

EnergyCAP® Enterprise Software Purchase Agreement

(rev. 06/01/10)

This Software License Purchase Agreement (this "Agreement") is made by and between _____ ("Licensee") and EnergyCAP, Inc. of State College, PA ("ECI") as of the date of LICENSEE'S Purchase Order or signing of this agreement for EnergyCAP software and services whichever is earlier (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 a perpetual EnergyCAP Enterprise software license pursuant to the terms of the EnergyCAP Enterprise Software End-User License (the "License" as such term is more particularly described therein) attached hereto as Exhibit B 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 Exhibit C and incorporated herein by reference.

1.3. **Software Implementation Services.** Purchase of related implementation services ("Implementation Services") shall be in accordance with the terms of the Software Implementation Services Agreement ("Services Agreement") attached hereto as Exhibit D and incorporated herein by reference. To the extent Licensee purchases Implementation Services, whether the same is for the initial installation of the Software, or for the installation of additional modules during the term of this Software License Purchase Agreement, the parties agree to execute a Services Agreement in substantially the same form as Exhibit D attached hereto. For the avoidance of doubt, any changes the Parties agree to make to Schedule A of Exhibit A attached thereto shall be considered non-substantial changes to the Services Agreement.

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. The number of facilities, accounts, meters and bills to be tracked is a factor used in ECI pricing considerations. ECI has relied upon Licensee's representations of inventory and scope. Growth in scope of facilities, accounts, meters and bills of up to 25% is permitted without additional price increase to Licensee. Growth beyond 25%, whether due to reorganization, merger, acquisition, etc., exceeds the pricing considerations and ECI reserves the right to charge an additional license and maintenance fee, over that specified

in Exhibit A, with prior Licensee written authorization. If Licensee does not authorize the additional fee then ECI reserves the right to restrict Licensee's access to higher meter counts.

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 to be used, and has priced both the Software License and Maintenance Agreement 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 with prior Licensee written authorization.

ARTICLE II. FEES AND TERMS OF PAYMENT

ECI agrees to invoice Licensee and Licensee shall pay for the software and services provided under the License, Maintenance Agreement and Services Agreement in accordance with prices, payment schedule and terms in Exhibit A.

ARTICLE III. ECI RESPONSIBILITIES

ECI agrees to perform in accordance with the License, the Maintenance Agreement and the Services Agreement, and perform the Implementation Services in accordance with the delivery dates listed in the Implementation Services Agreement.

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 that have been 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 all necessary tools, office space, equipment, personnel, facilities, telecommunications access, computers and all other resources necessary for ECI to completely and effectively 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.

ECI shall indemnify and hold Licensee, its affiliates, shareholders, directors, officers, employees, agents, successors, and assigns harmless from and against any and all third party claim or liability to the extent arising solely from the acts or omissions of ECI or its employees or agents in the course of performing the services or from the infringement by ECI of any United States patent, trademark, copyright or proprietary rights.

ARTICLE V. DURATION OF AGREEMENT

This Agreement commences on the date executed by Licensee and shall remain in full force and effect for so long as any one or more of the License or Maintenance 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 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 during this Agreement or for a period of five (5) years beyond termination of this Agreement, whichever is later.

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 for use by Licensee on the terms set forth in Exhibit B.

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 AND DELEGATION.

Licensee shall not assign nor delegate this Agreement or any rights, duties or obligations hereunder to any other person and/or entity without prior express written approval of ECI which approval shall not be unreasonably withheld.

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. 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.

9.4. 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.

9.5 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: