



City of Ann Arbor, MI

EnergyCAP Subscription Agreement

EnergyCAP, LLC

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EnergyCAP® Subscription Agreement

This Subscription Agreement (this “Agreement”), dated as of _____, 2025 (“Effective Date”), is by and between EnergyCAP, LLC, a Delaware limited liability company (“ENC”), and City of Ann Arbor, a Michigan municipality (“Subscriber”), for use of the Subscription Services (as defined below). ENC and Subscriber are referred to individually as a “Party” and collectively as the “Parties.”

In consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

1. DEFINITIONS.

- 1.1. “Applicable Law” means any statute, ordinance, judicial decision, executive order, directive, or regulation having the force and effect of law in each case to the extent applicable to a Party, the Services or, in connection with this Agreement.
- 1.2. “Defect” has the meaning assigned in Section 6.1.2 below.
- 1.3. “Documentation” means any explanatory materials, such as user manuals, training manuals, specifications regarding the implementation and use of the Subscription Services (electronic or written) that is provided or made available by ENC regarding the Subscription Services, as may be updated from time to time.
- 1.4. “Fees” means any fees due for the Subscription Services set forth on the applicable Order.
- 1.5. “Force Majeure Event” means any event or circumstance that is beyond the control of an affected Party and that prevents the performance of any of the affected Party’s obligations under this Agreement or prevents Subscriber from using the benefits of the Subscription Services including acts of God, acts of war, riots, acts of terror and other acts or omissions of third parties such as interruptions, delays, or malfunctions of service by third-party service providers; provided, however, “Force Majeure Event” expressly excludes any event that ENC could reasonably have prevented by testing, reasonable work around, other exercise of diligence or the use of technology common and prevalent in the industry.
- 1.6. “Initial Term” has the meaning assigned in Section 3.1.
- 1.7. “Subscriber Data” means all data uploaded into the Subscriptions Services or otherwise provided to ENC for purposes of providing the Subscription Services.
- 1.8. “Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.
- 1.9. “Material Subcontractor” means third-party contracted to perform a substantial part of the Subscription Services.
- 1.10. “Order” means any mutually agreed document referencing this Agreement that defines the specific Subscription Services purchased by Subscriber pursuant to this Agreement.
- 1.11. “Professional Services” means the consulting, development, implementation, training, and other services described in a mutually agreed statement of work (each, a “SOW”) executed by the Parties.
- 1.12. “Renewal Term” has the meaning assigned in Section 3.1.
- 1.13. “Subscription Services” means the online, web-based applications and platform provided by ENC as specifically described on the applicable Order.
- 1.14. “Support Services” means the services described in Section 6 below.
- 1.15. “Term” means the Initial Term and each Renewal Term, collectively.
- 1.16. “Users” means individuals who are authorized by Subscriber to use the Subscription Services and who have been supplied with user identifications and passwords by Subscriber (or by ENC at Subscriber’s request). Users may include Subscriber’s employees, consultants, contractors, and agents.

2. LICENSE GRANT; RESTRICTIONS.

- 2.1. During the Term, ENC hereby grants Subscriber a right to access and use the Subscription Services in accordance with the Documentation, this Agreement and the limitations set forth in the applicable Order.
 - 2.1.1. Subscriber may authorize its Users to access and use the Subscription Services. Subscriber is responsible for (i) the confidentiality of all usernames and passwords and all activities that occur under such usernames; and (ii) each User’s compliance with the terms of this Agreement. Subscriber shall promptly notify ENC of any suspected unauthorized access to the Subscription Services.
 - 2.1.2. Subscriber may (i) include its company name or logo in the Subscription Services interface and reports; and/or (ii) create its own branded login screen; however, the EnergyCAP logo and other identifiable EnergyCAP content may be present throughout the application and in help content.
 - 2.1.3. Subscriber is responsible for the telecommunications, broadband and computer equipment and services needed to access and use Subscription Services.
- 2.2. Subscriber will not (i) alter, modify, or adapt the Subscription Services or Documentation, in whole or in

part, in any way; (ii) disassemble, decompile, reverse engineer, translate or create derivative works of the Subscription Services; or (iii) transfer, distribute, rent, sub-license, or lease the Subscription Services or the Documentation; (iv) use any external program to alter, edit or append records to the data files without using ENC-provided external tools and interfaces; (v) remove, alter or obscure any product identification, copyright or proprietary notices; (vi) upload or provide any information or materials that are defamatory, offensive, abusive, obscene, of menacing character, or that violate any third party's privacy or intellectual property rights; (vii) use the Subscription Services to threaten, defame, bully, harass, or harm persons or their property; (viii) send, store or distribute any Malicious Code with the intent or effect of damaging, destroying, disrupting, monitoring or otherwise impairing ENC's or any third party's network, computer system, or other equipment, or any third party data contained therein; or (ix) access the Subscription Services or use the Documentation in order to build a similar or competitive product.

