



December 14, 2016

# EnergyCAP<sup>®</sup> Enterprise

Software License Purchase Agreement

Annual License

**Organization Name**

Submitted by:

**EnergyCAP, Inc.**

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## EnergyCAP® Enterprise Software Purchase Agreement

This Software License Purchase Agreement (this “Agreement”) is made by and between \_\_\_\_\_ (“Licensee”) and EnergyCAP, Inc. of State College, PA (“ECI”) as of the date of Licensee’s Purchase Order or signing of this agreement for EnergyCAP software and services, whichever is earlier (the “Effective Date”).

Whereas, ECI agrees to provide a License to use EnergyCAP Enterprise software (the “Software”) and related services to Licensee pursuant to the terms of this Agreement, and

Whereas, Licensee desires to obtain a License to use Software and other related services from ECI.

Now, therefore, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto intending to be legally bound do hereby mutually agree as follows:

### ARTICLE 1. SCOPE OF AGREEMENT

This Software License Purchase Agreement provides for the following:

1.1. Software License Scope. The fee listed in the Payment Terms to the Fee Schedule, attached hereto as Exhibit A, is based upon the Licensee’s current approximate facility/account/meter inventory and Licensee’s current software module utilization needs.

1.1.1. The number of facilities, accounts, meters and bills to be tracked is a factor used in ECI pricing considerations. ECI has relied upon Licensee’s representations of inventory and scope. Licensee is permitted to track the listed number of meters in Exhibit A. Growth in scope of facilities, accounts, meters and bills, whether due to reorganization, merger, acquisition, etc., exceeds the pricing considerations and ECI reserves the right to charge an additional license and maintenance fee, over that specified in Exhibit A, with prior Licensee written authorization. If Licensee does not authorize the additional fee then ECI reserves the right to restrict Licensee’s access to higher meter counts.

1.1.2. The program modules listed in Exhibit A to be used by Licensee are a factor in ECI pricing considerations. ECI has relied upon Licensee’s representations of modules, features and functions to be used, and has priced both the Software License and Maintenance Agreement pricing accordingly. In the event Licensee desires to use additional software modules, whether available today or included in future releases, ECI reserves the right to charge an additional license and maintenance fee with prior Licensee written authorization.

1.2. Software License. Purchase of an EnergyCAP Enterprise software license pursuant to the terms of the EnergyCAP Enterprise Software End-User License (the “License” as such term is more particularly described therein) attached hereto as Exhibit B and incorporated herein by reference.

1.3. Software Maintenance. Purchase of Software Maintenance services pursuant to the terms of the EnergyCAP Maintenance Agreement (the “Maintenance Agreement”) attached hereto as Exhibit C and incorporated herein by reference.

1.4. Software Implementation Services. Purchase of related implementation services (“Implementation Services”) shall be in accordance with the terms of the Software Implementation Services Agreement (“Services Agreement”) attached hereto as Exhibit D and incorporated herein by reference. To the extent Licensee purchases Implementation Services, whether the same is for the initial installation of the Software, or for the installation of additional modules during the term of this Software License Purchase Agreement, the parties agree to execute a Services Agreement in substantially the same form as Exhibit D attached hereto. For the avoidance of doubt, any changes the Parties agree to make to the Project and Invoicing Schedule in Exhibit A attached thereto shall be considered non-substantial changes to the Services Agreement.

1.5. Database Hosting Service. ECI offers an optional EnergyCAP database hosting service to EnergyCAP Licensees. The hosting service, if purchased, will be provided pursuant to the terms of the EnergyCAP Database Hosting Service Agreement attached hereto as Exhibit E and incorporated herein by reference.

1.6. EnergyCAP Services. ECI offers optional professional services to assist Licensee in data management. All services, if purchased, will be provided pursuant to the terms of the EnergyCAP Professional Services Agreement attached hereto as Exhibit F and incorporated herein by reference.

1.7. Source Code Escrow. Licensee can be added as a beneficiary to ECI's Source Code Escrow account at the request of Licensee. ECI can provide to Licensee the Beneficiary Enrollment Form to be completed by Licensee. A copy of the complete software source code shall be placed in escrow with Innovasafe, Inc. by ECI. When ECI provides an updated version of the software, ECI will place the latest version of the source code in escrow. If ECI becomes insolvent or ceases to conduct business during the term of this Agreement, the Licensed Software in Escrow will be made available to Licensee immediately upon Licensee's demand. Fees associated with the software escrow service are the responsibility of the Licensee.

## ARTICLE 2. FEES AND TERMS OF PAYMENT

ECI agrees to invoice Licensee and Licensee shall pay for the software and services provided under the License, Maintenance Agreement and Services Agreement in accordance with prices, payment schedule and terms in Exhibit A.

## ARTICLE 3. ECI RESPONSIBILITIES

ECI agrees to perform in accordance with the License, the Maintenance Agreement and the Services Agreement, and perform the Implementation Services in accordance with the delivery dates listed in the Implementation Services Agreement.

While at any Licensee location, if at all, ECI's personnel, agents, and permitted subcontractors agree to comply with reasonable requests, rules, and regulations of Licensee that have been previously provided to ECI in writing regarding personal and professional conduct (including the wearing of identification badges and adhering to Licensee regulations, data security, and safety practices or procedures), and shall otherwise conduct themselves in a businesslike manner.

ECI agrees to provide all necessary tools, office space, equipment, personnel, facilities, telecommunications access, computers and all other resources necessary for ECI to completely and effectively provide the services hereunder. ECI agrees to provide the proper custody and care of any Licensee-supplied property provided to ECI for use in connection with the performance of services.

## ARTICLE 4. MUTUAL REPRESENTATIONS

Each party represents and warrants to the other that (a) it has full power and legal right to execute and deliver this Agreement and to perform its obligations under this Agreement, (b) no authorization or approval from any third party is required in connection with such party's execution, delivery or performance of this Agreement, and (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

Further, ECI represents and warrants to Licensee that to the best of its knowledge (i) it has all right, title or interest, or valid license to use, the intellectual property, software copyrights, trademarks or service marks, logos, names, artwork and designs covered by this Agreement, and that its grant or rights associated therewith do not violate any proprietary rights of any third party, and (ii) all services provided hereunder will be performed in a professional and workmanlike manner consistent with the level of care and skill ordinarily exercised by members of ECI's profession currently performing such services under similar conditions.

ECI shall indemnify and hold Licensee, its affiliates, shareholders, directors, officers, employees, agents, successors, and assigns harmless from and against any and all third party claim or liability to the extent arising solely from the acts or omissions of ECI or its employees or agents in the course of performing the services or from the infringement by ECI of any United States patent, trademark, copyright or proprietary rights.

## ARTICLE 5. DURATION OF AGREEMENT

This Agreement commences on the date executed by Licensee and shall remain in full force and effect for so long as any one or more of the License or Maintenance Agreements are in effect as set forth therein.

## ARTICLE 6. 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” will also include, but not be limited to, Licensee technology, Licensee utility billing and rate information, ECI technology, and the terms and conditions of this Agreement. “Confidential Information” shall not include information that: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

Each party acknowledges that it will or may have access to Confidential Information of the other party and therefore each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary and providing that they agree to be bound by obligations of confidentiality at least as strict as those contained herein), nor permit any of its partners, shareholders, directors, officers, employees, agents or contracting parties to use or disclose, any of the other party's Confidential Information and will take precautions necessary to protect the confidentiality of such Confidential Information using the same degree of care used to protect its own Confidential Information, but in any case using no less than a reasonable degree of care.

