

# E-ISAC APPLICATION USER AGREEMENT

Last modified: March 9, 2021

## I. AGREEMENT

This User Agreement sets the terms and conditions for using Electricity Information Sharing and Analysis Center (“E-ISAC”) applications (“E-ISAC Applications”), including, but not limited, to the E-ISAC portal (“Portal”). The E-ISAC is a department of the North American Electric Reliability Corporation, (“NERC”). By accessing, viewing, or otherwise using an E-ISAC Application, you (“You” or “Your”) expressly understand and intend this Agreement as the legal equivalent of a signed, written contract that is equally binding between You and the E-ISAC. You accept and agree to be legally bound by the terms and conditions of this Agreement. If You are using an E-ISAC Application on behalf of a business (referred to as “Your Business”), You represent that You have the authority to bind and hereby do bind Your Business to this Agreement. You further represent that you are an Authorized User, as defined in Section II below.

## II. OVERVIEW

E-ISAC Applications are reserved for electricity industry asset owners, operators, and their representatives and agents, and other invited partners (“Authorized Users”). E-ISAC Application usage, including all its components and content, is intended exclusively for Authorized Users.

Participation in or use of an E-ISAC Application is voluntary. E-ISAC Applications, such as the Portal, are tools provided for the use and convenience of Authorized Users and for promoting information sharing for all Authorized Users’ benefit. The goal is to improve industry security and coordination of preventative measures for responding to cyber and physical threats, vulnerabilities, and incidents.

E-ISAC applications create a conduit for the exchange of physical security and cyber security information separate from the NERC Compliance Monitoring and Enforcement Program. All Content, defined below, shared voluntarily or otherwise made available (“Hosted”) on an E-ISAC Application is subject to the requirements of the E-ISAC Code of Conduct, accessible [here](#) and incorporated by reference. The E-ISAC does not share Content with NERC personnel, directly or indirectly, except in the limited circumstances permitted by the E-ISAC Code of Conduct.

## III. MODIFICATION

E-ISAC reserves the right to change, modify, add, or remove portions of this Agreement (collectively “Changes”) at any time and without prior notice, at its sole discretion. You should review this Agreement regularly. All Changes to this Agreement are effective immediately when E-ISAC posts them. Your continued use of E-ISAC Applications following postings of Changes to this Agreement signifies that You accept such Changes. If You do not agree to the updated Agreement, You must discontinue use of E-ISAC Applications. E-ISAC shall post notice of Changes to this Agreement on its website. Notwithstanding the foregoing, You accept that each time You use an E-ISAC Application, You are subject to, and bound by, this Agreement as modified from time to time.

#### **IV. LICENSE**

Subject to Your compliance with the terms and conditions of this Agreement, E-ISAC grants You a non-exclusive, non-sublicensable, revocable, non-transferable license to use E-ISAC Applications. E-ISAC Applications, or any portion of the E-ISAC Application or Content made available on the E-ISAC Application, may not be used other than as contemplated in this Agreement or reproduced, duplicated, copied, modified, sold, resold, traded, distributed, or otherwise exploited for any commercial, personal, or other purpose without E-ISAC's prior express written consent. Except as expressly set forth herein, this Agreement grants You no rights in or to any of E-ISAC's or NERC's intellectual property or the intellectual property of any other party that you may access through the E-ISAC Application, including without limitation any Content other than Your Content, as defined below. The license granted in this section is conditioned on Your compliance with all the terms and conditions of this Agreement. In the event that You breach any provision of this Agreement, Your rights under this Section shall immediately terminate.

#### **V. DESIGNATED APPROVING OFFICIAL**

You acknowledge that at all times that you have access to an E-ISAC Application you have been approved by Your Business' Designated Approving Official ("DAO") for such access. You will self-report to the DAO when you no longer require access to an E-ISAC Application or when you leave the employ of Your Business. You also authorize the E-ISAC to share Your Content with Your DAO.

#### **VI. CONTENT ON E-ISAC APPLICATIONS**

"Content" is any information, communications, materials, data, analysis or any other content of any type and in any format that is on or made available through the E-ISAC Application, including, without limitation, any information, communications, materials, data, analysis or any other content that You provide to E-ISAC for Hosting or otherwise make available on the E-ISAC Application ("Your Content"), and any information, communications, materials, data, analysis or any other content that another Authorized User or third party provides to E-ISAC for Hosting on the E-ISAC Application or otherwise makes available on the E-ISAC Application.