- 2.3. ENC shall retain all right, title, and interest in and to its proprietary intellectual property ("ENC IP"), including, without limitation, all concepts, frameworks, methodologies, analytic techniques, management tools, know-how, software, survey designs, metrics, diagnostic instruments, data sets, databases, the Subscription Services, the Documentation, and any and all enhancements, modifications, improvements, or derivative works thereto (collectively, the "Enhancements"), whether or not created or developed in conjunction with Subscriber. ENC IP is an integral part of ENC's knowledge base and may be reused across projects and clients. In performing its obligations under this Agreement, ENC may use, replicate, create, modify, or enhance elements of the ENC IP. All such elements, including all Enhancements, shall remain the sole and exclusive property of ENC. All applicable rights to patents, patent applications, copyrights, trademarks, trade secrets, and any other proprietary rights in and to the ENC IP are, shall be, and shall remain with ENC. Except for the limited rights expressly granted to Subscriber under this Agreement, no rights are granted to Subscriber or its employees or agents, and neither shall acquire any proprietary interest in or to the ENC IP.
- 2.4. Subscriber Data. As between Subscriber and ENC, Subscriber exclusively owns all rights, title, and interest in and to all of Subscriber Data and is solely responsible for the accuracy, quality, integrity, and legality of Subscriber Data and of the means by which Subscriber acquired the Subscriber Data. Subscriber grants ENC and its third-party providers a non-exclusive, worldwide, royalty-free, and fully paid license to use the Subscriber Data solely as necessary to perform the Subscription Services.
- 2.5. Feedback. The parties acknowledge that the Subscription Services may collect and aggregate certain de-identified information and data regarding the use and operation of the Subscription Services by Subscriber. Subscriber agrees that ENC may utilize such information and data as well as any Subscriber suggestions, enhancement requests or other recommendations (collectively, "Feedback") for any lawful business purpose, without a duty of accounting to Subscriber so long as such Feedback does not identify Subscriber or Subscriber Data. No compensation shall be paid with respect to ENC's use of Feedback.
- 2.6. Aggregated Data. Subscriber grants ENC a non-exclusive, royalty-free license to Use De-identified Subscriber data in business intelligence initiatives. "De-identified" means data that is not attributable to or identifiable as specific buildings, utility accounts, utility meters or premise addresses in a manner that could allow an observer to identify the point of service. "Use" means analysis for purposes of creating and displaying useful data-based cross-Subscriber products and tools, industry, and regional key performance indicators (KPIs), benchmarks, and statistical results such as averages and means, for distribution to and the benefit of ENC customers generally. De-identified data and analyses may be shared with third parties such as consultants, vendors, educational and public entities. Under no circumstances shall ENC sell, license, monetize, or otherwise commercially exploit any Subscriber Data.

3. TERM.

- 3.1. All Subscription Services will be provided beginning on the effective date of the applicable Order (the "Order Effective Date") and continuing for the term identified on the applicable Order (the "Initial Term") unless earlier terminated in accordance with this Agreement. Upon completion of the Initial Term, the Subscription Services shall automatically renew for successive one (1) year periods (each, a "Renewal Term") unless a different renewal period is specified on the applicable Order. Either Party must provide written notice of termination or Subscriber must provide written notice of requested changes to the Subscription Services no later than thirty (30) days' before the end of the Initial Term or the then-current Renewal Term. If no such notice is provided, the subscription will renew as-is under the terms outlined in the current agreement or applicable quote subject to Subscriber's available funding. Unless otherwise agreed in writing, each Renewal Term is subject to an annual increase not to exceed ten percent (10%). Subscriber must communicate its intent to terminate to sales@energycap.com to be effective. The Fees payable during any Renewal Term will be increased by ten percent (10%) (unless the pricing in such prior

Term was designated in the applicable Order as promotional or one-time) over the Fees paid during the prior Term and will be further adjusted to account for any increase in the scope of the Subscription Services.

- 3.2. A Party may terminate this Agreement and/or any then current Order for cause: (i) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period or such longer period as may be mutually agreed in writing; or (ii) immediately 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.
- 3.3. ENC may terminate this Agreement and/or any current Order if Subscriber fails to remit payment within ten (10) days after written notice from ENC with respect to any unpaid invoice.
- 3.4. Upon any termination for cause by Subscriber, ENC shall refund any prepaid Fees covering the remainder of the then current Term. Upon any termination for cause by ENC, Subscriber shall pay all Fees due and to become due during the Term of any then current Order(s). In no event shall any termination relieve Subscriber of its obligation to pay any Fees due for Services provided prior to the effective date of termination.
- 3.5. During the period of thirty (30) days after the effective date of termination of the applicable Order, Subscriber may retrieve Subscriber Data via existing reports, out-of-the box export capabilities or from screen captures. After such 30-day period, ENC shall have no obligation to provide any Subscriber Data to Subscriber or otherwise maintain the Subscriber Data and may thereafter, unless legally prohibited, delete all Subscriber Data in its systems or otherwise in ENC's possession or under ENC's control.
- 3.6. ENC may suspend Subscriber's access to or use of any of the Subscription Services without notice if ENC reasonably believes that such suspension is necessary to preserve the security, integrity, or accessibility of the Subscription Services or in the event of delinquent payment by Subscriber. In the event that access to the Subscription Services is suspended for delinquent payment by Subscriber, Fees for such Subscription Services will still be applicable during the suspension period.