The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or as required by law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure. If the disclosing party is not successful in precluding the requesting legal body from requiring disclosure of the Confidential Information, the receiving party shall furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded with the Confidential Information.

All of Confidential Information disclosed pursuant to this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of the disclosing party. All such information in tangible form shall be returned to the disclosing party promptly upon written request or the termination or expiration of this Agreement, and shall not thereafter be retained in any form by the receiving party, its affiliates, or any employees or independent contractors of the receiving party or its affiliates.

This Article VI shall remain in full force and effect for so long as either party retains any Confidential Information of the other party during this Agreement or for a period of five (5) years beyond termination of this Agreement, whichever is later.

## ARTICLE 7. INTELLECTUAL PROPERTY

The Software and all documentation, enhancements, modifications, improvements or derivative works thereto, whether or not created or developed in conjunction with Licensee (collectively, the “Enhancements”) shall remain the sole and exclusive property of ECI. ECI retains all copyrights, patents, trade secrets, trademarks, and all other intellectual property interests in the Software and the Enhancements and is licensed for use by Licensee on the terms set forth in Exhibit B.

All underlying methodology utilized by ECI and Licensee respectively which was created and/or developed by either prior to the date of this Agreement and utilized in the course of performance pursuant to this Agreement shall not become the property of the other.

ARTICLE 8. ASSIGNMENT AND DELEGATION

Licensee shall not assign nor delegate this Agreement or any rights, duties or obligations hereunder to any other person and/or entity without prior express written approval of ECI which approval shall not be unreasonably withheld.

ARTICLE 9. GENERAL PROVISIONS

9.1. Entire Agreement. This Agreement together with the attachments hereto and all documents incorporated by reference herein, constitutes the entire and sole agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations, understandings, or other matters, whether oral or written, with respect to the subject matter hereof. This Agreement cannot be modified, changed or amended, except in writing signed by a duly authorized representative of each of the parties.

9.2. Conflict. In the event of any conflict, ambiguity or inconsistency between this Software License Purchase Agreement and the Exhibits attached hereto, the terms and conditions of this Software License Purchase Agreement shall govern.

9.3. Severability. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

9.4. Governing Law; Venue. This Agreement shall be governed by, construed in accordance, and subject to the laws of the state of the party initiating the dispute, without regard to rules of strict interpretation of either party irrespective of the identity of the party who prepared or may have directed the preparation hereof. Any disputes relating to this Software License Purchase Agreement shall be resolved exclusively in the state or federal courts located in the state of the party initiating the dispute and each party irrevocably consents to the jurisdiction of such courts. This Agreement shall also be subject to any applicable federal and state laws, rules and regulations.

9.5 Notice. Any notices required by this Agreement or any attachment hereto shall be in writing and shall be given to the parties by hand, by facsimile, by nationally recognized overnight courier service or by express, registered or certified mail, postage prepaid, return receipt requested. Notices shall be deemed to have been given upon actual receipt thereof.

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

Licensee  
Name  
Address  
City, State, Zip

ECI  
EnergyCAP, Inc.  
2026 Sandy Drive  
State College, PA 16803

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A: Fee Schedule**

## **Exhibit B: EnergyCAP® Enterprise Annual Software End-User License**

EnergyCAP, Inc. (“ECI”) owns all rights and copyrights in and to the subject software product (“Software”) called “EnergyCAP Enterprise version.”

The Software is furnished subject to the terms and conditions of this License Agreement, which has a 10-day unconditional Acceptance Period. If the Software itself or any terms of this License Agreement are not acceptable for any reason, the software and documentation must be returned within ten (10) days of purchase to ECI for a full refund. If returned, all installed copies must be uninstalled and all Setup files must be permanently deleted.

By this License Agreement, Licensee is granted a license to use the Software subject to the following terms, restrictions, and limitations:

### **ARTICLE 1. INSTALLATION AND USE**

1.1 Licensee may install the Software on one or more file servers or multiple microcomputers for simultaneous use by multiple users within Licensee’s organization. Licensee may make copies of the Software for archival, testing, training, and back-up purposes only.

1.2. This license allows Licensee to use the Software for internal use by its employees or contractors/consultants for the benefit of the Licensee organization only. Licensee may not use the Software to process the data of third parties or in a service bureau capacity without written authorization from ECI

### **ARTICLE 2. SCOPE**

2.1. License covers those program features, functions and modules purchased by Licensee (as documented in the quote, proposal or contract from ECI), as well as any subsequent enhancements to these features furnished to Licensee pursuant to the EnergyCAP Enterprise Maintenance Agreement. Licensee must pay an additional license fee to add features, functionality, and modules that are outside of the scope of its initial license. Such functionality (1) may have been available to Licensee at time of purchase but Licensee elected not to purchase, or (2) may be added to the Software’s capabilities and offered to Licensee at a later date.

2.2. Licensee may not alter, modify, or adapt the Software or documentation, or portions thereof, in any way. Licensee may not disassemble, decompile, reverse engineer, translate or create derivative works of the Software, or portions thereof, in any way. Licensee must install and operate the Software in accordance with the documentation. This License Agreement shall be deemed automatically terminated if Licensee violates any of the foregoing.

2.3. Use of an external program to alter, edit or append records to the data files voids all warranties, as it may corrupt the database.

2.4. This License Agreement and ECI’s copyrights also apply to any data that Licensee may have obtained from ECI, including without limitation weather data libraries, bundled type tables (such as the energy type table) and separate data bases. Licensee may use these data files in conjunction with its licensed copy of the Software. Licensee may not provide them to any third parties, nor may Licensee install them on any computer not running Licensee’s licensed copy of the Software.

2.5. This license does not include supporting software and hardware required to be furnished by Licensee, such as operating systems, browsers, database engines, servers and client workstations.

### **ARTICLE 3. TERM**

3.1. This License Agreement and the licenses granted hereunder are effective upon acceptance by Licensee and shall remain in effect until terminated.

3.2. Licensee may terminate this License Agreement at any time by notifying ECI in writing of the termination.

3.3. ECI may terminate upon 60 days written notice if an invoice for license fees or services rendered remains unpaid for a period of 60 days after invoice due date and Licensee has not satisfied the outstanding invoices within said 60-day termination period.

3.4. ECI may terminate the License Agreement if Licensee violates any provision of this Agreement. ECI shall notify Licensee in writing of a violation and Licensee shall have a 30-day period to cure said violation. If the violation is not cured within said 30-day period, ECI may terminate the License upon written notice.

3.5. Upon termination of the License Agreement, Licensee shall discontinue use of the Software, remove Software from computers, destroy all copies of Software, and discontinue use of the EnergyCAP Enterprise SQL Server database. User data contained within the database is owned by the Licensee and may be exported to other databases at Licensee's expense, but shall not be retained in ECI's proprietary EnergyCAP SQL Server database format.