Most Content Hosted on E-ISAC Applications is provided to E-ISAC via an Authorized User or third party. E-ISAC may, at its discretion, provide analysis of or supplement such Content. You agree that all Content is provided on an "as is" basis and You must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. You further acknowledge and agree that E-ISAC and NERC do not verify any Content or in any way guaranty, certify, warrant, adopt, endorse, or otherwise accept responsibility for the veracity, contemporaneity, completeness, usefulness, accuracy, fitness for a particular purpose, or reliability of any Content Hosted or made available through an E-ISAC Application or Your reliance on that Content.

#### **VII. YOUR CONTENT**

You maintain full ownership of all Your Content. By Hosting or causing E-ISAC to Host Your Content on an E-ISAC Application, You automatically grant a perpetual, fully paid-up, royalty-free, worldwide, irrevocable, assignable license to (a) E-ISAC to use, host, store, reproduce, modify, communicate, copy, distribute, transmit, perform, and display Your Content on the E-ISAC Application or otherwise in connection with the E-ISAC Application's operation and (b) other Authorized Users to use Your Content as contemplated in this Agreement. This license continues even if You stop using the E-ISAC Application. You agree not to Host or cause E-ISAC to Host any information, communications, materials, data, analysis

or any other content that violates the intellectual property or other rights of any third-party or results in the violation any law, including international, national (including without limitation the United States and Canada), provincial, state or local laws or regulations (collectively, “Law(s)”).

You, including Your Business if you are using the E-ISAC Application on behalf of Your Business, are solely responsible, and shall indemnify and hold the E-ISAC and NERC harmless from any damages, costs, actions, or losses it incurs by reason of infringement of third-party rights or violation of any law resulting from an of your content that you post of cause E-ISAC to Host on the E-ISAC Application.

The E-ISAC will not share any of Your Content that is confidential or attributable to You without Your consent. You specifically authorizes E-ISAC to share Your Content if Your Content is aggregated with similar information from other sources in a manner that ensures Your Content is anonymized and non-attributable to You.

## **VIII. CONTENT MARKINGS**

E-ISAC Applications receive, store, process, use, and share various types of information, often sensitive in nature, gathered from or provided to electricity industry participants, government partners, cross-sector partners, and other entities. Improper disclosure of or unauthorized access to this information could present risk to the security of the electric sector; cause financial loss; violate laws, regulations, and contracts; or damage the reputation of the E-ISAC or one of its members. The secure handling of sensitive information is a cornerstone of the E-ISAC’s mission.

All Content Hosted on E-ISAC Applications is considered E-ISAC Private unless expressly marked Public. E-ISAC Private Content shall be marked with distribution instructions, such as the Traffic Light Protocol, that indicate whether the material is restricted to Internal Use and Necessary Consultants / Third-Party Providers or whether Authorized Users can distribute the Content more broadly. You are required to comply with any markings or other distribution instructions included on any Content. You will not distribute, share, or use Content inconsistent with any markings without the E-ISAC’s prior written consent.

## **IX. PASSWORD AND SECURITY**

You will receive a password and account designation in connection with the E-ISAC Application. You are responsible for maintaining the confidentiality and integrity of the password and account and are fully responsible for all activities that occur using Your password and through Your account. You agree to (a) change Your password every six months, (b) immediately notify E-ISAC of any unauthorized use of Your password or account or any other breach of security (including, but not limited to, a compromise of the system(s) You use to access the E-ISAC Applications), and (c) ensure that You exit from Your account at the end of each session. The E-ISAC reserves the right to suspend or terminate Your account and access to the E-ISAC Applications in the event that Your account and/or system(s) used to access the E-ISAC Applications is or becomes compromised. The E-ISAC, in its sole discretion, may re-activate Your account if, in the E-ISAC’s determination, the security compromise has been mitigated. You shall reasonably assist and provide the E-ISAC with reasonable documentation that any such compromise has been mitigated by You and/or Your organization.

## **X. YOUR USAGE**

The E-ISAC monitors and collects Authorized Users’ usage data to promote, provide, maintain, protect, and improve the E-ISAC application. Furthermore, the E-ISAC also monitors and collects usage data relating to any E-ISAC Application-related communications to Authorized Users from the E-ISAC and/or

the E-ISAC Application, including, but not limited to, emails, newsletters, and postings. The E-ISAC may, in its sole discretion, share lists of its Authorized Users and/or Authorized Users' organizations with third parties to advance the E-ISAC's mission and as required by law.

By using an E-ISAC Application, you expressly acknowledge and consent to the E-ISAC's tracking, collecting, and using information as described herein relating to Your use of the E-ISAC Application and E-ISAC Application-related communications.