4. FEES, PAYMENT TERMS.

- 4.1. ENC agrees to invoice Subscriber and Subscriber shall pay for the Subscription Services in accordance with the terms set forth in the applicable Order. Payment is due within 30 days from the date of the applicable invoice unless otherwise set forth in the applicable Order.
- 4.2. Subscriber shall be responsible for all taxes imposed by any governmental agency with respect to the Subscription Services and related services rendered by ENC other than taxes based on ENC's income or property.
- 4.3. If any undisputed amount owed hereunder is more than 30 days past due, and ENC promptly provided written notice of the amount past due, ENC may impose a late payment fee not exceeding the lesser of 1% per month and the maximum amount permitted by law on the undisputed amount past due.

5. WARRANTIES; DISCLAIMERS.

- 5.1. ENC warrants that during the Term the Subscription Services will perform materially in accordance with the Documentation and the functionality of the Subscription Services will not be materially decreased. In the event of any breach of the foregoing warranty, ENC will use commercially reasonable efforts to correct the reported non-conformity and/or breach, at no charge to Subscriber, or if ENC is unable to do so within a reasonable period, not to exceed thirty (30) days, Subscriber may terminate the applicable Order, and Subscriber will receive a pro-rata refund of any unearned Fees, based on the date Subscriber reported the non-conformance, that Subscriber has pre-paid for the Subscription Services.
- 5.2. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, THE SUBSCRIPTION SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. SUPPLIER DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES WILL RUN WITHOUT ERROR OR BE PROBLEM-FREE.

6. CONFIDENTIAL INFORMATION.

- 6.1. Definition of Confidential Information. "Confidential Information" is any document or other media or tangible items that relates to research, development, trade secrets, clients, business affairs or that contains any other information of a Party that was not generally available to the public when received by the other Party. "Confidential Information" includes Subscriber's technology, Subscriber's utility billing and rate information, ENC's technology, and the terms and conditions of this Agreement. "Confidential Information" does not

include information that: (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party.

- 6.2. Protection of Confidential Information. Each Party acknowledges that it will or may have access to Confidential Information of the other Party and therefore each Party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that Party's attorneys, accountants and other advisors as reasonably necessary and providing that they agree to be bound by obligations of confidentiality at least as strict as those contained herein), nor permit any of its partners, shareholders, directors, officers, employees, agents or contracting parties to use or disclose, any of the other Party's Confidential Information and will take precautions necessary to protect the confidentiality of such Confidential Information using the same degree of care used to protect its own Confidential Information, but in any case using no less than a reasonable degree of care.
- 6.3. Compelled Disclosure. The receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency or as required by law, provided that it gives the disclosing Party reasonable prior written notice sufficient to permit the disclosing Party to contest such disclosure. If the disclosing Party is not successful in precluding the requesting legal body from requiring disclosure of the Confidential Information, the receiving Party shall furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded with the Confidential Information.
- 6.4. Ownership of Confidential Information. All Confidential Information disclosed pursuant to this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of the disclosing Party. All such information in tangible form shall be returned to the disclosing Party promptly upon written request or the termination or expiration of this Agreement and shall not thereafter be retained in any form by the receiving Party, its Affiliates, or any employees or independent contractors of the receiving Party or its Affiliates.
- 6.5. Survival. SECTION 6 SHALL REMAIN IN FULL FORCE AND EFFECT FOR SO LONG AS EITHER PARTY RETAINS ANY CONFIDENTIAL INFORMATION OF THE OTHER PARTY.
- 6.6. Nothing in this Agreement shall prevent Subscriber from timely compliance with requests for public records pursuant to Michigan Freedom of Information Act ("FOIA") (MCL 15.231 et seq.) or request for records pursuant to a valid court order. Subscriber will, when practicable, provide ENC with notice of any such request that seeks ENC's Confidential Information.

7. INDEMNIFICATION.

- 7.1. Indemnification by ENC. ENC will defend Subscriber against any claim, demand, suit, or proceeding ("Claim") made or brought against Subscriber by a third party alleging that the use of the Subscription Services as permitted hereunder infringes or misappropriates the intellectual property rights of such third party, and ENC shall indemnify and hold harmless Subscriber from and against any damages finally awarded against, and for reasonable attorney's fees incurred by, Subscriber in connection with any such Claim.
- 7.2. Indemnification by Subscriber. RESERVED
- 7.3. Exclusive Remedy. ENC shall have no obligation under Section 7.1 for any Claim to the extent arising out of or is based upon: (i) Subscriber's use of the Subscription Services not in compliance with this Agreement or the Documentation; (ii) Subscriber's combination of the Subscription Services with software, hardware, system, data, or other materials not supplied or authorized by ENC (unless expressly permitted by the Documentation) without ENC's prior written authorization; (iii) ENC's adherence to Subscriber's written specifications or written instructions pursuant to a separate SOW or (iv) the Subscriber Data. In the event an infringement or misappropriation Claim involving the Subscription Services is brought or threatened, or is likely to be brought or threatened in ENC's reasonable opinion, ENC will, at its sole option and expense: (x) procure for Subscriber the right to continue to use the Subscription Services, (y) modify the Subscription Services in a manner that does not materially degrade the functionality of the Subscription Services functionality, or (z) terminate the affected Subscription Services and, with respect to such termination, refund the unearned portion of the applicable pre-paid Fees. Notwithstanding anything else herein, the foregoing indemnification obligations are ENC's only obligations and liability, and Subscriber's exclusive remedy, in respect of any infringement or misappropriation Claim.
- 7.4. Process. Each Party seeking indemnification hereunder shall provide the other Party with: (i) prompt written

notice of any Claim for which indemnification is sought; and (ii) reasonable assistance and cooperation in such defense at the indemnifying Party's expense. Notwithstanding the foregoing, the indemnifying Party may not enter into a settlement of a claim that involves a remedy other than the payment of money by the indemnified Party (which amounts must be subject to indemnification by the indemnifying Party) without the indemnified Party's written consent.

