E Source License and Website Agreement

E Source License and Website Agreement

Please review this Agreement carefully. This Agreement, including any amendments, governs your access to and use of the E Source Website now and in the future. Your use of the E Source Website for any purpose, your use of Services, or your enrollment as an E Source Member or non-Member account-holder, constitutes your acceptance of these terms and conditions as a User. If you do not agree with any term of this Agreement, do not use the E Source Website. The entire E Source Website and all Content are protected by copyright, E Source Companies LLC. See the website footer for copyright dates. All rights reserved.

This E Source License and Website Agreement ("**Agreement**") is between E Source Companies LLC, a Delaware limited liability company ("**E Source**"), and each Person who uses or accesses the E Source Website or any Service for any purpose ("**User**").

Definitions are stated in Article 1 and elsewhere throughout this Agreement.

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1.

Article 1: DEFINITIONS

Certain Paid Services have specific terms, conditions, limitations, and restrictions in addition to those stated elsewhere in this Agreement. The terms and conditions stated in this Article 1 modify the License, and take precedence over the terms and conditions stated elsewhere in this Agreement, to the extent stated below, but only to such extent.

Affiliate	an entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity
Agreement	this document and all documents that are expressly incorporated herein, whether or not this document is hyperlinked to them
CASL	defined in Section 9.2.c
Claim	defined in Section 9.1, and as expanded in Section 9.2.c, for the purpose of that section only
Company User	either: (a) a User that is a legal entity and that purchases Services for use by one or more Individual Users employed by the legal entity; or (b) an Individual User who has contracted for Paid Services on his or her own behalf
Confidential Information	defined in Section 7.1
Content	information that is obtained, authored, or generated by E Source and is provided to User through the E Source Website, regardless of whether it is proprietary to or owned by E Source; “Content” includes information provided to Users under its “Ask E Source” service, ESCD Materials, newsletters, and Documentation; “Content” includes reports and other materials generated or created using any Tool or Tools
Damages	defined in Section 9.1
Documentation	E Source’s online user guides, documentation, and help and training materials, as updated or modified from time to time, including any of the foregoing items found on the E Source Website
E Source Website	www.esource.com, all related sites, any other URL, domain, Internet address, or website offered or maintained by or on behalf of E Source
Effective Date	the date on which this Agreement became binding on the parties
ESCD Materials	web documents or other documents, in electronic or hard copy form, that are produced by E Source for use by purchasers of the E Source Customer Direct service
Fees	defined in Section 4.1.a
Individual User	a User who is a natural person
Intellectual Property	copyrights, trademarks, trademark applications (including intent-to-use applications), trade names, moral rights, trade secrets, patents, patent applications, inventions, invention disclosures, know-how, designs, and other items commonly recognized as intellectual property under the laws of the United States or any other country
Intellectual Property Rights	all rights in, to, and under Intellectual Property
License	defined in Section 2.1

Malicious Code	code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses
Paid Service	a Service that is not available to the public and that may not be used without payment; the term "Paid Services" includes Content that is supplied as a one-time purchase
party	(whether or not capitalized) a party to this Agreement, *i.e.,* E Source or User
Person	an individual, corporation, company, partnership, limited liability company, trust, governmental entity or agency, or other legal entity
Purchase	defined in Section 6.2
Registered E Source User	a User who is registered or enrolled as either (a) a member of E Source; or (b) a non-member E Source Website account-holder
RELEASEES	defined in Section 9.2.c
Services	information services, Content, Tools, computer programs, software, functionality, products, databases, data, reports, or analyses that are accessible through the E Source Website, regardless of whether a fee or other payment is paid or required to access, and regardless of how denominated; the following are illustrative examples of Services: E Source Tools, Research and Advisory Services, data delivered through E Source's Regulatory Trends Service, Energy Vendor IQ, Business Energy Advisor (API Data Delivery or hosted by E Source), Ask E Source inquiries and responses, newsletters, and subscription services
Taxes	taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use, or withholding taxes
Term	as to any Paid Service, the "**Term**" is the period for which User has purchased the right to use the Service
Third-Party Websites	other websites that are not owned or controlled by E Source but that may be accessed through the E Source Website
Tools	computer programs, software, databases, database services, and other functionality, including: (a) structured content or computer programs intended to assist in the creation of structured content; (b) combinations of any of the foregoing; and (c) any item that E Source refers to as an "E Source Tool"
User	defined in the preamble; for clarity, the term "User" means a Person who accesses or uses any aspect or feature of the E Source Website or Services, including Content, for any purpose whatsoever, at any time, whether on one occasion or on a regular basis; references to "User" in this Agreement may refer either to the specific User who is a party to this Agreement or to Users generally, as the context may require
User Posting	defined in Section 5.1

2.

Article 2: GRANT OF RIGHTS; RESTRICTIONS

1. E Source grants User a nonexclusive license to use the Services (the "License"), throughout the applicable Term, subject to all the provisions of this Agreement, including the limitations, conditions, and restrictions stated in this Article 2. The License applies only to: (i) Paid Services that User has purchased and for which User is current in payment; and (ii) subject to Section 2.2, Services available to the public on the E Source Website free of charge.

