



EnergyCAP® Professional Online Software License, Maintenance, and Hosting Agreement

(rev. 10/27/2014)

IMPORTANT! READ BEFORE USING! USE OF THE ENERGYCAP® SOFTWARE PROGRAM YOU ACCEPT THE TERMS OF THIS AGREEMENT.

EnergyCAP, Inc. owns all rights and copyrights in and to the subject software product (“Software”) called “EnergyCAP® Professional.” EnergyCAP is a registered trademark of EnergyCAP, Inc.

The Software is furnished subject to the terms and conditions of this Agreement, which has a 10-day unconditional Acceptance Period. If the Software itself or any terms of this Agreement are not acceptable for any reason, notify EnergyCAP, Inc. in writing within (10) days of purchase to EnergyCAP, Inc. for a full refund.

By this Agreement you are purchasing an annual subscription for software license, maintenance and database hosting. Maintenance includes technical support and periodic updates. Your subscription begins on the day you are first provided login access to the software (whether or not you login or utilize the software on that date) which shall promptly follow the receipt by EnergyCAP, Inc. of a purchase order or software order form; this date is established as the Agreement Anniversary Date.

By this Agreement, you are granted a license to use the Software and receive Maintenance and Hosting services subject to the following terms, restrictions and limitations:

1. You may use the Software in any operable configuration (single workstation, multiple workstations, remote access) for simultaneous use by multiple operators within your organization.
2. This is a “single user” license which means a single end user licensee organization, which may have multiple simultaneous operators. It allows you to use the Software for internal use by your employees or contractors/consultants for the benefit of the licensee organization only. You may not use the Software to process the data of third parties or in a service bureau capacity without written authorization from EnergyCAP, Inc.
3. This Agreement covers only the stated version of the Software and any future maintenance releases or program updates. You must pay an additional fee for a license for any optional features of the Software that either you elected not to purchase initially or became available at a later date.

4. EnergyCAP Professional version is only available for clients of Cenergistic, Inc. of Dallas, TX (including clients continuing a relationship with Cenergistic after Cenergistic's fees for services have been paid) as set out in paragraph 5d below. Because of that fact, the rights and intellectual property ownership of all parties (including Cenergistic) regarding the data and results obtained using EnergyCAP will be acknowledged and addressed herein. Data ownership rights are as follows:
 - a. Licensee owns all data that originates with Licensee (such as data related to utility bills, meters, accounts, vendors, facilities, organizational structure, and users).
 - b. EnergyCAP, Inc. owns all EnergyCAP, Inc.-provided data (such as weather data, GHG factors, commodity conversion factors, bill entry template design, report design and Excel import templates).
 - c. EnergyCAP, Inc. owns all data in the form of results produced by EnergyCAP proprietary calculation algorithms (such as weather adjustment factors, adjusted baselines, and cost and usage avoidance)
 - d. Cenergistic owns all rights in and to its organizational behavior based energy conservation program, which includes, without limitation, all of its intellectual property that is included as part of the data as well as the adjusted baselines, cost and avoidance savings results and other documents that can be produced from the database (subject to EnergyCAP's intellectual property in 4c above).
 - e. Licensee may make copies of any data for Licensee's own use subject to any limitations and contractual agreements between the Licensee and Cenergistic. Copies may be made via built-in Excel download features, screen capture or reports.
 - f. Licensee may not distribute (outside of Licensee organization) or resell EnergyCAP, Inc. -owned data or Cenergistic owned data except with prior written permission of EnergyCAP, Inc. or Cenergistic, respectively.
 - g. Licensee grants EnergyCAP, Inc. permission to access Licensee-owned data for purposes of providing technical support to Licensee.
 - h. Licensee further grants EnergyCAP, Inc. permission to use Licensee-owned data for purposes of industry benchmarking and analytics, but EnergyCAP, Inc. may not publish any Licensee-identifiable data (to include Licensee name, facility names, account/meter/utility bill/vendor identifiable data) for view/access by any third parties without Licensee written permission.
 - i. Licensee grants Cenergistic permission to access and use Licensee-owned data for purposes of providing technical support to Licensee and for purposes of maintaining data for historical, benchmarking and analytical purposes as deemed appropriate by Cenergistic and in a manner consistent with the contract between Licensee and Cenergistic;
 - j. EnergyCAP, Inc. will provide access to Licensee data to Cenergistic, Inc. and to the extent required will deem Licensee's acceptance of the terms of this License Agreement to be consent for Cenergistic to have access to Licensee's data. Licensee releases EnergyCAP from all liability for providing Cenergistic access to Licensee's data.