8. LIMITATION OF LIABILITY.

- 8.1. LIMITATION OF LIABILITY. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY OR ITS AFFILIATES, ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY SUBSCRIBER HEREUNDER FOR SUBSCRIPTION SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT SUBSCRIBERS' PAYMENT OBLIGATIONS UNDER SECTION 4 ("FEES, PAYMENT TERMS") ABOVE.
- 8.2. EXCLUDED DAMAGES. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, OR GOODWILL, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, STORE CLOSURES, OR ANY BUSINESS INTERRUPTION OR LOSS OF DATA, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW

9. HOSTING SERVICES, SECURITY

- 9.1. ENC will make the Subscription Services available 99% of the time determined on a quarterly basis during the Term except for: (a) planned downtime (of which ENC will provide at least 8 hours' prior notice which notice will be provided via the Subscription Services and be scheduled to the extent practicable during the weekend hours from 6:00 p.m. Eastern time Friday to 6:00 a.m. Eastern time Monday), or (b) any unavailability caused by a Force Majeure Event.
- 9.2. ENC will implement and maintain administrative, physical, and technical safeguards designed to ensure that the Subscription Services meet then-current and relevant industry standards relating to the privacy, security, confidentiality, integrity, and availability of Subscriber Data, including by maintaining a written information security program that includes applicable policies, procedures, training, and technology controls designed to protect Subscriber Data from unauthorized access, use, disclosure, alteration, or destruction. ENC will only use and/or process Subscriber Data in accordance with this Agreement and for purposes of providing the Services.
- 9.3. ENC will promptly (and in any event within forty-eight (48) hours) notify Subscriber in the event of the occurrence of any unauthorized access to Subscriber Data (a "Data Privacy Breach"). ENC will provide as many details as known at that time – including root cause of breach and remediation steps performed by ENC - (and regularly update Subscriber thereafter in writing or by email followed by a written notification) setting out in reasonable detail, without limitation, the nature of the information compromised, threatened, or potentially compromised, the specific information compromised or potentially compromised and of all events which may adversely affect ENC's ability to provide the Subscription Services. ENC further agrees to provide reasonable assistance and cooperation requested by Subscriber in the furtherance of any correction, remediation, or investigation of any Data Privacy Breach.
- 9.4. ENC grants to Subscriber a limited, nonexclusive, nontransferable, non-sublicensable, worldwide, license during the Subscription Term to use and make calls to the API to develop, implement, and distribute Subscriber-owned applications solely for use by Subscriber and its End Users in connection with the Subscription Services. ENC may modify, amend, change, or deprecate all or part of any API in its reasonable discretion at any time (an "API Modification"). ENC shall use commercially reasonable efforts to notify Subscriber of any such actions as soon as reasonably practical. Subscriber shall, within thirty (30) days from the date of first notice of any API Modification(s) (or such shorter period of time specified in the notice of the API Modification(s)) (the "Conformance Period") comply with such modification(s) by (i) implementing and using the most current version of the API, (ii) making any changes to Subscriber's application using the API that may be required as a result of such API Modification, (iii) using commercially reasonable efforts to stop distribution of all prior versions of Subscriber applications using the API and (iv) using commercially reasonable efforts to upgrade all prior versions of Subscriber's applications using the API then in use to the most recent version. Subscriber acknowledges that an API Modification may have

a material adverse effect on Subscriber's applications using the API, causing such applications to not operate as designed. ENC shall have no liability of any kind to Subscriber or any User with respect to such API Modifications or any adverse effects resulting from the use or failure to use such API Modifications. ENC reserves the right to monitor and enforce, within reason, rate-limiting and throttling of API calls.

10. SUPPORT SERVICES.

- 10.1. ENC will provide (i) all enhancements and updates to the Subscription Services that are not separately marketed by ENC and are made available by ENC to its customers generally during the Term to Subscriber. ENC will use reasonable efforts to notify Subscriber at least two weeks in advance of all major enhancements which require planned downtime. Release notes will be provided and made available to Subscriber at the same time and in the same format as ENC provides to its customers generally.; (ii) Support Services for the Subscription Services such that the Subscription Services perform substantially in accordance with Documentation.
- 10.2. ENC will use commercially reasonable efforts to correct or replace Subscription Services and/or provide Support Services to remedy any failure of the Subscription Services to perform substantially in accordance with Documentation (a "Defect"). SUCH CORRECTION, REPLACEMENT, OR SUPPORT SERVICES SHALL BE SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY, AND ENC SHALL HAVE NO OTHER LIABILITY, FOR DEFECTS.
- 10.3. Subscriber acknowledges and agrees to review and understand the applicable product terms for each product to which it subscribes. Such product terms will be made available to the Subscriber during the implementation process and upon written request to the ENC support team. The Subscriber further acknowledges that product terms may be updated from time to time; however, any such updates shall not materially diminish the core functionality of the products or the Subscriber's rights therein.
- 10.4. In the event (i) any Defect is determined by ENC to be attributable to Subscriber's acts or omissions or to Subscriber's software, hardware, modifications, or system changes, or (ii) Subscriber requests assistance in connection with additional training, correction of database errors and/or data conversion, ENC shall provide a quotation to Subscriber for additional Professional Services at its then current rates for the Professional Services.
- 10.5. Support Services will be provided during regular business hours defined as 8:00 AM-5:00 PM ET Monday through Friday except federal holidays. Subscriber may receive support via the toll-free support hotline at 877-327-3702 or by submitting a support ticket at <https://Helpcenter.EnergyCAP.com>.
- 10.6. Subscriber may call or submit support tickets via the online support ticketing system only to report a Defect, but not for general operating or training questions.
- 10.7. After-Hours Support Services are available via the support ticket system and online help manuals accessible from within the Subscription Services. Support tickets submitted after 5:00 PM ET will be addressed at the start of the next business day. ENC will use reasonable efforts to respond to all support requests in accordance with the times set forth in the table below.