2. If User is not a Company User or the authorized employee of a Company User, User has no right under the License other than the right to access the E Source Website to obtain Services that are available to the public free of charge.
3. Use Restrictions and Conditions. The restrictions and conditions stated in this Section 2.3 limit the scope of the License.
    1. Restrictions on Use by or for Others. Except as may be stated in a separate agreement or addendum between the parties:
        1. Login credentials are specific to Individual Users and may not be shared or distributed;
        2. User may not use any Paid Service for the benefit of any Person outside its organization, including rendering services to third parties as a service bureau or on an outsourced basis;
        3. User may not rebrand or "white-label" any Service;
        4. If any Paid Service is purchased on a per-seat basis, User may not permit or enable any Person to use that Paid Service other than a User possessing a valid seat license with login credentials issued by E Source;
        5. User may not use any Service in violation of applicable laws and regulations. The export of certain Services, including Content, or the use of the same outside the United States, may be subject to laws and regulations of the United States and other countries; and
        6. User may not create the impression, or allow such impression to be created, that E Source endorses any particular product or service. As a matter of policy, E Source does not endorse or approve any product, service, or other offering.
    2. Restrictions on Copying and Distribution. Except as permitted under Section 3.1 with respect to ESCD Materials:
        1. User shall not copy or distribute copies of any Content obtained from or through the E Source Website, including Content generated or created using Services.
        2. User shall not copy, replicate, frame, or mirror any Service, in whole or in part, except for copying that is expressly permitted under another provision of this Agreement.
        3. User shall not download Content in bulk by any method under any circumstances; prohibited activities include screen-scraping, spidering, and database scraping. The preceding sentence does not prohibit exports that are specifically permitted or contemplated under the Documentation for certain Services. User shall not print out Content in bulk and re-enter it, either manually or automatically. User shall not otherwise emulate the functionality or usurp the value of any Service so as to circumvent the protections afforded to E Source under this Agreement or the restrictions and limitations stated in this Article 2.
    3. E Source Credit Required. All materials created using Services or otherwise containing Content must bear conspicuously the legend stated below if used outside User's organization. E Source reserves the right to require that the E Source logo be placed conspicuously on the materials in a form supplied by E Source. User must inform all recipients to whom the User delivers the materials that the terms stated in the legend below are binding on the recipients, and User will be liable for any breach by such recipients of the terms stated in the legend.

Certain portions of these materials are © E Source Companies LLC [year]

(E Source) and were obtained from E Source. These materials are proprietary to E Source, and the recipient may not, without the consent of E Source: (1) sell or distribute copies of these materials outside the recipient's organization; or (2) create summaries, excerpts, restatements, or other derivative works based on these materials. All rights reserved.

4. Other Restrictions. User shall not do any of the following or attempt to do so:
    1. Obtain or attempt to obtain any Paid Services for which the User has not paid the required Fee;
    2. Circumvent a restriction contained in this Agreement, directly or indirectly;
    3. Interfere with the performance of any service rendered by E Source to others;
    4. Affect the integrity or quality of any Content on the E Source Website;
    5. Use any Service to build a competitive product or service; or
    6. Reverse-engineer or decompile any Service or software.
4. The License granted to a Company User extends only to authorized Employees of the Company User who are Registered E Source Users. It does not extend to Affiliates of a Company User.
5. The License will be suspended automatically if User is not in compliance with this Agreement. E Source reserves the right to terminate the License if User is exercising its rights under the License in a manner not contemplated by parties at the Effective Date.
6. The License may not be transferred, assigned, or sublicensed in whole or in part, and any attempt to do so is void and is a breach of this Agreement. E Source reserves the right to terminate the License, subject to a refund of any unused license fees, if the User undergoes a change in control.
7. User may establish a hypertext link to the E Source Website, provided that the link directs to the full version of the E Source Website and does not state or imply that E Source sponsors or endorses any products or services. User is not permitted to link directly to any image or content hosted on the E Source Website by any method, including using in-line linking to cause the image or content hosted by E Source to be displayed on another website. User may not frame or otherwise incorporate into another website any portion of the E Source Website without the prior written consent of E Source. User may not display or otherwise use, on its website or elsewhere, any trademarks, service marks, logos, or copyrighted materials appearing on the E Source Website without the prior written consent of E Source.
8. User may not use the Services or any component thereof, including Content or Tools, except as expressly permitted under this Agreement or under another agreement between E Source and User.

3.

Article 3: LICENSE TERMS FOR SPECIFIC SERVICES

Certain Paid Services have specific terms, conditions, limitations, and restrictions in addition to those stated elsewhere in this Agreement. The terms and conditions stated in this Article 3 modify the License, and take precedence over the terms and conditions stated elsewhere in this Agreement, to the extent stated below, but only to such extent.

1. ESCD Materials. The permissions stated below in this paragraph apply only to ESCD Materials and only for so long as User or its employer has purchased, and is current in

paying for, the Service known as “E Source Customer Direct.” Except as expressly permitted in this paragraph, User shall not alter any ESCD Materials or create derivative works based on them.

