



E SOURCE License Agreement

This is a License Agreement ("License Agreement") between E Source Companies LLC ("E Source") and you—the client organization named in the E Source Membership Services Agreement delivered with this License Agreement. Your signature on the Membership Service Agreement or your payment of the invoiced amount set forth thereon, constitutes your express acceptance of the terms and conditions of this License Agreement.

This License Agreement grants you the right to use E Source Membership Services and Proprietary Materials (collectively, the "E Source Materials"), and sets forth certain restrictions on use. E Source encourages your practical use of the E Source Materials (in contrast to unauthorized disclosure or transmission to third parties), subject to your compliance with this License Agreement. Please read this entire License Agreement carefully.

For good and valuable consideration, you agree as follows:

1. License of E Source Materials; Use Restrictions.

a. License. E Source grants to you a nonexclusive, nontransferable license to use the E Source Materials for the period set forth in your Membership Service Agreement for your business purposes, by your authorized employees on your internal computer network, in accordance with this License Agreement.

b. Restrictions. You shall not (i) copy or reproduce any of the E Source Materials; (ii) sell, transfer, distribute, transmit, or sublicense, in whole or in part, in any form or manner, the E Source Materials; (iii) alter, modify, translate, or prepare derivative works of the E Source Materials; (iv) permit any persons outside your organization to use the E Source Materials, including employees of corporate affiliates, without obtaining a license extension and paying the required fees; (v) remove any of E Source's proprietary or other notices in the E Source Materials; or (vi) make any use of the E Source Materials except as expressly authorized in this License Agreement. You agree to advise your employees of the terms of this License Agreement and these restrictions on use, and as necessary you will assist E Source in enforcing such terms and restrictions in the event of an employee's unauthorized use.

c. Other Uses. The restrictions in the paragraph above shall not prohibit you, from time to time on a one-off basis only, from copying a specific E Source report for a particular client or in order to respond to a particular client need or request. Additionally, in the event that the E Source Materials you have subscribed for include the E Source Business Energy Advisor or contain items that are labeled with an "E Source Customer Direct" (ESCD) logo, in addition to the provisions of this License Agreement, you shall be bound by the rights and restrictions as to your use of such services; such rights and restrictions can be viewed at www.esource.com/BEALicense and at www.esource.com/ESCDLicense, respectively. If you wish to use the E Source Materials in other ways—by way of example only, by sharing them with a corporate affiliate or third party for a particular project, publishing a summary with technical detail, or using the E Source Materials in a regulatory or legal proceeding, you must obtain E Source's prior written consent. E Source will endeavor to accommodate your request, as long as the confidentiality and proprietary nature of the E Source Materials remain protected.

d. Reservation of Rights. All rights to the E Source Materials that E Source has not expressly licensed to you herein shall be and are reserved exclusively by and unto E Source.

2. Confidentiality and E Source's Intellectual Property Ownership.

The E Source Materials are accessible substantially only to E Source clients and are confidential. E Source is the sole and exclusive owner throughout the world of the E Source Materials and of all applicable copyrights, patents, trade secrets, trademarks, and all other intellectual property and proprietary rights, registered and at common law, in and to the E Source Materials under United States and international laws and conventions. This License Agreement is a license only. E Source does not transfer or convey any rights of ownership in the E Source Materials to you. Nothing in this License Agreement or otherwise gives you any right, title, or interest in or to E Source Materials except for the limited license expressly granted in this License Agreement.

3. NO WARRANTIES; NO CONSEQUENTIAL DAMAGES.

a. **WARRANTY DISCLAIMER.** The E Source Materials are provided "as is." E Source makes no warranties, express or implied, as to the E Source Materials, including as to accuracy, completeness, compliance with laws or regulations, merchantability, or fitness for any particular purpose. This exclusion of warranty is in lieu of all liabilities or obligations of E Source for damages arising out of or in connection with the delivery, use or performance of the E Source Materials. The information contained in the E Source Materials may change without notice. E Source's sole and exclusive obligation in the event of any deficiency in the E Source Materials is to use commercially reasonable efforts to correct such deficiency.

b. **NO CONSEQUENTIAL DAMAGES.** In no event shall E Source be liable for any direct, indirect, incidental, consequential, or special damages, including without limitation, damages for loss of revenue or profits. This disclaimer shall apply whether or not E Source has been apprised of the possibility of such damages. Under all circumstances, E Source's total liability for all claims, whether in contract, tort (including negligence and product liability), or otherwise, arising out of, connected with, or resulting from this Agreement and your use of the E Source Materials, shall not exceed the invoiced amount to you set forth on your Membership Service Agreement.

4. Termination.

a. **Termination upon Breach.** In the event of your breach of this License Agreement, upon written notice to you E Source shall have the right to immediately terminate this License Agreement and its provision of services to you and revoke the license granted hereunder. Such termination shall be in addition to all legal and equitable rights and remedies, including the right to obtain injunctive relief without posting a bond therefor, to which E Source is entitled by reason of your breach or threatened breach of this License Agreement. In the event you breach this License Agreement, E Source shall recover its reasonable attorneys' fees and costs incurred in enforcing its rights and the terms and conditions hereof.

b. **No Further Use of the E Source Materials.** Upon the expiration of the license granted in Section 1 and/or the termination of this License Agreement for any reason, you shall immediately stop all use of the E Source Materials, delete all program files of the E Source Materials on your computer system, and destroy other E Source Materials in your possession.

5. General.

a. **Governing Law.** This License Agreement shall be governed by and construed in accordance with Colorado law as applied to contracts executed and performed entirely within such state by residents of such state. Any litigation or arbitration arising under this License Agreement in which the parties are unable, after good-faith negotiation, to resolve among themselves, shall be tried or conducted, as the case may be, in the appropriate federal or state court situated in Denver, Colorado. Judgment may be entered and enforced in any court of competent jurisdiction.

b. **No Assignment.** You shall not assign or otherwise transfer this License Agreement or your interest hereunder. Subject to the foregoing, this License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

c. **Complete Agreement; Amendment.** This License Agreement and the Membership Service Agreement constitute the entire agreement and understanding between the parties superseding all others, either oral or written, concerning the subject matter hereof and shall be read and construed as one integrated agreement. This License Agreement can be amended only by E Source in its commercially reasonable discretion, provided that any such amendment(s) shall be effective and incorporated herein only upon E Source's mailing to you and your receipt of such amendment(s).

d. **Partial Invalidity; Waiver.** Any invalidity, illegality, or limitation of the enforceability with respect to any one or more of the provisions of this License Agreement, or any part thereof, shall in no way affect or impair the validity, legality, or enforceability of this License Agreement as a whole. No waiver of any breach of any provision of this License Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of E Source.

E SOURCE

1965 North 57th Court, Boulder, Colorado 80301, USA;
Tel 303-444-7788; E-mail esource@esource.com; Web www.esource.com