

Energy Savings Contract

This energy savings contract is made available to Educational Services Commission of New Jersey ("ESCNJ") members through a cooperative purchasing agreement contract awarded by ESCNJ to Cenergistic LLC ("Cenergistic"). This cooperative purchasing contract is between the Brick Township Public School District ("Member") and Cenergistic LLC ("Cenergistic"). This contract is subject to all applicable federal laws and laws of the State of New Jersey.

Cenergistic® delivers customized, comprehensive people-driven energy conservation programs that focus on using technology and changing human behavior to help school districts, churches and higher education clients reduce their consumption of energy and water without any equipment upgrades. Implementation of these programs is guided by Cenergistic's team of energy consultants and Dallas-based support team members - together representing several hundred years of public school energy conservation experience. Cenergistic's clients can invest the financial savings that result in the lives of the people they serve, rather than in utility companies. Cenergistic guarantees the success of these programs as set out in paragraph 8 below. To date Cenergistic has served more than 1,425 clients in 48 states.

Cenergistic has offered to build and provide a customized energy conservation program that is focused on technology and organizational and behavioral change and is designed with the following goals:

- Save dollars that the Member can reinvest in the people it serves;
- Preserve a quality learning environment for the Member's children;
- Conserve energy for a positive impact on the environment; and,
- Increase awareness to empower energy users to be energy savers.

Cenergistic will help the Member pursue these goals through implementation of its energy conservation program. Central to the success of this program is the recognition of shared responsibility between Cenergistic and the Member as the program is initiated and implemented. Cenergistic provides extensive resources, remote monitoring, education and training, action planning, and other conservation-related services, while the Member will hire the part-time energy specialist as set out below and will work cooperatively to implement Cenergistic's program.

As a part of this shared responsibility, Cenergistic offers a *Fee Free Period* during the first month to allow for acceleration of savings for the Member before Monthly Fee payments begin.

The parties therefore agree as follows:

1. **Program.** On _____ (“Start Date”) Cenergistic shall begin its work on this contract. Cenergistic shall take immediate actions to facilitate the Member’s search for an Energy Specialist and shall provide the Member with a people-driven energy management program that is customized to enable the Member to reduce consumption of energy (“Program”).

2. **Energy Consultants.** A Cenergistic team shall deliver the Program to the Member as follows:

- Through Cenergistic’s limited on-site, remote and ongoing assessments of the Member’s facilities and based on Cenergistic’s experience in having assessed thousands of client facilities, Cenergistic’s team shall develop many recommendations that are specific to the Member’s environment.
- Cenergistic’s team shall guide and assist the Member’s Program implementation following Cenergistic’s proven methodology, the Cenergistic energy management program.

3. **Energy Specialist.** (a) **Position and Compensation.** Program implementation requires a daily focused effort that is led by one of the Member’s own people – an energy specialist who can make conservation a priority while positively engaging people to conserve energy. The energy specialist position will be part-time (with a daily commitment) and the Member shall not allow or assign other duties that could limit the energy specialist’s pursuit of the Program goals. The Member shall pay the energy specialist at a level that is within the range recommended by Cenergistic to attract and retain qualified people (“Compensation”).

(b) **Member Hiring.** Cenergistic shall serve an active and key role to assist and guide the Member through its energy specialist search process - from posting the position through interviewing candidates. On the Start Date the Member shall promptly begin and then continue this search process until a mutually acceptable person is identified and hired by the Member (and funded by the savings from the Program), for the energy specialist position. Due to the unique nature of the position, the energy specialist will ideally be a current or retired Member employee with teaching experience, though other candidates both inside and outside the Member should be encouraged to apply for the position. Cenergistic’s recommendation for the energy specialist position will follow the conclusion of the posting and interview processes and is subject to the Member’s approval and decision to hire or not hire. Likewise, the Member will not employ any person as energy specialist that is unacceptable to Cenergistic.

(c) **Duties.** The energy specialist’s primary duties will be to spend time in the Member’s facilities to identify savings opportunities and to work closely with Cenergistic and the Member’s employees to execute proven implementation strategies to change behavior linked to energy consumption. The effective management of energy information is also important for achieving positive results through accountability. For this the energy specialist will work to maintain energy consumption and other information related to energy use in the Member’s facilities and areas. The energy specialist will use the EnergyCAP® energy accounting program from EnergyCAP, Inc. (“Third Party Software”).

(d) **Education and Training.** Cenergistic’s team shall train the energy specialist with the skills essential for Program implementation. Cenergistic’s comprehensive training will be delivered both remotely online and on-site. The energy specialist must attend the on-site appointments scheduled

by Cenergistic and must be receptive and responsive to Cenergistic. Cenergistic shall provide written education and training materials, plus online support. Furthermore, Cenergistic shall host and the energy specialist shall participate in remote training (Skype, Gotomeeting, etc.) or other education and training sponsored by Cenergistic, which will be an integral part of the energy specialist's education and training. Cenergistic's energy consultants and Dallas-based team will be available and on-call to respond by phone (or in person as deemed appropriate in Cenergistic's discretion), to special problems or questions through the end of the Term (as defined below).

(e) **Observation and Communication.** The Member is the energy specialist's supervisor and maintains full and final employment authority, e.g. hiring and firing, for this important position that is subject to high standards and performance expectations. For example, the Cenergistic energy management program calls for routine data entry which is monitored through weekly accountability reporting. Cenergistic shall observe the energy specialist's fit, skills, tenacity, hard work, leadership, interpersonal relationships, and performance level and results. Designating a high ranking Member business official ("Program Liaison") as the energy specialist's supervisor directly and positively impacts Program implementation. Cenergistic shall communicate with the energy specialist's supervisor concerning the observed performance of the energy specialist. As a part of these obligations, during the first twelve months of an energy specialist's service, Cenergistic shall periodically advise the energy specialist's supervisor whether that person has shown the qualities to be successful in the position. If Cenergistic advises the Member that a person serving as energy specialist does not have the qualities to be successful in the position, a replacement energy specialist will be recruited and hired using the collaborative process and guidelines described in paragraph 3(b).

(f) **Leave Scheduling.** The energy specialist is expected to spend a majority of time out in the Member facilities to drive energy savings; with times outside the instructional day being particularly valuable for the energy specialist to identify and capture savings opportunities. It is critically important (especially during the first two years of the Program) that the energy specialist be available for work during times when buildings are unoccupied and have flexibility to work nights, weekends and holidays. To allow for appropriate dialogue, the Member will notify and consult with Cenergistic before approving any requests for the energy specialist's vacation leave or other leave that (1) is in conjunction with school holidays or break periods, or (2) requires an extended absence of more than one week.

4. **Program Implementation.** (a) **Prompt Start.** Upon completion of the Fee Free Period, the Member will promptly begin and then continue to implement the Program at its expense.

(b) **Commitment and Communication.** In Cenergistic's experience, the success of the Member's Program implementation will be a function of the demonstrated commitment of the school board, superintendent and other administrators, e.g. through timely communication of high level support for the Program. More specifically, no later than 60 days after the Start Date, the school board must adopt an appropriate policy and, no later than 30 days after the Start Date, the administration must adopt appropriate administrative guidelines reflecting the Member's commitment to the Program. The Member shall communicate these guidelines to its people, construction contractors and on-site management service providers, if any. Cenergistic will work with the energy specialist to facilitate semi-annual progress reports for the school board. The Member will make its utility records available for review and copying on request of the energy specialist or Cenergistic.

(c) Software. (i) Cenergistic GreenX™ Software. The GreenX mobile and desktop application which is accessible over any browser-enabled device serves as the focal point for energy savings across your entire facilities portfolio. Our machine-learning anomaly detection algorithms provide transparency into the energy consumption profiles of your buildings and provides alerts and potential resolutions by combining building, equipment and sensor data with historical energy use, weather and other seasonal data. (“Cenergistic Software”)

(ii) Third Party Software. The effective management of energy information is a first step to achieving positive results through accountability. Energy consumption will be accounted for by using the Third Party Software, with which Cenergistic’s team is knowledgeable and trained to provide support to the Member. No later than 30 days after the Start Date, the Member must license the Third Party Software program (and pay the licensing fees) from EnergyCAP, Inc. or, if later recommended by Cenergistic to its clients (e.g. because EnergyCAP® ceased to be available), an alternative Third Party Software program. Data input and maintenance will be managed and controlled, at Cenergistic’s option, either by the Energy Specialist or at Cenergistic’s corporate office, with Member access to review all data entry.

(d) Access, Authority and Control. The energy specialist needs to have access to the Member’s systems controls, including the energy management systems (“EMS”), and the authority (in communication and coordination with other Member personnel) to make changes so that facilities are not operated outside of the established policy and guidelines. The energy specialist needs the authority to: (1) program the EMS including changes in the temperature settings and run times of EMS controlled equipment (e.g. HVAC, water, heating and lighting systems), and (2) change settings and run times for each facility’s equipment and systems (e.g. lighting, sewer and water systems, time clocks and thermostats) that are not controlled by the EMS. The energy specialist will not have authority to make any changes that violate Member established policy and guidelines and the Member retains the right to suspend the energy specialist’s access at any time. In the event of such a suspension the Member will immediately inform Cenergistic of the suspension and the basis. The Member shall provide such access and authority to the energy specialist within 30 days of the Start Date. In order to evaluate and track occupant comfort, within 30 days of the Start Date, the Member will set up or modify its internal procedure to ensure that all comfort feedback is immediately routed to the energy specialist. This contract does not alter the Member’s exclusive right of control over its people and facilities and its pre-existing responsibility, if any, to provide reasonable premises safety.

(e) No Third Party Interference. The Member shall not allow any third party to interfere with the Member’s Program implementation.

5. **Savings Determination.** (a) General. Energy savings are determined in accordance with the Measurement and Verification Plan (“M & V Plan”) attached hereto by comparing measured use before and after the start of Program implementation, with appropriate adjustments for changes in conditions that are independent of the Program. The simple formulaic expression is:

Avoided Energy Use (or Savings) = Adjusted-Baseline Energy – Reporting-Period Energy ± Non-Routine Adjustments of baseline energy to reporting-period conditions

Cenergistic and the energy specialist shall use the Third Party Software to calculate the Member’s savings by subtracting the energy actually used (i.e. consumption: kWh, BTUs, gallons, etc.) in each

Performance Year (as defined below) from the use in the Base Year (as defined below), plus or minus any Adjustment Variables (as defined below), and applying the price (based on the blended rate to the Member for each type of energy purchased by the Member for all sources of energy except for solar which shall be valued as set out in paragraph 5(d)(iii) below) ("Savings"). The "Total Savings" means the Savings and any additional verifiable cost containment or avoidances resulting from the Program (e.g. utility refunds received as a result of a Program billing audit), in accordance with current industry-accepted valuation methodology. Savings reports shall be delivered to the Program Liaison for review and verification. The Program Liaison will work diligently to review reported Savings and will present any questions about the savings reports within five business days of receipt. Cenergistic's projections of Total Savings when using the Program are based upon energy consumption and other data furnished by the Member.

(b) **Baseline Period.** A baseline period will be established as set out in the attached M & V Plan by Cenergistic and the Member's energy specialist. Unless modified as set out below, the Third Party Software will be used to establish a baseline period consisting of 12 consecutive months that precede the Start Date ("Base Year"). The Member represents that the historical utility usage data and building information provided to Cenergistic for the purpose of savings projections is accurate. If it is later determined that either: 1) there is a variation between the data provided and the Base Year data of $\pm 5\%$ or more or, 2) changes in the 12 months preceding the Start Date would cause those 12 months to not accurately reflect actual pre-program usage by the Member ("variation"), Cenergistic may select as the Base Year an alternate 12-month period from the 36 months preceding the Start Date. For new construction, the energy specialist and Cenergistic, in consultation with the Program Liaison, will use detailed, calibrated simulation analysis to compile the Base Year.

(c) **Reporting Period.** Each reporting period, other than the Fifth Year, will be a 12 month period ("Performance Year"). The first Performance Year will begin after the *Fee Free Period* (as defined below) ends ("First Year") and each Performance Year is consecutively named. The "Second Year" means the 12 month reporting period following the end of the First Year, the "Third Year" follows the Second Year, the "Fourth Year" follows the Third Year. The "Fifth Year" follows the Fourth Year and will be an 11 month period. A performance year may be suspended as set out below. Using the Third Party Software, Savings shall be calculated for each Performance Year in comparison to the Base Year.

(d) **Appropriate Adjustments.** (i) Adjustments to the baseline shall be made in accordance with the M&V Plan to recognize that the operating environment changes in ways that impact energy use but are independent of the Program (e.g. the weather) and function simply to bring energy use for the two time periods to an equivalent set of conditions.

(ii) The Third Party Software allows appropriate adjustments to the Base Year, using available data to account for the following factors occurring during the Performance Year that affect the energy used in facilities ("Adjustment Variables"): outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; number of days in the billing period; energy rates; and reasonably estimated energy loads added or reduced after Program implementation.

(iii) The Third Party Software also allows other appropriate adjustments for a more accurate Savings calculation. If the Member has experienced abnormal temperatures during the Base Year, a total of 36 months of billing information will be used to create a more accurate statistical

model for the Member. The Member shall communicate the Member's energy conservation guidelines to its construction contractors and on-site management service providers, if any. Savings will be determined using either calibrated simulation or by making appropriate adjustments, as mutually agreed by the parties, in the event of any of the following: (a) the guidelines are not substantially followed by third party construction contractors or on-site management service providers; (b) the Member chooses not to substantially implement Cenergistic's water conservation recommendations; or, (c) there are equipment malfunctions that negatively impact program savings. Agreement concerning the calibrated simulation or appropriate adjustments will not be unreasonably withheld by either party. In the event solar electricity is implemented by the Member, the parties agree to a process that recognizes net metered electric generation to exclude any solar production from the reported Third Party Software use and cost avoidance. Solar energy produced (that was consumed by the building) is tracked in the Third Party Software to allow for the total energy consumption comparisons. All savings reported in the cost avoidance reports shall be from energy purchased from the grid (metered electricity) so it will be valued at the grid average unit cost (as "average unit cost" is defined in this contract and Measurement and Verification Plan). If the energy specialist position is vacant or the energy specialist is off-the-job for more than 30 days, or if the Member fails to substantially implement the program as determined by Cenergistic in its sole discretion, the Performance Year can be suspended until an energy specialist is on-the-job and the Member is substantially implementing the program. If a Performance Year is suspended, it will consist of twelve non-consecutive months; however, for purposes of determining savings, savings, if any, during the suspended period shall continue to accrue.

(iv) The data will continue to be reviewed for accuracy during the term of the Contract. In the event there are inaccuracies in the data or there are data entry errors (i.e. information not known at the time, incorrect meter reading or data entered into the Third Party Software incorrectly), the data may be updated to correct such errors that occurred during the twelve (12) months immediately preceding the latest monthly billing statement. Data prior to the twelve (12) months immediately preceding the latest monthly billing statement will be deemed to be accurate by the parties.

