

## EXHIBIT C

### ENERGYAXIS® MANAGEMENT SYSTEM (EA\_MS)

#### SYSTEM MAINTENANCE AGREEMENT

THIS SYSTEM MAINTENANCE AGREEMENT (this "Agreement") is made and entered into effective this 24<sup>th</sup> day of June, 2014 ("Effective Date") by and between Elster Solutions, LLC, a Delaware limited liability company, with offices at 208 S. Rogers Lane, Raleigh, NC 27610, USA, ("Elster" or "Licensor"), and City of Santa Clara California, a chartered California municipal corporation, with offices at 1500 Warburton Avenue, Santa Clara, CA 95050 ("City" or "Licensee").

Licensor will provide system maintenance services ("System Maintenance Services") for the Program licensed to Licensee pursuant to that certain EnergyAxis Management System License Agreement (the "System License Agreement") executed between the parties and described herein and in Appendix 1 of the System License Agreement. Capitalized terms in this System Maintenance Agreement not otherwise defined shall have the meaning set forth in the System License Agreement. The terms and conditions of the System License Agreement shall govern Licensee's use of the Program.

#### 1 DEFINITIONS

<b>Casual Consulting</b>	Includes telephone and email system support that does not require access to the production, test or backup system, and is limited to information readily accessible to tech support personnel, such as operation manuals and similar documentation including: <ul style="list-style-type: none"><li>a) General support regarding proper utilization of the applicable Program</li><li>b) Assistance with Licensor's user documentation and technical manuals provided with the Program</li><li>c) Guidance on the Program's intended, normal use</li></ul>
<b>Technical Support</b>	Includes support that may require more experienced technical support personnel, system analysis, and access to the production, test or backup system including: <ul style="list-style-type: none"><li>a) Technical assistance specific to the operation of the Program</li><li>b) Diagnosis and troubleshooting</li><li>c) Attempted replication of errors reported by Licensee. Licensor shall use commercially reasonable efforts to resolve replicated errors by providing: (1) a reasonable work-around; (2) a change to the Program code; or (3) an action plan for resolving the error.</li><li>d) Remote installation of the applicable Program and Software/Firmware Upgrades</li><li>e) Over the Air (OTA) upgrades of EnergyAxis network devices, meters and nodes, or upgradeable devices.</li></ul>
<b>Error</b>	For purposes of this System Maintenance Agreement, an "error" shall mean either:

- a) a material nonconformity to the then-current applicable specifications; or
- b) a defect which materially impairs use.

## 2 TERM AND RENEWAL

The term of this System Maintenance Agreement shall begin on the Effective Date and shall continue until December 31st of the then current calendar year (the "Initial Term"). Thereafter, this System Maintenance Agreement shall automatically renew for successive one-year terms (each a "Renewal Term") unless the Agreement is terminated by either party by written notice to the other party sixty (60) days prior to the end of the then-current term with such termination to be effective upon completion of such term.

To ensure that the Agreement meets the needs and expectations of Licensor and Licensee, the parties agree in good faith to review this Agreement not less than annually and if warranted and mutually agreed upon, to make adjustments in the Agreement, including prices, to be consistent with evolving industry practices and the needs of the parties.

If for any reason this Agreement should lapse, the Licensee may reinstate lapsed support and maintenance upon payment of 150% of the support and maintenance fees in arrears, and all costs invoiced by Licensor on a time and materials basis for updating Licensee's Program to the then-current version.

## 3 SUPPORT SERVICES

System Maintenance Services shall consist of the following:

### 3.1 Software Updates

Software Updates include:

- a) **Major Release** - Software Upgrade that includes significant functional changes. Major Releases are identified by a change in the whole number of the Application version number (i.e., 2.0.0.0 to 3.0.0.0). Software upgrade fees will apply to Major Releases.
- b) **Minor Release** - Software Update that includes small functional changes. Minor releases are identified by a change in the first decimal of the Application version number (i.e., 2.2.0.0 to 2.3.0.0). Minor releases occur as needed to meet individual product market needs.
- c) **Maintenance Release** - Software Update that includes fixes for known issues or operational problems which cause the application not to perform as designed. Maintenance Upgrades are typically identified by a change in the second decimal of the Application version number (i.e., 2.2.2.0 to 2.2.3.0). Maintenance Upgrades are released as needed, typically 3 to 6 months apart.
- d) **Patch** - Software Patches include fixes for a known issue or operational problem which cause the application not to perform as designed. Patches are identified by a change in the third decimal of the Application version number (i.e., 2.2.2.2 to 2.2.2.3). Patches are released as needed. Patches target only portions of the software files, and do not require a full software upgrade.

Software Updates include distribution of one (1) copy of any corresponding standard documentation updates on CD or DVD.

Updates apply to the program and modules originally licensed.

Licensor will specify any Third Party Software that Licensee is required to have for each Software Upgrade.

