



ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

TO: ENERGYCAP, LLC 360 DISCOVERY DRIVE BOALSBURG, PA 16827	DATE ISSUED: 12/9/2022 CONTRACT NO: 23-DES-SLA-315 CONTRACT TITLE: UTILITY MANAGEMENT SOFTWARE
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THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 23-DES-SLA-315 including any attachments or amendments thereto.

EFFECTIVE DATE: 12/9/2022
EXPIRES: NOVEMBER 30, 2023
RENEWALS: THIS IS THE FIRST YEAR AWARD NOTICE OF A POSSIBLE FIVE (5) YEAR CONTRACT.
COMMODITY CODE(S): 95800, 96800
LIVING WAGE: N

ATTACHMENTS:
AGREEMENT No. 23-DES-SLA-315

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

<u>VENDOR CONTACT:</u> JOHN HEINZ, VP – STRATEGIC ACCOUNTS	<u>VENDOR TEL. NO.:</u> (814) 413-0708
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EMAIL ADDRESS: JOHN.HEINZ@ENERGYCAP.COM

<u>COUNTY CONTACT:</u> CHARLES NJOKU (DES-AIRE)	<u>COUNTY TEL. NO.:</u> (703) 228-3557
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COUNTY CONTACT EMAIL: CCNJOKU@ARLINGTONVA.US

PURCHASING DIVISION AUTHORIZATION

DocuSigned by: <i>Arlene Palmer</i>	Title Buyer	Date 12/9/2022
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**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

AGREEMENT NO. 22-DES-SLA-315

THIS AGREEMENT is made, on 12/9/2022, between EnergyCAP, LLC, 360 Discovery Drive, Boalsburg, PA 16827 ("Contractor"), a Delaware limited liability company authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Exhibit A – Scope of Work
- Exhibit B – Contractor's Pricing And Terms

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Exhibit A), the primary purpose of the Work is to provide EnergyCAP software Utility Management application. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and, except as set forth in Exhibit B, sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence. The Work will commence on December 1, 2022 and must be completed no later than November 30, 2023 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a bilateral Notice of Renewal, authorize continuation of the Agreement under the same contract prices for not more than four (4) additional 12-month periods, from December 1, 2023 to November 30, 2027 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit A unless those additional goods or services are covered by a fully executed amendment to this Contract.

6. CONTRACT PRICE ADJUSTMENTS

The Contract Amount/unit price(s) will remain firm until November 30, 2023 ("Price Adjustment Date"). To request a price adjustment, the Contractor or the County must submit a written request to the other party not less than 90 days before the Price Adjustment Date. Adjustments to the Contract Amount/unit price(s) will not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the 12 months of statistics available at the time of the Contract's renewal.

Any Contract Amount/unit price(s) that result from this provision will become effective the day after the Price Adjustment Date and will be binding for 12 months. The new Price Adjustment Date will be 12 months after the price adjustment.

If the Contractor and the County have not agreed on a requested adjustment by 30 days before the Price Adjustment Date, the County may not renew the Contract, whether or not the County has previously elected to renew the Contract's term.

7. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within forty-five (45) days after receipt of an invoice. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

8. * PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County

for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

9. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

10. * NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

11. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

12. * COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

13. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not, except in the event of death, disability or termination of employment, replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will use all reasonable efforts to replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval, which will not be unreasonably withheld.

14. * EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

15. * EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

16. * DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

17. *SEXUAL HARASSMENT POLICY

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

18. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

19. COVID-19 VACCINATION POLICY FOR CONTRACTORS

Due to the ongoing COVID-19 pandemic, the County has taken various steps to protect the welfare, health, safety, and comfort of the workforce and public at large. As part of these steps, the County has implemented various requirements with respect to health and safety including policies with respect to social distancing, the use of face-coverings and vaccine mandates. To protect the County's workforce and the public at large, all employees and subcontractors of the Contractor who are assigned to this Contract, should be fully vaccinated against COVID-19. Any contractor employee or subcontractor who is not fully vaccinated should be following a weekly testing protocol as established by the Contractor, unless exempt pursuant to a valid reasonable accommodation under state or federal law.

20. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience. No fees will be refunded following termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 30 days or any longer period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

Termination by Contractor. If the Contractor reasonably determines that the County has failed to perform its obligations under this Contract, then the Contractor will give the County written notice of such failure(s) and the opportunity to cure them within the Cure Period. If the County fails to cure within the Cure Period, the Contractor may terminate the Contract for such breach by providing written notice with a termination date. Upon termination under this clause, the County will remit all amounts due and owing to the Contractor and the Contractor will cease performance of all work under this Contract.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits. No fees will be refunded following termination for convenience.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

21. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's or its subcontractors' negligence or willful misconduct in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

22. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

The Contractor shall have no obligation under Section 22 for any claim to the extent arising out of or based upon: (i) the County's use of the work not in compliance with this Agreement or the Documentation (as defined in Exhibit B); (ii) the County's combination of the work with software, hardware, system, data, or other materials not supplied or authorized by the Contractor (unless expressly permitted by the Documentation) without the Contractor's prior written authorization; (iii) the Contractor's adherence to the County's written specifications or written instructions pursuant to a separate SOW or (iv) infringement by the County Data. In addition to the indemnification obligations set forth in this Section, the event an infringement or misappropriation claim involving the work is brought or threatened, or is likely to be brought or threatened in the Contractor's reasonable opinion, the Contractor may, at its sole option and expense: (x) procure for the County the right to continue to use the work, (y) modify the work in a manner that does not materially degrade the functionality of the work functionality, or (z) terminate the affected work and, with respect to such termination, refund the unearned portion of the applicable pre-paid fees.

23. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created for the sole and exclusive use of the County pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

Notwithstanding the foregoing, the Contractor, including its subcontractors, has certain proprietary materials and intellectual property (collectively, "the Contractor IP") that it may use in connection with the provision of the work and deliverables hereunder. Without limitation, the Contractor IP includes preexisting proprietary information, know-how, ideas and concepts, document templates, project tools, algorithms, usability, requirements, rapid prototyping processes, methods, forms, graphics, software developed outside the scope of this Agreement, and other content provided by the Contractor. The Contractor IP shall also include (i) any improvements, revisions and derivatives to pre-existing the Contractor IP made in connection with any Statement of Work and (ii) any software and code (and components thereof) not created solely and exclusively for the County's use which are of a generic nature and do not contain any County Confidential Information. The County acknowledges that all right, title and interest in and to all the Contractor IP is and remains the exclusive property of the Contractor or the Contractor's suppliers.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

24. OWNERSHIP OF WORK PRODUCT

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All work product created for the sole and exclusive use of the County that results from this Contract is the property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

No Contractor IP will be included in any work product.

25. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

26. * ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

27. * COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

28. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract, provided that the affected party gives notice to the other party as soon as practicable after the force majeure event, including reasonable detail and the expected duration of the event's effect on the party.

29. * AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

30. * RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

31. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

32. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, reports must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)

- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

33. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

The Purchasing Agent may require the Contractor to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the Contract and furnish the service, material or goods specified herein in a satisfactory manner at any time during the term of this Contract.

34. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County, except that Contractor may, upon reasonable notice to the County, assign to an affiliate or an entity that acquires all or substantially all of its stock, business or assets, whether through merger, consolidation, reorganization or otherwise.

35. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

36. * ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

37. * DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

38. * APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

39. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

40. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

41. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

42. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

43. * ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

44. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

45. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

46. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

47. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

John Heinz, VP – Strategic Accounts
EnergyCAP, LLC
360 Discovery Drive
Boalsburg, Pennsylvania 16827
Phone: (814) 413-0708
Email: john.heinz@EnergyCAP.com

TO THE COUNTY:

Charles Njoku, Energy Project & Data Analyst
Arlington Initiative to Rethink Energy (AIRE)
Arlington County Department of Environmental Services
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3557
Email: ccnjoku@arlingtonva.us

AND

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3294
Email: slewis1@arlingtonva.us

TO COUNTY MANAGER’S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

48. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 (“Licenses”) of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060, or e-mail business@arlingtonva.us.

49. * NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

50. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$500,000/500,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$1,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Cyber - \$3,000,000 per occurrence/claim
- e. Errors & Omissions - \$1,000,000 per occurrence/claim
- f. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be listed as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- g. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- h. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- i. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County’s acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor’s insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

51. COUNTERPARTS

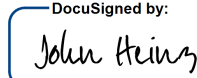
This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

ENERGYCAP, LLC

AUTHORIZED SIGNATURE: 
534895682490484...

