

Whole Building Aggregated Energy Use Data Terms and Conditions

Welcome to the National Fuel Energy Performance Reporting Website (the "Website"). This Website is operated by National Fuel Gas Distribution Corporation ("the Company" or "National Fuel") to facilitate uploading of your aggregated energy usage data ("Data") to the United States Environmental Protection Agency ("EPA") Portfolio Manager®, an online tool created and managed by the EPA and used, in part, to measure and track energy consumption ("EPA Portfolio Manager"). Please read this Agreement in full before using the Website.

National Fuel is required to apply a privacy standard before providing access to aggregated energy use/consumption data to building owners or their authorized agents: data requested for compliance with local laws is exempt. Furthermore, the below Terms and Conditions require building owners or their authorized agents to accept the Terms and Conditions prior to receiving whole building aggregated data from the National Fuel. This data will be made available by National Fuel to building owners or their authorized agents for the purposes of reporting whole building data (where applicable), energy efficiency projects, energy management or other energy-related efforts. By accepting the Terms and Conditions listed herein, you agree that you have read the terms and conditions and agree to abide by them.

Building owners or their authorized agents that request whole building energy data agree to:

- Only use the whole building energy use data for the purposes of building benchmarking, identifying energy efficiency projects, and energy management;
- Not disclose whole building energy use data except for the purposes of building benchmarking, identifying energy efficiency projects, and energy management;
- Take appropriate administrative, technical, and physical safeguards to protect the whole building data from any unauthorized use or disclosure;
- Not use the whole building energy use data for a secondary commercial purpose not related to the authorized purpose without first obtaining consent from the customer(s) to be targeted for such commercial purpose;
- Destroy any whole building energy use data that is no longer necessary for the purpose for which it was transferred; and
- Not permit access to the whole building data by anyone that has not agreed to abide by the terms pursuant to which the data was provided by National Fuel.

By using the Website you:

- Agree that you have read this Agreement and National Fuel's Privacy Policy and agree to be legally bound by this Agreement and National Fuel's Privacy Policy. If you do not agree to the terms contained herein or in National Fuel's Privacy Policy, do not use or further access the Website.
- Represent that you are one or more of the following:
 - (a) the owner of the building(s) specified on the Web Consent Form found on the Website (such owner and/or its duly authorized agent, the "Owner"; such building(s), the "Building(s)");
 - (b) the Building(s)' Owner's duly authorized agent with the authority to enter into this Agreement;
 - (c) the account holder of the National Fuel (or its affiliate) account that contains the Data (such account holder or its duly authorized representative, the "Customer"); or
 - (d) a representative of the Customer, duly and expressly authorized in writing by such Customer to enter Customer's Data on such Customer's behalf (Owner and Customer using the Website also referred to as "you or "your"; National Fuel and you are referred to herein collectively as the "Parties" and separately as a "Party.").
- Agree that any and all information and Data you provide via the Website (including the Web Consent Form) or pursuant to this Agreement is true, accurate, complete and correct.
- Request that National Fuel automatically generate and upload Data for your Building(s) to the EPA Portfolio Manager and you authorize National Fuel to release Data on your Building(s) to the appropriate governmental or regulatory agencies.
- Agree that National Fuel may provide Data to the EPA Portfolio Manager and understand that National Fuel will transmit electronically up to 12 months of the most recent Data to the EPA Portfolio Manager database in aggregate form.

- Agree that, prior contacting National Fuel for the disclosure of the Data to the EPA, the Owner has obtained all required tenant consents for such disclosure and use of such tenant's Data for the EPA Portfolio Manager.
- Agree to comply with all applicable federal, state and local laws, ordinances, rules, regulations, codes, permits, licenses, authorizations, and orders of any governmental body, agency, authority.

Owner understands that the following tenant consents are required:

- Buildings that have four (4) or more active accounts per commodity (electric and/or gas) and no one account represents 50% or more of the annual energy use for whole building aggregation must submit one consent form completed by Owner, in a PDF format.
- Buildings that have (a) three (3) or less active accounts per commodity (electric and/or gas) **OR** (b) one account that represents 50% or more of the annual energy use for the whole building aggregation are required to submit consent forms for each tenant, in a PDF format.

The Website allows National Fuel, acting on Owner's behalf, to create, access, upload, modify, and view data in the EPA Portfolio Manager database. After electronic transmission by National Fuel to the EPA Portfolio Manager database of up to 12 months of the most recent Data, National Fuel may automatically create, access, upload, modify or view Owner's meter data on a periodic basis. The Data that will be provided by National Fuel to the EPA Portfolio Manager reflects the amount of energy usage billed to the Customer. Actual energy usage may vary from billed energy usage. There are times when National Fuel may be unable to obtain an actual meter reading of energy usage and therefore will use an estimate based on energy usage history to bill the affected Customer(s). Any variance between actual and estimated energy usage may be reconciled in the EPA Portfolio Manager. National Fuel's performance is complete once your Data is transmitted to the EPA Portfolio Manager. National Fuel is in no way responsible or liable for the Data, or its use or modification by the EPA or a third party, after the Data has been transmitted to the EPA Portfolio Manager. National Fuel reserves the right to modify the terms contained herein and/or in the National Fuel Privacy Policy at any time without prior notice, and your use of the Website binds you to the changes made. You should review this Agreement and the National Fuel Privacy Policy prior to each use of the Website and provision of any information and/or Data.