To the extent Software Updates contain new Third Party Software, Licensee agrees to comply with all license terms associated with such software. Licensor shall notify Licensee of new Third Party Software when Software Updates are distributed, and Licensee's installation and use of Software



Updates shall be deemed Licensee's acceptance of Third Party Software license terms, and Licensee's agreement to be bound by such license terms. To the extent Third Party Software license terms are inconsistent with the terms of this System License Agreement, Third Party Software license terms shall control with respect to the Third Party Software.

### 3.2 Firmware Updates

Firmware updates include gatekeeper and endpoint node updates (REX, A3 NIC, water module, gas module, etc.) for application firmware and/or radio firmware, and will be applied by Elster as required. Firmware Updates are categorized as:

- a) **Firmware Functional Upgrades** - Firmware Functional Upgrades include significant functional changes. Functional upgrades are typically identified by a change in the first number of the firmware version number (e.g., 2.0 to 3.0). Firmware Functional Upgrades may incur an upgrade fee and/or hardware change as determined by Elster
- b) **Firmware Maintenance Updates** - Firmware Maintenance Updates are primarily bug fixes. Minor functionality changes may also be included. Maintenance Updates are typically identified by a change in the second decimal of the firmware version number (e.g., 2.0 to 2.1).

### 3.3 System Support

System support is available for the latest commercially released version of the Program (N), and for the previous commercially released version of the program (N-1). With each new release of the Program, the version purchased by the Licensee will age by (-1).

Versions N and N-1 are fully supported. Version N-2 signifies the Program has reached end of life, and system support will be limited to Severity 1 issues defined in [Appendix C-3](#) while allowing Licensee time to complete Program upgrades. Version N-3 signifies the Program has reached end of life support, and thus no longer supported by the Licensor. Licensee must upgrade its Program to continue system support.

The parties may amend this System Maintenance Agreement to add additional Modules licensed by Licensee, subject to additional System Maintenance Fees and terms. Licensor reserves the right to commercialize uniquely new features, endpoints and interfaces as optional add-ons to its base system features. Additional system maintenance fees may apply unless the feature or interface is part of a contractual scope jointly agreed to by the parties.

Support and maintenance of third-party software, such as the computer operating system, must be obtained from the supplier and is the responsibility of the Licensee. Licensor will provide support for embedded software within the EA\_MS Program, subject to third-party support terms to which Elster is party.

Licensor offers the following levels of Support.

- a) **9 x 5 Support**  
Includes Casual Consulting and Technical Support Monday through Friday from 8:00 AM to 5:00 PM, Eastern Standard Time or Eastern Daylight time as applicable, except for Licensor holidays.
- b) **12 x 7 Support**  
Includes Casual Consulting and Technical Support seven days a week from 8:00 AM to 8:00 PM, Eastern Standard Time or Eastern Daylight time as applicable, including Licensor holidays. Alternate hours are available for an additional fee.
- c) **24 x 7 Support**  
Includes Casual Consulting and Technical Support from 8:00 AM to 8:00 PM, and technical support 8:00 PM - 8:00 AM Eastern Standard Time or Eastern Daylight time as applicable, including Licensor holidays.

d) **Emergency On-Call Support**

Available for a Severity 1 issues, as defined in [Appendix C-3](#), that occur outside of contracted support hours for customers on 9x5 or 12x7 support plans. Emergency support excludes upgrades and other requests made solely for the business convenience of the Licensee. Emergency on call support is available 7 days a week, including Licensor holidays. Emergency calls are directed to a Licensor support representative. If the support representative is unavailable to accept the call, callers will be directed to voice mail, and Licensor's support representative will return the call within one (1) hour of receipt. Returned calls will be charged per fees described in [Appendix C-1](#).

Alternate hours are available for an additional fee. Unanticipated office closures due to conditions of force majeure or other unforeseen events that affect the Licensor's availability schedule will be communicated to the Licensee as soon as reasonably possible.

Licensor shall use commercially reasonable efforts to resolve replicated errors by providing: (1) reasonable work arounds; (2) a change to the Program code; or (3) an action plan for resolving the error. Case resolution and response times will depend on the severity of the issue as defined in [Appendix C-3](#).

### 3.4 Selected Support Level

Licensee must indicate the support level selected for the Initial Term of the System Maintenance Agreement by placing an "X" in the appropriate box of the "Selected Support Level" table which follows the signature block of this Agreement. To change support levels, Licensee must request such change in writing no later than October 1st of the then-current year. Licensor will approve or reject the request in writing no later than December 1st. If approved, Licensor will invoice Licensee for the new level of support, payable by December 31st of the then current year, and all approved changes will be effective as of January 1st of the next calendar year. Any change in support levels will be added as an amendment to the Selected Support Level table and to [Appendix C-4](#).

### 3.5 Support Contact Information

Casual Consulting and Technical Support are available via:

a) **Toil-Free Number with Customer Specific PIN**

The EnergyAxis Software Support line, 866-554-9007 or +919-250-5717, is available 24 hours a day 7 days a week. If a call is received during Licensee's support hours and a support engineer is not available to take the call, the call will be routed to a voice mailbox. The next available support engineer will return voice messages. Calls received outside of Licensee support hours will be automatically routed to a voice mailbox. Messages received outside support hours will be returned the following support day.

b) **Email**

Email may be sent to [EnergyAxis.Support@us.elster.com](mailto:EnergyAxis.Support@us.elster.com). Emails sent to this address are automatically routed to support engineers who will respond during Licensee's support hours. Emails received outside of Licensee support hours will be returned the following support day.

c) **Web Portal**

The Elster Support System (ESS) User Portal (<http://ElsterSupport.com>) can be accessed using individual login IDs provided by Technical Support. The User Portal is available 24 hours a day, 7 days a week.

