

Single End-User License Agreement for EnergyGauge® Software

This End-User License Agreement (the “Agreement”) between you (“you” or “LICENSEE”) and the University of Central Florida Research Foundation, Inc. (“we,” “us” or “UCFRF”) (collectively, “parties”, or singly, “party”) governs commercial use of EnergyGauge® Software Product that accompanies this Agreement, including any associated media, printed materials and electronic documentation. Multiple versions of EnergyGauge®, each with different features, are made available to download upon payment of appropriate fee on the website <http://www.energygauge.com>. **BY INSTALLING, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USING THE SOFTWARE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, ACCESS OR USE THE SOFTWARE PRODUCT.**

WHEREAS, employees of the University of Central Florida (“UCF”), working on behalf of the Florida Solar Energy Center (hereinafter “FSEC”) a research institute of UCF created the software titled, ENERGYGAUGE, and including all revisions thereto (hereinafter collectively, the “Software Product”, as further defined below) in the scope of their employment and as work for hire;

WHEREAS, the University of Central Florida Research Foundation, Inc. (“UCFRF”) is a direct support organization, acting as an instrumentality of UCF, and through which UCF-generated intellectual property may be made available for commercial use;

WHEREAS, UCFRF is a Florida not-for-profit corporation incorporated under the provisions of Chapter 617, Florida Statutes, and approved by the Florida Department of State;

WHEREAS, UCFRF owns all rights, title, and interest to the Software Product, including all copyrights, whether registered or not, and to the trademark ENERGYGAUGE, including all trademark rights, whether registered or not, and including without limitation U.S. trademark registration no. 2318526;

WHEREAS, UCFRF has the right to grant licenses to the foregoing Software Product and Documentation (as hereinafter defined), and wishes to have the Software Product utilized by LICENSEE; and

WHEREAS, UCFRF desires to grant to LICENSEE and LICENSEE desires to obtain from UCFRF, a nonexclusive, non-transferable single end-user license to use the Software Product and Documentation solely in accordance with the terms and the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

For the purpose of this Agreement, the following words and phrases have the following meaning:

Software Product: shall mean the computer program EnergyGauge® utilized to assess residential and commercial building energy code compliance, and to perform energy analysis and rating, comprising all versions and multiple features, as selected by LICENSEE to suit a particular use.

Documentation: shall mean online user documentation and associated media, installation and activation instructions included with the Software Product, patches, and Updates which are made available online to LICENSEE under this Agreement, as applicable.

System: shall mean the hardware and third-party software required to operate the computer program Software Product (EnergyGauge®).

Licensed Materials: shall mean the Software Product and Documentation covered by this Agreement.

Maintenance: if applicable, shall mean a comprehensive program that includes Online Technical Support or Telephone Technical Support and any part thereof which relate to the Software Product which once provided become part of the Software Product.

Online Technical Support: if applicable, shall mean e-mail and web-based online assistance provided to LICENSEE's system administrators and provided by UCF personnel at FSEC, on the topics of Software Product installation, Updates, patches, problems arising during the use of Software Product, System interfacing, and error reports.

Telephone Technical Support: if applicable, shall mean telephone assistance provided to LICENSEE's system administrators and provided by UCF personnel at FSEC, on the topics of Software Product installation, Updates, patches, problems arising during the use of Software Product, System interfacing, and error reports.

Updates: if applicable, shall mean a new version or portion of the Software Product that adds substantial new features and functionality to a prior version of the Software Product.

ARTICLE 2 GRANT OF RIGHTS

A. Grant of License. This is a license agreement and not an agreement for sale. Subject to the payment of the fee required, and subject to the terms of this Agreement, UCFRF hereby grants to LICENSEE a non-exclusive, non-transferable, revocable license to install Software Product on a single computer, workstation, terminal, tablet, or other digital electronic or analog device ("Device"). A License for the Software Product and its component parts shall not be separated for use on more than one Device and may not be shared or installed on more than one Device, unless expressly permitted by this Agreement.

B. Use by LICENSEE. The LICENSEE shall only use himself /herself or permit its employees or its agents to have access to the Licensed Materials on LICENSEE's Device. LICENSEE shall not otherwise use the Licensed Materials for the benefit of any third party, nor may the LICENSEE modify, assign, sublicense or distribute, sell or rent the Licensed Materials or reverse engineer, decompile, or disassemble the Software Product. The Software Product shall be used only by LICENSEE on LICENSEE's System. The Software Product may be used on a backup System if the primary System is down or for onsite testing, as applicable. The license granted herein shall not be construed to confer any rights upon LICENSEE by implication, estoppel, or otherwise except as specifically set forth herein. Any rights not expressly granted herein are hereby expressly reserved to UCFRF.

C. Copies. LICENSEE shall make no copies of the Software Product, except for LICENSEE's backup, or archive purposes.

D. Ownership. LICENSEE further acknowledges that all copies of the Software Product in any form provided by UCFRF, UCF, or FSEC, and including any backup or archive copy made by LICENSEE are the sole property of UCFRF. LICENSEE is not the owner of the copy or copies of the Software Product made available for its use under this Agreement and does not possess the rights of an owner of a copy of a computer program provided in Section 117 of the United States Copyright Act. LICENSEE shall not have any right, title, or interest to any such Software Product or copies thereof except as provided in this Agreement, and further shall secure and protect all Software Product and Documentation consistent with the maintenance of UCFRF's proprietary rights therein.

ARTICLE 3 DELIVERY, INSTALLATION & MAINTENANCE

A. Delivery. UCFRF, via FSEC, shall deliver one (1) copy of the Software Product in executable form and one (1) copy of the Documentation to the LICENSEE.

B. Installation. LICENSEE, shall be responsible for the installation of the Software Product on LICENSEE's System or by another arrangement mutually acceptable to the parties hereto.

C. Required System. The System requirements for the installation of EnergyGauge[®] Software Product are listed on the EnergyGauge.com website at the time of purchase. LICENSEE is solely responsible for the cost, acquisition and regular maintenance of the System required to operate the Software Product.

D. Maintenance.

Online Technical Support services: All LICENSEE's are eligible to receive Online Technical Support services from FSEC personnel during and after the installation of Software Product, LICENSEE may do so at no additional cost as long as LICENSEE maintains Software Product license current and active by paying the yearly license subscription fee.

Telephone Technical Support services: If applicable, upon selection & payment by LICENSEE, LICENSEE will receive Telephone Technical Support services from FSEC personnel during and after the installation of Software Product, LICENSEE may do so by paying an additional fee for Telephone Technical Support. The details of Telephone Technical Support services and corresponding terms and conditions are described in EXHIBIT-A.

**ARTICLE 4
LICENSE AND TECHNICAL SUPPORT FEES**

The license fees are based on a subscription of Residential or Commercial Software Product, version of Software Product and a number of years of license subscription if applicable. The license fee and the fixed telephone based Technical Support fee are listed on the Software Product web portal <http://www.energygauge.com>. LICENSEE's selection of Software Product version and payment for the desired type of Software Product and technical support will dictate the downloads available from the web portal, with all payments made online.

**ARTICLE 5
INTELLECTUAL PROPERTY RIGHTS**

All title and intellectual property rights in and to the Licensed Materials (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software Product), the accompanying materials (Documentation), and any and all backup and archive copies of the Software Product are owned by UCFRF. All title and intellectual property rights in and to the content that is in the Software Product, or may be accessed through use of the Software Product, is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties. LICENSEE, at LICENSEE's sole expense, is solely responsible for obtaining any and all rights necessary from any third party owners of content that may be accessed through use of the Software Product. This Agreement grants you no rights to use such content. If this Software Product contains documentation that is provided only in electronic form, you may print one copy of such electronic documentation. You may not copy or reproduce the online instructions accompanying the Software Product.

**ARTICLE 6
TERMINATION**

This Agreement effective from the date of purchase of Software Products remain in effect for one year, and may be renewed for additional one year term(s) upon LICENSEE payment of an annual subscription fee to UCFRF.

In case of termination of this Agreement, applicable obligations of the LICENSEE shall continue, including without limitation, as set forth in Section 6(B).

A. Termination by UCFRF. Upon any material breach of this Agreement by LICENSEE, UCFRF shall have the right to terminate this Agreement by giving thirty (30) days written notice thereof to LICENSEE. Such termination shall become effective unless LICENSEE shall have cured any such breach prior to the expiration of said thirty (30) day period.