1. User may post ESCD Materials on its website, or may make hard copies available, for distribution to and use by its customers.
2. User may incorporate news content from ESCD Materials into the User’s own corporate communications.
3. User may add its logo to any ESCD Materials designated as “brandable.”
4. User may change the second color of the PDFs of brandable ESCD Materials.

2. Business Energy Advisor–API Data Delivery. The terms and conditions stated in this Section 3.2 apply to the Paid Service known as “Business Energy Advisor–API Data Delivery” (the “**BEA/API Service**”).
    1. Users who have purchased the BEA/API Service and are current in paying for it, and their authorized employees (“**BEA/API Purchasers**”), are authorized to download Business Energy Advisor data (“**BEA Data**”) from E Source’s web servers into the BEA/API Purchasers’ own operating environments, using an application programming interface (a/k/a “**API**”) provided by E Source. BEA Data constitutes Services and Content under this Agreement.
    2. A BEA/API Purchaser is permitted to operate, and to have others operate, web servers (“**Local Servers**”) that make BEA Data accessible by employees and customers of the BEA/API Purchaser. Each BEA/API Purchaser, in its discretion, may determine whether to establish secure login credentials for access to its Local Servers and BEA Data. This permission does not extend to Affiliates other than Affiliates who also are BEA/API Purchasers. BEA/API Purchasers may permit linking to their Local Servers by anyone who is authorized to access the BEA Data. A BEA/API Purchaser shall not permit or enable any other Person to establish and operate its own Local Server. BEA/API Purchasers shall update the BEA Data on their Local Servers no less frequently than once per calendar quarter, to maintain its integrity. Each BEA/API Purchaser shall take commercially reasonable steps, in accordance with commonly accepted information security standards for similar installations, to safeguard against any Person’s use of the BEA/API Purchaser’s Local Servers or other facilities to obtain unauthorized access to E Source’s servers or systems.
    3. Each BEA/API Purchaser is authorized to create a website or other collection of web pages, *i.e.,* pages accessible through a browser, to present the BEA Data to its employees and customers, *provided, however,* that such website or pages shall comply with Section 2.3.c.
    4. Each BEA/API Purchaser may incorporate BEA Data into its own website data and functionality; *provided, however,* that nothing in this paragraph authorizes the BEA/API Purchaser to create a derivative product based on the BEA/API Service. For these purposes a derivative product is a product or service that incorporates or is based upon BEA Data but is different from the BEA/API Service in content, functionality, or presentation format in any material respect.
    5. Except as provided above in this Section 3.2, Local Servers must be secured against unauthorized access or use in accordance with commonly accepted information security standards for similar installations. If the Term for the BEA/API Service ends and is not renewed or otherwise extended, the BEA/API Purchaser must immediately cease using the Local Server and must cease providing BEA Data to any Persons.

6. The rights granted to BEA/API Purchasers are subject in all respects to technical instructions, specifications, and standards made available by E Source, which may change from time to time on reasonable notice.
7. The permissions granted under the License and this Article 3 shall not be construed to permit BEA/API Purchasers to do any of the following:
    1. Alter the contents of any BEA Data or other aspect of the Business Energy Advisor system, including text, graphics, and HTML coding and including the insertion of hyperlinks, text, or graphical elements, unless E Source gives its specific consent to such alteration in writing in any particular circumstance, under a separate agreement or statement of work;
    2. Create any product or service that constitutes a repackaging or white-labeling of BEA Data such that users are not aware that the BEA Data is furnished by E Source; or
    3. Create the impression, or allow such impression to be created, that E Source endorses any particular product or service described on the BEA/API Purchaser's website.
8. The API for the BEA/API Service: (i) is a software program that constitutes Services and is subject to all the terms and conditions of this Agreement governing Services; (ii) may not be distributed to, copied by, or used by any persons other than Users who have purchased the BEA/API Service; and (iii) may not be used for any purpose other than developing and using computer software and interfaces for accessing and using BEA Data as permitted under this Agreement.

4.

Article 4: PAID SERVICES AND FEES

This Article 4 applies only to Company Users.

1. Fees Generally
    1. Each Company User shall pay the usage fees and other periodic and one-time charges ("**Fees**") applicable to the Paid Services that the Company User has selected, regardless of whether E Source issues an invoice.
    2. The Paid Services, if any, available to each Company User and its employees are stated in the E Source Membership Agreement between E Source and the Company User.
2. If a Company User is delinquent in paying any required Fees, E Source, in its discretion and without prejudice to any other rights or remedies it might have, may take any or all of the following actions: (a) impose late fees at the rate of 1.5% of the outstanding balance per month or the maximum rate permitted by law, whichever is lower; (b) condition future purchases and renewals of Paid Services on Company User agreeing to special payment terms; (c) accelerate User's unpaid Fee obligations, so that all such obligations become immediately due and payable; and (d) suspend all Paid Services to User until all unpaid Fees are paid in full. E Source will not exercise any of the foregoing rights with respect to any amount that is the subject of a *bona fide* dispute, in E Source's reasonable opinion.
3. Each Company User is responsible for paying all Taxes associated with its receipt of Paid Services, other than Taxes based on E Source's income, property, or employees. Fees quoted by E Source do not include applicable Taxes.

4. A Company User's obligation to pay Fees will not be contingent on E Source's future delivery of any particular features, including advanced, enhanced, upgraded, or improved features of any Paid Service, including any Content, that are not in existence at the time User purchases the Paid Service in question.

5.

Article 5: USER POSTINGS

1. In connection with certain Services, E Source may permit User to post information on the E Source Website (each such posting, a "**User Posting**"). User Postings may include, for example, postings to E Source online community forums, vendor promotional materials and requests for proposals posted by Users of the Services known as Energy Vendor IQ and Energy RFP. E Source reserves the right to require any Person to become a Registered E Source User before being permitted to make a User Posting. A Person making User Postings is subject to all the terms and conditions of this Agreement.
2. By posting any material or information in a User Posting, User waives all rights of confidentiality and all proprietary rights in the posted material or information.
3. User warrants and represents the following with respect to each User Posting that it makes:
    1. User possesses all necessary rights and permissions to make the User Posting and to waive the rights stated in Section 5.2, and otherwise has full right, power, and authority to do so.
    2. The User Posting is not false or defamatory. The User Posting does not and will not infringe the rights, including privacy rights, of any other person and will not be wrongful or unlawful in any other respect.
4. User shall not use a Service to post, store, or transmit material that is false, misleading, deceptive, infringing of the Intellectual Property Rights or other rights of any other Person, libelous or otherwise wrongful, including Malicious Code, nor shall User attempt to do so.
5. E Source's Rights to Modify and Use User Postings
    1. User grants E Source permission to remove, modify, or edit any User Posting, in its sole discretion, for any reason or no reason, without notice to User (including, without limitation, the ability to collect, use, and disclose any personal information contained within such User Posting, for purposes which are consistent with the E Source Privacy Policy). Without limiting the generality of the preceding sentence, E Source may modify any User Posting: (i) to disclaim any authorship of, endorsement of, or other participation in the User Posting; (ii) to state that the content of the User Posting must be attributed solely to the User and not to E Source; and (iii) to remove or delete any statements or other material that E Source deems abusive, harassing or threatening, rude, vulgar, indecent, hateful, illegal, or otherwise inappropriate.
    2. User grants E Source a perpetual, nonexclusive, worldwide, royalty-free, assignable, sub-licensable license to all User Postings, which includes the right for E Source and its assignees to use, copy, transmit, excerpt, publish, distribute, publicly display, and create derivative works from User Postings.
    3. E Source may comment publicly, whether favorably or unfavorably, on any User Posting in any manner it deems appropriate, in its sole, subjective discretion. E Source may notify User, by means of User's company or personal email address, of any problems, issues or comments it may have with regard to a User Posting.
6. A price quoted in a User Posting will be considered firm and binding on the Person who

quoted the price, for 30 days after it was posted, or such other time that it may be stated in the posting.

7. User will not state or imply that E Source has endorsed or approved any product or service described in a User Posting or any opinion, comment, or other material contained in a User Posting.
8. A third-party Claim against E Source that arises out of or in connection with, or otherwise results from, a User Posting will be deemed a “Claim Against E Source,” as defined in Section 9.2, and will be subject to indemnification by User under that section.
9. E Source, in its sole, subjective discretion, may decide to assert or exercise, or not to assert or exercise, any of its rights under this Article 5 and will have no liability for its failure to exercise any of such rights, regardless of whether such failure is intentional or negligent. Without limiting the generality of the preceding sentence, if E Source chooses to monitor the use of any online community forum and the User Postings thereon E Source will have no obligation to delete, remove, or modify any User Posting. E Source will have no obligation to monitor the use of any online community forum or the User Postings thereon.

6.

Article 6: INTELLECTUAL PROPERTY RIGHTS

1. E Source owns all Intellectual Property and Intellectual Property Rights arising in connection with, or otherwise relating to, Services. All Services, including all Content: (a) constitute copyrightable works of authorship; (b) are owned by E Source or its suppliers; and (c) are protected under the copyright laws of the United States and Canada.
2. E Source grants only nonexclusive licenses in, and never sells, its Intellectual Property and Intellectual Property Rights in any Service or its included Content. The term “purchase,” when used regarding a Service, whether or not capitalized, means the purchase of the right to access and use the Service and not the purchase of any Intellectual Property or Intellectual Property Rights relating to the Service or its included Content; moreover, the term “purchase” includes obtaining a right of access on any basis, whether companywide, per-seat, or otherwise.
3. Reservation of Rights. Except for the License, E Source and its licensors and suppliers reserve all their right, title, and interest in and to Services and all Intellectual Property and Intellectual Property Rights arising out of or in connection with Services, except as expressly granted herein. This Agreement does not transfer ownership of any Intellectual Property and does not grant exclusive rights in any Intellectual Property.
4. Trademarks, Brands, and Goodwill. All trademarks, brands, logos, and similar identifying marks, and all associated goodwill, created or arising in connection with Services or otherwise in connection with this Agreement, will be owned exclusively by E Source upon their creation.
5. License-Back to Use User Feedback. User grants E Source and its Affiliates the worldwide, perpetual, irrevocable, royalty-free right and license to use any solicited or unsolicited suggestion, enhancement request, recommendation, correction, or other feedback provided by User relating to Service.