#### ARTICLE 4. LICENSE VALIDATION

ECI reserves the right to include periodic expiration and validation processes in the Software to hinder software piracy and protect its rights, copyrights and intellectual property. Licensees will be provided with activation keys at no additional charge for the term of this License Agreement.

#### ARTICLE 5. ASSIGNMENT AND DELEGATION

The license hereunder is not assignable by Licensee without ECI's prior written consent. Licensee may not transfer, distribute, rent, sub-license, or lease the Software or the documentation.

#### ARTICLE 6. WARRANTY

ECI warrants to Licensee only that, for a period of 180 days beginning on the day following the expiration of the 10-day unconditional Acceptance Period, the media containing the Software shall be free from material defects in materials and workmanship and, if it is not, ECI will at its option either repair and replace the same if ECI is notified of such defect and the defective media is returned to ECI, together with proof of purchase, within the 180-day period **THE FOREGOING STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDY, AND ECI'S SOLE AND EXCLUSIVE LIABILITY FOR, ANY DEFECT, FAILURE OR OTHER PROBLEM WITH THE SOFTWARE WHATSOEVER.**

**EXCEPT AS EXPRESSLY SET FORTH IN THE PRECEDING PARAGRAPH, THE SOFTWARE IS PROVIDED AS IS, WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. ECI DOES NOT WARRANT THAT THE SOFTWARE WILL RUN WITHOUT ERROR OR BE PROBLEM-FREE. IN NO EVENT SHALL ECI BE LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR ANY LOSS OR DAMAGES, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION DATA LOSS, LOSS TO BUSINESS, OR OTHERWISE), INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR OTHERWISE, ARISING FROM OR RELATED IN ANY WAY TO THE SOFTWARE AND/OR DOCUMENTATION LICENSED BY ECI, WHETHER SUCH DAMAGES OR LOSS SOUND IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, AND ALL OTHERS), WARRANTY, OR UNDER STATUTE. ECI HAS ABSOLUTELY NO OBLIGATIONS OR LIABILITIES ASSOCIATED WITH OR ARISING OUT OF THE MANNER IN WHICH LICENSEE USES THE SOFTWARE AND OTHER DATA COVERED BY THIS LICENSE AGREEMENT.**

#### ARTICLE 7. GENERAL TERMS

ECI retains all rights not expressly granted herein. Nothing in this License Agreement constitutes a waiver of ECI's rights under copyright law. This license is non-exclusive. This Agreement is governed by the laws of the state of the party initiating a dispute related to the terms of the Agreement or the Software. This Agreement contains the final and entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior and subsequent offers, proposals, negotiations, understandings, and agreements with respect to the subject matter hereof.

## Exhibit C: EnergyCAP® Enterprise Maintenance Agreement (“ECMA”)

### ARTICLE 1. TERM AND FEES

1.1. Licensee’s ECMA subscription shall be for one year (“Term”). The initial Term shall commence on the date that Licensee first installs EnergyCAP Enterprise on a Licensee-owned or -operated computer or first successfully logs into EnergyCAP Online (not including any demonstration or trial versions installed prior to placing a purchase order with ECI.) Licensee shall promptly provide said date to ECI in writing and certified by Licensee’s implementation engineer. This initial software installation date (which normally precedes the operational date of the software and related systems) shall be established as Licensee’s ECMA anniversary date. On each subsequent anniversary date of Licensee’s ECMA subscription, the ECMA subscription will, upon acceptance by Licensee, renew for another Term, and will continue to renew for additional Terms thereafter, unless Licensee cancels the subscription by written notice at least 30 days prior to the expiration of the then current Term.

1.2. Upon renewal, ECI will invoice Licensee for the ECMA Fee for the new Term. Licensee’s ECMA subscription will be automatically cancelled if ECI has not received payment 60 days after the date of the invoice. Licensee shall be responsible for all taxes imposed by any governmental agency with respect to the services rendered by ECI. ECI may from time to time invoice Licensee for applicable Expenses (only as pre-authorized by Licensee) or other Fees for services as provided herein. Licensee’s payment for such other Fees and Expenses shall be due 30 days from the date of the invoice. Licensee’s failure to make payments for ECMA Fees or Expenses shall result in suspension or termination of the ECMA subscription, in addition to other remedies ECI may have for such non-payment.

1.3. The annual ECMA fee is provided in Exhibit A and reflects the software and services proposed for purchase. If no additional software licenses or services are purchased by Licensee, the stated fee will remain unchanged for a period of at least one year from date of purchase. Thereafter, ECI retains the right to increase the ECMA fee on an annual basis at a rate not to exceed the Consumer Price Index (“CPI”) or three percent, whichever is greater or at the agreed upon rates in Exhibit A.

### ARTICLE 2. MODIFICATION AND TERMINATION

2.1. ECI may modify the ECMA Fees or these Terms upon written notice to Licensee (“ECMA Modification”), but no such ECMA Modification shall be effective prior to the end of the current Term of the subscription. If Licensee receives an ECMA Modification, Licensee may elect not to extend this ECMA beyond the end of the subscription Term then in effect by canceling in accordance with Article 1.

2.2. ECI may cancel this Agreement at any time upon 30 days written notice to Licensee. If so canceled, Licensee will be refunded one-twelfth of the ECMA fee for every month remaining in its prepaid annual subscription.

### ARTICLE 3. SCOPE OF SERVICES

3.1. The licensed software covered under these Terms (the “Software”) is EnergyCAP Enterprise versions 6.x and later and EnergyCAP Online versions 3.x and later and related database versions.

3.2. ECMA services include support for all ECI developed interfaces, reformatters, custom reports, or other deliverables as part of this Agreement in addition to EnergyCAP Software code. Support ensures that all custom-developed ECI deliverables function as expected after software upgrades are released. This Agreement does not provide support if Licensee requests revisions to deliverables due to a reason outside of the control of ECI. If revisions are required then ECI shall provide a quotation to Licensee for services at ECI’s then-current rates for services.

3.3. During the Term, ECI will use commercially reasonable efforts to correct or replace Software and/or provide support services to remedy material programming errors that are attributable to the Software, and which significantly affect use of the Software (“Software Defects”). **SUCH CORRECTION, REPLACEMENT, OR SUPPORT SERVICES SHALL BE LICENSEE’S SOLE AND EXCLUSIVE REMEDY, AND ECI SHALL HAVE NO OTHER LIABILITY, FOR SOFTWARE DEFECTS.**

3.4. ECI agrees to only provide the support services described above in Section 3.2 if Licensee (a) promptly provides ECI with reports, screen prints and all other relevant diagnostic information and assistance required by ECI; and (b) ECI is able to duplicate the problem as reported by Licensee. Licensee further agrees to provide all necessary IT support and test time on Licensee's computer system to demonstrate to ECI'S reasonable satisfaction the existence of a Software Defect.

3.5. Licensee shall inform ECI in writing of any modifications made by Licensee to the Software. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL ECI BE RESPONSIBLE FOR SUPPORTING, MAINTAINING OR PROVIDING ANY SERVICES WITH RESPECT TO SOFTWARE MODIFIED BY LICENSEE.

3.6. In the event any problems, difficulties or defects are determined by ECI to be traceable to Licensee's software, hardware, modifications or system changes, ECI shall provide a quotation to Licensee for services at ECI's then-current rates for the services provided by ECI in connection with any such problem, difficulty, or defect.

3.7. During the term of this ECMA, ECI will provide to Licensee:

- a. Updates to all current licensed features, as they are commercially and generally released by ECI. In the event ECI releases new product features that are not included as standard product features for all EnergyCAP users and for which Licensee does not have a current license, then ECI shall provide a quotation to Licensee for the new features. Licensee has the sole option to add the features and is under no obligation to do so.
- b. Office Hours: Staffed 8:00 AM-5:00 PM ET Monday through Friday except federal holidays. Telephone toll free support hotline 877-327-3702.
- c. After-Hours Support: Support ticket system at <http://Support.EnergyCAP.com>, website at <http://www.EnergyCAP.com/Support>, and online help manuals at <http://Docs.EnergyCAP.com> and <http://Help.EnergyCAP.com>.
- d. Additional Support Resources: Tech Support via Internet e-mail and website, <http://Support.EnergyCAP.com> and <http://www.EnergyCAP.com/Support>. The scope and content of such materials and services shall be determined by ECI at its sole discretion. ECI shall retain absolute discretion as to the timing, scope, and content of updates, upgrades, new releases and/or new versions of the Software, including without limitation, the pricing (if any) therefore.
- e. Program activation codes as may be required by the EnergyCAP piracy protection scheme to operate authorized modules of the program.
- f. Subscription services for the ENERGY STAR interface, access to EPA eGrid Greenhouse Gas factors, and mean daily temperature weather data provided by AccuWeather®.

3.8. The services provided hereunder do not include: (a) any services relating to software or hardware not provided by ECI, 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); (c) correction of user errors and database errors; (d) installation of updates, new versions, or new releases; or (e) data conversion.

3.9. ECI will use reasonable efforts to respond to all support requests submitted during standard business hours within four hours of submission. Support requests are prioritized by Licensee at time of submission into one of three categories, and ECI will make a reasonable effort to resolve the request within the specified time: (a) Routine – 5-day resolution; (b) Urgent – 2-day resolution; (c) Emergency – 1-day resolution.

#### ARTICLE 4. LICENSEE'S RESPONSIBILITIES

4.1. Licensee shall use commercially reasonable efforts to thoroughly research all software or system problems before reporting a problem to the ECI support staff. If, upon analyzing a suspected error at Licensee's request, ECI determines that no error exists in the Software, ECI reserves the right to provide a quotation to Licensee for time spent in response to Licensee's request at ECI's then-current rates.

4.2. Licensee shall promptly install software provided by ECI, including all updates, patch disks, diagnostic programs, database scripts and new system releases. Licensee agrees and acknowledges that failure to promptly install new system releases shall release ECI from its support obligations hereunder until such time as the new release is installed.

4.3. Licensee acknowledges that it is Licensee's sole responsibility, at all times, including specifically during service functions performed by ECI, to protect the computer system database, files and software from all possible losses, including power failures, hardware failures, software problems, external influences, and inadvertent mistakes, such as operator errors, or any other cause by maintaining copies, through the use of verified daily file saves, stored on and off the premises, and such other additional methods of protection as may be available for the computer system database, files and software.

#### ARTICLE 5. EXPENSES

In the event that ECI anticipates incurring additional expenses ("Expenses") not included in the ECMA Fee specified herein, including but not limited to, travel to and from Licensee's site, lodging, meals, telephone, and shipping, ECI agrees to notify Licensee before any expenses are incurred and upon authorization from Licensee agrees to perform the requested services.

#### ARTICLE 6. LIMITATIONS OF LIABILITY

ECI'S LIABILITY HEREUNDER SHALL BE LIMITED IN THE AGGREGATE TO AN AMOUNT EQUAL TO ALL ECMA FEES PAID BY LICENSEE TO ECI FOR SUPPORT AND MAINTENANCE SERVICES FOR THE 12-MONTH PERIOD PRECEDING ANY CLAIM OR DEMAND BY LICENSEE. IN NO EVENT SHALL ECI BE LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION DATA LOSS, LOSS TO BUSINESS, OR OTHERWISE), INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE LOSS OR DAMAGE, ARISING FROM OR RELATED IN ANY WAY TO THE SERVICES HEREUNDER, OR THE SOFTWARE AND/OR DOCUMENTATION LICENSED BY ECI, WHETHER SUCH DAMAGES OR LOSS IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, AND ALL OTHERS), WARRANTY, OR UNDER STATUTE.

#### ARTICLE 7. GENERAL TERMS

ANY MODIFICATION TO THESE ECMA SUBSCRIPTION TERMS AND CONDITIONS SHALL AUTOMATICALLY RENDER THEM VOID AND SHALL EFFECT THE CANCELLATION OF SERVICES PROVIDED HEREUNDER. These Terms shall be governed and construed under the laws of the Commonwealth of Pennsylvania, without regard to rules of strict interpretation of either party irrespective of the identity of the party who prepared or may have directed the preparation hereof. Any dispute related to this License Agreement shall be resolved exclusively in the state or federal courts located in the state of the party initiating the dispute and each party irrevocably consents to the jurisdiction of such courts. ECI is an independent contractor. These Terms shall not be construed to create a partnership or joint venture between the Parties. Nothing in these Terms shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind. These ECMA Terms shall not be construed as a third party beneficiary contract.

#### ARTICLE 8. SUBSCRIPTION SERVICES TERMS & CONDITIONS OF USE

Before using EnergyCAP, Inc. subscription-based products, Licensee should carefully read the following terms and conditions. Licensee's use of ECI's subscription-based products ("Subscription Products") implies that Licensee has read and accepted the following terms and conditions:

8.1. Licensee's use of EnergyCAP, Inc. Subscription Products signifies that Licensee agrees to indemnify and hold harmless EnergyCAP, Inc., its partners, agents, officers, directors, employees, subcontractors, successors, assigns, third party suppliers of information and documents, and affiliates (collectively, "ECI") from any liability, loss, claim and expense related to Licensee's use of the Subscription Products. In no event will ECI be liable for any damages including, but not limited to, direct, indirect, special, incidental or consequential damages or losses arising out of or inability to use ECI Products.

8.2. ECI's Subscription Products are intended for Licensee's own use. Licensee may not place any of ECI's Subscription Products, including imported third party content and/or data, modified or unmodified, on a diskette, CD, DVD, flash drive or any other medium and offer them for redistribution, re-broadcast, or resale of any kind.

8.3. Licensee may not claim intellectual or ownership rights to any of ECI's Subscription Products, modified or unmodified. All Subscription Products and contents therein are property of ECI or 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 ECI 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 ECI.

8.4. **ECI's SUBSCRIPTION PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND.** Neither ECI, 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 ECI 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.

8.5. By utilizing ENERGY STAR submittal service, Licensee gives ECI a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive right and license to use, reproduce, publicly display and distribute information relating to Licensee's ENERGY STAR Portfolio Manager submittal including building type, floor area, building attributes as submitted to Portfolio Manager and ENERGY STAR ratings. ECI shall not reveal data that could be used to identify the building to include organization/owner name and building name/address. Licensee confirms and warrants to ECI that Licensee has all the rights, power, and authority necessary to grant said license.