(e) Third Party Contractor. The parties agree that Cenergistic may utilize the services of a third party contractor to (1) automatically retrieve utility bill data from both online and offline sources by, among other things, accessing utility vendor websites, OCR of scanned copies of bills or reading from machine readable files, (2) import the data into the Third Party Software and (3) utilize the service of other third party contractors. The Member (1) consents to allowing access to utility bills by such third party contractor and (2) agrees to reasonably cooperate with such third party contractor, with assistance as necessary from Cenergistic, to enable the third party contractor to have and maintain access to (including online) to the Member's utility bills.

6. **Term.** This contract shall be for a term beginning on the Start Date and ending on the last day of the Fifth Year ("Term").

7. **Fee Free Period and Monthly Fee.** (a) **Fee Free Period.** The *Fee Free Period* shall begin on the Start Date and end one month after the Start Date, or on such later date as determined by Cenergistic ("Fee Free Period"). In the event the Performance Year is suspended as set out in paragraph 5 above, the Monthly Fees for the suspended period shall be deferred and the term shall be extended until 60 monthly fee payments have been made.

(b) **Monthly Fee.** The Member shall pay Cenergistic a fee of \$10,871.19 ("Monthly Fee") per month for 59 consecutive months ("Fee Period"). For internal accounting purposes, Cenergistic will allocate 25% of the Monthly Fees as the value of the Cenergistic Software. The Member shall pay the first Monthly Fee in the second month after the Start Date and Cenergistic will bill the Member on the 1st of each month for each subsequent Monthly Fee. Failure to pay the billing statement within 60 days after it is due, at Cenergistic's option, shall result in the Program being suspended (including, without limitation, the suspension of Cenergistic support for the Program). Savings shall continue to accrue during any suspension for failure to pay the billing statement.

(c) **Administrative Fee.** Cenergistic will pay ESCNJ a 2% administrative fee on a quarterly basis based on payments received from Member and/or the participating Members. Quarterly reports must be submitted within 15 days of the quarter's end.

(d) **Additional Facilities.** In the event the Member builds, acquires, contracts with, or otherwise becomes responsible for educational services for another member ("acquired member"), or is requested by another member ("requesting member") to allow the Member's energy specialist to provide energy management support, the Member agrees to not share, utilize, or include the Program (including the use or services of the energy specialist trained by Cenergistic) to any extent, in any facilities in the acquired or requesting member without Cenergistic's express written consent and payment of additional fees as mutually agreed.

8. **Savings Guarantee.** (a) Cenergistic's commitment to the quality of the Program is evidenced by Cenergistic's Savings Guarantee (as defined below). Cenergistic shall reimburse the Member for the difference if the Member's Costs (as defined below) exceed its Total Savings, computed from the Start Date to the end of any Performance Year during the Term ("Savings Guarantee"). Due to the cumulative nature of the Savings Guarantee it is necessary to specify that Cenergistic shall not make reimbursement for amounts that Cenergistic has already reimbursed for a prior Performance Year. To be eligible for the Savings Guarantee the Member must have employed an energy specialist as required and substantially implemented the Program. If Cenergistic reasonably determines that the Member is not substantially implementing the Program, Cenergistic shall give the Member written notice of its determination (including specific details supporting Cenergistic's determination and specific recommendations for appropriate Member action) and, at Cenergistic's election, the Performance Year and payment of the Monthly Fees shall be suspended for a period of up to four months as time to remedy. The Member shall act within a reasonable time to cure such failure, with curative steps being taken within sixty (60) days after receipt of the written notice referenced above. If the parties are unable to agree on whether the Member is substantially implementing the Program, the parties agree to meet to resolve the differences as set out in paragraph 13(c) below. "Substantial implementation of the Program" does not require the Member to have implemented the Program in every detail. To "substantially implement" the Program means that the process of implementation is material to the extent that the program functions as intended. It requires that the Program has been implemented in its material elements, or almost fully implemented. Without limiting the foregoing, the following shall be a lack of substantial implementation for purposes of this paragraph: (i) failure to pay a billing statement within 90 days from the due date; (ii) failure to approve the administrative guidelines within 60 days of the start date; or, (iii) if the Member directs Cenergistic to stop work for reasons other than a material breach of this contract and such notice is not withdrawn within sixty (60) days after initial delivery to Cenergistic. The "Member's Costs" means

the total amounts paid for the energy specialist's Compensation and Travel Expenses, initial and renewal costs of the Third Party Software, and the Monthly Fees. Cenergistic shall pay the Member a required reimbursement no later than 90 days after the results for the prior Performance Year have been finalized by Cenergistic and the Member's energy specialist. If Cenergistic fails to make a required reimbursement, the Member may terminate this contract without a payment of a Work Fee and recover the amount of the required reimbursement from Cenergistic.

(b) The Member shall refund prior reimbursements on the Savings Guarantee to Cenergistic if (1) the Total Savings exceed the Member's Costs, computed from the Start Date to the end of a later month during the Term, or (2) the Member exercises its right of Termination for Convenience (as defined below). The Member shall pay Cenergistic a required refund: (1) no later than 90 days after the results for such later month have been finalized by Cenergistic and the Member's energy specialist, or (2) on the effective date of a Termination for Convenience.

