

## **Attachments to Agreements (A, B, & C)**

(rev. 06/09/11)

### **Attachment A to EnergyCAP Enterprise License**

Terms Specific to Licensee

Licensee: \_\_\_\_\_

1. Licensee is limited to \_\_\_\_\_ account records in the aggregate, all databases combined. Higher limits can be authorized for an additional fee.
2. Annual fee includes software license, technical support (Attachment C) and, if applicable, hosting by EnergyCAP, Inc. (ECI) (Attachment B). Data entry, data manipulation, data validation, report and/or software enhancements, business consultation, business development, marketing support and like services are not included.
3. Licensee is responsible for software support, training and assistance to Licensee's Clients. ECI shall not be responsible for direct support of Licensee's third party Clients.

### **Attachment B to EnergyCAP Enterprise License**

Terms Specific to ECI Role as Database Hosting Agent, if Applicable

1. ECI agrees to serve as the Hosting Agent and will provide hosting services wherein ECI will host Licensee's database(s) on hardware owned and maintained by ECI. Equipment is located in Pittsburgh, PA in a commercial co-location facility that has secure access, redundant high speed Internet access and redundant power supply. Hosting equipment will include a multi-processor database server with RAID and mirrored drives, Microsoft Server 2003 OS, Microsoft SQL Server, and separate web server. Databases will be backed up nightly to on-site and off-site locations.
2. Data ownership resides with Licensee. Ownership of proprietary EnergyCAP SQL database schema resides with ECI. (Database schema includes database design elements, to include: table and field design; indexes and triggers; stored procedures, scripts and views.)
3. ECI will treat Licensee databases as confidential information and not release, divulge or provide access to data by any third parties without the prior written consent of Licensee.
4. Guaranteed system availability is 98% during customary Eastern Time Zone office hours. Licensee shall be entitled to a credit of \$500 if system availability in any calendar quarter falls below 98% for that quarter.
5. ECI reserves the right to terminate Hosting Agent services upon 180 days written notice and shall transfer Licensee data to Licensee upon termination.

## **Attachment C to EnergyCAP Enterprise License**

### EnergyCAP Maintenance Agreement ("ECMA")

1. This Maintenance Agreement shall run concurrently with your EnergyCAP software license.
2. ECI will use commercially reasonable efforts to correct or replace Software and/or provide support services to remedy material programming errors which are attributable to the Software and which significantly affect use of the Software ("Software Defects"). SUCH CORRECTION, REPLACEMENT, OR SUPPORT SERVICES SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR SOFTWARE DEFECTS.
3. ECI's obligation to provide the support services described above is conditioned upon (a) you promptly providing ECI with reports, screen prints and all other relevant diagnostic information and assistance; and (b) ECI' ability to duplicate the problem as reported by you. You further agree to provide all necessary IT support and test time on your computer system to demonstrate to ECI' reasonable satisfaction the existence of a Software Defect.
4. You shall promptly inform ECI in writing of any modifications made by you to the Software. Notwithstanding anything to the contrary herein, in no event shall ECI be responsible for supporting, maintaining or providing any services with respect to Software modified by you.
5. ECI will not provide any billable services without first obtaining your written authorization.
6. During the term of this ECMA, ECI agrees to provide you:
  - a. Routine maintenance updates to the Software, as they are commercially and generally released by ECI to Maintenance Agreement clients. Additional fees may apply if you want to add new or optional modules not originally ordered.
  - b. Toll-Free Support Hotline – 877.327.3702 manned 8:00 am - 5:00 pm ET on normal business days.
  - c. Program activation codes as may be required by the piracy protection scheme to operate authorized modules of the program.
  - d. Tech Support via Internet, e-mail and website.
7. The services provided hereunder specifically exclude: (a) any services relating to software or hardware not provided by ECI, including, without limitation, any programming performed by you; (b) training; (c) correction of user errors and database errors; (d) installation of updates, new versions, or new releases; and (e) data conversion.
8. You shall promptly install software provided by ECI, including all updates, patch disks, diagnostic programs, database scripts and new system releases. You agree and

acknowledge that failure to promptly install new system releases shall release ECI from its support obligations hereunder until such time as the new release is installed.

9. You acknowledge that it is your sole responsibility, at all times, specifically including during all service functions performed by ECI, to protect the computer system database, files and software from all possible losses, including power failures, hardware failures, software problems, external influences, and inadvertent mistakes, such as operator errors, or any other cause by maintaining copies, through the use of verified daily file saves, stored on and off the premises, and such other additional methods of protection as may be available for the computer system database, files and software.

10. "You" refers equally to Licensee and Licensee's Hosting Agent, if any.