### 3.6 On-Site Support Services

Prior to furnishing on-site support, the Licensee must present the Licensor with a written request for on-site support services, and the terms and nature of the services to be provided must be defined in a written Scope of Work signed by the parties



System Support as detailed in Section 3.3 does not include On-Site Support. For purposes of this Agreement, "On Site Support" shall occur when:

- a) Licensors is requested by Licensee to arrive at a Licensee location to provide support and/or consultation services;
- b) Licensors is contacted outside of contracted support hours and must, following written approval from the Licensee, travel to another location (including Licensors's site) to complete the required services; and
- c) Licensors is contacted during normal contracted support hours and must, following written approval from the Licensee, travel to a separate location to complete the required services.

Any travel to Licensee's site requires prior approval of Licensors management. Any On-Site Support provided at the request or approval of Licensee shall be billed on an hourly basis at the then-current labor rates reflected in [Appendix C-2](#), plus reasonable travel and living expenses including a 10% administrative fee. For travel outside the continental United States, travel time to site is also charged on an hourly basis per rates in [Appendix C-2](#). On-Site Support services will be provided under Licensors's then-current standard service terms.

### 3.7 Other Available Services

The following services are not provided under this System Maintenance Agreement but are available for an additional fee:

- a) Distribution or maintenance of Program Modules not listed in [Appendix B-1](#) of the System License Agreement
- b) Interpretation of Program results
- c) Supply of typical or representative data
- d) Assistance with computer hardware and peripheral questions not related to Program use
- e) Data debugging and/or correcting
- f) Services necessitated as a result of any cause other than ordinary and proper use of the Program by Licensee, including but not limited to neglect, abuse, unauthorized maintenance, or electrical, fire, water, or other damage
- g) Services resulting from the failure of Licensee to provide a suitable environment for the Program or associated equipment
- h) Services relating to problems caused by modifications in any version of the Program not made or authorized by Licensors
- i) Services resulting from the combination of the Program with other programming or equipment, and to the extent such combination has not been approved in writing by Licensors.
- j) Services relating to problems caused by communications facilities and infrastructure (telephone, etc.)

### 3.8 Resolution of Helpdesk Issues

Licensors's Technical Support will contact Licensee to ensure that a problem or issue has been resolved to Licensee's satisfaction before closing the problem report. In instances where Licensors has resolved the problem to Licensors's satisfaction but has been unable to confirm that the supplied solution is satisfactory to Licensee, Licensors will assume such solution to have been satisfactory and close the case after thirty (30) working days unless Licensee notifies Licensors to the contrary.

## 4 FEES

System Maintenance Fees are calculated based on the calendar year. The annual System Maintenance Fee calculation guidelines are set forth in [Appendix C-1](#), attached hereto. To facilitate easy lookup, [Appendix C-4](#) summarizes the then-current applicable maintenance fees incorporating maintenance fees for the original purchase of the program and all amendments due to incremental modules or services purchased

thereof. Upon the Effective Date of this Agreement or on a date as specified in an associated system contract, Licensee shall pay the then-current annual System Maintenance Fee, pro-rated based on the number of months remaining in the calendar year from the Effective Date of this Agreement. Thereafter, annual System Maintenance Fees will be invoiced in October of each year, with payment for the next year's System Maintenance due no later than December 31 of the current year. On Site Support services and any other Additional Services will be billed at the end of the month in which the services are provided. Fees for Modules licensed separately by Licensee shall be charged at purchase. Except as specifically set forth in this System Maintenance Agreement, all invoices are due net thirty (30) days from the date of invoice. Licensor will assess a late payment charge on any amount which remains unpaid after the due date, computed at the rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law on the unpaid amount for each month that such amount remains unpaid. This late payment charge shall be in addition to any other remedies Licensor may have at law or in equity. All System Maintenance Fees are in US dollars.

## 5 TERMINATION

Either party may upon written notice to the other party, terminate this Agreement and any license granted hereunder at any time and for any reason, including nonpayment or other material breach that is not cured within thirty (30) days following written notice thereof.

Within ten (10) days after the date of termination, Licensee will cease use of the Software and Third Party Software and return, or at Elster's direction, destroy all originals and copies, in whole or in part and in any form, of any Software or other Elster furnished documentation in the Licensee's possession, and will certify to the foregoing to Elster in writing.