8.6. **ECI reserves the right to change or modify these Subscription Products terms and conditions of use at any time without prior notice.** Consult the EnergyCAP, Inc. website at [www.EnergyCAP.com](http://www.EnergyCAP.com) for the latest version.

## **Exhibit D: EnergyCAP® Enterprise Implementation Services Agreement**

This Agreement provides the terms and conditions by which EnergyCAP, Inc. (“ECI”) agrees to furnish Software Implementation Services (“Services”) to Licensee in order to assist Licensee in making EnergyCAP Enterprise software (“Software”) operational, as required by Licensee, in a timely manner.

### **ARTICLE 1. SCOPE**

1.1 ECI shall, as an independent contractor, provide certain consulting, software development, implementation, training, and other services as described in Exhibit A or, after project has commenced, in a Quote form, which lists the specific implementation tasks and functional requirements for the Services. Any Services not listed in Exhibit A or Quote form are not included in this Agreement. All software delivered under this Software Implementation Services Agreement shall be included in the definition of “Software” set forth in the EnergyCAP Enterprise Software End-User License and referred to in the Software Purchase Agreement as Software End-User License. Accordingly, ECI shall support all software delivered under this Software Implementation Services Agreement under the terms of any in-force EnergyCAP Maintenance Agreement.

1.2. If, due to Licensee action or request, the implementation tasks change at any point following the project Kickoff Meeting, ECI retains the right to provide a Change Order quotation to Licensee for additional services and, upon acceptance, invoice Licensee for costs incurred by ECI due to the task change(s). Task changes for which additional fees may apply include, but are not limited to, addition of licensed software 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 ECI’s then-current hourly rates and documented in the Change Order, and the Change Order will be submitted to Licensee for approval prior to acceptance or invoicing by ECI.

### **ARTICLE 2. DILIGENCE**

ECI shall appoint sufficient staff of suitable training and skills to provide the services called for by this Agreement. ECI reserves the right to subcontract portions of the Services, provided that the subcontracting firm is (1) capable of providing the services, (2) will be disclosed to Licensee upon request, and that (3) ECI will remain responsible for all subcontracted portions. ECI shall endeavor to complete tasks per the delivery dates shown in Exhibit A or Quote form. Completion dates may be extended at no fault to ECI due to uncontrollable factors beyond the control of ECI.

### **ARTICLE 3. ACCEPTANCE OF DELIVERABLES**

3.1 Each deliverable shall be subject to review by Licensee to verify that the deliverable is acceptable to Licensee. In the event that any deliverable is not acceptable to Licensee, Licensee shall give ECI written notice thereof and shall cooperate with ECI in identifying what aspect of the deliverable fails to conform. ECI shall, at no cost to Licensee, promptly correct any deficiencies which prevent such deliverable from conforming. If the deliverable does not conform within a reasonable period of time after initial delivery to Licensee, Licensee may (i) immediately terminate this Software Implementation Services Agreement, the Software Purchase Agreement and/or any attachment thereto, for cause in accordance with Section 9 of this Software Implementation Services Agreement, or (ii) require ECI to continue to attempt to correct the deficiencies, reserving the right to terminate as above at any time.

### **ARTICLE 4. LIMITATION OF LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL, OR ANY INDIRECT LOSS OR DAMAGE, INCLUDING WITHOUT LIMITATION LOST PROFITS, ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, WHETHER IN AN ACTION FOR OR ARISING OUT OF ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE ENTIRE LIABILITY OF EITHER PARTY FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE ARISING IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES.

## ARTICLE 5. REMEDIES

EXCEPT FOR OTHER REMEDIES SET FORTH IN THIS SOFTWARE IMPLEMENTATION SERVICES AGREEMENT, THE SOLE AND EXCLUSIVE REMEDY FOR FAILURE OF ECI TO PROVIDE THE SERVICES OR FOR ANY BREACH OF THIS SOFTWARE IMPLEMENTATION SERVICES AGREEMENT BY ECI SHALL BE TERMINATION OF THE SERVICES BY Licensee IN EXCHANGE FOR A FULL REFUND OF ALL AMOUNTS PAID UNDER THE SOFTWARE IMPLEMENTATION SERVICES AGREEMENT.

## ARTICLE 6. LIMITED WARRANTY REGARDING SERVICES

ECI warrants that (a) it shall make its best effort to provide the Services substantially free of defects and malfunctions, (b) each deliverable will have all of the functions and features and perform as agreed by the parties in Quote form or Software Purchase Proposal, (c) the deliverables do not and shall not infringe any patents, copyrights, trade secrets, or other intellectual property, proprietary or contractual rights of any third party, and (d) Licensee shall have the full right to use and exploit such materials in accordance with the terms and conditions of this Software Implementation Services Agreement without claims from any third party, including, without limitation, any employee, agent or subcontractor of ECI. ECI shall remedy any failure to comply with the foregoing warranties at no cost to Licensee, including, without limitation, by repairing or replacing any non-conforming deliverables and/or obtaining any necessary third party rights.

## ARTICLE 7. DISCLAIMER

EXCEPT AS PROVIDED EXPRESSLY IN THIS SOFTWARE IMPLEMENTATION SERVICES AGREEMENT, LICENSEE'S SOFTWARE PURCHASE AGREEMENT AND ANY OTHER ATTACHMENT THERETO, ECI HEREBY DISCLAIMS ALL IMPLIED AND EXPRESS WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES FOR MERCHANTABILITY, ACCURACY, INTEGRATION, OR FITNESS FOR PARTICULAR PURPOSE, RELATING TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY SOFTWARE, HARDWARE, TECHNOLOGY, OR TANGIBLE OR INTANGIBLE PROPERTY THEREIN.

## ARTICLE 8. TERM

This Agreement shall remain in full force and effect until Services have been completed by ECI, accepted by Licensee, and paid in full, except that Licensee may terminate this Software Implementation Services Agreement, the Software Purchase Agreement and/or any attachment thereto, by providing written notice to ECI if (a) ECI fails to satisfactorily perform its contracted duties and responsibilities in accordance with this Software Implementation Services Agreement, the Software Purchase Agreement and/or any attachment thereto, or (b) ECI materially breaches any representation, warranty or covenant set forth in this Software Implementation Services Agreement, the Software Purchase Agreement and/or any attachment thereto, and ECI is unable to cure such failure or breach within thirty (30) days of receipt of notice from Licensee specifying Licensee's intention to terminate if such deficiency is not cured. The rights and remedies of Licensee provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by or in law, equity or under this Agreement.

## ARTICLE 9. INDEPENDENT CONTRACTOR STATUS

ECI will render the services hereunder as an independent contractor (and not as an employee or agent of, or joint venturer with, Licensee) and, accordingly, neither ECI nor Licensee will (a) participate in any of the other parties' employee benefits plans nor receive any other compensation beyond that stated in this Agreement, (b) have the power or authority to bind the other party or to assume or create any obligation or responsibility, express or implied, on the other party's part or in the other party's name, except as otherwise set forth in this Agreement, or (c) represent to any person or entity that Licensee or ECI or any employee of Licensee or ECI has such power or authority. Each party shall be solely responsible for determining the manner and means by which it performs the duties and responsibilities assigned to it, and shall be solely responsible and liable for its employees and agents and their acts. Licensee shall make the payments due to ECI under this Agreement without any deductions for Social Security, employment, payroll or similar taxes, in accordance with the status of ECI as an independent contractor. ECI shall indemnify Licensee for any losses resulting from any failure of ECI to pay withholding, employment, or unemployment taxes or worker's compensation payments with respect to ECI's employees or approved subcontractors.

## **Exhibit E: EnergyCAP® Database Hosting Service Agreement**

### **ARTICLE 1. HOSTING SERVICE**

ECI may, at Licensee's option, act as the Licensee's Hosting Agent and host Licensee's EnergyCAP database(s) on hardware owned and maintained by ECI.

1.1. Hosting hardware is located in Pittsburgh, PA in a commercial co-location facility that has secure access, redundant high-speed Internet access, redundant power, and redundant cooling.

1.2. Hardware will include a multi-processor database server with RAID and mirrored drives, Microsoft Server OS, Microsoft SQL Server, and separate web server.

1.3. Databases will be backed-up nightly to on-site and off-site locations. Additionally, databases are backed up to a secondary database server in near real-time.

1.4. Guaranteed system availability of 98% during customary Eastern Time Zone business office hours. Licensee shall be entitled to a credit of \$500 if system availability in any calendar quarter falls below 98% for that quarter.

1.5. Licensee may elect, at an additional fee, to have ECI host a separate EnergyCAP database for testing purposes. The test database will be in addition to Licensee's production database(s), and the following terms will apply to the test database:

- a. The test database will be set up initially as a restored copy of Licensee's production database.
- b. ECI will, up to two times per 12-month period and upon Licensee's request, delete the test database and replace it with a new backup of Licensee's then-current production database.
- c. The test database will be upgraded by ECI as part of the normal production environment upgrade process.
- d. Test databases are not considered to be critical databases and, therefore, are not subject to ECI's standard service level agreement (SLA) terms.
- e. Test databases are backed-up nightly; however, a hot-swappable backup is not created. In the event of a server failure the most recent backup copy of the test database (up to 24 hours old) will be restored for Licensee access.
- f. All standard ECI hosting service terms and conditions apply to test databases, unless stated otherwise in this Paragraph 1.5.
- g. A fee of \$1,200 per year will be added to Licensee's annual hosting service fee for each Licensee test database hosted by ECI.

1.6. Licensee may elect to store electronic bill images on a server owned and maintained by ECI at an annual Bill Image Hosting Fee of \$0.05 per bill image. The Bill Image Hosting Fee will be invoiced by ECI annually and included on Licensee's annual Database Hosting Fee invoice.

1.7. ECI will upgrade the database and web client when updates are released by ECI for Licensee access. ECI will make a reasonable effort to notify Licensee at least two weeks in advance of all upgrades. It is the responsibility of Licensee to upgrade the Installed Windows Client on all personal computers on which the Windows Client is installed on or after the database upgrade date specified by ECI.

### **ARTICLE 2. DATA OWNERSHIP & CONFIDENTIALITY**

2.1. Ownership of proprietary EnergyCAP SQL database schema resides with ECI. Database schema includes database design elements, to include: table and field design; indexes and triggers; stored procedures, scripts and views.

2.2. Data ownership resides with the Licensee. ECI shall treat Licensee databases as confidential information and shall not release, divulge, or provide access to data by any third parties without the prior consent of Licensee:

- a. The EnergyCAP application does not store or process any personal information aside from Username.

- b. EnergyCAP utilizes secure Web and FTP traffic as needed for implementation and other client projects.
- c. EnergyCAP does not encrypt database files. Communication between the installed workstation or Web application can use SSL encryption (128-bit) for all data transfer on a site-to-site basis.

### ARTICLE 3. HOSTING SERVICE TERMINATION

3.1. ECI reserves the right to terminate Hosting Agent services upon 180 days written notice to Licensee and shall transfer Licensee data to Licensee upon termination.

3.2. The Hosting Agent Service is separate and independent of the EnergyCAP Software License and Maintenance (ECMA) agreements; therefore, termination of the Hosting Agent Service does not automatically terminate the License or ECMA agreements.

## Exhibit F: EnergyCAP® Professional Services

### ARTICLE 1. OPTIONAL BILL CAPTURE BILL ENTRY SERVICE

If elected by Licensee, EnergyCAP, Inc. (“ECI”) will provide ongoing Bill CAPture utility bill processing services to Licensee for bill import into Licensee’s EnergyCAP database. Licensee must maintain an active and current ECMA in order to subscribe to the Bill CAPture service. The following service terms apply:

1.1. Definition of a Meter: A meter is a point of service as itemized on a vendor bill and/or tracked in EnergyCAP as a meter. It includes points of service for which no physical meter exists, such as sewer, fire lines, outdoor lighting, fuel oil tanks, storm drainage, ISP and telephone service, etc.

1.2. Definition of a Transaction: Each unique meter, service ID, or point of service receives one transaction per billing period. Utility bills that include multiple meters will result in multiple transactions – one transaction for each meter. Deregulated bills issued separately by a supplier and an LDC count as two transactions per deregulated meter.

1.3. Meter Enrollment: The Meter Enrollment Fee stated above is a one-time fee for the enrollment of the listed number of meters in the Bill CAPture service. Deregulated meters serviced by both a supplier and an LDC require two meter enrollments. An additional per-meter fee will be charged when a new meter is submitted by Licensee or a Licensee vendor for Bill CAPture enrollment. The fee covers the cost of preparing the Bill CAPture service for processing a new meter but does not include utility bill account management within EnergyCAP.

It is expected that account numbers and all data will be setup correctly in Licensee’s EnergyCAP database prior to Bill CAPture enrollment. If, upon the initial entry of bill data, bill records unsuccessfully import and return in the bill kick-out log file, it is the responsibility of Licensee to make the necessary corrections in EnergyCAP. If Licensee requires ECI’s assistance, ECI retains the right to provide a Change Order quotation to Licensee for the necessary scope of work to edit existing account, meter, and vendor fields and, upon acceptance, invoice Licensee for the additional work.

Licensee is responsible for all EnergyCAP data revisions and maintenance including but not limited to: the creation of new accounts, meters, places, and vendors, managing account number changes, and taking action on bill kick-out reports. ECI and Licensee will schedule a time for initiation of the enrollment process. Meter enrollment will commence within sixty (60) calendar days following ECI’s receipt of all Licensee Meter Enrollment data. Enrollment will be completed upon a mutually agreed upon timeframe.

1.4. Bill Processing: The annual processing fee stated herein assumes that Licensee, and utility vendors on behalf of Licensee, will provide bills to ECI in the formats illustrated in the table below. Data files can be transferred via website upload, secure FTP transfer, or other means agreed to by both ECI and Licensee. ECI has relied on Licensee to provide scope details and has provided this quotation based on the information in the table below. If the Licensee requests a change in utility bill formats causing the scope of bill delivery to change at any point, ECI retains the right to provide a Change Order quotation to Licensee and, upon acceptance, invoice Licensee for any changes in costs due to the task change(s).

1.5. Service Level Agreement: ECI will process Licensee’s utility bills within the timeframe selected below by Licensee. ECI’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 ECI and is subject to the terms of Licensee’s database hosting agreement and associated image hosting fees.

