

EnergyCAP® Professional Maintenance Agreement ("ECMA")

(rev. 06/01/10)

TERMS AND CONDITIONS ("TERMS")

By installing EnergyCAP®, you acknowledge and agree that you have read, understand and accept these Terms.

ARTICLE 1 - TERM AND FEES

Your ECMA subscription shall be for one year ("Term"). The initial Term shall commence on the date that you first install EnergyCAP® Professional on your computer. This initial software installation date shall be established as your ECMA anniversary date. On each subsequent anniversary date of your ECMA subscription, unless terminated by EnergyCAP, Inc., your ECMA subscription will automatically renew for another Term, and will continue to automatically renew for additional Terms thereafter, unless you cancel your subscription by written notice at least 30 days prior to the expiration of the then current Term. Your ECMA subscription will be automatically cancelled if EnergyCAP, Inc. has not received payment 60 days after the date of the invoice. You shall be responsible for all taxes imposed by any governmental agency with respect to the services rendered by EnergyCAP, Inc. under these Terms. EnergyCAP, Inc. may from time to time invoice you for applicable Expenses (only as pre-authorized by you) or other fees for services as provided herein. Your payment for such other fees and Expenses shall be due 30 days from the date receipt of the invoice. Your failure to make payments for ECMA Fees or Expenses could result in suspension or termination of your ECMA subscription, in addition to other remedies EnergyCAP, Inc. may have for such nonpayment.

EnergyCAP, Inc. may cancel this Agreement at any time without cause upon 30 days written notice to you. If so canceled, you will be refunded one-twelfth of your ECMA fee for every month remaining in your paid-up annual subscription. This Agreement is automatically and immediately terminated upon the termination for any reason of your EnergyCAP® Professional Software License Agreement.

ARTICLE 2 - CHANGES IN TERMS, CONDITIONS AND FEES

EnergyCAP, Inc. may modify the ECMA Fees or these Terms on written notice to you ("ECMA Modification"), but no such ECMA Modification shall be effective prior to the end of the current Term of your subscription. If you receive an ECMA Modification, you may elect not to extend this ECMA beyond the end of the subscription Term then in effect by canceling in accordance with Article 1 above.

ARTICLE 3 - SCOPE OF SERVICES

3.1 The licensed software covered under these Terms is EnergyCAP® Professional versions 1.3, 2003 and later (the "Software") and is subject to the terms and conditions of EnergyCAP, Inc.'s standard EnergyCAP® Professional Software License Agreement.

3.2 During the Term, EnergyCAP, Inc. will use commercially reasonable efforts to correct or replace Software and/or provide support services to remedy material programming errors which are attributable to the Software, and which significantly affect use of the Software ("Software Defects"). SUCH CORRECTION, REPLACEMENT, OR SUPPORT SERVICES SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY, AND ENERGYCAP, INC.'S SOLE AND EXCLUSIVE LIABILITY, FOR SOFTWARE DEFECTS.

3.3 EnergyCAP, Inc.'s obligation to provide the support services described in Section 3.2 is conditioned upon (a) you promptly providing EnergyCAP, Inc. with reports, screen prints and all other relevant diagnostic information and assistance; and (b) EnergyCAP, Inc.'s ability to duplicate the problem as reported by you. You further agree to provide all necessary IT support and test time on your computer system to demonstrate to EnergyCAP, Inc.'s reasonable satisfaction the existence of a Software Defect.

3.4 You shall inform EnergyCAP, Inc. in writing of any modifications made by you to the Software. Notwithstanding anything to the contrary herein, in no event shall EnergyCAP, Inc. be responsible for supporting, maintaining or providing any services with respect to Software modified by you.

3.5 In the event any problems, difficulties or defects are determined by EnergyCAP, Inc. to be traceable to your software, hardware, modifications or system changes, EnergyCAP, Inc. shall invoice for, and you hereby agree to pay on a time and materials basis at EnergyCAP, Inc.'s then-current rates for, the services provided by EnergyCAP, Inc. in connection with any such problem, difficulty, or defect.

3.6 During the term of this ECMA, EnergyCAP, Inc. will provide to you:

a. Updates to the Software, as they are commercially and generally released by EnergyCAP, Inc..

b. Toll-Free Support Hotline – 877-327-3702, manned 8:00 am - 5:00 pm ET on normal business days.

c. Program validation codes as may be required by the EnergyCAP® piracy protection scheme to operate the program.

d. Technical Support via Internet e-mail and website . The scope and content of such materials and services shall be determined by EnergyCAP, Inc. in its sole discretion. EnergyCAP, Inc. shall retain absolute discretion as to the timing, scope, and content of updates, upgrades, new releases and/or new versions of the Software, including without limitation, the pricing (if any) thereof.

