

EnergyCAP® Enterprise Consultant Software Purchase Agreement (rev. 06/01/10)

This Software License Purchase Agreement (this "Agreement") is made by and between Consultant ("Licensee") and EnergyCAP, Inc. of State College, PA ("ECI"), effective as of the date of execution by the Parties (the "Effective Date").

Whereas, ECI agrees to provide a license to use EnergyCAP Enterprise software (the "Software") and related services to Licensee pursuant to the terms of this Agreement, and

Whereas, LICENSEE desires to obtain a license to use Software and other related services from ECI.

Now therefore, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto intending to be legally bound do hereby mutually agree as follows:

ARTICLE I. SCOPE OF AGREEMENT

This Software License Purchase Agreement provides for the following:

1.1. Software License. Purchase of an annual EnergyCAP Enterprise software license pursuant to the terms of the EnergyCAP Enterprise Software License for Consultant Serving Third Party Clients (the "License" as such term is more particularly described therein) attached hereto as Exhibit C and incorporated herein by reference.

1.2. Software Maintenance. Purchase of Software Maintenance services pursuant to the terms of the EnergyCAP Maintenance Agreement (the "Maintenance Agreement") attached hereto as Attachment C and incorporated herein by reference.

1.3. Software Implementation Services. Purchase of related implementation services ("Implementation Services") pursuant to the terms of Exhibit A and detailed in Schedule A both attached hereto and incorporated by reference.

1.4. Software License Scope. The fee listed in the Payment Terms to the Fee Schedule, attached hereto as Exhibit A, is based upon the Licensee's current approximate facility/account inventory and Licensee's current software module utilization needs.

1.4.1. A meter is a point of service as itemized on the bill and tracked in EnergyCAP as a meter/logical device and includes points of service where no physical meter exists, such as sewer, fire lines, outdoor lighting, fuel oil tanks, storm drainage, ISP and telephone service, etc. Growth is subject to the guidelines incorporated in the Software License Policy and Pricing for Consultants, Exhibit B attached hereto and incorporated by reference, whether due to reorganization, merger, acquisition, etc. ECI reserves the right to charge an additional license and maintenance fee per the pricing terms in Exhibit B.

1.4.2. The program modules listed in Exhibit A to be used by Licensee are a factor in ECI

pricing considerations. ECI has relied upon Licensee's representations of modules, features and functions, and has priced both the software license and maintenance pricing accordingly. In the event Licensee desires to use additional software modules, whether available today or included in future releases, ECI reserves the right to charge an additional license and maintenance fee per the pricing terms in Exhibit B.

ARTICLE II. FEES AND TERMS OF PAYMENT

ECI agrees to invoice Licensee and Licensee shall pay for the Software and services in accordance with the License Agreement's prices, payment schedule and terms in Exhibit A.

ARTICLE III. ECI RESPONSIBILITIES

ECI agrees to perform in accordance with the License Agreements and complete the Implementation Services in accordance with the mutually agreed upon delivery dates.

While at any Licensee location, if at all, ECI's personnel, agents, and permitted subcontractors agree to comply with reasonable requests, rules, and regulations of Licensee previously provided to ECI in writing regarding personal and professional conduct (including the wearing of identification badges and adhering to Licensee regulations and safety practices or procedures), and shall otherwise conduct themselves in a businesslike manner.

ECI agrees to provide necessary tools, office space, equipment, personnel, facilities, telecommunications access, computers and other resources necessary for ECI to provide the services hereunder. ECI agrees to provide the proper custody and care of any Licensee-supplied property provided to ECI for use in connection with the performance of services.

ARTICLE IV. MUTUAL REPRESENTATIONS

Each party represents and warrants to the other that (a) it has full power and legal right to execute and deliver this Agreement and to perform its obligations under this Agreement, (b) no authorization or approval from any third party is required in connection with such party's execution, delivery or performance of this Agreement, and (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

Further, ECI represents and warrants to Licensee that to the best of its knowledge (i) it has all right, title or interest, or valid license to use, the intellectual property, software copyrights, trademarks or service marks, logos, names, artwork and designs covered by this Agreement, and that its grant or rights associated therewith do not violate any proprietary rights of any third party, and (ii) all services provided hereunder will be performed in a professional and workmanlike manner consistent with the level of care and skill ordinarily exercised by members of ECI's profession currently performing such services under similar conditions.

ARTICLE V. DURATION OF AGREEMENT

This Agreement commences on the date executed by both parties and shall remain in full

force and effect for so long as any one or more of the License Agreements are in effect as set forth therein.

ARTICLE VI. CONFIDENTIAL INFORMATION

“Confidential Information” is any document or other media or tangible items that relates to research, development, trade secrets, clients, business affairs or that contains any other information of a party that was not generally available to the public when received by the other party. “Confidential Information” will also include, but not be limited to, Licensee technology, Licensee utility billing and rate information, ECI technology, and the terms and conditions of this Agreement. “Confidential Information” shall not include information that: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known, independently of disclosure by the disclosing party, to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

Each party acknowledges that it will or may have access to Confidential Information of the other party and therefore each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary and providing that they agree to be bound by obligations of confidentiality at least as strict as those contained herein), nor permit any of its partners, shareholders, directors, officers, employees, agents or contracting parties to use or disclose, any of the other party's Confidential Information and will take precautions necessary to protect the confidentiality of such Confidential Information using the same degree of care used to protect its own Confidential Information, but in any case using no less than a reasonable degree of care.

The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or as required by law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure. If the disclosing party is not successful in precluding the requesting legal body from requiring disclosure of the Confidential Information, the receiving party shall furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded with the Confidential Information.

All of Confidential Information disclosed pursuant to this Agreement including, but not limited to information in computer software or held in electronic storage media shall be and remain the property of the disclosing party. All such information in tangible form shall be returned to the disclosing party promptly upon written request or the termination or expiration of this Agreement, and shall not thereafter be retained in any form by the receiving party, its affiliates, or any employees or independent contractors of the receiving party or its affiliates.

This Article VI shall remain in full force and effect for so long as either party retains any Confidential Information of the other party.

ARTICLE VII. INTELLECTUAL PROPERTY

The Software and all documentation, enhancements, modifications, improvements or derivative works thereto, whether or not created or developed in conjunction with Licensee (collectively, the "Enhancements") shall remain the sole and exclusive property of ECI. ECI retains all copyrights, patents, trade secrets, trademarks, and all other intellectual property interests in the Software and the Enhancements and is licensed annually for use by Licensee on the terms set forth in this Agreement.

All underlying methodology utilized by ECI and Licensee respectively which was created and/or developed by either prior to the date of this Agreement and utilized in the course of performance pursuant to this Agreement shall not become the property of the other.

ARTICLE VIII. ASSIGNMENT.

This Agreement shall not be assignable in whole or in part by Licensee without the express written consent of ECI.

ARTICLE IX. GENERAL PROVISIONS

9.1. Entire Agreement. This Agreement together with the attachments hereto and all documents incorporated by reference herein, constitutes the entire and sole agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations, understandings, or other matters, whether oral or written, with respect to the subject matter hereof. This Agreement cannot be modified, changed or amended, except in writing signed by a duly authorized representative of each of the parties.

9.2. Conflict. In the event of any conflict, ambiguity or inconsistency between this Software License Purchase Agreement and the Exhibits attached hereto, the terms and conditions of this Software License Purchase Agreement shall govern.

9.3. Assignment and Delegation. Neither party shall assign or delegate any rights, duties or obligations hereunder to any other person and/or entity without prior express written approval of the other party which approval shall not be unreasonably withheld.

9.4. Severability. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

9.5. Governing Law; Venue. This Agreement shall be governed by, construed in accordance, and subject to 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 Software License Purchase 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 Agreement shall also be subject to any applicable federal and state laws, rules and regulations.

9.6 Notice. Any notices required by this Agreement or any attachment hereto shall be in writing and shall be given to the parties by hand, by facsimile, by nationally recognized overnight courier service or by express, registered or certified mail, postage prepaid, return receipt requested. Notices shall be deemed to have been given upon actual receipt thereof.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have caused this Agreement to be executed as of the date first written below.

LICENSEE

Name

Address

City, state zip

By:

(Signature)

Name:

Title:

Date:

ECI

EnergyCAP, Inc.

110 Radnor Road, Suite 101

State College, PA 16801

By:

Name:

Title:

Date: