

# INTELLECTUAL PROPERTY END USE AGREEMENT

Energy Audits Unlimited, LLC, henceforth known in this agreement as "EAU" proposes this to:

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Henceforth known in this agreement as "You" OR "you"

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## 9. SURVIVAL

The provisions of Sections 3, 5, 6, 9, 10, 11, 12, 13, 14, 15 and 16 shall survive any termination or expiration of these Terms and Conditions.

## 10. INDEMNITY

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- C) Any content or material downloaded or otherwise obtained through the use of the software is done at your own discretion and risk and you will be solely responsible for any damage to your computer system or other device or loss of data that results from the download of any such content or material.
- D) none of the software is intended for use in the operation of nuclear facilities, life support systems, emergency communications, aircraft navigation or communication systems, air traffic control systems, or any other such activities in which case the failure of the software could lead to death, personal injury, or severe physical or environmental damage.
- E) No advice or information, whether oral or written, obtained by you from EAU or any third party or through the software shall create any warranty not expressly stated in these terms and conditions.

## 12. LIMITATION OF LIABILITY

You expressly understand and agree that EAU shall not be liable to you for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if EAU has been advised of the possibility of such damages) resulting from: (i) the use or the inability to use the software; (ii) the inability to use the software to access content or data; (iii) the cost of procurement of substitute goods or services; (iv) unauthorized access to or alteration of your transmissions or data; or (v) any other matter relating to the software. The foregoing limitations shall apply notwithstanding a failure of essential purpose of any limited remedy and to the fullest extent permitted by law.

## 13. EXCLUSIONS AND LIMITATIONS

Nothing in this agreement is intended to exclude or limit any condition, warranty, right or liability which may not be lawfully excluded or limited. Some jurisdictions do not allow the exclusion of certain warranties or conditions or the limitation or exclusion of liability for loss or damage caused by negligence, breach of contract or breach of implied terms, or incidental or consequential damages. Accordingly, only the above limitations in sections 11 and 12 which are lawful in your jurisdiction will apply to you and EAU's liability will be limited to the maximum extent permitted by law.

## 14. NO THIRD PARTY BENEFICIARIES

You agree that, except as otherwise expressly provided in these Terms and Conditions, there shall be no third party beneficiaries to these Terms and Conditions.

## 15. MISCELLANEOUS PROVISIONS

- A) Entire Agreement. These Terms and Conditions constitute the entire agreement between you and EAU relating to the Software and govern your use of the Software, superseding any prior or contemporaneous agreements between you and EAU regarding the Software.
- B) Choice of Law and Forum. These Terms and Conditions and the relationship between you and EAU shall be governed by the laws of the State of New Hampshire without regard to its conflict of law provisions. You and EAU agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Hillsborough, New Hampshire.
- C) Waiver and Severability of Terms. The failure of EAU to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision. If any provision of these Terms and Conditions is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms and Conditions shall remain in full force and effect.
- D) Statute of Limitations. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Software or these Terms and Conditions must be filed within one (1) year after such claim or cause of action arose or be forever barred.
- E) Headings. The section headings in these Terms and Conditions are for convenience only and have no legal or contractual effect.

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