B. Effect of Termination. Upon termination for any reason, LICENSEE shall provide UCFRF with written assurance that the LICENSEE ceased the use of Licensed Materials and all original copies of the Licensed Materials, and backup copies have been destroyed or return same to UCFRF.

ARTICLE 7 TRADEMARKS AND PUBLICITY

LICENSEE agrees not to use the name of UCFRF, UCF, FSEC, EnergyGauge® or any trademark, trade device, service mark, symbol, or any abbreviation, contraction, or simulation thereof, owned by UCFRF or UCF, nor the names of any officer, employees, or any adaptation thereof, in any advertising, promotional, or sales literature without prior written consent obtained from an authorized officer of UCFRF or UCF in each case.

ARTICLE 8 NO WARRANTY AND LIMITATION OF LIABILITY

The Licensed Materials are furnished to LICENSEE as-is. UCFRF and UCF make no representations or warranties, express or implied. By way of example, but not limitation, UCFRF and UCF (i) make no representations or warranties of merchantability or fitness for any particular purpose, ii) do not assume any legal liability or responsibility for the accuracy, completeness, or usefulness of Software Products, (iii) do not represent that use of Software Products would not infringe privately owned rights, and (iv) do not warrant that the operation of Software Products will be uninterrupted, that it is error-free or that any errors will be corrected.

Nothing in this Agreement shall be construed as a warranty or representation that the Licensed Materials will operate uninterrupted or error free.

The licensed program is not designed, intended, or authorized for use in any type of system or application in which the failure of the system or application could create a situation where personal injury or death may occur.

TO THE MAXIMUM EXTENT ALLOWED BY LAW, UCFRF and UCF SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, RESULTING FROM YOUR USE OF LICENSED MATERIALS, THE USE OR THE INABILITY TO USE THE SOFTWARE PRODUCT, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE LOSS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE SOFTWARE PRODUCT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO STOP USING THE SOFTWARE PRODUCT AND NON-RENEW YOUR SUBSCRIPTION. YOU ACKNOWLEDGE AND AGREE THAT THE AGREEMENT TO MAKE THE SOFTWARE PRODUCT AVAILABLE TO YOU DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION OF THE RISK OF ANY OF YOUR DAMAGES, REGARDLESS OF WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL OR ANY OTHER DAMAGES WHICH MAY ARISE IN CONNECTION WITH YOUR USE OF THE SOFTWARE PRODUCT. UCF, AND UCFRF AS A DIRECT SUPPORT ORGANIZATION AND INSTRUMENTALITY OF UCF, EXPRESSLY RETAIN ALL RIGHTS, BENEFITS, AND IMMUNITIES OF SOVEREIGN IMMUNITY IN ACCORDANCE WITH SECTION 768.28, FLORIDA STATUTES.

In no event shall UCFRF's liability to LICENSEE, whether in contract, tort (including negligence), or otherwise, exceed the price paid by LICENSEE to UCFRF for the Licensed Materials. LICENSEE agrees that the foregoing limitations shall apply.

ARTICLE 9 INDEMNIFICATION

LICENSEE agrees to indemnify and hold UCFRF, together with UCF, and the officers, directors, boards, employees, agents, and affiliates of both entities (collectively the "UCF Entities") harmless from any and all claims and expenses, including (without limitation) attorney's fees, arising from or related directly or indirectly to your use of Licensed Materials. By engaging in the use of Licensed Materials, you are hereby agreeing to release the UCF Entities from any and all claims, demands, debts, obligations, damages (actual or consequential), costs, and expenses of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, that you may

have against the UCF Entities, if any, arising out of or in any way related to such disputes and/or to the products and services.

ARTICLE 10
GENERAL

This Agreement will be governed by and construed in accordance with the laws of the State of Florida without regard to any conflicts of laws principles, and with jurisdiction and venue in Orange County, Florida. If any provision of this Agreement is found by any court, tribunal or administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other Section or part of this Agreement. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto. This Agreement may be modified by UCFRF from time to time, and without the requirement of notice to LICENSEE.

EXHIBIT A
Telephone Technical Support services Terms and Conditions

If you subscribed to Telephone Technical Support Services by submitting the necessary additional payment, the following terms and conditions apply. These terms and conditions are incorporated by reference into the Agreement and remain valid during each Term of the Agreement that is subject to renewal subscription, and that includes selection and payment for Telephone Technical Support Services. These terms and conditions may be revised by UCFRF from time to time, without the requirement of notice to LICENSEE.