Service Level	Response	Resolution	Definition
Critical	1 business hour	1 business day	The Subscription Services is offline or unavailable, data has been corrupted or lost and must be restored from a backup, and/or a business-critical feature/function is not available.
High	2 business hours	2 business days	Material features of the Subscription Services are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.
Medium	8 business hours	5 business days	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation, or configuration; bug affecting a small number of users. Acceptable workaround available.

- 10.8. Subscriber is responsible for (a) any services relating to software or hardware not provided by ENC, including, without limitation, any programming performed by Subscriber; (b) training of current or new Subscriber employees (technical support requests may not be used as a substitute for software training);

and (c) correction of user errors and database errors; (d) supporting software and hardware such as operating systems, browsers, and Subscriber workstations.

- 10.9. Support Services do not include revisions to deliverables. If revisions are requested, then ENC shall provide a quotation to Subscriber for Professional Services at ENC's then-current rates for such services.

11. INSURANCE.

- 11.1. During the Term, ENC will maintain in effect, at all times, all the insurance specified below with insurers having an A.M. Best rating of A-VIII or better.
- 11.2. Commercial General Liability Insurance. ENC shall maintain commercial general liability insurance ("CGL") with a limit of not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.
- 11.3. Workers' Compensation and Employer's Liability Insurance. ENC shall maintain statutory workers' compensation insurance as required by applicable laws. ENC shall also maintain employer's liability insurance. The limit for each policy shall not be less than \$500,000 per occurrence.
- 11.4. Business Auto Liability Insurance. ENC shall maintain business auto liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned.
- 11.5. Excess/Umbrella Liability Insurance. ENC shall maintain excess or umbrella liability insurance with a limit of not less than \$4,000,000 per occurrence.
- 11.6. Errors and Omissions Insurance. ENC shall maintain errors and omissions insurance with a limit of not less than \$5,000,000.
- 11.7. Certificates of insurance evidencing all these coverages shall be provided to Subscriber upon request once each year during the Term.

12. GENERAL TERMS.

- 12.1. Changes to the Subscription Services. ENC may modify the Subscription Services from time to time by removing unused features or substituting outdated features with new features that have similar or improved functionality or otherwise, as may be necessary to meet any applicable legal, regulatory, or industry-standard requirements or demands.
- 12.2. Notice. Any notices required by this Agreement, or any attachment hereto, shall be in writing and shall be given to the parties by hand, by nationally recognized overnight courier service or by express, registered, or certified mail, postage prepaid, return receipt requested or by email (provided the original is delivered via one of the preceding methods on or prior to the fifth (5th) day after transmission of the e-mail). Notices shall be deemed to have been given upon actual receipt thereof. Notices to ENC shall be directed via mail to EnergyCAP, LLC, 360 Discovery Drive, Boalsburg, PA, 16827, via fax: 719.623.0577, or via email: Accounts.Receivable@EnergyCAP.com.
- 12.3. Governing Law and Jurisdiction. This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The Parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The Parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.
- 12.4. Waiver of Jury Trial. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 12.5. Force Majeure. A Party shall be excused from complying with this Agreement and the Orders if, to the extent, and for as long as, such Party's compliance is delayed or prevented by a Force Majeure Event; provided, however, a Force Majeure Event shall not excuse performing duties that are unrelated to the Force Majeure Event, including discharging financial obligations.
- 12.6. Export Compliance. Each Party shall comply with the export laws and regulations of the United States in providing and using the Services. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
- 12.7. 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.

- 12.8. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 12.9. Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
- 12.10. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 12.11. Collection Fees. Subscriber shall be responsible for any collection fees incurred by ENC in collecting Fees.
- 12.12. Assignment. Neither Party may assign this Agreement or any Order without the prior written consent of the other Party, except to an Affiliate or an entity that acquires all or a majority of its stock, business, or assets, whether through merger, consolidation, reorganization or otherwise. Any assignment in violation of the foregoing shall be void and of no effect.
- 12.13. Surviving Provisions. Section 2.3, Section 2.6, Section 4.2, Sections 6 through 8 and Section 12 shall survive any termination or expiration of this Agreement.
- 12.14. Entire Agreement. This Agreement, together with any Order, attachments and all documents incorporated by reference herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations, understandings, or other matters, whether oral or written, with respect to the subject matter hereof. This Agreement shall take precedence over any conflicting terms in any Order or any Subscriber-provided purchase or procurement documentation, such as a purchase order, acknowledgement form, or other similar documentation and any pre-printed terms and conditions on or attached to Subscriber's purchase orders or invoices will be of no force or effect.
- 12.15. Modifications. This Agreement can only be modified, changed, or amended in writing and signed by a duly authorized representative of each of the parties.

Terms Related to the EnergyCAP Modules

Subscriber's right to access and use the EnergyCAP modules listed on the applicable Order (the "EnergyCAP Services") is subject to the following additional terms. If there is a conflict between the terms set forth below and the Agreement, the terms set forth below control for purposes of the EnergyCAP.

1. Additional Definitions:
 - 1.1. "Meter" means a point of service as itemized on a vendor bill or tracked in the Services as a meter/logical device that tracks a commodity or resource. A Meter can track bills, interval, or channel data, and may represent points of service for which no physical meter exists, including but not limited to a sewer, waste, recycling, fire lines, outdoor lighting, fuel oil tanks, storm drainage, internet service provider, telephone service. Meter records that are formula based or used in split, calculated, and virtual bill processes for chargeback, cost allocation, and distribution purposes are included in the total Meter count for purposes of this Agreement.
2. The Fees listed in the applicable Order are based upon the Subscriber's Meter inventory and Subscriber's current software module utilization needs as of the Effective Date. All Meters present in the database, including those listed as inactive, will count against the total Meter count. The number of Meters will be reviewed quarterly. **Excess utilization (i.e., Meters in excess of the amount stated in the applicable Order) will be billed quarterly in arrears at the per Tier annualized "Cost per Meter" set forth on the Order.**

Terms Related to SUBSCRIPTION DATA SERVICES

Subscriber's use of (i) the interface to ENERGY STAR Portfolio Manager, (ii) Weather Data, and/or (iii) Greenhouse Gas Emission factor updates (each, a "Subscription Product" and, collectively, the "Subscription Products") are subject to the terms set forth below:

1. The Subscription Products and contents therein are property of ENC or its independent third-party providers. Third party content and/or data may be imported or may be accessible via links from our Products. Subscriber acknowledges and agrees that ENC is not responsible for and assumes no liability for any loss or damages which may be incurred as a result of any mistakes, omissions, or incorrect data or representations or any other form of content provided by ENC.

2. The SUBSCRIPTION PRODUCTS ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. Neither ENC, nor any data suppliers or third-party providers make any warranty whatsoever as to the accuracy or completeness of the content or the results to be obtained from using the information contained therein, and neither ENC nor any data suppliers or third-party providers will be responsible for any claims attributable to errors, omissions, or other inaccuracies in the information contained in the content or results thereof. The entire risk for the results and performance of the Subscription Products is assumed by Subscriber.

Terms Related to Bill CAPture Services

Subscriber's right to access and use the Bill CAPture processing services (the “Bill CAPture Services”) is subject to the following additional terms. If there is a conflict between the terms set forth below and the Agreement, the terms set forth below control for purposes of the Bill CAPture Services:

1. Definitions:
 - 1.1. “Bill Pay Processing” is the period beginning when onboarding, implementation, and transition of bill pay responsibilities is complete and ENC becomes responsible for paying bills on behalf of the Subscriber.
 - 1.2. “Current Bills” are bills with a statement date within sixty (60) calendar days of the receipt date after live processing begins.
 - 1.3. “Enrolled Meter” means each point of service that is setup as a meter, which has a unique account, that Subscriber wants the Bill CAPture service to process Transactions for. Enrolled Meters only process bills with bill dates on or after the date the Meter is set up in the Subscription Services. Historical Bills are not included in Enrolled Meters.
 - 1.4. “Historical Bills” are bills having a statement date greater than sixty (60) calendar days from the receipt date.
 - 1.5. “Live Processing” is the period beginning when meter enrollment is complete, and all bills received by ENC for the Enrolled Meters can be processed.
 - 1.6. “Receipt Date” is the date bills are received by ENC.
 - 1.7. “Transaction” means each Enrolled Meter present on a utility bill invoice. Utility bills that include multiple Enrolled Meters are counted as multiple Transactions on the basis of one Transaction for each Meter.
2. Subscriber Responsibilities
 - 2.1. Bill CAPture Services fees are bundled and invoiced based on per Transactions pricing.
 - 2.2. Subscriber must enroll/identify all the Enrolled Meters at one time unless the Parties mutually agree in the applicable Order that Meters can be enrolled in phases. Meter enrollment and setup will commence within sixty (60) days after ENC’s receipt of all Enrolled Meters from Subscriber and be completed within a mutually agreed upon period.
 - 2.3. It is expected that account numbers and all data will be set up correctly in Subscriber’s EnergyCAP database prior to enrollment in Bill CAPture Services. In the event the initial entry of account information is unsuccessfully imported and rejected, Subscriber is responsible for making the necessary corrections in the EnergyCAP database to resolve the kick-outs.
 - 2.4. Subscriber is responsible for all EnergyCAP data revisions and maintenance including: the creation of new accounts, Meters, places, and vendors, managing account number changes, and taking action on bill kick-out reports, and for notifying ENC about any expected changes to Enrolled Meters a utility vendor may make. If Subscriber requires ENC’s assistance in connection with the performance of these responsibilities (collectively, “Professional Services” or “Managed Services”), ENC may provide a Change Order to Subscriber to address the scope of work to edit existing account, Enrolled Meter, and vendor fields and, upon acceptance, invoice Subscriber for the additional services.
3. Bill Acquisition
 - 3.1. ENC will provide Bill Acquisition services at its sole discretion when it determines that such services are operationally advantageous and cost-effective. This includes, but is not limited to, situations where electronic data interchange (EDI) or comparable automated methods are available. ENC will not acquire bills from vendors that require manual retrieval methods—such as downloading from vendor websites or portals—as such processes are not scalable, efficient, or consistent with ENC’s service model.
 - 3.2. The following Service Levels apply to Bill Processing Services:

Service	Service Level	Definition
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Bill Acquisition for both Pre-Payment and Post-Payment	An additional five (5) business days in addition to business days listed in Bill Processing SLA section for Pre-Payment and Post-Payment Bills	Bill Acquisition is a method of delivery where a bill in PDF format is downloaded directly from vendor websites using Subscriber's login credentials.
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3.3. Exceptions for the Bill Acquisition Service Level: In the event of credential failures, missing bills, website changes, or other issues outside of ENC's control that prevent the system from accessing bill images, these incidents are excluded from SLA calculations. Bill Acquisition services are limited to utility vendors that ENC has verified are able to consistently provide a quality utility bill within this SLA. ENC continuously evaluates the quality of the vendors for which Bill Acquisition is available and may, at its discretion and in writing to Subscriber, discontinue service when the level of consistency prevents ENC from meeting or exceeding this SLA agreement. When ENC discontinues Bill Acquisition for a utility vendor, ENC will identify the new preferred bill delivery method which may require Subscriber to manually upload PDFs or switchover to another Bill Acquisition method.

3.3.1. ENC will provide notice to Subscriber in the event Subscriber needs to be responsible for bill acquisitions for vendor bills which cannot be efficiently acquired by ENC.

3.3.2. Bill acquisition services are included as part of the Bill Pay pricing. ENC reserves the right to assess additional fees for **BC** customers who request Bill Acquisition without subscribing to Bill Pay.

3.3.3. As part of ongoing service improvements, ENC may work with legacy **BC** customers to transition from PDF-based billing to EDI or other automated formats, with the goal of enhancing efficiency and reducing manual intervention.

4. Bill Processing

4.1. Bill Processing will be provided for the term set forth on the applicable Order and subject to payment of the applicable annual fees based on the number of Transactions set forth on the applicable Order. ENC counts a Transaction when data is first submitted by Subscriber or via automated delivery method authorized by Subscriber during Meter enrollment. Refunds will not be provided based on Subscriber failure to update.

4.2. Upon the anniversary date of the applicable term, ENC will invoice Subscriber based on the current Transactions for the next annual term. ENC will notify Subscriber of any changes to the fees payable for the Bill CAPture Services at least thirty (30) days prior to the end of the then current term. If the total number of Transactions (by delivery type and format; historical and annual) processed in the completed term exceeds the amount set forth in the original Order, the volumes will be increased accordingly, and ENC will invoice Subscriber for the additional fees. When the total committed volume processed in the completed term is less than the amount set forth in the original Order, such excess volume will be forfeited.

4.3. If the total number of Transactions processed through the Bill CAPture Service exceeds the committed quantity specified in the applicable Order Form during the Initial Term or and Renewal Term, ENC reserves the right to automatically increase the contracted committed volume mid-Term on actual usage and invoice any increases as well as reflect any increases in volumes in the invoices in any Renewal Term. Subscriber may request current transaction usage summaries through ENC support.

4.4. The annual Bill Processing fee is based on the assumption that Subscriber, and utility vendors on behalf of Subscriber, will provide bills to ENC in the following formats: paper, pdf, scanned images, and flat files such as EDI 810, .xls, .csv, .txt, and xml. Subscriber agrees to support bill delivery method at ENC discretion. Options by which data files may be transferred include website upload, secure FTP transfer, mail redirect, website download or other means as mutually agreed by the Parties. If Subscriber requests a change in utility bill formats causing the scope of bill delivery to change at any point, ENC may provide a Change Order to Subscriber and, upon acceptance, invoice Subscriber for any changes in costs due to the task change(s).

4.5. Bill Processing Service Levels. ENC will process Subscriber's utility bills in accordance with the Order and as defined below. ENC's processing includes all body lines from the utility bills. If available, an electronic image of each bill will be linked to each utility bill processed by ENC.

4.5.1. The following Service Levels apply to Bill Processing:

Service	Service Level	Definition
Pre-Payment Bills	Within three (3) business days of receipt by ENC from Subscriber or Subscriber's vendor(s)	Pre-Payment Bills are Current Bills that have not yet been processed for payment by Subscriber.

Service	Service Level	Definition
Post-Payment Bills	Within five (5) business days of receipt by ENC from Subscriber or Subscriber's vendor(s)	Post-Payment Bills are Current Bills that have already been processed for payment by Subscriber via a means other than the Bill CAPture Services.
Historical Bills	Varies based on volume	Historical Bills are Post-Payment Bills that have an end date greater than sixty (60) calendar days from the receipt date.