## **XI. ASSUMPTION OF RISK; RELEASE**

You knowingly and freely assume all risk when using an E-ISAC Application, including any Content. You, on behalf of yourself and Your personal representatives, and/or agents, and Your Business, if You are using an E-ISAC Application on behalf of Your Business, hereby voluntarily agree to release, waive, discharge, hold harmless, defend, and indemnify E-ISAC and NERC from any damages, costs, claims, actions, or losses, however arising, from Your use of the E-ISAC Application or any Content.

## **XII. INTELLECTUAL PROPERTY**

### **A. Compliance with the Law**

You represent and warrant that, at all times when using any E-ISAC Application, You will obey all applicable laws and respect the intellectual property rights of others. Your use of the E-ISAC Application(s) is/are at all times governed by and subject to laws regarding copyright ownership and use of intellectual property generally.

### **B. Trademarks**

The marks "E-ISAC" and the "E-ISAC logos" (collectively, the "E-ISAC Marks") are trademarks of and are the sole property of NERC. Any use of the E-ISAC Marks must comply with the E-ISAC Trademark Policy located on its [website](#). Any use of any NERC trademark (the NERC logo or word mark) (collectively, the "NERC Marks") or copyright must comply with the NERC Trademark Policy located [here](#). Other trademarks, service marks, graphics, logos, and domain names appearing in the E-ISAC Application(s) may be trademarks of third parties or other Authorized Users. Neither Your use of the E-ISAC Application(s) nor this Agreement grant You any right, title, or interest in or to, or any license to reproduce or otherwise use, the E-ISAC Marks or the trademarks, service marks, graphics, logos, or domain names of any other Authorized User or other third-party. You agree that any goodwill in the E-ISAC Marks generated as a result of Your use of the E-ISAC Application(s) will inure to solely the E-ISAC's benefit, and You agree to assign, and hereby do assign, all such goodwill to E-ISAC. You shall neither at any time, nor assist others to, challenge E-ISAC's right, title, or interest in or to, or the validity of, the E-ISAC Marks or NERC Marks.

### **C. Copyrighted Materials; Copyright Notice**

All Content, other than Your Content, and any other materials available on or through the E-ISAC Application(s), including, without limitation the design, text, graphics, and other files, and the selection, arrangement, and organization thereof, are exclusively E-ISAC's property or the property of the Authorized User providing said Content. All Content and any other materials available through the E-ISAC Application(s) provided by You or any other Authorized User, subject to the terms of this Agreement, remain the Authorized User's property. Except as explicitly provided, neither Your use of the E-ISAC Application(s), nor this Agreement grant You any right, title, or interest in or to any such Content; either of E-ISAC's or other Authorized Users' property.

#### D. Digital Millennium Copyright Act Policy

Just as the E-ISAC asks Authorized Users to respect E-ISAC's intellectual property rights, E-ISAC respects the Authorized Users' intellectual property rights. If You believe Content located on or linked to by an E-ISC Application violates Your copyright, You are encouraged to notify E-ISAC. E-ISAC will respond to all such notices and terminate accounts of repeat infringers according to the process set out in the U.S. Digital Millennium Copyright Act.

### **XIII. APPLICATION CONDUCT POLICY**

You agree to comply with the following Application conduct policy whenever accessing and using an E-ISAC application.

All communication on an E-ISAC application, including in any Portal user community, must be limited to topics that are directly relevant to the security of the electricity industry. You shall not use an E-ISAC application to conduct any unlawful activity. Prohibited activities also include, but are not limited to, using the E-ISAC application for any price-fixing, division of markets, or other anti-competitive behavior.

Additionally, You shall not use an E-ISAC Application for commercial purposes or Your own private purposes, including, but not limited to, advertising or promoting a specific product or service, announcements of a personal nature, sharing of files or attachments not directly relevant to the mission of the E-ISAC, and communication of personal views or opinions, unless those views are directly related to the mission of the E-ISAC. Unless authorized by an appropriate NERC officer, You are not authorized to speak on behalf of the E-ISAC or to indicate Your views represent the views of E-ISAC.

You must conduct Yourself in a professional manner at all times when using the E-ISAC application. Examples of unprofessional conduct include, but are not limited to, use of abusive language, personal attacks, or derogatory statements made against or directed at E-ISAC personnel or another Authorized User.

You are solely responsible for Your interactions with other Authorized Users. You agree to exercise reasonable precaution in all interactions with other Authorized Users. E-ISAC does not represent, warrant, endorse, or guarantee the conduct of the E-ISAC Application's Authorized Users. In no event shall E-ISAC or NERC be liable for indirect, special, incidental, or consequential damages arising out of or relating to any Authorized Users' conduct in connection with such Authorized User's use of the E-ISAC Application, including, without limitation, damages, claims, actions, or losses, however arising, from Your use of the Application.