AUTHORIZED SIGNATURE: 
20FD0EB3EF214F2...

NAME: Meloni Hurley

NAME: John Heinz

TITLE: Assistant Purchasing Agent

TITLE: VP, Strategic Sales

DATE: 12/9/2022

DATE: 12/8/2022

EXHIBIT A

SCOPE OF WORK

Arlington County (County) seeks to utilize the Contractor's software, a utility management application used by the County since 2009, to maintain a database of all County electricity, natural gas and water use and billing. This software enables electronic receipt and payment of electric and natural gas bills via the County's accounts payable system.

Services are as follows below and in Exhibit B:

- Subscription services under software license for:
 - EnergyCAP Enterprise Application 500-Meter (as defined in Exhibit B) limit
 - Report Designer BI
 - Interval Data

- Bill CAPture Service – 2,400 Web CAPture transactions

EXHIBIT B

CONTRACTOR'S PRICING & TERMS

EnergyCAP® Subscription Agreement

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 Enterprise application, Report Designer BI, Interval Data, and BillCAPture Services or, in connection with this Subscription Agreement.
- 1.2. "Defect" has the meaning assigned in Section 5.2 below.
- 1.3. "Documentation" means any explanatory materials, such as user manuals, training manuals, and specifications regarding the implementation and use of the Subscription Services (electronic or written) that is provided 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. "Licensee Data" means all data uploaded into the Subscriptions Services or otherwise provided to ENC for purposes of providing the Subscription Services.
- 1.6. "Malicious Code" means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs.
- 1.7. "Meter" means a point of service as itemized on a vendor bill and tracked in the Services as a meter/logical device. A Meter may represent points of service for which no physical meter exists, such as sewer, fire lines, outdoor lighting, fuel oil tanks, storm drainage, internet service provider and telephone service, etc. Meter records that are 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 Subscription Agreement.
- 1.8. "Order" means any mutually agreed document referencing this Subscription Agreement that defines the specific Subscription Services purchased by Licensee pursuant to this Subscription Agreement.
- 1.9. "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.
- 1.10. "Subscription Services" means the online, web-based applications and platform provided by ENC as specifically described on the applicable Order.
- 1.11. "Support Services" means the services described in Section 5 below.
- 1.12. "Users" means individuals who are authorized by Licensee to use the Subscription Services and who have been supplied user identifications and passwords by Licensee (or by ENC at Licensee's request). Users may include Licensee's employees, consultants, contractors, and agents.

2. LICENSE GRANT; RESTRICTIONS.

- 2.1. ENC hereby grants Licensee a right to access and use the Subscription Services in accordance with the Documentation, this Subscription Agreement and the limitations set forth in the applicable Order.
 - 2.1.1. The Fees listed in the applicable Order are based upon the Licensee's Meter inventory and Licensee's current software module utilization needs as of the Effective Date of the parties' Contract. Licensee is permitted to track the number of Meters stated in the applicable Order using the Subscription Services. If Licensee requires use of the Subscription Services for Meters in excess of the number specified in the applicable Order, Licensee will pay the fees set forth in such Order or provided in a Quotation upon request by Licensee.
 - 2.1.2. Licensee may authorize its Users to access and use the Subscription Services. Licensee 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 Subscription Agreement.

Licensee shall promptly notify ENC of any suspected unauthorized access to the Subscription Services at support@energycap.com. Licensee and its authorized Users are only permitted to track data from Meters provided by Licensee.

- 2.1.1. Licensee 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.
 - 2.1.2. Licensee is responsible for the telecommunications, broadband and computer equipment and services needed to access and use Subscription Services.
 - 2.2. Licensee 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. During the period of ten (10) days after termination of the parties' agreement, Licensee may retrieve Licensee Data via existing reports, out-of-the box export capabilities or from screen captures. After such 10-day period, ENC shall have no obligation to provide any Licensee Data to Licensee or otherwise maintain the Licensee Data and may thereafter, unless legally prohibited, delete all Licensee Data in its systems or otherwise in ENC's possession or under ENC's control.
 - 2.4. ENC may suspend Licensee'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 Licensee. In the event that access to the Subscription Services is suspended for delinquent payment by Licensee, Fees for such Subscription Services will still be applicable during the suspension period.
 - 2.5. Surviving Provisions. Section 2,3, this Section 2.5, Sections 6 through 10 shall survive any termination or expiration of this Subscription Agreement.
3. **WARRANTIES; DISCLAIMERS.**
 - 3.1. ENC warrants that 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 Licensee, or if ENC is unable to do so within a reasonable period, not to exceed thirty (30) days, Licensee may terminate the applicable Order, and Licensee will receive a pro-rata refund of any unearned Fees, based on the date Licensee reported the non-conformance, that Licensee has pre-paid for the Subscription Services.
 - 3.2. **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.
4. **HOSTING SERVICES; SECURITY; PROFESSIONAL SERVICES.**
 - 4.1. 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.

- 4.2. 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 Licensee Data, including by maintaining a written information security program that includes applicable policies, procedures, training, and technology controls designed to protect Licensee Data from unauthorized access, use, disclosure, alteration, or destruction. ENC will only use and/or process Licensee Data in accordance with this Subscription Agreement and for purposes of providing the Services.
 - 4.3. ENC will promptly (and in any event within forty-eight (48) hours) notify Licensee in the event of the occurrence of any unauthorized access to Licensee Data (a "Data Privacy Breach"). ENC will provide as many details as known at that time (and regularly update Licensee 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 Licensee in the furtherance of any correction, remediation, or investigation of any Data Privacy Breach.
 - 4.4. ENC grants to Licensee 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 Licensee-owned applications solely for use by Licensee 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 Licensee of any such actions as soon as reasonably practical. Licensee 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 Licensee'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 Licensee applications using the API and (iv) using commercially reasonable efforts to upgrade all prior versions of Licensee's applications using the API then in use to the most recent version. Licensee acknowledges that an API Modification may have a material adverse effect on Licensee's applications using the API, including causing such applications to not operate as designed. ENC shall have no liability of any kind to Licensee 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.
 - 4.5. Hosting services include the ability to store bill images and file attachments for up to five (5) Gigabytes of storage or at the storage limits set forth in the applicable Order if greater.
 - 4.6. ENC will provide Professional Services in accordance with the terms set forth on Exhibit 1 to this Subscription Agreement.
5. SUPPORT SERVICES.

- 5.1. 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 Licensee. ENC will use reasonable efforts to notify Licensee at least two weeks in advance of all major enhancements which require planned downtime. Release notes will be provided and made available to Licensee 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.
- 5.2. 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 LICENSEE'S SOLE AND EXCLUSIVE REMEDY, AND ENC SHALL HAVE NO OTHER LIABILITY, FOR DEFECTS.
- 5.3. In the event (i) any Defect is determined by ENC to be attributable to Licensee's acts or omissions or to Licensee's software, hardware, modifications, or system changes, or (ii) Licensee requests assistance in

connection with additional training, correction of database errors and/or data conversion, ENC shall provide a quotation to Licensee for additional Professional Services at its then current rates for the Professional Services.

- 5.4. Technical support will be provided during regular business hours defined as 8:00 AM-5:00 PM ET Monday through Friday except federal holidays. Licensee may receive support via the toll-free support hotline at 877-327-3702 or by submitting a support ticket at <https://support.energycap.com>.
- 5.5. Licensee may call or submit support tickets via the online support ticketing system only to report a Defect, but not a “how do I?” operating or training question.
- 5.6. After-Hours Support is available via the support ticket system at <http://Support.EnergyCAP.com>, and online help manuals accessible from within the Subscription Services.
- 5.6.1. ENC will use reasonable efforts to respond to all support requests in accordance with the times set forth in the table below. Support requests are prioritized by Licensee at time of submission into one of three categories, and ENC will make a reasonable effort to resolve the request within the specified time:

Service Level	Response	Resolution	Definition
Emergency	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.

Service Level	Response	Resolution	Definition
Urgent	2 business hours	2 business days	Important features of the Subscription Services are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.
Routine	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.

- 5.7. Licensee is responsible for (a) any services relating to software or hardware not provided by ENC, including, without limitation, any programming performed by Licensee; (b) training of current or new Licensee 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 client workstations.
- 5.8. Support Services include support for all ENC developed interfaces, reformatters, custom reports, and other deliverables as part of the applicable Order for purposes of ensuring that all custom-developed ENC deliverables function as documented after upgrades are released. Except as set forth in this clause, Support Services do not include revisions to deliverables. If revisions are requested, then ENC shall provide a quotation to Licensee for Professional Services at ENC’s then-current rates for such services.
6. PROPRIETARY RIGHTS.
- 6.1. Reservation of Rights. The Subscription Services and the Documentation, and any and all enhancements, modifications, improvements or derivative works thereto, whether or not created or developed in conjunction with Licensee (collectively, the “Enhancements”) are and will remain the sole and exclusive property of ENC. Except for the rights granted pursuant to this Subscription Agreement, ENC retains all copyrights, patents, trade secrets, trademarks, and all other intellectual property interests in and to the

Subscription Services and the Enhancements.

- 6.2. Licensee Data. As between Licensee and ENC, Licensee exclusively owns all rights, title and interest in and to all of Licensee Data and is solely responsible for the accuracy, quality, integrity and legality of Licensee Data and of the means by which Licensee acquired the Licensee Data. Licensee grants ENC and its third-party providers a non-exclusive, worldwide, royalty-free and fully paid license to use the Licensee Data solely as necessary to perform the Subscription Services.
- 6.3. 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 Licensee. Licensee agrees that ENC may utilize such information and data as well as any Licensee suggestions, enhancement requests or other recommendations (collectively, "Feedback") for any lawful business purpose, without a duty of accounting to Licensee so long as such Feedback does not identify Licensee or Licensee Data. No compensation shall be paid with respect to ENC's use of Feedback.
- 6.4. Licensee grants ENC a non-exclusive, royalty-free license to Use De-identified Licensee 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-licensee 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.

7. CONFIDENTIAL INFORMATION.

- 7.1. 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 Licensee's technology, Licensee's utility billing and rate information, ENC's technology, and the terms and conditions of this Subscription 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 Subscription Agreement by the receiving party; or (iv) is independently developed by the receiving party.
- 7.2. 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 Subscription 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.
- 7.3. Compelled Disclosure. The receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency or as required by law, provided that, to the extent possible, 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.
- 7.4. Ownership of Confidential Information. All Confidential Information disclosed pursuant to this Subscription 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 Subscription 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.

7.5. Survival. SECTION 7 SHALL REMAIN IN FULL FORCE AND EFFECT FOR SO LONG AS EITHER PARTY RETAINS ANY CONFIDENTIAL INFORMATION OF THE OTHER PARTY.

8. LIMITATION OF LIABILITY.

8.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY OTHER PERSON OR ENTITY FOR (I) ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE, HOWEVER ARISING, UNDER ANY THEORY OF LIABILITY, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SUBSCRIPTION SERVICES OR THESE TERMS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) DIRECT DAMAGES IN EXCESS OF THE FEES ACTUALLY PAID OR PAYABLE BY LICENSEE UNDER THE APPLICABLE ORDER FOR THE AFFECTED SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM RESULTING IN SUCH DAMAGES AROSE. THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO CLAIMS OF INTELLECTUAL PROPERTY INDEMNIFICATION, PERSONAL INJURY OR DEATH OR TO LICENSEE'S FAILURE TO REMIT ALL FEES PROPERLY DUE AND OWING TO ENC.

9. ADDITIONAL TERMS FOR SUBSCRIPTION DATA SERVICES.

- 9.1. Licensee's use of the following subscription-based data products is subject to the additional terms set forth below: the interface to ENERGY STAR Portfolio Manager, Weather Data, and Greenhouse Gas Emission factor updates (the "Subscription Products"):
 - 9.1.1. Except for claims of IP indemnification, personal injury or death, ENC will not be liable for direct, indirect, special, incidental, or consequential damages or losses arising out of or inability to use ENC Products.
 - 9.1.2. Licensee must use the Subscription Products solely for its own business purpose and Licensee is prohibited from offering the same for redistribution, re-broadcast, or resale of any kind.
 - 9.1.3. ENC retains all right, title and interest in and to the Subscription Products, modified or unmodified, other than the license rights granted under this Subscription Agreement.
 - 9.1.4. 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. Licensee 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.
 - 9.1.5. 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 Licensee.

10. GENERAL TERMS.

- 10.1. 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.
- 10.2. 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.

Attachment 1 Professional Services Terms

This Exhibit sets forth the terms and conditions pursuant to which ENC will provide Professional Services to Licensee. The Professional Services will be subject to the terms of the Agreement except to the extent otherwise set forth in this Exhibit.

1. PROJECT SCHEDULE.

- 1.1. ENC and Licensee 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 Licensee will work together 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) Licensee's fulfillment of its obligations in a timely manner.

2. CHANGE REQUESTS.

- 2.1. If, due to Licensee 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 Licensee for additional Professional Services and, upon acceptance of the Change Order quotation, invoice Licensee 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 Licensee 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 Licensee for approval prior to acceptance or invoicing by ENC. Any change that modifies the Scope of Work will require an amendment to the parties' Contract.

3. CUSTOM DEVELOPMENT.

- 3.1. To the extent custom development is to be provided as part of the Professional Services in any mutually agreed SOW, Licensee 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 Licensee's initial request for the relevant Professional Services and end upon 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 Licensee'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 Licensee via phone or online conference account for less than 25% of the contracted hours; provided, however, when any contracted hours used exclusively for online training, will be applied at 100%.

5. WARRANTIES.

- 5.1. ENC's Warranties. ENC will exercise due professional competence and care consistent 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 Licensee 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 Licensee.

5.2. LIMITATIONS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 1 OF THIS ATTACHMENT ABOVE, ENC DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROFESSIONAL SERVICES PROVIDED OR THE RESULTS OBTAINED THEREFROM, AND ENC EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, ARISING BY USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE OR OTHERWISE.

5.3. LIMITATION ON REMEDIES AND AGGREGATE LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, MULTIPLE, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, SAVINGS, OR REVENUES OF ANY KIND, BUSINESS INTERRUPTION, DOWN TIME, OR LOSS OF INFORMATION), REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR ATTORNEYS' FEES. UNDER NO CIRCUMSTANCES SHALL A PARTY'S AGGREGATE LIABILITY FOR PROFESSIONAL SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES FOR PROFESSIONAL SERVICES RECEIVED BY OR PAYABLE TO ENC PURSUANT TO THE APPLICABLE SOW. THE LIMITATIONS OF THIS SECTION DO NOT APPLY TO CLAIMS OF INTELLECTUAL PROPERTY INDEMNIFICATION, PERSONAL INJURY OR DEATH.

6. OWNERSHIP OF INTELLECTUAL PROPERTY.

6.1. ENC has developed and continues to develop and enhance its proprietary intellectual property ("ENC IP"), which includes, without limitation, concepts, frameworks, methodologies, analytic techniques, management tools, know-how, software, survey designs, metrics, diagnostic instruments, data sets and databases. ENC IP is an integral part of ENC's knowledge base and may be reused from project to project and with multiple clients. In the performance of its obligations hereunder, ENC will use, replicate, create, modify, or enhance elements of the ENC IP, and all such elements, modifications and enhancements shall remain the sole and exclusive property of ENC; provided, however, that no proprietary and Confidential Information of Licensee will be deemed to be ENC IP. All applicable rights to patents, patent applications, copyrights, trademarks, trade secrets and all other proprietary rights in and to the ENC IP are, shall be and shall remain in ENC, and neither Licensee nor its employees or agents shall have any proprietary interest whatsoever in or to the ENC IP.

6.2. The Parties agree that all documents, reports, and any other materials created by ENC for Licensee as part of the Professional Services (collectively, the "Deliverables") shall be ENC IP. For purposes of the Agreement and this Exhibit, Licensee shall have the right to use such Deliverables as part of the Subscription Services.

Attachment 2 CAPture Services Terms

In addition to the terms set forth in the Agreement, this Exhibit 2 sets forth the terms and conditions pursuant to which ENC will provide ongoing Bill CAPture utility bill processing services (the "Bill CAPture Services") to Licensee. Licensee must be current under a Subscription Agreement in order to subscribe to the Bill CAPture Services.

1. Additional Definitions.

- 1.1. "Receipt Date" is the date bills are received by ENC.
- 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. "Historical Bills" are bills having a statement date greater than sixty (60) calendar days from the receipt date.
- 1.4. "Live Processing" is the period beginning when meter enrollment is complete, and all bills received by ENC for the enrolled meters can be processed.
- 1.5. "Transaction" means each Meter present on a utility bill invoice. Utility bills that include multiple Meters are counted as multiple Transactions on the basis of one Transaction for each Meter. Deregulated bills issued separately by a supplier and an LDC count as two transactions per deregulated Meter. Multiple bills from the same vendor for the same Meter(s) for the same service period – whether they be rebills or corrected bills – will be counted as additional Transactions.