General

By authorizing the release of the Data, Owner acknowledges it has received and validated the list of all active meters for which Data will be aggregated in the file transferred to the EPA Portfolio Manager database. Owner is responsible for notifying National Fuel of the need to update the list of accounts/meters associated with the Building which are used to generate Data and cost data, due but not limited to events such as new construction, remodeling, or demolition of existing units/structures. Per EPA's request, National Fuel will not perform any weather normalization of the Data provided.

You must notify National Fuel immediately by sending National Fuel an email message to CRC_Fax@natfuel.com if you know or reasonably believe the security of your user name or password has been compromised in any way.

Entire Agreement

This Agreement, which incorporates by reference National Fuel's Privacy Policy, is the entire agreement between you and National Fuel relating to your use of the Website and the provision and use of your Data for the EPA Portfolio Manager, and all prior and contemporaneous agreements and understandings relating to the subject matter of this Agreement are superseded by and merged into this Agreement. This Agreement may not be amended except by National Fuel as provided herein. You may not amend or assign this Agreement. If any provision of this Agreement is held to be unlawful, void, or for any reason unenforceable, then that provision will be deemed severable and will not affect the validity and enforceability of the remaining provisions.

Termination

Either Party may terminate this Agreement at any time, with or without cause, by giving notice to the other at the other Party's primary business address provided that once this Agreement is terminated, you may not use the Website. In the event ownership of the Building is transferred, the prior Owner must promptly notify National Fuel in writing and this Agreement will immediately terminate upon National Fuel's receipt of such written notification by such prior Owner.

No Warranties

National Fuel expressly disclaims any and all responsibility or liability arising or resulting from your use of the Website, or reliance on the information provided via the Website. National Fuel is only agreeing to provide Data to the EPA Portfolio Manager, and does not assume any other responsibility for Owner's legal or regulatory obligations with respect to such Data. In no event shall National Fuel be liable for (a) Owner's obligation to provide benchmarking compliance data to a governmental or regulatory agency or (b) any claims, damages, expenses, results or consequences arising from an unfavorable Energy Star rating of the Building(s).

THE WEBSITE (INCLUDING ANY CONTENT, INFORMATION, SOFTWARE, FUNCTIONS AND APPLETS PROVIDED ON AND THROUGH THE WEBSITE) IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE BASIS". NATIONAL FUEL DOES NOT WARRANT OR GUARANTEE THE WEBSITE (OR ANY CONTENT OR SERVICE PROVIDED IN CONNECTION

WITH THE WEBSITE) WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER NATIONAL FUEL NOR ANY THIRD PARTY MAKE ANY WARRANTY OR REPRESENTATION OF ANY KIND (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR SUCH INACCURACIES OR ERRORS TO THE FULLEST EXTENT PERMITTED BY LAW.), EITHER EXPRESS OR IMPLIED, AS TO THE WEBSITE, THE OPERATION OF THIS WEBSITE OR ANY INFORMATION AND MATERIALS INCLUDED ON THIS WEBSITE. YOU ACKNOWLEDGE THAT INFORMATION AND MATERIALS ON THIS WEBSITE MAY CONTAIN INACCURACIES AND ERRORS AND NATIONAL FUEL EXPRESSLY DISCLAIMS LIABILITY.

No National Fuel employee, agent, representative or any third party is authorized to create any warranty of any kind not expressly made in this Agreement.

Limitation of Liability

National Fuel, its affiliates or subsidiaries, and their respective officers, directors, employees, agents, successors, or assigns, will not be liable to you or any third party for any indirect, consequential, incidental, exemplary, special or punitive damages (including without limitation damages resulting from lost data, lost profits or costs of procurement of substitute products or services) arising out of or in connection with the Website or any of the services available on or through the Website. IN NO EVENT SHALL NATIONAL FUEL, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSS OR DAMAGES OF ANY TYPE ARISING FROM THIS AGREEMENT, THE USE OF THE WEBSITE AND/OR YOUR PROVISION OF ANY DATA.

Indemnification

You agree to defend, indemnify, and hold National Fuel, its affiliates and their respective officers, directors, employees, volunteers, agents, licensors, and suppliers, harmless from and against any claims, alleged claims, actions or demands, liabilities and settlements including without limitation, reasonable legal and accounting fees, arising from or in connection with (a) your use of, and access to, the Website (including, without limitation any use of your user account by a third party), (b) breach of this Agreement by you or users of your user account, including failure to notify National Fuel in writing that ownership of the Building has been transferred, (c) your violation of any third party right, including without limitation any trademark, copyright or other proprietary or privacy right, (d) the placement or transmission of any message, information, software, or other materials or content on or through the Website by you or users of your user account, and (e) any release of information or Data to the EPA or EPA Portfolio Manager for the energy performance benchmarking program pursuant to this Agreement or the unauthorized use of the information or Data by the EPA or another entity.

This Agreement shall be governed and interpreted by the laws of the State of New York. The Parties agree to negotiate any dispute arising out of this Agreement in good faith. If such dispute cannot be resolved, the Parties agree any action or claim arising out of or related to this Agreement shall be filed in the courts of Erie County, New York, and the Parties consent and agree to the exclusive jurisdiction of such courts for any action, suit or proceeding arising out of these terms and conditions.