3.7 The services provided hereunder do not include: (a) any services relating to software or hardware not provided by EnergyCAP, Inc., including, without limitation, any programming performed by you; (b) training; (c) correction of user errors and database errors; (d) installation of updates, new versions, or new releases; or (e) data conversion.

ARTICLE 4 - YOUR RESPONSIBILITIES

4.1 You agree to thoroughly research all software or system problems before reporting a problem to the EnergyCAP, Inc. support staff. If in analyzing a suspected error at your request, EnergyCAP, Inc. determines that no error exists in the Software, EnergyCAP, Inc. reserves the right to charge you for EnergyCAP, Inc.'s time spent in response to your request at EnergyCAP, Inc.'s then-current rates.

4.2 You agree to promptly install software provided by EnergyCAP, Inc., including all

updates, patch disks, diagnostic programs, database scripts and new system releases. You agree and acknowledge that failure to promptly install new system releases shall release EnergyCAP, Inc. from its support obligations hereunder until such time as the new release is installed.

4.3 You acknowledge that it is your sole responsibility, at all times, including specifically during all your service functions performed by EnergyCAP, Inc., to protect the computer system database, files and software from all possible losses, including power failures, hardware failures, software problems, external influences, and inadvertent mistakes, such as operator errors, or any other cause by maintaining copies, through the use of verified daily file saves, stored on and off the premises, and such other additional methods of protection as may be available for the computer system database, files and software.

ARTICLE 5 – EXPENSES

If EnergyCAP, Inc. incurs out-of-pocket expenses (“Expenses”) not included in the ECMA fee that you have pre-authorized in connection with performing services under this ECMA, then you shall reimburse EnergyCAP, Inc. for such reasonable out-of-pocket expenses, including travel to and from your site, lodging, meals, telephone, and shipping.

ARTICLE 6 - PROPRIETARY RIGHTS

The Software and all documentation, enhancements, modifications, improvements or derivative works thereto, whether or not created or developed in conjunction with you (collectively, the “Enhancements”) shall remain the sole and exclusive property of EnergyCAP, Inc.. EnergyCAP, Inc. retains all copyrights, patents, trade secrets, trademarks, and all other intellectual property interests in the Software and the Enhancements. You hereby assign all of your right, title and interest in and to Enhancements that are now existing or that may be hereafter developed. You further agree to execute all necessary documentation that may be reasonably required by EnergyCAP, Inc., including without limitation, necessary assignments and applications, to secure EnergyCAP, Inc.'s ownership of the Enhancements.

ARTICLE 7 - LIMITATIONS OF LIABILITY

ENERGYCAP, INC.'S LIABILITY HEREUNDER SHALL BE LIMITED IN THE AGGREGATE TO AN AMOUNT EQUAL TO ALL ECMA FEES PAID BY YOU TO ENERGYCAP, INC. FOR SUPPORT AND MAINTENANCE SERVICES FOR THE 12 MONTH PERIOD PRECEDING ANY CLAIM OR DEMAND BY YOU. IN NO EVENT SHALL ENERGYCAP, INC. BE LIABLE TO YOU OR TO ANY OTHER PARTY FOR ANY LOSS OR DAMAGES, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION DATA LOSS, LOSS TO BUSINESS, OR OTHERWISE), INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE SERVICES HEREUNDER, OR THE SOFTWARE AND/OR DOCUMENTATION LICENSED BY ENERGYCAP, INC. WHETHER SUCH DAMAGES OR LOSS SOUND IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, AND ALL OTHERS), WARRANTY, OR UNDER STATUTE.

ARTICLE 8 - GENERAL TERMS

ANY MODIFICATION TO THESE ECMA SUBSCRIPTION TERMS AND CONDITIONS BY YOU SHALL AUTOMATICALLY RENDER THEM VOID AND SHALL EFFECT THE CANCELLATION OF SERVICES PROVIDED HEREUNDER. These Terms shall be governed and construed under the laws of the Commonwealth of Pennsylvania, without regard to rule of strict interpretation irrespective of the party who prepared or may have directed the preparation hereof. EnergyCAP, Inc. is an independent contractor. These Terms shall not be construed to create a partnership or joint venture between the Parties. Nothing in these Terms shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind. These ECMA Terms shall not be construed as a third party beneficiary contract.