights or trade secrets of third parties.

**18. Confidential Information.**

a. "Confidential Information" means this Agreement, any addenda hereto, the data transmitted from the HAN System and all derivatives of such data created by NVE, and any proprietary, non-publicly available information supplied by NVE to Customer (including, without limitation, NVE IP), or by Customer to NVE, which is clearly marked as confidential information at the time of its disclosure, which is identified verbally as confidential at the time of disclosure, or that, based upon the circumstances under which it was disclosed, a reasonable person would believe to be confidential, including all items identified in this Agreement as Confidential Information.

b. Each party acknowledges that the Confidential Information constitutes valuable privacy rights and/or trade secrets and each party agrees that it shall use Confidential Information solely for the purposes of, and in accordance with, the provisions of this Agreement. Without the express written consent of the disclosing party, unless within the purposes of this Agreement, the non-disclosing party may not use, transfer, copy, disclose, or permit to be disclosed Confidential Information, whether directly or indirectly, to any third party, except third parties who are Authorized Users or third parties with a need to know for the purposes for which the Confidential Information was disclosed. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. Customer assumes sole liability for any breach of these terms by its Authorized Users. However, neither party bears any responsibility for safeguarding information that: (i) is publicly available other than through the fault of the receiving party, (ii) released by the disclosing party to anyone without restriction, (iii) rightfully obtained by the receiving party from third parties having a right to make such disclosure, (iv) independently developed by the other party without reference to Confidential Information, or (v) required to be disclosed by order of a court or other governmental entity, even if such information is Confidential Information, provided, that the party ordered to disclose any Confidential Information of the other party provides such party with reasonable notice of such order to allow such party to take protective measures.

c. In the event of actual or threatened breach of the provisions of this section, the non-breaching party will have no adequate remedy at law and will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages, in addition to whatever remedies it might have at law or under this Agreement.

**19. Notices.** All notices required to be sent hereunder shall be in writing, addressed to the opposite party at the Customer address or email first written above, and to the following NVE address or email: [6226 W. Sahara Avenue M/S 29, Las Vegas, NV 89151](mailto:6226 W. Sahara Avenue M/S 29, Las Vegas, NV 89151) or [mPowered@nvenergy.com](mailto:mPowered@nvenergy.com) and shall be deemed to have been given upon (i) the date sent by facsimile or email upon receipt of the sending party of an automatically generated confirmation, or (ii) the date it was delivered if by courier or certified mail. Either party may change the designated address by providing the other party written notice thereof.

**19. Force Majeure.** NVE will be excused from performance for any period during which, and to the extent that, it or its Contractors are prevented from performing any obligation or service under this Agreement, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, equipment failures, communication line failures, power failures, etc.

**20. Waiver.** The failure by either party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this Agreement. The waiver of any default by either party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

**21. Severability and Choice of Law.** Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect. This Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the State of Nevada and conducted in Clark County, Nevada, and Customer irrevocably submits itself to the personal jurisdiction of such courts for such purpose.

**22. Assignment and Binding Effect.** NVE may assign, delegate and/or otherwise transfer this Agreement or its rights and obligations hereunder to any person or entity. Upon the sale, lease or transfer by Customer of its premises, the HAN System may be transferred by Customer to the new owner or lessee of Customer's premises ("Assignee"). Customer may, alternatively, choose to keep the HAN System and use it by enrolling in the MPowered Program at Customer's new premises. Customer will notify NVE of its decision to retain the HAN System and re-enroll in the MPowered Program or to transfer the HAN System to an Assignee. If the HAN System is transferred to an Assignee residing or doing business at Customer's former location, the MPowered Program will continue uninterrupted with respect to such Assignee unless the Assignee notifies NVE of its intent to cease participation. The terms and conditions of this Agreement and the EULA shall transfer to such Assignee and Assignee will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

**23. Headings.** The headings used throughout this Agreement are for ease of reference only and are not to be construed or taken into account in interpreting the terms and provisions of any portion of the Agreement.

**24. Entire Agreement.** This Agreement sets forth the entire agreement and understanding between NVE and Customer regarding NVE's provision of and Customer's participation in the NVE Home Area Network MPowered Program, and supersedes any prior representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. This Agreement may not be modified or amended except by a writing signed by the party against whom the same is sought to be enforced.