2. Meter Enrollment.

- 2.1. The Meter Enrollment Fee stated on the applicable Order is a one-time fee for the enrollment of the listed number of Meters in the Bill CAPture Services. Deregulated Meters serviced by a supplier and an LDC require two-Meter enrollments. An additional per-Meter enrollment fee will be charged when a new Meter is submitted by Licensee or a Licensee vendor for enrollment in the Bill CAPture Services or when Licensee requests a change to the way a utility bill is mapped. The Meter Enrollment Fee covers the cost of preparing the Bill CAPture service for processing a new Meter. ENC and Licensee will schedule a time for initiation of the enrollment process.
- 2.2. Meter enrollment will commence within sixty (60) days after ENC's receipt of all Meter enrollment data from Licensee and be completed within a mutually agreed upon period. Licensee must enroll the majority of contracted Meters at one time unless the parties mutually agree in the applicable Order that Meters can be enrolled in phases provided the total number of phases does not exceed the number indicated on the Order Form.
- 2.3. It is expected that account numbers and all data will be set up correctly in Licensee's EnergyCAP database prior to Meter enrollment in the Bill CAPture Services. If, upon the initial entry of bill data, bill records unsuccessfully import and return in the bill kick-out log file, Licensee is responsible for making the necessary corrections in the EnergyCAP database to resolve the kick-outs.
- 2.4. Licensee 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 account or Meter number changes a utility vendor may make to Licensee's utility accounts. If Licensee fails to provide such notice, then all processed Meters that have new account or Meter numbers will be considered new Meters and additional Meter enrollment fees may be charged to Licensee. If Licensee requires ENC's assistance in connection with the performance of these responsibilities (collectively, "Management Services"), ENC may provide a Change Order to Licensee to address the scope of work to edit existing account, Meter, and vendor fields and, upon acceptance, invoice Licensee for the additional services. Any change that modifies the Scope of Work will require an amendment to the parties' Contract.
- 2.5. If Management Services are purchased (as set forth in the applicable Order or Change Order), ENC will be responsible for completing the data set up in Licensee's EnergyCAP database as part of Bill CAPture enrollment. If, upon the initial entry of bill data, bill records unsuccessfully import and return in the bill kick-out log file, ENC will work with Licensee to make the necessary corrections in the EnergyCAP database.

The Management Services consist of any 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. Licensee is responsible for notifying ENC about any expected account or Meter number changes the utility vendors may make to Licensee's utility accounts. This will assist the ENC Bill CAPture processing team from distinguishing which Meters are considered new Meter enrollments and which are existing Meter enrollments. If Licensee fails to provide such advance notice, then all processed Meters that have new account or Meter numbers will be considered new Meters and additional Meter enrollment fees may be charged to Licensee.

3. Bill Processing.

- 3.1. The Bill CAPture services 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 Licensee or via automated delivery method authorized by Licensee during Meter enrollment. There is no refund for unused Transactions.
- 3.2. The Bill CAPture Services do not include historical bill data (refer to Section 4.2 below). Transactions associated with historical bill data will be charged at a different rate.
- 3.3. The annual processing fee for the Bill CAPture Services is based on the assumption that Licensee, and utility vendors on behalf of Licensee, will provide bills to ENC in the formats defined in the applicable Order Form. Data files can be transferred via website upload, secure FTP transfer, or other means as mutually agreed by the parties. If the Licensee 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 Licensee and, upon acceptance, invoice Licensee for any changes in costs due to the task change(s). Any change that modifies the Scope of Work will require an amendment to the parties' Contract.

4. Bill CAPture Services Service Levels.

- 4.1. ENC will process Licensee's utility bills within the timeframe set forth in the applicable Order Form (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.
- 4.2. The following Service Levels apply to the Bill CAPture Services:

Service	Service Level	Definition
Pre-Payment Bills	Within three (3) business days of receipt by ENC from Licensee or Licensee's vendor(s)	Pre-Payment Bills are Current Bills that have not yet been processed for payment by Licensee.
Post-Payment Bills	Within five (5) business days of receipt by ENC from Licensee or Licensee's vendor(s)	Post-Payment Bills are Current Bills that have already been processed for payment by Licensee via a means other than the Bill CAPture Services.
Web Capture	Within five (5) business days after the processing times listed above for Pre- and Post-Payment Bills	Web Capture is a method of bill delivery where bill data, in PDF format, is downloaded directly from vendor websites using Licensee's login credentials.
Historical Bills	Varies based on volume and will be agreed during implementation	Historical Bills are Post-Payment Bills that have an end date greater than sixty (60) calendar days from the receipt date.