## 6 LIMITATION OF LIABILITY

The maximum liability of Licensor for any damages sustained by the Licensee under this System Maintenance Agreement shall in no circumstance exceed the amount of the annual maintenance fee payable by the Licensee to the Licensor for the then-current year. Neither Licensor nor its licensors or Third Party Software shall in any event be liable to Licensee for loss of revenue, profit, anticipated profit or indirect, incidental, special or consequential damages, including but not limited to, any losses to Licensee resulting from lost computer time or the destruction or damage of records, or any claims or demands made against the Licensee by a third party.

## 7 WARRANTY DISCLAIMER

Except as expressly provided herein, the Licensor does not make any representations or warranties under this System Maintenance Agreement whatsoever whether statutory, expressed or implied, including but not limited to warranties of merchantability and fitness for a particular purpose, and any warranties arising from course of dealing or usage of trade. No action, regardless of form, arising out of the transactions under this System Maintenance Agreement may be brought by Licensee more than two (2) years after the cause of action has accrued.

## 8 LICENSEE OBLIGATIONS

During the term of this System Maintenance Agreement, Licensee shall:

- a) Obtain, install and maintain, and provide at no cost to Licensor, direct FTP and fast VPN access (access via Citrix, WebEx, VNC, etc. not acceptable) to all meters, gatekeepers, and every production, backup and test Management System servers under support to allow Licensor to perform System Maintenance for the Program from Licensor's facilities in North Carolina. Reasonable allowance will be made to adhere to Licensee's corporate security administration and monitoring policies. However, during periods when Licensor has access to



the Management System servers, access will be at the administrator level. Reasonable allowances will be made to ensure that Licensee has monitoring abilities for all activities performed on Licensee's systems. No actions will be taken on any Licensee system without Licensee's permission.

- b) Allow Licensor to install as part of its standard support a Troubleshooting Tool with daily access to Licensee's secure FTP site to transfer data, thus enabling Licensor's support personnel to perform maintenance on the Licensee system effectively. Without use of the Troubleshooting Tool response and resolution times may be affected.
- c) Ensure that only personnel properly trained in the operation and use of the Program and its associated equipment call Licensor for direct phone support and that such personnel have sufficient access and computer time when using such service in order to implement the corrections suggested by Licensor.
- d) Allow Licensor to install all Software Upgrades within 60 days of delivery of same; provided, however, that Licensee may delay a Software Upgrade in the event of force majeure or in the event of delays beyond the control of Licensee or Licensor in corollary upgrades to third-party software or equipment. Licensee shall install or allow the install of the Software Upgrade immediately upon the cessation of the cause of delay. Reasonable delays will be accommodated to avoid impacts on Licensee's business operations, resource availability and/or IT policy compliance.
- e) Perform and install all diagnostic activities and routines recommended by Licensor before requesting On-Site Support.
- f) Ensure that all installed Elster Products (meters, gatekeepers, IP AxisLink, etc.) that have Longitude and Latitude attributes contain the correct geographic coordinates. Troubleshooting will not be performed by Elster for devices that do not have corresponding geographic information in the Energy Axis Management System.
- g) Ensure a proper Program environment is maintained and that Licensee's personnel who have access to the Program are properly trained in the operation and usage of the Program and the associated equipment.
- h) Provide adequate safeguards for the protection of Licensee's data and files while System Maintenance is being performed on the Program.
- i) Issue any purchase orders that might be required by Licensee's business processes to honor the payments obligated by this Agreement.
- j) Maintain the Management System servers consistent with industry standards on end of life planning for server systems. Licensor's general recommendation is that Licensees plan for server replacements on a 3 year cycle to consider hardware and OS obsolescence and to provide latest generation servers to support new features provided in Program releases provided as a part of this Agreement.
- k) Maintain the Supported System and the operating system software defined in [Appendix B-1](#) of the System License Agreement. Licensor will specify the third party software and version thereof required for each Software Upgrade or release.
- l) Licensee shall monitor overall system performance such as disk space, CPU, memory usage, etc
- m) Prevent the unauthorized use or copy of binary data used in virtual deployments of EA\_MS systems..

## 9 DATA BACKUP

Licensee shall be solely responsible to ensure that all of its files and data are adequately duplicated or documented, and Licensor shall in no way be responsible for Licensee's failure to do so, nor for the costs or expenses of reconstructing data which are lost, destroyed or otherwise damaged or rendered useless

during the course of or as the result of the performance of any services under this System Maintenance Agreement.

## **10 CONFIDENTIALITY**

Each Party (the "Receiving Party") shall maintain in strict confidence any and all proprietary and confidential information about the business, operations or customers of the other Party or any of their affiliates which it acquires in any form from the other Party (the "Disclosing Party"), including without limitation the terms of this Agreement, or any other information disclosed by the Disclosing Party and identified by Disclosing Party as confidential ("Confidential Information"). The Receiving Party will not disclose such Confidential Information with any third parties without the Disclosing Party's prior written consent. The Receiving Party further agrees to use its best efforts and to take all reasonable precautions to maintain strict confidentiality with respect to the Confidential Information and to prevent disclosure thereof to persons other than its employees, accountants, affiliates, attorneys, bankers, consultants, insurance advisors and carriers, and agents who need access to such information to carry out a Party's obligations under this Agreement, and the Receiving Party shall be liable for the compliance by such third parties with the confidentiality obligations hereof.