Format	Approx. # of Monthly Transactions
PDF or Scanned Image	300
CSV	0
XLS	0
XML	0
EDI 810	0
Web Download	0
Mail Redirect	0
<b>Total</b>	<b>300 Monthly; 3,600 Annually</b>

X Pre-Payment Bills: Processed within three (3) business days of receipt by ECI from Licensee or Licensee's vendor(s). Pre-Payment Bills are defined as "live" current bills; bills that have not yet been processed for payment by Licensee. Licensee will use the Bill CAPture service as part of its bill payment process. Current bills are defined as bills with an end date within sixty (60) calendar days of the upload date.

□ Post-Payment Bills: Processed within five (5) business days of receipt by ECI from Licensee or Licensee's vendor(s). Post-Payment Bills are defined as current bills that have already been processed for payment and EnergyCAP is not part of Licensee's bill payment process. Current bills are defined as bills having an end date within sixty (60) calendar days of the upload date.

Historical Bills: Processing time varies based on volume. Delivery dates will be mutually agreed upon by both ECI and Licensee. An estimated turnaround guideline is the greater of eight (8) weeks or one thousand (1,000) transactions per week after receipt by ECI from Licensee or Licensee's vendors(s). Historical bills are defined as bills having an end date greater than sixty (60) calendar days from the upload date.

1.6. The following services are included for each version of software deployment:

- Enterprise Hosted:
  - ECI will process bills, import or enter bills directly into Licensee's database, and link bill images (if available).
  - ECI will run a standard list of Bill CAPture audits on entered bill data to ensure data accuracy.
  - ECI will notify Licensee via email when the bills have been imported.
  - ECI will distribute exception reporting and audit results to designated Licensee contacts.
  - Licensee is responsible for reviewing bill kick-out log files and taking action on those files.
  - Licensee is responsible for all account management within EnergyCAP (create/edit/move/delete accounts, meters, buildings, hierarchy, vendors, etc.).
- Enterprise On-Premise:
  - ECI will process bills and provide to Licensee import-ready files of bill data, along with linked bill image files (if available).
  - Licensee is responsible for uploading files into EnergyCAP, auditing bills, running reports, and managing all workflow thereafter.
  - Licensee is responsible for all account management within EnergyCAP (create/edit/move/delete accounts, meters, buildings, hierarchy, vendors, etc.).

1.7. Licensee may cancel the service upon thirty (30) days written notice to ECI. ECI may cancel the service upon ninety (90) days written notice to Licensee. If so canceled by either party, Licensee will be refunded one-twelfth of the Bill CAPture fee for every full month remaining in Licensee's prepaid annual subscription. A reactivation fee may apply if Licensee cancels subscription and in the future wishes to re-subscribe to service.

1.8. ECI reserves the right to subcontract portions of the Deliverables, provided that the subcontracting firm is (1) capable of providing the services, (2) will be disclosed to Licensee upon request, and that (3) ECI will remain responsible for all subcontracted portions.

1.9. Upon renewal, ECI will invoice Licensee for the total Bill CAPture fee for the new renewal term, based upon the annual number of transactions listed in this quotation. If the total number of meter enrollments and/or transactions processed exceeds the contracted amount then an additional charge will be added to the next renewal invoice at the beginning of the next term. All unused meter enrollment and/or transactions shall not roll over into the next renewal term.

1.10. After the second anniversary of payment of the Bill CAPture fees, on each subsequent anniversary ECI may increase the Bill CAPture fees not to exceed 3% or the then current CPI percentage in any year. ECI will provide to Licensee at least sixty (60) days advance written notice of any fee increase.

1.11. Bill CAPture is an economical service designed to eliminate manual bill entry and replace it with bill imports. It is not a complete utility bill processing outsource solution and does not include such services as: researching missing

or questionable bills; contacting utility vendors for any reason on behalf of Licensee; making payments to vendors; setting up new accounts, meters, buildings or vendors in EnergyCAP or otherwise managing account data; producing reports and automating processes other than stated as Deliverables; researching, clearing or resolving bill audit results or missing bills reports; resolving or managing vendor-created issues such as cancel/rebills, corrected bills, misapplied payments, late fees, bills sent to incorrect customer, or other account management issues.

1.12. Limitation of Liability: ECI'S LIABILITY HEREUNDER SHALL BE LIMITED IN THE AGGREGATE TO AN AMOUNT EQUAL TO ALL BILL CAPTURE FEES PAID BY LICENSEE TO ECI FOR SUPPORT AND MAINTENANCE SERVICES FOR THE 12-MONTH PERIOD PRECEDING ANY CLAIM OR DEMAND BY LICENSEE. IN NO EVENT SHALL ECI BE LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION DATA LOSS, LOSS TO BUSINESS, OR OTHERWISE), INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE LOSS OR DAMAGE, ARISING FROM OR RELATED IN ANY WAY TO THE SERVICES HEREUNDER, OR THE SOFTWARE AND/OR DOCUMENTATION LICENSED BY ECI, WHETHER SUCH DAMAGES OR LOSS SOUND IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, AND ALL OTHERS), WARRANTY, OR UNDER STATUTE. ECI SHALL NOT BE LIABLE FOR THE PAYMENT OF UTILITY VENDOR LATE FEES, INTEREST CHARGES OR OTHER VENDOR-IMPOSED PENALTIES UNLESS (1) ECI IS PROVIDING SERVICES FOR BILLS THAT ARE PRE-PAYMENT (DEFINED AS BILLS BEING PROCESSED BEFORE BEING PAID BY LICENSEE'S ACCOUNTING SYSTEM, AND (2) SUCH FEE IS WHOLLY THE RESULT OF A FAILURE OF ECI OR THE SOFTWARE TO ACCURATELY PROCESS A UTILITY BILL FROM RECEIPT OF BILL (FROM VENDOR OR LICENSEE) TO DELIVERY OF BILLS TO LICENSEE WITHIN THE TIMEFRAME LISTED IN THE SERVICE LEVEL AGREEMENT.

## ARTICLE 2. OPTIONAL CAPTURE SAVINGS SHARED COST SAVINGS ANALYSIS SERVICE

2.1. At any point during the term of this Agreement, Licensee may, at its option, employ ECI to perform a cost savings analysis of Licensee's EnergyCAP database on a shared savings basis (CAPture Savings Service).

2.2. The CAPture Savings Service is a standalone service that may be purchased by Licensee in addition to and separate from the ECMA. Licensee may order the CAPture Savings Service by notifying ECI's Sales Department in writing of its desire to do so. Service requests may be submitted by an authorized Licensee representative via email to Sales@EnergyCAP.com or by mail: ATTN: Sales Department, EnergyCAP, Inc., 2026 Sandy Drive, State College, PA 16803. By submitting a written CAPture Savings Service request, Licensee confirms its understanding and acceptance of the terms and conditions outlined in this Article 2.