- k. In addition to Cenergistic, Inc., and subject to any Intellectual Property protections of EnergyCAP, Inc. or Cenergistic as set out in this License Agreement or any other contract between Licensee and Cenergistic, Licensee may appoint and authorize a person within Licensee's organization to administer certain technical aspects of the Software. Upon appointment, EnergyCAP, Inc. will offer Technical Support services to the appointed person at no additional cost and will limit access to specified technical software features to the authorized person only. Upon expiration or termination of the authorization, EnergyCAP, Inc. will block that person's access and return full access of all features to Licensee.
 - l. Upon Agreement termination for any reason, Licensee shall have a 10-day opportunity to capture a final copy of any data per 4e above. After the expiration of the data capture opportunity the data will no longer be accessible to Licensee. Licensee's obligations per #4f and EnergyCAP, Inc.'s obligations per #4h shall survive Agreement termination and remain in effect permanently.
5. This Agreement and the license granted hereunder are effective upon the Agreement Anniversary Date and shall remain in effect for the period of one year or until terminated, whichever occurs first.
 - a. It may be terminated by EnergyCAP, Inc. if you fail to comply with any term of this Agreement or any additional terms stated in your purchase documents, to include order form and purchase order, or if you fail to make payment on Software license or related fees per the payment terms in your invoice.
 - b. You may terminate this Agreement by notifying EnergyCAP, Inc. in writing of your termination.
 - c. This Agreement is renewable in one-year periods upon the Agreement Anniversary Date. You will automatically receive an annual renewal invoice form 60 days prior to the expiration date. Receipt of payment or purchase order by EnergyCAP, Inc. for your annual Agreement subscription fee will designate acceptance by both parties of Agreement renewal for the renewal period of one year.
 - d. EnergyCAP, Inc. has determined that it is essential for EnergyCAP Professional version licensees to maintain a client-consultant relationship and routine contact with Cenergistic, in order to be successful EnergyCAP users. Discontinuance of an ongoing relationship with Cenergistic in either a contractual or post-contract sustainability mode will be grounds for EnergyCAP, Inc. to decline to renew the Agreement at the end of the then current term. As between Licensee and Cenergistic, to the extent any of the terms of this License Agreement and the Contract between Licensee and Cenergistic are inconsistent, unclear or ambiguous, the terms of the Contract shall control.
 - e. In the event of Agreement termination during an annual term, EnergyCAP, Inc. shall only be responsible for providing a pro-rated refund for unused months if termination is due to EnergyCAP default.
6. This Agreement includes Maintenance and Hosting services.

- a. 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.
 - b. EnergyCAP, Inc.'s obligation to provide the support services 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.
 - c. During the term of this Agreement, EnergyCAP, Inc. will provide to you:
 - i. Updates to the Software, as they are commercially and generally released by EnergyCAP, Inc.
 - ii. Toll-Free Support Hotline – 877.327.3702, manned 8:00 am - 5:00 pm ET on normal business days.
 - iii. 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.
 - d. 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; or (d) data conversion.
 - e. Hosting shall be provided in a commercial data center.
7. This Agreement is not assignable by you without EnergyCAP, Inc.'s prior written consent. You may not transfer, distribute, rent, sub-license, or lease the Software or the documentation.
8. EnergyCAP, Inc. may modify the Annual Fee or these Terms on written notice to you ("Modification"), but no such Modification shall be effective prior to the end of the current Term of your subscription. If you receive a Modification notification, you may elect not to extend this Agreement beyond the end of the subscription Term then in effect by canceling in accordance with paragraph 5 above. Annual Fee increases are limited to not more than 5% above the rate then in effect, unless otherwise stipulated in Exhibit A.
9. WARRANTY: EnergyCAP, Inc. warrants to you only that, for a period of 180 days beginning on the day following the expiration of the 10-day unconditional Acceptance Period, the Software shall be free from material defects in materials and workmanship and, if it is not, EnergyCAP, Inc. will repair the same if EnergyCAP, Inc. is notified of such defect within the 180-day period. THE FOREGOING STATES YOUR SOLE AND

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10. EnergyCAP, Inc. retains all rights not expressly granted herein. Nothing in this Agreement constitutes a waiver of EnergyCAP, Inc.'s rights under copyright law. This license is non-exclusive. Unless otherwise stated in Exhibit A, this Agreement is governed by the laws of Commonwealth of Pennsylvania, without regard to rule of strict interpretation irrespective of the party who prepared or may have directed the preparation hereof. This Agreement contains the final and entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior and subsequent offers, proposals, negotiations, understandings, and agreements with respect to the subject matter hereof.