7.

Article 7: CONFIDENTIALITY

1. Definition of Confidential Information
    1. Subject to Section 7.1.b,
        1. "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
        2. E Source's Confidential Information includes the Services and all Content therein, including the pricing of Paid Services.
        3. By way of example, the term "Confidential Information" of a party may include business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by that party.
    2. Notwithstanding Section 7.1.a,
        1. Confidential Information does not include any information that (A) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (B) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (C) is received from a third party without breach of any obligation owed to the Disclosing Party, or (D) was independently developed by the Receiving Party.
        2. Confidential Information does not include User's unsolicited submissions and does not include User's communications in using the Ask E Source service, unless E Source agrees otherwise in writing.
2. Protection of Confidential Information. Each Receiving Party agrees: (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; (ii) except as otherwise authorized by the Disclosing Party in writing, not to divulge Confidential Information of the Disclosing Party to any other Person; *provided, however,* that Receiving Party may disclose the Disclosing Party's Confidential Information to those of its employees and contractors who require access to such Confidential Information for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those stated in this Agreement; and (iii) to safeguard the confidentiality of the Disclosing Party's Confidential Information using the same degree of care that the Receiving Party uses to protect the confidentiality of its own confidential information of like kind, but not less than reasonable care.
3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent it is compelled by law to do so, but only if the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure and reasonable assistance if requested by the Disclosing Party. Such assistance will be provided at the Disclosing Party's expense, unless the Disclosing Party is a party to the proceeding in which compelled disclosure is sought.

8.

Article 8: REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS

1. E Source's Sole Warranties. The warranties stated in this paragraph are made to Company Users only; for any particular Company User, these warranties are made only with respect to those Services that the Company User has purchased and for which it is current in payment. Subject to the foregoing, E Source warrants as follows: (a) that all Tools which are provided through the E Source Website will perform substantially as described in the applicable Documentation in all material respects; (b) that with respect to any Service, E Source will not materially decrease the functionality of that Service during its Term, including by material alteration of its Content, without offering User an opportunity to cancel the Service and obtain a refund for the unexpired portion of its Term; and (c) that Services, other than those obtained through Third-Party Websites, will not introduce Malicious Code into a Company User's systems.
2. Disclaimers
    1. E Source disclaims all implied warranties regarding Services, including Content and Tools, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, and non-infringement.
    2. The warranty stated in Section 8.1 is the only warranty made by E Source with regard to Services, including Content and Tools. E Source makes no other warranty with respect to Services, including Content and Tools, of any kind, whether express, implied, statutory, or otherwise.
    3. No warranty whatsoever, express or implied, is made to any Persons other than Company Users.
    4. All Content is provided "as-is," without any warranty whatsoever.
    5. E Source makes no warranties whatsoever concerning any Third-Party Websites. Third-Party Websites are independent from E Source, and E Source has no control over their content. Links to Third-Party Websites are provided, if at all, solely for the convenience of Users and do not signify any endorsement, or acceptance of liability or responsibility, by E Source.
    6. E Source makes no warranty whatsoever, and will have no liability, with respect to products or services described in User Postings.
    7. User is advised that although E Source attempts to observe the highest standards of reporting in its industry, E Source does not warrant that Services or any other aspect of the E Source Website will be uninterrupted or error-free; they may contain technical or other errors and inaccuracies. E Source does not warrant that the use of the E Source Website will not infringe the rights of others.
3. The disclaimers stated in Section 8.2 will apply to the greatest extent allowed by law. Some jurisdictions do not allow the disclaimer or limitation of implied warranties, so certain of the above limitations may not apply.

9.

Article 9: MUTUAL INDEMNIFICATION

1. Indemnification by E Source. Subject to the last sentence of this paragraph: (i) E Source will defend a Company User against any claim, demand, suit, or proceeding ("Claim") made or

brought against User by a third party alleging that the use of a Service in accordance with this Agreement and the Documentation infringes or misappropriates such third party's intellectual property rights in the United States (a "**Claim Against User**"); and (ii) E Source will indemnify a Company User from any damages, expenses, and costs (including attorneys' and experts' fees) ("**Damages**") that the Company User may suffer or incur as a result of a Claim Against User, including amounts reasonably paid in settlement, provided User: (A) promptly gives E Source written notice of the Claim Against User, (B) gives E Source sole control of the defense and settlement of the Claim Against User, except that E Source may not settle a Claim Against User unless User is unconditionally released from all liability in the settlement, and (C) gives E Source all reasonable assistance, at E Source's expense. A Claim Against User will not include, and this paragraph will not apply to, a Claim to the extent it arises from either (x) software that is not furnished by E Source as part of a Service, including third-party software; or (y) Content other than Content that is represented as being original with E Source.