If You do not comply with this policy, certain reasonable restrictions on Your use of the E-ISAC application may be imposed, as described below. The E-ISAC has full discretion and authority over all decisions made or actions taken relating to violations of this policy and use of the Application.

If the E-ISAC determines, upon its own observation or complaint of another Authorized User, that You are not complying with this policy, the E-ISAC may restrict Your access to E-ISAC Applications indefinitely. Before the E-ISAC restricts Your access to an E-ISAC Application, the E-ISAC may first remind You of the obligation to conduct Yourself in a professional manner and in accordance with this policy. The E-ISAC reserves the right to inform Your organization of the breach in conduct.

At any time, the E-ISAC may restrict Your access to an E-ISAC Application, or a user community or

forum, as may be reasonably necessary to maintain a professional and constructive environment for all Authorized Users. You may request removal of the restriction by submitting a request in writing to the E-ISAC. The restriction will be removed at the reasonable discretion of the E-ISAC.

If You have concerns about this policy, You may contact NERC's General Counsel.

#### **XIV. DISCLAIMERS; LIMITATION OF LIABILITY**

##### **A. Disclaimer of Warranties**

You expressly understand and agree that:

(1) Your use of the E-ISAC Application(s) and any Content are at your own sole risk. The E-ISAC Application(s) and Content are provided on an "as is" and "as available" basis. E-ISAC, NERC, and its officers, employees, agents, partners, and licensors expressly disclaim all warranties of any kind whether express or implied, including, but not limited to, the implied warranties of title, merchantability, fitness for a particular purpose, and non-infringement.

(2) E-ISAC, NERC, and its officers, employees, agents, partners, and licensors make no warranty that (i) the E-ISAC Application(s) or Content will meet Your requirements or Your expectations; (ii) the E-ISAC Application(s) or Content will be uninterrupted, timely, secure or error-free; (iii) the results that may be obtained from the use of the E-ISAC Application(s) or Content will be accurate or reliable; or (iv) any errors in the E-ISAC Application(s) or Content will be corrected.

(3) Any Content or other material downloaded or otherwise obtained through the use of the E-ISAC Application(s) is/are accessed at Your own discretion and risk, and You will be solely responsible and hereby waive any and all claims and causes of action with respect to any damage to your computer system, internet access, download or display device, or loss of data that results from Your use of the E-ISAC application(s) or download or use of any such Content or material.

##### **B. Limitation of Liability**

You expressly understand and agree that E-ISAC, NERC, and its officers, employees, agents, partners, and licensors shall not be liable to You or Your Business for any punitive, indirect, incidental, special, consequential or exemplary damages, including, but not limited to, damages for loss of profits, goodwill, use of data or other intangible losses (even if E-ISAC or NERC has been advised of the possibility or such damages), resulting from: (1) the use of or the inability to use the E-ISAC Application(s) or any Content; (2) the cost of procurement of substitute goods and services; (3) unauthorized access to or alteration of your Content; (4) statements or conduct of any other Authorized Users on the E-ISAC Application(s); or (5) any other matter relating to the E-ISAC Application(s) or Content. Further, You agree that E-ISAC and NERC shall have no liability for any failure or delay to Host material on the E-ISAC Application(s). The foregoing does not apply to the extent prohibited by applicable law. By accepting this Agreement, You expressly agree that this limitation of liability represents a reasonable allocation of risk and is a fundamental element of the basis of the bargain between You and E-ISAC. The E-ISAC Application(s) and services would otherwise not be provided without such limitations.

##### **C. Application**

The above disclaimers, waivers, and limitations do not in any way limit any other disclaimer of warranties or any other limitation of liability in any other agreement between You and E-ISAC, NERC, or NERC's

contractors, subcontractors, suppliers, services providers, or licensors. Unless limited or modified by applicable law, the foregoing disclaimers, waivers, and limitations shall apply to the maximum extent permitted, even if any remedy fails its essential purpose. No advice, information, or otherwise, whether written or oral, obtained by You through the E-ISAC Application(s) or otherwise shall alter any of the disclaimers, limitations, or waivers in this Agreement or any other Agreement You have with E-ISAC or NERC.

#### **XV. YOUR REPRESENTATIONS AND WARRANTIES**

You represent, warrant and covenant that You are an Authorized User, and that Your use of the E-ISAC Application(s) and any Content will be in accordance with this Agreement, with any other E-ISAC or NERC policies provided or made available to You, and with all applicable Laws.