The Receiving Party shall not use, or permit the use of, the Confidential Information for any purpose other than performing this Agreement and exercising the rights granted under this Agreement. The Receiving Party acknowledges that the rights of the Disclosing Party in the Confidential Information are unique, and accordingly the Disclosing Party shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights hereunder by an action for injunctive relief and specific performance to the full extent permitted by law. Upon termination of this Agreement and the written request of the Disclosing Party, the Receiving Party shall return or destroy all copies of all Confidential Information to the Disclosing Party. To the extent it would be unreasonably costly or cumbersome, neither Party shall be required to delete intangible copies of Confidential Information that are made as part of such Party's routine systems back-up procedures.

Notwithstanding the foregoing, Licensor shall be entitled to disclose to a third party licensor of any Third Party Software (a) the fact of this Agreement (including the identity of Licensee) and (b) audit results with respect to Licensee's compliance with the Third Party Software terms of this Agreement. The provisions of this Article shall survive any termination of this Agreement or of any license granted hereunder.

## **11 FORCE MAJEURE**

Neither party shall be liable for loss, damage, or delay nor be in default for failure to perform (other than payment obligations) due to causes beyond its reasonable control, including but not limited to acts of God, acts of war or terrorism, fire, flood, strike, labor disputes, acts or omissions of any governmental authority or of the other party, compliance with government regulations, embargos, fuel or energy shortage, delays in transportation, inability to obtain necessary labor, materials, or services from usual sources, or from defects or delays in performance of a party's suppliers or subcontractors due to such causes. In the event of a delay by either party due to the foregoing, the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the delay.

## **12 ASSIGNMENT**

Neither this Agreement nor any interest under this Agreement shall be assigned by Client without the prior written consent of Elster, except that either Party may assign this Agreement without prior consent in connection with a sale of controlling interest in the capital stock or other equity interest of such Party, a sale of all or substantially all of the assets of such Party, or pursuant to a merger or consolidation. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.



### **13 NOTICES**

Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered on the date evidenced by receipt obtained upon transmission by fax, upon delivery by commercial delivery service, or upon delivery by certified or registered mail to a party's address or facsimile number shown below:

#### **If to Licensee**

City of Santa Clara  
Silicon Valley Power  
Director of Electric Utility  
1500 Warburton Avenue  
Santa Clara, CA 95050

#### **If to Elster**

Elster Solutions, LLC  
208 S Rogers Lane  
Raleigh, NC 27610  
ATTN: Contracts Department  
ContractsDept@us.elster.com

Either Party may at any time change its respective address or point of contact by sending written notice of the change to the other Party.

### **14 AMENDMENT AND ENFORCEMENT**

This System Maintenance Agreement, including the Appendices attached hereto, contain the entire understanding of the parties with respect to the matters herein. This System Maintenance Agreement may not be modified except by writing, executed by authorized representatives of Licensor and Licensee. If any provision hereof is or becomes, at any time or for any reason, unenforceable or invalid, no other provision hereof shall be affected, and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted herein. If Licensee issues a purchase order or other document that purports to define System Maintenance other than as set forth in this System Maintenance Agreement, it is agreed that the terms and conditions of any such purchase order shall have no application or effect, and that the provisions of this System Maintenance Agreement shall continue to control matters related to the provision of System Maintenance. Either party's failure to exercise any right under this System Maintenance Agreement shall not constitute a waiver of any other terms or conditions of this System Maintenance Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.

### **15 HEADINGS**

The headings and captions herein shall not be considered for purposes of interpretation or application, and are furnished for convenience only.

### **16 SURVIVAL**


The provisions of Sections 1, 2, 6, 7, 9, 12, and 13 shall survive the cancellation, expiration or termination of this Agreement.

### **17 GOVERNING LAW**

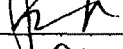
This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law or conflicts of law rules of any jurisdiction. The Parties agree that all causes of action against either Party under this Agreement shall be brought solely and exclusively in the State Courts of the State of California, or the U.S. District Court for California.

INTENDING TO BE LEGALLY BOUND, THE PARTIES HAVE AUTHORIZED THEIR REPRESENTATIVES TO EXECUTE THIS AGREEMENT AS OF THE "EFFECTIVE DATE" FIRST WRITTEN ABOVE.

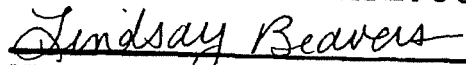
**CITY OF SANTA CLARA**

By   
Printed name Julio J. Fuentes  
Title City Manager  
Date 6/30/14

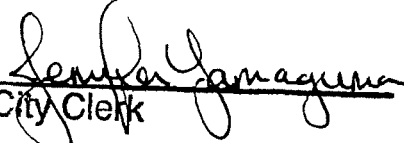
**ELSTER SOLUTIONS, LLC**

By   
Printed name Robert Hens  
Title VP contracts and proposals  
Date 6/2/2014

APPROVED AS TO FORM:  
SANTA CLARA CITY ATTORNEY'S OFFICE

  
for LINDSAY BEAVERS, DEPUTY CITY ATTORNEY

ATTEST:

  
City Clerk



### SELECTED SUPPORT LEVEL

Support Level	Description	Support Level Selected (Place an "X" in the appropriate box)
9 × 5	Customer Support Mon-Fri, from 8 AM to 5 PM Eastern Time except designated Licensor holidays*	X
12 × 7	Customer Support 7 days a week, from 8 AM to 8 PM Eastern Time*	
24 × 7	Customer Support 24 hours a day, 365 days a year*	
Optional Emergency on-call	Customer Support from 8 PM to 8 AM Eastern time for customers on 9x5 or 12x7 support for Severity 1 issues	

\* Reference Support Level Services table below for list of services available

### SUPPORT LEVEL SERVICES

	9x5, 12x7 and 24x7 8 AM to 5 PM Mon-Fri	12x7 and 24x7 8 AM to 8 PM 7 days/week	24x7 8 PM to 8 AM 7 days/week
Severity 1 issues	✓	✓	✓
System upgrades/patches	✓	✓	Not supported during overnight hours
Gatekeeper upgrades	✓	✓	
Severity 2 issues	✓	Not supported during extended hours	
Severity 3 issues	✓		
Meter upgrades	✓		
Managed services	✓		
Casual consulting	✓		
Status updates	✓		
Integration support	✓		

All times Eastern

## APPENDIX C-1

### YEARLY SYSTEM MAINTENANCE AGREEMENT FEES

#### 1 SYSTEM MAINTENANCE FEE FOR EACH OPERATIONAL SYSTEM

The system maintenance fee is structured based on the level of support desired by the Licensee, total system size and optional services purchased by the Licensee. The table below describes the structure for system maintenance fees for the EnergyAxis Management System.

The percent of license fees is determined by the desired support level. Total list license fee includes licenses for all programs, system, modules, endpoints, interfaces and custom integrations purchased by the Licensee as defined in the latest amendment to the Licensor System License Agreement or customer statement of work.

Support Level	Support Fees	Optional Emergency On-call Support
9 x 5	20% of SLA List Fees	5% of SLA List Fees per annum in addition to Standard Support, and per call fee of \$1000 for first hour, \$500/hr for each subsequent hour or part thereof
12 x 7	27% of SLA List Fees	
24 x 7	34% of SLA List Fees	

A support level of 12 x 7 or 24 x 7 is mandatory for Advanced and 24 X 7 for Enterprise tier Licensees, as defined in the EnergyAxis System License Agreement.

It is highly recommended that customers with DA support have 24 X 7 SMA support.

#### 2 FUTURE MODULES AND APPLICATIONS

Additional System Maintenance fees for new modules or applications will be determined at time of purchase.

#### 3 ANNUAL INCREASE PROVISION

Licensor reserves the right to increase the annual SMA fee at the time of annual renewal each year after the 1st complete calendar year by the greater of 4% or the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, U.S. City Average. The CPI-U adjustment rate will be determined by comparing the percentage difference between the CPI-U in effect for the base twelve month average (October through September); and each (October through September) 12 month average thereafter. The percentage difference between the two CPI-U issues will be the adjustment rate.

#### 4 OPTIONAL SYSTEM RETRAINING

Licensee with a current System Maintenance Agreement can purchase optional system retraining for 1 week under the following fee structure. Training requests will be accepted subject to Licensor's resource availability.



- a) Training at Licensor's Facility in Raleigh, NC: \$10,000 plus \$250 per set of printed materials (limited to a maximum of nine students in one training session)
- b) Training at Licensee's Facility: \$15,000 plus travel and living and \$250 per additional set of printed materials (limited to a maximum of nine students in one training session).

## **5 MAINTENANCE FEE FOR SYSTEMS INTEGRATION/BILLING CONVERSION PROGRAM SUPPORT**

An annual fee will be charged for maintenance of Licensor developed interfaces and systems integration, to maintain compatibility with future releases of Energy Axis Management system and customer enterprise system(s). These fees are determined at the time the integration is scoped and quoted, but are a minimum of 20% of initial development cost to Licensee.

## **6 DATABASE REFRESH ON NON-PRODUCTION SERVERS**

Database refresh on test and backup systems requested by the Licensee are not part of the routine upgrade process, thus an additional maintenance fee will apply. The effort will be scoped based on the size of the database (usually 4 - 6 hrs for an Advanced system), at the then current fee for a Support Engineer as defined in [Appendix C-2](#). For Advanced and Enterprise tier support, one database refresh during upgrade of a production or test system, and one during production cut-over is included.

## **7 PRICING NOTES**

System maintenance must be purchased for ALL of the Licensee's Management Systems (operational, backup and test) and the levels of coverage for all the Systems must be the same.

SMA support for any of Licensee's systems is only available if the all of the applicable license fees have been paid (including any incremental backup and/or system Software License fees), the system(s) installed and all of the Licensee's systems are under an active and paid SMA.

If Elster is responsible for Tier 1 support of third party WAN or MDM solutions, additional SMA fees will apply.