2.3. ECI responsibilities:

- a. ECI shall assign a Technical Services Project Manager with suitable training and skills to provide CAPture Savings Service. ECI agrees to use reasonable efforts to perform said CAPture Savings Service;
- b. ECI shall have access to and shall access Licensee's EnergyCAP database to perform the CAPture Savings Service;
- c. ECI will apply its analytical and investigative efforts to identify sources of potential utility bill cost recoveries and reductions;
- d. ECI will calculate and document potential cost savings in the event cost savings are identified;
- e. ECI will coordinate with Licensee regarding its utility vendors to obtain refunds, rebates, credits and, if applicable, suggest alternative ways that the Licensee may be able to obtain utility cost savings and/or reduce energy consumption;
- f. ECI will provide to Licensee a list of recommendations for future cost savings if as a result of ECI's investigative efforts potential cost savings are identified, but due to such factors as the need for capital improvements or significant operational modifications the recommendations have no immediate cost savings;
- g. ECI, in coordination with Licensee's designated point-of-contact, will make modifications, if applicable, to Licensee's EnergyCAP database that may be beneficial to the Licensee by streamlining or optimizing the use of EnergyCAP. All changes will be documented and no changes shall be made without prior written approval from Licensee.

2.4. Licensee Responsibilities:

- a. Licensee shall assign a point-of-contact person who will be the day-to-day interface with ECI's Technical Services Project Manager. Said point-of-contact person shall be available and have the authority to provide prompt replies to ECI inquiries;
- b. Provide ECI with access to Licensee's live EnergyCAP database via one of the following methods: (1) live database hosted by ECI on ECI servers, (2) remote access via VPN to Licensee-hosted database, or (3) remote access via GoToMyPC, remote desktop, or similar technology;
- c. On Licensee's letterhead, authorize utility vendors to provide Licensee's relevant utility bill information directly to ECI;
- d. Licensee shall contact utility vendors, if applicable, to request refunds, rebates, error corrections, rate-tariff changes, and/or other cost savings recommendations resulting from the ECI's CAPture Savings Service.

2.5. Compensation. Licensee shall compensate ECI for the CAPture Savings Service via a shared savings arrangement, wherein ECI receives a percentage of cost recoveries and future savings identified through provision of the CAPture Savings Service. Compensation terms are outlined in the following Table A:

Table A

Type of Cost Recovery Identified by ECI for Licensee	Percent (%) Retained by Licensee	Percent (%) Paid to ECI	Invoice Rule Applied
Direct refund, rebate or compensation payment made by a third party (e.g., a utility vendor) to Licensee.	50%	50%	A
Credit applied to Licensee's account; reduces future net amounts due to vendor	50%	50%	A
Mitigation of 'waste' resulting in lower future bills. The future 24-month avoided cost will be calculated and documented by ECI. Avoided cost will be shared as follows: <ul style="list-style-type: none"> <li>• Identification by ECI and correction by client of a previously unknown mechanical problem (water leak, HVAC or lighting control problem, etc.)</li> <li>• Identification and correction by ECI of ongoing billing errors (non-owned accounts, improper charges, etc.)</li> <li>• Identification and correction by ECI of unused accounts that are subsequently eliminated</li> <li>• Identification by ECI and implementation by client of metering/service measures (installation of submeters for more accurate billing, consolidation of service, switch to primary voltage, etc.)</li> <li>• Identification by ECI and implementation by Licensee of rate/tariff changes</li> </ul>	60%* 50% 50% 60%*	40%* 50% 50% 40%*	B
<b>Non-implemented savings Opportunities.</b> In the event that (1) ECI informs Licensee that it has found a potential source of cost recovery requiring further investigation, action and time/expense commitment by ECI ("Opportunity"), and (2) Licensee approves ECI's investment of further time and effort to confirm and analyze the Opportunity, and (3) Licensee subsequently decides not to implement the Opportunity and, therefore, has no savings to share, Licensee agrees to and shall reimburse ECI for the time and material ECI expended in pursuing, analyzing, and documenting the Opportunity subsequent to Licensee's authorization to proceed with the investigation.			C

\*Of net savings after deduction of Licensee implementation costs.

a. ECI shall invoice Licensee according to the Invoice Rules referenced in Table A above and defined as follows:

- Rule A: ECI shall invoice Licensee upon confirmation by Licensee that funds have been received by Licensee.
- Rule B: ECI shall invoice Licensee for the calculated amount of the 24-month savings stream multiplied by the applicable shared savings percentage upon implementation of the corrective action. ECI shall provide saving calculations.
- Rule C: ECI shall invoice Licensee for ECI's time and expenses upon notification by the Licensee that Licensee does not intend to implement the Opportunity. ECI shall provide appropriate documentation of expenses. Labor costs are as follows:
  - Technical Services Project Manager: .....\$165.00/hr
  - Data Analysis Specialist: .....\$ 95.00/hr
  - Data Entry Clerk: .....\$ 55.00/hr
  - No mark-up applied to any out-of-pocket expenses

b. CAPture Savings Service Payment Terms: Net 30 days, 0.5%/month late fee may be applied by ECI

2.6. Dispute Resolution. Licensee and ECI agree that, in the event that there is a disagreement with ECI's CAPture Savings Service, Licensee and ECI shall provide the other party with documentation to substantiate its position regarding the items in disagreement. If the matter is not resolved within ten (10) days of the appropriate party receiving said documentation, an authorized representative of both Licensee and ECI shall meet via conference call to resolve the issues. If after ten (10) days of said meeting the matter is not resolved, each party shall appoint an independent representative to mediate the issues. The two independent representatives shall appoint a third independent person agreeable to both representatives. Within ten (10) days of said appointment, the three representatives shall meet, review the documentation provided by the parties, and render a decision. Said decision shall be final and binding upon the parties. The decision may be entered in a Court of competent jurisdiction as a final judgment without rights of appeal. Any dispute or dispute resolution shall have no effect on the Licensee's EnergyCAP license, software maintenance, or other agreements that may exist between Licensee and ECI. The obligations and provisions of this Paragraph 2.6 shall survive termination of this Agreement pursuant to Paragraph 2.8 herein.

2.7. Term. The term of the CAPture Savings Service will begin on the date written approval to begin the service is received by ECI from Licensee and shall continue until terminated in accordance with Paragraph 2.8 herein.

2.8. Termination:

- a. ECI has the right to immediately terminate the CAPture Savings Service in the event that Licensee's EnergyCAP software license is terminated;
- b. Either party may terminate the CAPture Savings Service, upon thirty (30) days prior written notice to the other party, if the other party is in default of any provision of this Agreement and such default is not satisfactorily resolved within the thirty (30) day period;
- c. ECI may terminate the CAPture Savings Service upon the insolvency, bankruptcy, or change of greater than 50% of the controlling ownership of Licensee;
- d. Licensee may terminate the CAPture Savings Service upon ninety (90) days prior written notice to ECI;
- e. The CAPture Savings Service shall terminate upon completion of services. At such time as ECI deems services to be complete, in its sole discretion, ECI shall notify Licensee, and the CAPture Savings Service shall be terminated upon receipt of notification by Licensee.
- f. The CAPture Savings Service is separate and independent of the ECMA; therefore, cancellation of the CAPture Savings Service does not impact the ECMA.

2.9. Right of Audit. ECI shall have the right to audit the books and records of Licensee pertaining to the accounting and receipt of cost recovery delineated in Table A herein. The obligations and provisions of this Paragraph 2.9 shall survive termination of this Agreement pursuant to Paragraph 2.8 herein.