2. Indemnification by User
    1. User will defend E Source against any Claim made or brought against E Source by a third party alleging facts which, if true, would imply or mean that User's use of the E Source Website or any Service: (i) is in breach of this Agreement, (ii) infringes or misappropriates such third party's intellectual property rights, or (iii) violates applicable law (any such claim, action, suit or proceeding being referred to as a "**Claim Against E Source**"); a Claim brought by a third party alleging Damage arising out of or in connection with the use of the BEA/API Service or in connection with a User Posting will be a Claim Against E Source.
    2. User will indemnify E Source from any Damages that E Source may suffer or incur as a result of a Claim Against E Source, including amounts paid in settlement, provided E Source: (1) promptly gives User written notice of the Claim Against E Source, (2) gives User sole control of the defense and settlement of the Claim Against E Source, except that User may not settle any Claim Against E Source unless it unconditionally releases E Source of all liability, and (3) gives User all reasonable assistance, at User's expense.
    3. User hereby represents and warrants that it has obtained all necessary consents to be and remain in compliance with *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act, and the Telecommunications Act*, S.C. 2010, c. 23 ("**CASL**"), in respect of all individuals located in Canada to whom E Source shall send or cause to be sent electronic messages, in the course of providing the Services, and the User further acknowledges that E Source is relying on such representation and warranty, without which, E Source would not perform the Services. The User hereby WAIVES ANY AND ALL CLAIMS that the User has or may have in the future against E Source, and its successors, assigns, predecessors, and affiliates and each of the respective present and former shareholders, directors, officers, employees, and agents of each of the foregoing (all of whom are collectively included in the term "**RELEASEES**") and to RELEASE the RELEASEES from any and all liability for any loss, damage, expense, or injury, due to the User: (i) breaching the warranty set out in this paragraph; or (ii) not

being compliant with CASL, including in both cases, without limitation, any and all actual or threatened claims, demands, actions, causes of action, liabilities, losses, damages, fines, penalties (including, without limitation, administrative monetary penalties), costs and expenses (including, without limitation, legal fees on a solicitor-and-own client basis, investigation fees, and disbursements) (for the purpose of this Section 9.2(c), any such loss, damage, expense, or injury being referred to as a "**Claim**"). The User hereby agrees to HOLD HARMLESS AND INDEMNIFY THE RELEASEES from any and all liability for any loss, damage, expense, or injury arising from any Claim.

4. Notwithstanding the above provisions of this Section 9.2, a Claim Against E Source will not include, and this Section 9.2 will not apply to, a Claim to the extent it arises from: (x) infringing or allegedly infringing Content that is represented as being original with E Source; or (y) User's use of a Service in a manner contemplated by this Agreement and the applicable Documentation, and in compliance with this Agreement and such Documentation.

3. E Source may notify User at any time that a portion or feature of Services, including Content, may be infringing the rights of third parties ("**Infringement Notice**"). Upon receipt of an Infringement Notice, User will follow the reasonable instructions of E Source contained in the Infringement Notice, as the same may be updated or amended from time to time. In addition, E Source may in E Source's discretion and at no cost to User: (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for User's continued use of that Service in accordance with this Agreement, or (iii) terminate User's access to that Service upon 30 days' written notice and refund User any prepaid fees covering the remainder of the Term of the Service to which access was terminated.
4. Cessation of Infringing Use. If E Source sends User an Infringement Notice, User will immediately cease all potentially infringing uses and will follow E Source's reasonable instructions to avoid further infringement.
5. Exclusive Remedy. This Article 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any Claim Against User or Claim Against E Source, as applicable.
6. This Agreement imposes no obligation on E Source to indemnify any Person other than a Company User, under any circumstances.

10.

Article 10: LIMITATION OF LIABILITY

1. Limits of Liability. In no event will either party's total liability to the other for any claim arising out of or relating to this Agreement, including claims for breach of warranty, exceed the greater of $5,000 or the total amount actually paid by User during the 12 full months preceding the assertion of the claim. The above limitation will apply whether the claim is grounded in contract or tort and regardless of the underlying legal theory or theories. Notwithstanding the foregoing, this paragraph will not limit or reduce (a) User's obligations to pay for Services; or (b) either party's liability under Article 9.
2. Exclusion of Consequential and Related Damages. Except for liability arising under Section 9.2(c), in no event will either party have any liability to the other party for any lost profits, lost revenues, or indirect, special, incidental, consequential, cover, or punitive damages, regardless of whether the action or claim is in contract or tort and regardless of the theory

of liability, even if a party has been advised of the possibility of such damages. The foregoing disclaimer will not apply to the extent prohibited by law.

3. Exclusivity of Remedies. User's sole and exclusive remedies for E Source's breach of any warranty regarding Services, including Content and Tools, are the remedies described in Section 11.3 (Termination) and Section 11.4 (Refund).
4. If for any reason E Source is unable to provide any Service, *e.g.*, the failure of an E Source Content supplier to deliver requisite Content to E Source, E Source may terminate the Service, without incurring any liability to User except to refund the amounts previously paid corresponding to the remainder of the Term of the Service so Terminated.
5. Hosting Services by Third parties. Neither party will be liable to the other, under breach of warranty, strict liability, negligence, or any other legal theory, for any harm or Damage caused by a third-party hosting provider. No indemnification will be available to either party under Article 9 for Damages caused by a third-party hosting provider.
6. Limitations Period for Claims. User shall not make a Claim or commence a lawsuit or proceeding regarding any aspect of Services more than six months after the earliest date on which the Claim could have been made or the lawsuit or proceeding could have been commenced.