**APPENDIX C-2**  
**EA\_MS Server System Maintenance Agreement**  
**Professional Services Request Form**

<b>To:</b>	<b>ATTN:</b>	<b>Date:</b>
Elster Solutions, LLC 208 S Rogers Lane Raleigh, NC 27610	Systems Support Manager Fax: (919) 250 5439	

**Work requested by customer:** (Attach additional page(s) if more space is required)

**Rates: The rates quoted below apply to work initiated in calendar year 2014 and completed within one (1) year. Rates are for labor only and DO NOT include travel and living expenses.**

Professional service roles	Hourly rate	Service Description
Program Manager	\$220	Project Management Office for large scale and turn key projects, including projects involving multiple vendors
Project Manager	\$180	Assemble the project team, develop and execute the project schedule, report weekly status, and acquire the appropriate resources necessary to resolve issues
Business Process Specialist	\$250	Technical expertise for business process analysis re-engineering and integration scoping for Enterprise AMI integration
Integration Developer	\$180	Develop software to integrate Enterprise business applications
IT architect	\$170	Technical expertise to ensure that the network elements, metering end points and hardware interfaces of the AMI system deployed function as intended to meet the specified AMI system requirements and configuration of network to meet Licensee's Enterprise IT Requirements
Field Service Engineer	\$170	Field installation coordination and field trouble shooting
Database Administrator	\$170	Assistance with database management, optimization and migration
Support Engineer	\$160	Assistance with maintenance services outside the scope
Logistics Coordinator	\$145	Coordination of equipment and material delivery logistics
Test Engineer	\$140	Definition and execution of system acceptance test of Licensor approved system configuration

Unless otherwise stated herein, Service prices are based on normal business hours (8 a.m. to 5 p.m. Monday through Friday). "Time" is on-the-job plus travel time to and from the job site from the regularly assigned office location. "Time" starts and ends at the person's regularly assigned office location unless otherwise agreed upon prior to the start of work. Overtime, Saturday hours will be billed at one and one half (1 ½) times the hourly rate; Sunday will be billed at two (2) times the hourly rate and holiday hours recognized by Licensor will be billed at three (3) times the hourly rate. Minimum billable time per person will be four (4) hours.

<b>Send Invoices To:</b>	<b>Customer Authorized Representative</b>
<b>Company:</b> _____	
<b>Address:</b> _____	
<b>City, State ZIP:</b> _____	<b>Printed Name</b> _____
<b>ATTN:</b> _____	
<b>Telephone No.:</b> _____	
	<b>Signature</b> _____
	<b>Date</b> _____
<b>Request Received by Elster</b> _____	<b>Enter Time Tracking System Task Name</b> _____

All services and products delivered under this request are governed exclusively by Elster Solutions, LLC General Terms and Conditions.



## APPENDIX C-3

### SEVERITY OF CUSTOMER CASES AND RESOLUTION TIMES

When customers open a case in the Elster Support System (ESS) User Portal, they can specify a priority of the problem. This will guide the support team about the actions to take when the case is assigned to a support analyst. Priorities will determine the urgency with which a support engineer needs to start investigating the problem.

#### 1 SEVERITY 1 ISSUES

System is not functioning, unavailable, or unusable, or billing data is lost. Defects are critical in nature, do not allow the system to fully operate or impact data integrity, do not have workarounds and demand immediate action. Data integrity is defined as 10% or more of the actively communicating meters not read or processed. Examples include:

- a) EA\_MS hangs
- b) Can't login to GUI
- c) Billing schedule fails to run or meter read success rate is unacceptable (below 90%), and WAN is properly functioning.
- d) Integration application fails (if provided by Licensor)
- e) Database needs to be recovered from a backup copy (system fail over)

In addition to opening a case, the customer shall report Severity 1 issues via the EnergyAxis support line (866-554-9007) using the customer specific PIN.

#### 2 SEVERITY 2 ISSUES

Loss of some functionality (not included in Severity 1) or partial loss of data. Defects do not stop system operation, do not preclude users from performing their tasks, and/or may partially impact data integrity (i.e. less than Severity 1). There may be a work around, but implementing the work around is unacceptably time consuming and will adversely affect Licensee's ability to conduct normal system production activities. Examples include:

- a) Non-billing schedule is running with low performance
- b) GIS application does not work
- c) Marriage File import fails
- d) CIS import fails
- e) Sudden change in number of orphaned nodes
- f) Partial data loss (Cannot read a EA\_Gatekeeper or a meter - excluding WAN issues)
- g) Data is corrupt
- h) Application has limited capability

Severity 2 cases shall be reported using the ESS User Portal. Additional telephone and/or email notification to Licensor Support is advisable but not required.

