

## **EnergyCAP® Enterprise Consultant Software License for Third Party Clients** (rev. 06/01/10)

By this License, EnergyCAP, Inc. ("ECI"), of State College, PA grants a license to an energy services, engineering, or consulting firm ("Licensee") to use the EnergyCAP Enterprise software ("Software") to process, analyze and report the data of Licensee's third party clients ("Clients") subject to the following terms, restrictions and limitations.

ECI owns all rights and copyrights in and to the subject Software. The Software includes executable program files, supporting files, bundled data files (such as energy type tables), report files and the database structure/schema in Microsoft SQL Server format, as delivered to and made accessible by Licensee.

1. Licensee may install Software on one or more file servers and multiple PCs for simultaneous use by multiple users solely within Licensee's organization.
2. There is no limit on the number of allowable Licensee clients and client EnergyCAP databases.
3. Direct access by Licensee's third party Clients to EnergyCAP databases shall be limited by Licensee to the use of the Browser ('thin client') interface. Clients shall not be provided with the Windows/LAN or Windows/Web ('rich client') EnergyCAP application nor shall Clients be provided database access via a VPN or remote access technology, without prior written approval of ECI. Notwithstanding the above, Licensee shall not provide any direct access by any means to EnergyCAP databases for Clients that are public school districts in the United States.
4. Software shall only be used to process the data of Licensee's Clients. A separate end-user license is required for use of the Software for the processing of Licensee's data, i.e. for tracking Licensee utility accounts in Licensee owned or leased facilities.
5. Provided this License has not been terminated, future routine maintenance releases, annual program updates, and new modules/programs provided to Licensee by ECI are included unless specifically excluded at time of delivery.
6. Licensee may reproduce the User Manual and other user documentation for use by Licensee's employees and Clients.
7. LICENSEE SHALL NOT ALTER, MODIFY, OR ADAPT THE SOFTWARE OR DOCUMENTATION, OR PORTIONS THEREOF, IN ANY WAY. LICENSEE SHALL NOT DISASSEMBLE, DECOMPILE, REVERSE ENGINEER, TRANSLATE OR CREATE DERIVATIVE WORKS OF THE SOFTWARE, OR PORTIONS THEREOF, IN ANY WAY. LICENSEE SHALL ONLY INSTALL AND OPERATE THE SOFTWARE IN ACCORDANCE WITH THE DOCUMENTATION.
8. Use of an external program to alter, edit or append records to the data files is at Licensee's own risk. ECI assumes no liability for maintenance or support on any database

altered via an external program. Import of external data via the Software's existing import mechanisms (EDI, meter readings, interval data, etc) is permitted.

9. This License and ECI' copyrights extend to any data that Licensee may have obtained from ECI, including without limitation weather data libraries, bundled type tables (such as the energy type table) and separate data bases. Licensee shall only use these data files in conjunction with Licensee's licensed copy of the Software.

10. Terms specific to Licensee, if any, are included in Attachment A attached hereto and incorporated herein by reference.

11. Licensee may appoint one or more third-party Database Hosting Agents ("Agent") to host, operate and maintain the Software for the behalf of Licensee. All terms of this License apply equally to Agent as to Licensee and Licensee agrees to be responsible for any actions or omissions of Agent. Software may not be used by any Agent to provide service to users other than Licensee's Clients.

12. If Licensee designates ECI as the Agent to host Licensee database(s), the terms in Attachment B hereinbelow and incorporated herein by reference shall apply. 13. Routine program updates and technical support services are included and will be provided to Licensee pursuant to the terms of the EnergyCAP Maintenance Agreement, Attachment C hereinbelow and incorporated herein by reference.

14. This license shall remain in effect until terminated as follows: a. Licensee may terminate without cause upon payment to ECI in full of any and all outstanding fees and providing 60 days written notice prior to said termination. ECI may terminate without cause upon 365 days written notice.

b. ECI may terminate upon 60 days written notice if an invoice for license or services fees remains unpaid for a period of 60 days after invoice due date and Licensee has not satisfied the outstanding invoices within said 60-day termination period. c. ECI may terminate the License if Licensee violates any provision of this License. ECI shall notify Licensee in writing of a violation and Licensee shall have a 30-day period to cure said violation. If the violation is not cured within said 30 day period, ECI may terminate the License upon written notice.