11.

Article 11: TERM AND TERMINATION

1. Effectiveness of Agreement. This Agreement is in effect from the Effective Date through the period ending three years after the latest date on which User uses the E Source Website for any purpose.
2. Duration of Access to Paid Services. The Term for any Paid Service will be the Term the User has purchased and paid for. User also has the option, but not the obligation, to choose one of the following two special plans by initialing the appropriate line in the Membership Agreement: (a) Multiyear; and (b) Automatic Renewal. The terms of the Multiyear and Automatic Renewal plans are incorporated by reference into the Membership Agreement with hyperlinks and take precedence over any inconsistent provisions of this Agreement.
3. Termination. A party may terminate this Agreement for cause: (i) upon 30 days' written notice to the other party of a material breach, but only if such breach is not cured during the notice period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
4. Refund or Payment upon Termination. If this Agreement is terminated by User under Section 11.3, E Source will refund User any prepaid Fees covering the remainder of the Term of each Service being terminated. If this Agreement is terminated by E Source under Section 11.3, User will pay any unpaid Fees covering the remainder of the Term. In no event will any termination relieve User of User's obligation to pay any Fees payable to E Source for the period before the effective date of termination.
5. Surviving Provisions. At the end of the Agreement Term: (a) the License will terminate, (b) all other provisions of this Agreement will survive, and (c) User will destroy or, at E Source's election, return, all copies of Content in its possession, custody or control.

12.

Article 12: NOTICES; DIGITAL MILLENNIUM COPYRIGHT ACT

1. Notice Addresses
    1. User shall direct all notices and other communications concerning this Agreement ("**Notices**"), and all "takedown" notices under the Digital Millennium Copyright Act, to E Source as follows:
    E Source Companies LLC
    Attention: Matthew Burks, Chief Strategy Officer
    1745 38th Street
    Boulder, CO 80301
    Phone number: 1-800-376-8723
    Fax number: 303-484-4279
    2. Users may use the above contact information for inquiries of a legal nature relating to this Agreement or the E Source Website.
    3. E Source shall direct all Notices to User, (i) at User's physical or e-mail address as stated in E Source's records, which addresses may be changed by User at any time by contacting E Source as directed on the E Source Website; or (ii) if the foregoing address is not available, such other address or contact information as is available. Each Company User will notify E Source promptly if any of its billing or contact information changes.
    4. Notwithstanding the above provisions of this Section 12.1, actual Notice to an officer, employee, or other representative having administrative duties and responsibilities concerning this Agreement will constitute Notice to the intended party.
2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all Notices must be in writing and will be deemed to have been given upon actual receipt by or on behalf of the party to whom addressed. Actual receipt will be rebuttably presumed to have occurred upon the first to occur of: (i) personal delivery, (ii) the second business day after mailing by certified mail, return receipt requested, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by e-mail. A Notice sent by e-mail will be considered "in writing."
3. Digital Millennium Copyright Act. E Source shall act in response to notices of alleged copyright infringement (a/k/a "takedown notices") if they comply with the provisions of the Digital Millennium Copyright Act. E Source reserves right to delete or disable content alleged to be infringing and to terminate accounts of repeat infringers. E Source's designated agent for notice of alleged copyright infringement on the E Source Website or by the Services is Matthew Burks, Chief Strategy Officer, whose contact information is stated in Section 12.1.a.

13.

Article 13: DISPUTES AND GOVERNING LAW

1. Dispute resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement ("**Dispute**"), the parties shall use their best efforts to settle the dispute by business discussions. If they do not settle the dispute within 30 days, then, upon notice by either party to the other, the dispute shall be submitted to binding

arbitration in Denver or Boulder, Colorado, in accordance with the rules and procedures of the American Arbitration Association. Issues relating to the formation of this Agreement and the validity of this arbitration clause must be submitted for arbitration under the preceding sentence. The award of the arbitral tribunal shall be final and binding on the parties, and may be enforced by any court of competent jurisdiction. Notwithstanding the above provisions of this paragraph, at the sole option of E Source, E Source may elect to have any claim or issue involving the ownership or infringement of Intellectual Property decided exclusively in a state or federal court located in Colorado, and the parties hereby submit to the jurisdiction of any such Court and waive any objection to such jurisdiction.

2. The existence and details of a dispute, including the final award or decision of the arbitrator, will be deemed Confidential Information.
3. Waiver of Jury Trial. **Each party knowingly, freely, and voluntarily waives any right it may otherwise have to a trial by jury in any action or proceeding arising out of or in connection with this Agreement.**
4. Governing Law. This Agreement will be construed, applied, and enforced under the laws of the State of Colorado, without regard to its choice of law or conflict of laws principles.