This Exhibit A outlines the parameters of Telephone Technical Support Services covered as they are mutually understood by the parties. No other services are included other than specifically set forth herein.

Successful Telephone Technical Support for Software Product is a joint effort. While UCF has highly trained engineers and technicians supporting our EnergyGauge® software, it is imperative that the LICENSEE's system administrator has knowledge of the basic concepts of software installation, including knowledge of the Windows PC operating systems and any associated network operating system. The ability to navigate through the system, provide information to our support technician and perform assigned tasks is essential for successful Telephone Technical Support. In the event your System Administrator or contact person do not have these capabilities or knowledge to perform tasks mentioned above, UCFRF may limit the support activity to fifteen (15) minutes on any incident.

UCFRF /FSEC's Telephone Technical Support Services and Responsibilities:

- Provide Telephone Technical Support in the form of a tutorial on how to model energy use in residential and commercial buildings using the EnergyGauge® software.
- Provide phone support during install, upgrade, and migration of EnergyGauge® software on Windows operating systems.
- UCF may limit each Telephone Technical Support activity to thirty (30) minutes per incident and maximum support of 72 hours annually.

Services not included in Telephone Technical Support: Our Telephone Technical Support *DOES NOT* cover installation, setup, and configuration of operating systems, migration or diagnostics of your server, PCs, local area network, printers or related systems. These issues should be addressed by your on-site system administrator or your hardware vendor.

LICENSEE Requirements:

- Maintaining license subscriptions to the Software Product for which Telephone Technical Support is sought.
- Pay and maintain Telephone Technical Support subscription on a necessary periodic basis.
- Reasonable availability of LICENSEE representative(s) when resolving a service-related incident or request.
- Maintain confidentiality of the information and services provided during Telephone Technical Support, in accordance with the limited license rights provided to LICENSEE.
- Conducting communication professionally. Any unprofessional behavior will result in discontinuity of the Telephone Technical Support services at UCF's sole discretion and the subscription fee will not be refunded.
- Consent to record the Telephone Technical Support service at UCF's sole discretion, and to the extent permitted by law.

Service Management

The Telephone Technical Support is contingent upon LICENSEE maintaining License to appropriate Software Product and subscription to Telephone Technical Support. LICENSOR is not liable for any damages caused by accidental/wrong click by LICENSEE, which may result in deletion of pre-installed software or break down of

LICENSEE's computer during Telephone Technical Support services. The following sub-sections provide relevant details on operating hours and response time related to technical support.

Operating hours:

The operating hours and availability of support personnel specific to the service(s) covered under Telephone Technical Support are as follows:

- Telephone support: Monday through Friday 8:00 A.M. to 5:00 P.M Eastern Time (EST), except during holidays and UCF closures.
- Calls received out of office hours will be collected and reviewed in the order of calls received at the beginning of the next working day and best efforts will be made to answer or take necessary action on the call, assuming customer availability at that time. The Telephone Technical Support service is provided to LICENSEE for the latest updated software, which is the responsibility of the customer to maintain the latest updated software.

Service Requests

In support of services outlined here under Telephone Technical Support, the FSEC support personnel will respond to service-related incidents and/or requests submitted by the LICENSEE within the following time frames, with classifications of priority according to LICENSOR's sole and reasonable discretion:

- 0-8 hours (during business hours) for issues classified as High priority.
- Within 48 hours for issues classified as Medium priority.
- Within 5 working days for issues classified as Low priority.

Remote assistance will be provided in-line with the above timescales dependent on the priority of the support request.

Payment and Renewal

Telephone Technical Support can be renewed annually along with Software Product subscription renewal. LICENSEE shall renew 30 days prior to the expiration of support and may do so by paying the renewal fee. In this event, the renewal date will commence with the date of prior expiration.

Force Majeure

UCFRF shall not be liable for any breach of the Telephone Technical Support terms resulting from causes beyond its reasonable control including but not limited to fires, strikes (of its own or other employees) insurrection or riots, terrorist attacks, wars, revolution, civil commotion, epidemic, embargoes, earthquakes, hurricanes, flood, natural disasters and other acts of God.