15. When terminated, Licensee and all third party Clients shall discontinue use of the Software, remove Software from computers, destroy all copies of Software and discontinue use of the EnergyCAP Enterprise SQL Server database. User data contained within the database is owned by the Licensee and may be exported to other databases at Licensee's expense, but shall not be retained in ECI' proprietary EnergyCAP SQL Server database format.

16. ECI reserves the right to include periodic expiration and validation processes in the Software to hinder software piracy and protect its rights, copyrights and intellectual property. Licensees will be provided with activation keys at no additional charge for the life of this License. Pending program expiration will generate a warning message beginning no less than 30 days in advance of expiration.

17. ECI reserves the right to periodic audits of the client databases to ensure that license fees based on a "per bill" and "per meter/account" basis have been accurately reported by Licensee.

18. ECI may make alterations/customizations to the software at the request of Licensee. Applicable customization fees will be negotiated at the time of the request. Ownership of the software intellectual property, copyrights and full rights in any alterations/customizations made at Licensee's request shall be and remain with ECI; Licensee does not obtain any ownership rights to said alterations/customizations.

19. The License hereunder is not assignable by Licensee without ECI' prior written consent. Licensee may not transfer, distribute, rent, sub-license, or lease the Software.

20. This License does not include supporting software and hardware required to be furnished by Licensee and Agent, such as operating systems, browsers, database engines, servers and client workstations.

21. Licensee shall acknowledge the "EnergyCAP, Inc." registered trademark and "EnergyCAP" registered trademark whenever used in Licensee's publications, printed and electronic.

22. ECI retains full and complete ownership of and copyrights in Software; nothing in this License confers or transfers any Software intellectual property rights to Licensee whatsoever.

23. WARRANTY: ECI warrants to Licensee that the software will provide the functionality as outlined in the Web-Based User Manual that is accessible via the ECI website ([www.EnergyCAP.com](http://www.EnergyCAP.com)) as of the effective date of this License, and ECI will cure any deficiencies within 60 days of prompt notification in writing. THE FOREGOING STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR, ANY DEFECT, FAILURE OR OTHER PROBLEM WITH THE SOFTWARE WHATSOEVER.

24. EXCEPT AS EXPRESSLY SET FORTH IN THE PRECEDING PARAGRAPH, THE SOFTWARE IS PROVIDED AS IS, WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. ECI DOES NOT WARRANT THAT THE SOFTWARE WILL RUN WITHOUT ERROR OR BE PROBLEM-FREE. IN NO EVENT SHALL ECI BE LIABLE TO LICENSEE, LICENSEE'S CLIENTS, AGENTS OR TO ANY OTHER PARTY FOR ANY LOSS OR DAMAGES, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION DATA LOSS, LOSS TO BUSINESS, OR OTHERWISE), INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE SOFTWARE AND/OR DOCUMENTATION LICENSED BY ECI, WHETHER SUCH DAMAGES OR LOSS SOUND IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, AND ALL OTHERS), WARRANTY, OR UNDER STATUTE. ECI HAS ABSOLUTELY NO OBLIGATIONS OR LIABILITIES ASSOCIATED WITH OR ARISING OUT OF THE MANNER IN WHICH LICENSEE USES THE SOFTWARE AND OTHER DATA COVERED BY THIS LICENSE.

25. ECI retains all rights not expressly granted herein. Nothing in this License constitutes a waiver of ECI' rights under copyright law. This license is non-exclusive. This License is governed by the laws of the Commonwealth of Pennsylvania, without regard to rules of strict interpretation of either party irrespective of the identity of the party who prepared or may have directed the preparation hereof. Any disputes relating to this Purchase License Agreement shall be resolved exclusively in the state or federal courts located in Centre County, Pennsylvania and each party irrevocably consents to the jurisdiction of such courts.. This License contains the final and entire agreement of the parties with respect to the subject matter hereof, and supersedes any and all prior and subsequent offers, proposals, negotiations, understandings, and agreements with respect to the subject matter hereof.