14.

Article 14: PRIVACY POLICY

1. The privacy of Users is important to E Source. E Source provides a notice explaining its online information practices and the choices Users can make about the way their information is collected and used on the E Source Website. Users are advised to read E Source's Privacy Policy, which is displayed on the E Source Website.

15.

Article 15: AMENDMENTS; MODIFICATION OF SERVICES

1. E Source reserves the right, in its sole discretion, to modify, amend, alter, or update this Agreement (each, a "**Modification**") at any time. Each Modification will be effective immediately upon posting of the Agreement as so Modified. If User uses or accesses the E Source Website after notice of such Modification has been posted, the User will be deemed to have accepted the Modified terms. Notwithstanding the foregoing, any purported Modification of this Agreement, other than a Modification made for purposes of clarification, will not apply to Paid Services purchased by User unless and until User has renewed the Services in question or has accepted the Modification by checkbox, click-through, or otherwise.
2. E Source reserves the right, in its sole discretion, without notice, to determine which Services, including Content, are made available to the public free of charge and to modify such materials at any time and from time to time.

16.

Article 16: BINDING NATURE OF THIS AGREEMENT

1. Persons Bound
    1. All Registered E Source Users are bound by all the terms and conditions of this Agreement.

2. A User other than a Registered E Source User will be deemed to have accepted the terms and conditions of this Agreement if it has done any of the following: (a) used the E Source Website or Services for any purpose regardless of the duration of use; (b) indicated assent by click-through, checkbox, electronic signature, or manual signature; or (c) indicated assent by any other means.
3. An Individual User is bound by all the terms and conditions of this Agreement as a User, to the same extent as the Company User who purchased Services on behalf of the Individual User.
4. A User, whether a Company User or Individual User, will be liable for the acts or omissions of its employees, contractors or agents with respect to the subject matter of this Agreement, to the same extent as though such acts or omissions were those of the User itself.

2. Prior Agreements. If a User previously has signed, or is deemed to have signed, any agreement with E Source regarding Services, this Agreement will supersede and take precedence over the earlier agreement to the extent it is inconsistent with the earlier agreement.
3. Future Visits. User will be bound by all the terms and conditions of this Agreement, as amended, at all times in the future and for all future visits to the E Source Website, regardless of whether the User has indicated assent to this Agreement at the time of each visit.
4. Entire Agreement and Order of Precedence. Any terms and conditions not stated in this Agreement that concern the use of the E Source Website or Services, including any prior or contemporaneous statements or promises, will not be given effect unless in writing. This Agreement will take precedence over any other document purporting to state terms and conditions of the User's access to and use of the E Source Website, unless such other document specifically states that it is intended to modify this Agreement and is executed by E Source. Any term or condition stated in a standard or pre-printed portion of a purchase order, invoice, or other document (a/k/a "boilerplate") will be void and will not be binding on either party, unless the parties expressly agree otherwise in writing.
5. Binding Nature. This Agreement is binding upon, and inures to the benefit of, the parties and their permitted successors and assigns.

17.

Article 17: GENERAL PROVISIONS

1. User shall not take any action that adversely affects the operation, functionality, or content of any E Source server or database. User shall take all reasonable actions within its authority and ability to prevent adverse effects on the operation, functionality, or content of any E Source server or database.
2. Express Consent to Commercial Electronic Messages. User consents to the receipt from E Source of commercial electronic messages, which may consist of e-mails that provide Content as well as promotional information or advertisements. **This consent may be revoked at any time by contacting E Source or by using the opt-out features available in the commercial electronic messages.** This consent is valid and effective unless and until it is expressly revoked or limited by a person who is authorized by User to do so.
3. FCPA Compliance. User represents that it is not aware of any illegal or improper bribe,

kickback, or gift being offered or accepted in connection with this Agreement.

4. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent, which may not be unreasonably withheld; *provided, however,* that either party may assign this Agreement in its entirety, without the other party's consent, to one of its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets, if the assignee agrees to be bound by this Agreement. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice but otherwise may not interfere with or prevent the sale or change of control. In the event of such a termination, E Source will refund to User any prepaid fees covering the remaining Terms of all Paid Services.
5. Relationship of the parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.
6. Third-Party Beneficiaries. E Source's Content licensors will have the benefit of E Source's rights and protections hereunder with respect to the applicable Content. There are no other third-party beneficiaries under this Agreement.
7. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
9. Certain Rules of Construction
    1. The words, "including" and "for example," as used in this Agreement, will be construed as "including, without limitation" and "for example, without limitation," respectively.
    2. The word "use," with regard to the E Source Website, means and includes: (i) making use of or accessing the E Source Website for any purpose of for any duration; (ii) obtaining any Tool, Content, Documentation, data or other information in any form whatsoever through the E Source Website; or (iii) making use of any Tool or similar resource available through the E Source Website.
    3. The word "use," with regard to any Service, means making use of any Tool, Content, Document, data, or other information obtained by means of that Service.

E Source and User agree to be bound by all the terms and conditions stated above as though they had each manually executed a copy of this Agreement.

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