#### 3 SEVERITY 3 ISSUES

Defects do not impact effective system operation, or have minimal effect on the system or licensee's business process. An appropriate workaround is available. Unless expressly agreed, defects will generally be resolved in Licensor's next maintenance release. Examples include:

- a) Request missing marriage file
- b) Explain feature functionality (like daily DR, HHF)
- c) Request software upgrades

- d) Request firmware upgrades
- e) Request any other Elster Managed Services

Severity 3 cases shall be reported using the ESS User Portal

#### **4 RESPONSE TIME / RESOLUTION**

The priority of a case governs the expected response time for resolution. Resolution times are as follows:

##### **4.1 Severity 1**

- a) Response time  
Licensor will acknowledge the customer call reporting such problems by phone or email within one hour of notification within contracted support hours. If the problem is reported outside of the contracted support hours, Licensor will acknowledge the call the following business day.
- b) Problem resolution  
Licensor will make commercially reasonable best efforts to start investigating the problem immediately after acknowledgement and attempts to fix the problem or provide a work around solutions as soon as reasonably possible.

##### **4.2 Severity 2**

- a) Response time  
Licensor will acknowledge such notice within six hours of notification within contracted support hours. If the problem is reported outside of the contracted support hours, Licensor will acknowledge the call the following business day.
- b) Problem resolution  
Licensor will make commercially reasonable effort to start investigation the problem within a business day of acknowledgement, and will provide a solution in the form of workaround or documentation clarification, as soon as reasonably possible.

##### **4.3 Severity 3**

- a) Response time  
Licensor will acknowledge such notice within one business day.
- b) Problem resolution  
Licensor will work on the case as time permits. Implementation of the solution may be in the form of a workaround or documentation clarification. Generally, fixes for non-critical errors are addressed in a future scheduled EA\_MS release.



## APPENDIX C-4

### SYSTEM MAINTENANCE FEES SUMMARY

This appendix summarizes the system maintenance fees derived from the system license fees in [Appendix B-4](#) of the System License Agreement at the time of the original purchase, and will be amended as necessary to reflect any changes to the License or maintenance configuration after the initial purchase.

#### EnergyAxis Premiere License and Maintenance fee Calculation

EnergyAxis System License Fees		Qty	List Price	Total	Discount Price	Ext. Price
<b>Base System</b>						
EnergyAxis Premier		1	\$75,000.00	\$75,000.00	\$35,000.00	\$35,000.00
Additional Backup / Test System		2	\$27,000.00	\$54,000.00	\$15,000.00	\$30,000.00
Virtualization		1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Incremental AMI/AMR endpoint license fees (per 2,500 unit bundle)		1	\$5,500.00	\$5,500.00	\$906.00	\$906.00
Axis Detect			\$15,000.00	\$0.00	\$15,000.00	\$0.00
Direct Wide Area Network (WAN) connection support		1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
Third Party Meter Support			\$5,000.00	\$0.00	\$5,000.00	\$0.00
<b>Water</b>						
Water Module Support (includes Site License for Route Manager)		1	\$10,000.00	\$10,000.00	\$6,000.00	\$6,000.00
<b>Gas</b>						
Gas Module Support (includes Site License for Route Manager)			\$10,000.00	\$0.00	\$10,000.00	\$0.00
<b>Demand Response (DR) / Home Area Network (HAN)</b>						
Base License Fee: Home Area Network (HAN) Support		1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DR Element / Device Fee (1 - 500,000)			\$1.00	\$0.00	\$0.75	\$0.00
DR Element / Device Fee (500,000+)			\$0.75	\$0.00	\$0.75	\$0.00
<b>Distribution Automation (DA)</b>						
Base License Fee: Distribution Automation (DA) Support		1	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00
DA Element / Device Fee (1 - 50,000)			\$2.00	\$0.00	\$1.50	\$0.00
DA Element / Device Fee (50,000+)			\$1.50	\$0.00	\$1.50	\$0.00
Secure Tunnel Server Gateways (0 - 50)			\$25,000.00	\$0.00	\$25,000.00	\$0.00
Secure Tunnel Server Gateways (51 - 200)			\$35,000.00	\$0.00	\$35,000.00	\$0.00
Secure Tunnel Server Gateways (200+)			\$50,000.00	\$0.00	\$50,000.00	\$0.00
<b>Custom SW Development / Modules / Interfaces / Stand Alone</b>						
Route Manager		1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
EA_Inspector Manager		1	\$0.00	\$0.00	\$1,100.00	\$1,100.00
<b>Subtotal - AMI Software License Fees (SLA)</b>				\$179,500.00		\$99,106.00
<i>Credit for previously paid license fees</i>						(\$99,106.00)
<b>Total - AMI Software License Fees (SLA)</b>						<b>\$0.00</b>

EnergyAxis System Maintenance Fees		Qty	List Price	Total		
<b>Base System</b>						
Standard Support: 9x5	20%	1	\$35,900.00	\$35,900.00		
Standard Support: 12x7	27%		\$48,465.00	\$0.00		
Standard Support: 24x7	34%		\$61,030.00	\$0.00		
Optional On-Call Emergency Support	5%		\$8,975.00	\$0.00		
Equipment Maintenance Fee: EA_Inspector/ EA_Installer Handheld		6	\$895.00	\$5,370.00		
Annual Increase Provision	4%	1	\$41,270.00	\$1,650.80		
<b>Total - EnergyAxis System Maintenance (SMA)</b>				<b>\$42,920.80</b>		