- 4.3. Exceptions for the Web CAPture 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. Web CAPture 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 Web CAPture is available and may, at its discretion and in writing to Licensee, discontinue service when the level of consistency prevents ENC from meeting or exceeding this SLA agreement. When ENC discontinues Web CAPture for a utility vendor, Licensee has the option to manually upload the PDFs of bills using the ENC bill image portal or switchover to another Bill CAPture data acquisition method. Pricing changes will be made accordingly and will be agreed upon by both parties in writing if the delivery method changes.
5. In addition to the terms set forth in Section 8 of Exhibit B to the Agreement, ENC SHALL NOT BE LIABLE FOR THE PAYMENT OF UTILITY VENDOR LATE FEES, INTEREST CHARGES, OTHER VENDOR-IMPOSED PENALTIES, OR DAMAGES PERTAINING TO UTILITY SERVICE DISRUPTIONS UNLESS (1) ENC IS PROVIDING PRE-PAYMENT BILL CAPTURE SERVICES, (2) THE PROCESSING SERVICE IS OTHER THAN WEB CAPTURE, AND (3) SUCH 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 OF THIS EXHIBIT WITHIN THE SERVICE LEVEL SET FORTH IN SECTION 4.2 ABOVE.
6. OPTIONAL SMART CAPTURESM SERVICE
 - 6.1. If elected by Licensee, ENC will provide ongoing SMART CAPture Meter data processing services to Licensee for import into Licensee's EnergyCAP database. As a SMART CAPture service subscriber, ENC will automate the process of extracting, transforming, and loading interval data that is already available to the Licensee.
 - 6.2. The following additional terms apply to the SMART CAPTURE SERVICE:
 - 6.2.1. Process and Timing. ENC shall extract, transform, and load interval data provided from the identified data source on behalf of the Licensee. ENC guarantees that data provided by the data source shall be loaded into Licensee's EnergyCAP database within the mutually agreed timeframe between ENC and Licensee. Licensee is responsible for ensuring data is available from the subscribed data sources.
 - 6.2.2. Data Quality. ENC does not evaluate the accuracy or quality of the data provided by the data source, however it does ensure accuracy and quality in the extract, transform, and load process.
 - 6.3. Enrollment Process and Responsibilities.
 - 6.3.1. ENC shall work with Licensee through each step of enrollment leading up to live interval data appearing in Licensee's EnergyCAP database. Enrollment steps vary based on the data source providing the interval data.
 - 6.3.2. ENC shall not configure Licensee or third-party owned equipment in the process of enrollment.
 - 6.3.3. Licensee must (i) provide ENC with the required credentials and/or access to the data sources containing the interval data; (ii) create and maintain the credentials for each data source; (iii) configure EnergyCAP Meters to receive the interval data provided by the SMART CAPture Subscription. This includes updating Import IDs with the correct data source Meter identifier as well as creating interval data channels to receive the data provided by each data source for the enrolled meters.
 - 6.4. Ongoing Service Terms and Conditions. Licensee is responsible for all EnergyCAP data revisions and maintenance including but not limited to: the creation of new Meters, managing Import ID changes, and taking action when data sources fail to provide data on the expected schedule. ENC and Licensee will schedule a time for initiation of the enrollment process. Licensee may at any time request a quote to enroll additional Meters in the service.

7. ENC may use third party subcontractors in connection with the provision of the Bill CAPture Services so long as (1) the subcontracting firm is capable of providing the applicable services, and (2) ENC remains responsible to Licensee for performance of the Bill CAPture Services.

PRICING

Subscription Services		
Item	Description	Annual Price
	EnergyCAP Enterprise Annual Subscription Fee	\$8,435.39
Software License	Report Designer BI	\$2,195.00
	Interval Data	\$3,500.00
CAPture Services	Bill CAPture Annual Processing Fee based on 2,400 Web Download transactions.	\$10,152.00
	Sales Tax	-
Total Fee		\$24,282.39