#### **XVI. INDEMNIFICATION**

Without limiting any other indemnification provision of this Agreement, You agree to indemnify, defend and hold E-ISAC, NERC, and its affiliates, officers, employees, agents, partners, licensors, contractors, subcontractors, suppliers, and service providers harmless against any and all claims, demands, or expenses, including, but not limited to, legal costs and attorneys' fees, made by any third-party or other Authorized User due to or arising from: (a) Your breach of this Agreement, including without limitation, any representation or warranty contained in this Agreement; (b) Your access or use of the E-ISAC Application(s); (c) Your violation or alleged violation of any law; or (d) Your violation or alleged violation of any third-party rights of any kind.

#### **XVII. GOVERNING LAW; JURISDICTION AND VENUE**

The E-ISAC Applications and this Agreement, including without limitation, this Agreement's interpretation, must be treated as though this Agreement were executed and performed in Washington, D.C., and shall be governed by and construed in accordance with the laws of the District of Columbia without regard to conflict of law principles. Any dispute arising out of or relating to the E-ISAC Applications, any Content or this Agreement that cannot be informally resolved, shall be resolved by use of one of the following mutually agreed upon methods: (1) binding arbitration; (2) alternative dispute resolution; or (3) litigation provided that such litigation occur in the federal or state courts of the District of Columbia.

#### **XVIII. TERMINATION**

##### **A. By E-ISAC or NERC**

Without limiting any other provision of this Agreement, E-ISAC and NERC reserve the right to, in E-ISAC's and NERC's sole discretion and without notice or liability, discontinue, temporarily or permanently, access to the E-ISAC Applications (or any part thereof, including any Content) and/or deny use of the E-ISAC Applications to any Authorized User with or without notice, for any reason or for no reason at all, including, without limitation, for any breach or suspected breach of any representation, warranty, or covenant contained in this Agreement, or any applicable law or regulation. You agree that E-ISAC and NERC shall not be liable to You or to any third party for any modification, suspension, or discontinuance of the E-ISAC Applications and/or Your access to any or all Content.

##### **B. Automatic Termination Upon Breach By You**

This Agreement shall automatically terminate in the event that You breach any of this Agreement's representations, warranties, or covenants. Such termination shall be automatic and effective immediately upon breach. It shall not require any action by E- ISAC.

**C. Survival**

All provisions of this Agreement, which by their nature should survive termination, shall survive termination, including, without limitation, warranty disclaimers, indemnity, covenants, and limitations of liability.

**XIX. NOTICES**

Unless otherwise expressly provided herein, all notices required or permitted to be given under this Agreement must be in writing. E-ISAC shall give any notice by email sent to the most recent email address, if any, provided by each Authorized User. You agree that any notice received from E-ISAC electronically satisfies any legal requirement that such notice is in writing. You bear the sole responsibility of ensuring that Your email address on file with E- ISAC is accurate and current, and notice to You shall be deemed effective upon the sending by E-ISAC of an email to that address. Any notice from You shall be in writing and sent to [memberservices@eisac.com](mailto:memberservices@eisac.com).

**XX. SEVERABILITY**

If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions shall remain in full force and effect.

**XXI. FEEDBACK**

Any comments or materials sent to E-ISAC regarding any Content found on an E-ISAC Application, including, without limitation, feedback data, ideas, graphics, questions, comments, or suggestions (collectively "Feedback"), will not be treated as confidential and will become E- ISAC's exclusive property. E-ISAC has no obligation of any kind with respect to such Feedback and will be free to reproduce, use, disclose, exhibit, display, transform, create derivative works, and distribute the Feedback.

**XXII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between E-ISAC and You (including Your Business if You are participating in your capacity as an employee of Your Business when accessing an E-ISAC Application) concerning Your use of E-ISAC Applications. This Agreement may only be modified by E-ISAC or by written amendment authorized by E-ISAC. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. This Agreement and all of Your rights and obligations hereunder are not assignable or transferrable. This Agreement is binding upon and shall inure to the benefit of the parties. Participation in and use of E-ISAC Applications does not in any way create an independent contractor, agency, partnership, joint venture, or employee-employer relationship. Furthermore, there are no third-party beneficiaries of this Agreement.

You acknowledge and agree that any actual or threatened breach of this Agreement or infringement of proprietary or other third-party rights by You shall cause irreparable injury to E- ISAC, NERC, NERC's contractors, subcontractors, suppliers, service providers, or licensors, and would therefore entitle E-ISAC, NERC, and its contractors, subcontractors, suppliers, service providers, or licensors, as the case may be,

to injunctive relief.

The headings in this Agreement are for the purpose of convenience only and shall not limit, enlarge, or affect any of the covenants, terms, conditions, or provisions of this Agreement.