4.6. ENC SHALL BE LIABLE FOR THE PAYMENT OF UTILITY VENDOR LATE FEES, INTEREST CHARGES, OTHER VENDOR-IMPOSED PENALTIES, OR DAMAGES PERTAINING TO UTILITY SERVICE DISRUPTIONS ONLY IF:

- 4.6.1. ENC provides pre-payment Bill CAPture services pursuant to an Order and the bill records are exported to Subscriber's accounting system for payment or ENC is paying bills on behalf of Subscriber.
- 4.6.2. Such late fee is imposed directly as a result of a failure of ENC to accurately process a utility bill that has been provided in compliance with the terms and timelines,
- 4.6.3. The fee was incurred after the date the first live bill was processed in the service for each meter,
- 4.6.4. The bill is provided by a vendor in the United States or Canada, with greater than twenty-one (21) business days payment terms, and ENC has received the bill from the vendor or Subscriber at least fifteen (15) calendar days prior to the bill due date,
- 4.6.5. For bill payment services, Subscriber has provided funding at least twelve (12) days prior to bill due dates, such funds are readily available to ENC for payment to the vendor(s), and Subscriber has either elected to auto-approve bills or Subscriber has approved the correct payment amount at least (13) days prior to bill due date;

Professional Services Terms

These terms set forth the terms and conditions pursuant to which ENC will provide Professional Services to Subscriber. The Professional Services will be subject to the terms of the Agreement except to the extent otherwise set forth in these terms.

1. PROJECT SCHEDULE.

- 1.1. ENC and Subscriber will agree to provide the necessary resources to execute the tasks to meet project schedule milestones contained in each mutually agreed SOW. If the applicable SOW does not contain project schedule milestones, ENC and Subscriber will collaborate to establish a mutually agreed schedule and milestones promptly after project kickoff.
- 1.2. Completion of the Professional Services in accordance with the mutually agreed schedule is dependent upon (among other things) Subscriber's fulfillment of its obligations in a timely manner.

2. CHANGE REQUESTS.

- 2.1. If, due to Subscriber action or request, the implementation task attributes (description, conditions for satisfactory completion, resource assignment, duration) outlined in the SOW or the Project Schedule change at any point following agreement on the same, ENC retains the right to provide a Change Order quotation to Subscriber for additional Professional Services and, upon acceptance of the Change Order quotation, invoice Subscriber for costs incurred by ENC due to the task change(s). Task changes for which additional fees may apply include, but are not limited to, addition of Subscription Services features, changing the primary point(s)-of-contact designated by the Subscriber resulting in the need for duplication of training and coordination tasks, acceleration of the project timeline, or placing the implementation project on hold for an extended period of time, resulting in the need for remobilization at a later time. Fees related to the task change(s) will be calculated at ENC's then-current hourly rates and documented in the applicable Change Order, and the Change Order will be submitted to Subscriber for approval prior to acceptance or invoicing by ENC.

3. CUSTOM DEVELOPMENT.

3.1. To the extent custom development is to be provided as part of Professional Services in any mutually agreed SOW, Subscriber is responsible for delivering complete custom development specifications to ENC prior to the commencement of development services. ENC will develop the specified deliverables in the timeframe set forth in the applicable SOW. Delivered items will be referenced as "functional deliverables."

4. HOURLY SERVICES.

4.1. If ENC is to provide Professional Services on an hourly basis as described in the applicable SOW, the specified hours will be considered used during the term of the applicable SOW in accordance with the following formula: 3 calendar weeks per 10 hours unless otherwise agreed in writing by the parties. The applicable period shall begin upon Subscriber's initial request for the relevant Professional Services and end on the date calculated by the formula set forth above. ENC shall make its resources available for up to 10 hours per week during the contract period. The hours are provided on a "use it or lose it" basis and ENC will not refund any fees paid for unused or expired hours. If additional hours are needed beyond the level of service purchased in the applicable SOW, ENC will provide a quote based on the scope of work at its then current billable rates.

4.2. For avoidance of doubt, performance of the following Professional Services will be applied against the hours purchased: time spent on support and assistance tasks such as reviewing and manipulating Subscriber's database and data files, researching and replying to questions and issues, and consultation with other ENC resources on best practices and solutions. Typically, the contact hours with Subscriber via phone or online conference account for less than 25% of the contracted hours; provided, however, when any contracted hours are used exclusively for online training, will be applied at 100%.

5. PROFESSIONAL SERVICES WARRANTIES.

5.1. ENC's Warranties. ENC will exercise due professional competence and care consistently with generally accepted industry standards and practices in the performance of the Professional Services. In the event of a breach of the foregoing warranty, ENC will either (i) re-perform the deficient Professional Services; or (ii) return to Subscriber the fees paid for such services prior to the breach. Any claim for breach of the foregoing warranty must be made by notice to ENC within thirty (30) days of completion of the Professional Services with respect to which the claim is made, or said claim shall be deemed waived by Subscriber.

IN WITNESS, WHEREOF, the Parties, by their duly authorized representatives, have caused this Agreement to be executed as of the date first written below.

Subscriber
City of Ann Arbor, MI

EnergyCAP
EnergyCAP, LLC
360 Discovery Drive
Boalsburg, PA 16827

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____