9. **Termination for Convenience.** (a) Termination for Convenience by Member. As provided in this contract Cenergistic anticipates a long-term relationship and remains committed to the Member through the Term and beyond. However, the Member may terminate this contract for any reason and without cause as provided in this paragraph. To validly exercise this right to terminate for any reason and without cause (including if there is no appropriation of funding or for any other termination that is not based on Cenergistic's failure to perform its material obligations under this contract) (a "Termination for Convenience"), the Member shall provide Cenergistic with at least 60 days prior written notice and shall pay Cenergistic a Work Fee to compensate Cenergistic for its Intellectual Property, the work performed by Cenergistic and for the benefits received by the Member (and not as a penalty) ("Work Fee"), with the calculation based upon the date of termination, as follows: (i) Contract Start Date through the end of the First Year, \$163,067.50, (ii) during or through the end of the Second Year, \$130,454.00, during or through the end of the Third Year, \$117,408.60, (iii) during or through the end of the Fourth Year, \$104,363.20, (iv) during or through the end of the Fifth Year, the lesser of the remaining monthly payments or \$71,749.80.

Upon a Termination for Convenience, the Work Fee shall include the following additional amounts which the Member shall pay Cenergistic: the unpaid Monthly Fees but only through the termination effective date (including any months which were deferred because of a suspension of the Performance Year as set out in paragraph 5 above). A Termination for Convenience voids the Savings Guarantee. This termination right does not limit the rights and remedies of the Member. More specifically, if Cenergistic fails to perform its material obligations under this contract, the Member's legal rights and remedies are not limited by the terms of this paragraph. If the Member contends Cenergistic has committed a material breach of the contract, the Member will provide written notice to Cenergistic specifically describing the breach and giving Cenergistic a reasonable opportunity and time (not less than 30 days) to cure the claimed breach before taking other action. If the material breach is not remedied by Cenergistic following the notice as set out above, the Member may terminate this contract without any obligation to pay a Work Fee.

(c) Termination for Convenience by Cenergistic. In the event Cenergistic determines there are unanticipated factors or changes that occur during the Term that make continuation of the Program unsustainable, upon giving the Member sixty (60) days prior written notice, Cenergistic shall have the right to terminate this contract without any payment or other obligation. In such event, the

Member will be entitled to retain all residual savings after the date of termination from the Program without payment of Monthly Fees for such period and shall not be required to pay a Work Fee. Unanticipated factors or changes shall include, without limitation, the following: unusual building or operational conditions, equipment defects, inability to hire and/or retain a qualified energy specialist, or other factors not in Cenergistic's control that would materially and negatively impact savings or savings potential.

10. **Termination Event.** Upon termination of this contract or discontinuation of the Program at the end of the Fee Period the Member shall promptly: (a) return to Cenergistic all materials and Proprietary Information previously furnished by Cenergistic or accumulated by the Member in connection with the Program, including all copies thereof; (b) discontinue the employment of any Member energy specialist trained by Cenergistic in that position; (c) return or allow the removal by Cenergistic of any monitoring or sensor devices installed by Cenergistic or at any time upon Cenergistic request; and (d) cease using the Proprietary Information and implementing the Program. Notwithstanding the foregoing, the Member is not prohibited from: (i) using energy conservation information that is in the public domain or is obtained from sources other than Cenergistic, or (ii) hiring a person (other than an energy specialist trained by Cenergistic) to assist with monitoring energy use or consumption.

11. **Proprietary Program and Information.** (a) Proprietary Information. The Member will have access to and use of (1) Cenergistic's energy management program, (2) materials that are copyrighted, trade secrets and other information that is proprietary to Cenergistic and (3) the Cenergistic Software, including both browser based and mobile versions, as the same may be developed and released by Cenergistic from time to time during the term of this Contract pursuant to a nonexclusive, nontransferable license to use Cenergistic Software. Items (1) through (3) along with all database files created using the Third Party Software are collectively referred to as "Proprietary Information".

(b) Limitations on Use; Confidentiality. The Member agrees that nothing contained in this Agreement shall be construed as granting any ownership rights to any Proprietary Information, or to any invention or any patent, copyright, trademark, or other intellectual property right. The Member shall not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Proprietary Information. The Member will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Proprietary Information. The Member agrees that the Proprietary Information (including all copies) continues to be Cenergistic's property and should be kept confidential to the full extent permitted by law. The Member shall give Cenergistic written notice and an opportunity to respond if the Member receives a third party request for Proprietary Information. The Member shall not disclose the Proprietary Information to any unauthorized person or use it outside of the Member or this contract. The Member shall assist Cenergistic in the protection of the Proprietary Information. The Member's obligations under this paragraph survive termination of this contract. Member hereby agrees that breach of this subparagraph will cause Cenergistic irreparable damage for which recovery of damages would be inadequate, and that Cenergistic shall therefore be entitled to obtain timely injunctive relief, as well as such further relief as may be granted by a court of competent jurisdiction.

(c) In consideration of the education and training provided by Cenergistic, the Member's energy specialist must agree not to disclose Proprietary Information to third parties or to

compete with Cenergistic. Due to the inherent risk for disclosure of Proprietary Information, the Member's energy specialist must not participate in any energy specialist user group meeting that is not sponsored by Cenergistic.

(d) **Non-Solicitation.** While under contract with Cenergistic and for a period of two years following the termination of this contract, the Member will not solicit, hire or retain any Cenergistic employees or contractors for employment or other work at or for the Member.

12. **Program Continuation Phase.** After the Term, the Member will have the option to continue partnering with Cenergistic upon the same terms as set out in this Contract to sustain and grow energy program savings. No action will be required by either party to continue the Program beyond the Term, but if the Member chooses not to continue the Program beyond the Term or to terminate at any time after the Program has been continued beyond the Term, it will provide sixty (60) days written notice to Cenergistic. There shall be no Work Fee in the event of cancellation after the end of the Term.

13. **Miscellaneous.** (a) This contract constitutes the entire agreement of the parties with respect to the subject matter of this contract. This contract supersedes the parties' prior communications, requests, responses, proposals, offers and agreements, if any. This contract may be modified only by a writing signed by the parties. Invalidity or unenforceability of one or more provisions of this contract shall not affect any other provision of this contract. The attached Schedule 12(b) includes Cenergistic's affirmative action agreement in compliance with N.J.S.A. 10:5-33 et seq. and N.J.A.C. 17:27.

(b) In an action to enforce or construe this contract in a court with competent jurisdiction, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs of court.

(c) **Dispute Resolution.** Open communication and cooperation of the parties is vital to the success of the Program and to the settlement of disputes if they arise. If a dispute persists, either party may suggest an executive meeting for review and resolution. The party suggesting the meeting should identify the issues in dispute and coordinate a face-to-face meeting at the Member to review the issues and solution options. The executive officer for each party who has full authority to discuss the issues and commit to effective solutions shall attend and participate in the meeting. Also, those persons with firsthand knowledge of the issues must be available for the meeting. No dispute under this contract shall be subject to litigation proceedings prior to completing the meeting, except for an action to seek injunctive relief.

(d) **Counterparts.** A signed copy of this Contract delivered by facsimile, e-mail or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

Each party is signing this contract on the date stated under that party's signature.

Brick Township Public School District

CENERGISTIC LLC

By: _____

By: _____

Name _____

Name: John Bernard

Title: Business Administrator/Board Secretary

Title: Senior Vice President, Client Development

Date: _____

Date: _____

Brick Township PSD, NJ – ESCNJ NJ K12 FF (SIM) part-time District employed ES v.1 032619

The Bottom Line: 5 Years = \$950,580 Net Savings

	Contract Period					
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	TOTAL
Gross Savings	\$265,000	\$335,000	\$372,000	\$406,000	\$435,000	\$1,813,000
Energy Specialist (Part-time) Stipend ¹	\$34,020	\$34,900	\$35,800	\$36,700	\$37,600	\$179,020
Energy Accounting Software ²	\$14,000	\$7,000	\$7,000	\$7,000	\$7,000	\$42,000
Cenergistic Energy Management Program ³	\$130,454	\$130,454	\$130,454	\$130,454	\$119,583	\$641,400
Net Savings to Client ⁴	\$86,526	\$162,646	\$198,746	\$231,846	\$270,817	\$950,580

1. Client employs and pays Energy Specialist. Recommended Energy Specialist estimated stipend for one part-time position, annualized, including night, weekend and holiday work. Final stipend figure will affect net savings.
2. Energy Accounting Software is licensed by your organization directly from EnergyCAP, Inc., a third-party company. Year 1 costs include installation service and base year database set up. Terms and conditions to be negotiated directly with EnergyCAP, Inc.
3. Cenergistic's monthly fixed fee of \$10871.19 will be billed monthly over the term of the contract.
4. Total investment guaranteed to be funded from savings, including Energy Specialist stipend and cost of third party software. Net savings to client assumes gross savings projections are realized; actual net savings will vary based on the level of gross savings achieved.
5. Proposal valid thru June 27, 2019.

MEASUREMENT AND VERIFICATION PLAN

This Measurement & Verification Plan (“M&V Plan”) is prepared for Brick Township Public School District (the “Organization”) by Cenergistic and is agreed to by the parties as the M&V plan in accordance with the protocols of the International Performance Measurement and Verification Protocol (“IPMVP”) for the energy program delivered by Cenergistic pursuant to the contract with a Start Date of _____.

This M&V Plan is prepared in accordance with Section 7 of IPMVP Core Concepts (EVO 10000-1:2016).

The IPMVP guideline, developed and maintained by the nonprofit Efficiency Valuation Organization (see www.EVO-World.org), is the most current and widely-recognized guideline promulgated by a non-profit and impartial source. The IPMVP is the product of an international consortium of volunteers working together to promote standardized methods for the correct valuation of energy efficiencies.

IPMVP includes guidance for many types of energy management initiatives and circumstances; not all guidance is applicable in all cases. The purpose of this M&V Plan is to document how the M&V guidance contained within IPMVP will be specifically applied to this contract. In cases of variance between specific provisions of IPMVP and this M&V Plan, this Plan takes precedence.

- 1. Facility and Project Overview** Cenergistic energy programs are people driven programs that include multiple facilities and conservation steps. The program scope and list of measures are described within the contract.
- 2. ECM Intent** The energy conservation measures (“ECMs”) reduce electricity, gas, water and other energy usage and cost, depending on the specific facility. Many varied ECMs will be used to achieve the savings. The expected savings will be an amount in excess of the cost of the program in accordance with the Savings Guarantee. ECMs will be operational in nature (not equipment, facility or hardware retrofits) and are generally categorized as turning off energy-using systems when not necessary, setting back energy-using systems when possible, and improving efficiency of energy-using systems when in use. Space conditions, during both occupied and unoccupied periods, will change as necessary to comply with the organization’s published energy policy and administration guidelines.
- 3. Selected IPMVP Option and Measurement Boundary** IPMVP Option C (Whole Facility) will be used for savings determination because it is the most appropriate M&V method for total facility energy reduction when all energy-using systems are affected and ECMs cannot be isolated, submetered or simulated by computer model. Option C was also chosen because many ECMs will be involved, and some of them cannot be directly measured. Utility meters for electricity, gas, water and sewer will be included in the savings M&V for the organization. Together, these meters will account for all energy use by each facility. The total savings is the sum of savings for each facility. The measurement boundary includes all facilities and infrastructure owned and leased by the Organization. In the event metering equipment is determined to be unreliable, unavailable, or does not measure the effect of the ECM, Option A (Retrofit-isolation: Key Parameter Measurement), Option B (Retrofit Isolation: All Parameter Measurement) or Option D (Calibrated Simulation), will be used.
- 4. Baseline: Period, Energy and Conditions** Using the Third Party Software (as defined in the contract, hereinafter “Third Party Software”), a baseline period shall be established for each meter consisting

of 12 consecutive months (or 24 consecutive months when conditions warrant an expanded baseline) that precede the energy program Start Date. Normally this will be the 12 months immediately prior to start date, but under circumstances described in the contract, an alternate period (up to 24 months) may be chosen.

The baseline data for each meter will be defined and available in the M&V Third Party Software upon import and preparation of the data for each meter & facility. The Third Party Software also includes static factors such as weather and building size. Included in the baseline data will be an identification of the baseline period, baseline energy consumption and demand data, other independent and relevant variable data, and other static factors (i.e. occupancy type, building information such as square footage, etc.). Other baseline data may be included and/or supplemented as agreed by the parties. Local weather data will be obtained from a nationally-recognized service.

5. **Reporting Period** Each reporting period will be as set forth in the contract and called a "Performance Year". The Performance Year begins according to the terms of the contract.
6. **Basis for Adjustment** Energy savings are determined by comparing measured use before and after the start of Program implementation, after making appropriate adjustments for changes in conditions that are independent of the Program. Since savings are to be reported as "cost avoidance", under reporting period conditions, the IPMVP equation for reporting period savings will be used. This method quantifies how savings in a given reporting period is determined, relative to what energy use would have been without the ECMs in place, consider routine and non-routine adjustments and is expressed as:

$$\text{Avoided Energy Use (or Savings) =} \\ \text{Adjusted-Baseline Energy} - \text{Reporting-Period Energy} \pm \text{Non-Routine Adjustments of} \\ \text{baseline energy to reporting-period conditions}$$

In addition, savings may be accrued due to one-time actions such as identification of utility billing errors leading to refunds, rebates, rate changes, and other measures that do not reduce energy usage but do reduce Organization's out of pocket utility costs.

7. **Calculation Methodology and Analysis Procedure** The Third Party Software performs the cost avoidance calculation and analysis procedure. The Third Party Software allows appropriate routine and non-routine adjustments to the baseline period, using available data to account for the following factors occurring during the reporting period that affect the energy used in facilities: number of days in the billing period, energy unit cost, and reasonably estimated energy loads added or reduced after Program implementation due to such factors as outside temperature; floor space; occupancy type or schedule; amount, type or use of equipment; facility construction/renovation; and energy management hardware retrofits installed under unrelated projects. Specific cost avoidance analysis algorithms used by the Third Party Software are extensively documented and can be furnished upon request.

The Third Party Software also allows other appropriate adjustments for a more accurate Savings calculation. If the organization has experienced abnormal temperatures during the baseline period, a total of 36 months of billing information can be used to create a more representative statistical weather model. Savings will be determined using either calibrated simulation or by making

appropriate adjustments, as mutually agreed by the parties, in the event of any of the following: (a) the organization's energy conservation guidelines are not substantially followed by its construction contractors or on-site management service providers, if any, (b) the Member chooses not to substantially implement Cenergistic's water conservation recommendations; or, (c) there are equipment malfunctions that can negatively impact program savings.

The Third Party Software adheres to the IPMVP guidelines. IPMVP is not exhaustive in its guidance; in some situations engineering judgment must be used. Calculations are supervised by licensed Professional Engineers, Certified Measurement and Verification Professionals and Certified Energy Managers.

- 8. Energy Prices** Reporting of cost avoidance will value the energy use avoided at the then-current unit cost for each meter, each period. Prices will be calculated by the Third Party Software for each month. The price applied for each utility (except solar) is the realized price, based on the blended rate to the Organization for each type of energy purchased by the organization, taking into account consumption and all charges from the utility provider. In the event solar electricity is implemented by the Organization, the parties agree to a process that recognizes net metered electric generation to exclude any solar production sold back to the grid from the reported EnergyCAP use and cost avoidance. Solar energy produced (that was consumed by the building) is tracked in EnergyCAP to allow for the total energy consumption comparisons. All savings reported in the cost avoidance reports shall be from energy purchased from the grid (metered electricity) so it will be valued at the grid average unit cost (as "average unit cost" is defined in this contract and Measurement and Verification Plan).
- 9. Meter Specifications** Utility grade meters used for billing are the only meters used. Exception: For bulk fuel stored in tanks, manual measurements recorded by the organization or by the provider may be used. In master-metered campus situations, submeters may be necessary for accurate identification of building by building energy usage.
- 10. Monitoring responsibilities** Energy data from utility bills will be recorded in the Third Party Software as set out in the contract. The Third Party Software captures weather information necessary for calculating and applying adjustments. Changes to the baseline conditions, such as facility size, occupancy or equipment changes, will be documented in the Third Party Software. Responsibility for collection, entry, calculation and accuracy of the data in the Third Party Software is the responsibility of the Energy Specialist(s) under the supervision of Cenergistic.
- 11. Expected Accuracy** The accuracy of data capture of the utility billing data and entry of that data into the Third Party Software is expected to be verified 100% ($\pm 2\%$) via reports that reconcile data with utility bill accounts payable to ensure the quality of the data entered, to ensure consistency with previous billing, elimination of gaps or duplicate entries, and reasonable protection against user errors in data entry. Statistical accuracy of the Third Party Software's routine weather adjustment process uses industry-standard linear regression techniques and is evaluated on a meter-by-meter basis. Data analysis does not involve sampling since the actual data, as entered into the Third Party Software, is used for any savings calculations. The accuracy of the Third Party Software's calculations has been validated empirically against the Department of Energy's ENERGY STAR program, which benchmarks buildings' performance. The calculations of the Third Party Software

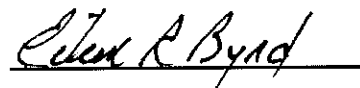
are consistent with ENERGY STAR results in determining increase in building energy utilization index (EUI – Energy usage per square foot per year).

- 12. Budget** The cost of M&V includes the Third Party Software cost, as defined in the contract, plus a portion of the Energy Specialist's time. The Third Party Software cost is defined in the contract. More time will be required early in the energy program by the Energy Specialist as the baselines are determined and the Energy Specialist becomes familiar with the Third Party Software and the process for entering data and determining savings. Once the utility bills have been entered, the baseline has been determined and the Energy Specialist has become familiar with the Third Party Software and the process, subsequently, the savings determination process and its review with operating and administrative staff is expected to require approximately 5% of an Energy Specialist's time, across all meters and facilities for the organization.
- 13. Report Format** Cost avoidance will be calculated on a monthly basis as set out in the contract. M&V and cost avoidance reports will be prepared and provided at least semi-annually to the organization. Cost avoidance calculations will commence with a formal data release occurring approximately five months after the Energy Specialist is in place. Cost avoidance reports will include results from the Third Party Software and show energy as well as expenditure savings versus the baseline. Cost avoidance reports have different formats for different audiences, but in general show usage and cost for: baseline actual, baseline adjusted to reporting period conditions, reporting period actual, and calculated cost avoidance (adjusted baseline minus reporting period actual).
- 14. Quality Assurance** Cenergistic quality assurance procedures and testing principles are applied to the baseline and performance data at the beginning of each program and periodically throughout the term of the contract. Testing includes, but is not limited to a review of the baseline for compliance with contractual terms including M&V Plan, testing of baseline data for reasonableness, accuracy and completeness, substantive sampling techniques for Third Party Software bill entry data correctness, Third Party Software settings and standard and special adjustments appropriateness and correctness.

The parties agree this M & V plan will be modified as mutually agreed to reflect changes that occur or additional data that may be obtained.

This M & V plan has been developed for Brick Township Public School District by the following qualified professional.

CENERGISTIC LLC



Eileen Byrd

SENIOR VICE PRESIDENT - QUALITY ASSURANCE

CERTIFIED PUBLIC ACCOUNTANT (Texas State Board of Public Accountants)

CERTIFIED INTERNAL AUDITOR (Institute of Internal Auditors)

CERTIFIED QUALITY ENGINEER (American Society of Quality)

CERTIFIED MEASUREMENT AND VERIFICATION PROFESSIONAL (Association of Energy Engineers)

CERTIFIED ENERGY MANAGER (Association of Energy Engineers)

Schedule 12(b)

Mandatory Affirmative Action Language

During the Term of this contract, Cenergistic (referred to in this Schedule as the "contractor") agrees as follows:

1. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional or sexual orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer (PACO) setting forth provisions of this non-discrimination clause;
2. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, or affectional or sexual orientation or sex;
3. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
4. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-33 et seq., as amended and supplemented from time to time.
5. The contractor or subcontractor agrees to make good faith efforts to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division pursuant to N.J.A.C. 17:27-5.2.
6. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, or affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
7. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
8. In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.