



Prepared For:
 Lexington-Fayette Urban County
 Government
 Attn: Accounts Payable
 200 East Main Street
 Lexington, Kentucky 40507

Date: 2/3/2025
 Subscription Effective Date: 7/1/2025

Quote Number: Q-04820

Expiration: 6/30/2025
 Initial Term: 36 Months

Pricing Summary – 7/1/2025 – 6/30/2026

Subscription Services		
Item	Description	Annual Price
Software License	EnergyCAP UtilityManagement – Enterprise – Base License	\$9,604.41
Software License	EnergyCAP UtilityManagement – Enterprise – Accounting Interface	\$1,600.74
Software License	EnergyCAP Utility Management – Enterprise – Interval Data	\$1,600.74
Software License	EnergyCAP UtilityManagement – Enterprise – Chargebacks	\$1,600.74
Total Fee – Year 1		\$14,406.63

Scope Details

Product Scope and Details

Subscription Services – 3 Year Term 7/1/2025 – 6/30/2028			
Items	Year 1 7/1/2025 – 6/30/2026	Year 2 7/1/2026 – 6/30/2027	Year 3 7/1/2027 – 6/30/2028
EnergyCAP Utility Management – 5,000 Meters	\$9,604.41	\$10,084.63	\$10,588.86
Accounting Interface	\$1,600.74	\$1,680.78	\$1,764.82
Interval Data	\$1,600.74	\$1,680.78	\$1,764.82
Chargebacks	\$1,600.74	\$1,680.78	\$1,764.82
Sales Tax	-	-	-
Total 5-Year Pricing Summary	\$14,406.63	\$15,126.97	\$15,883.32

Scope Details

Product Scope and Details

Subscription Details

Licensed Software Features	Included: Base License; Chargebacks, Accounting Integration, Chargebacks
Subscription Effective Date	7/01/2025
Initial Term	3 Years
Licensed Number of Meters	5,000
Licensed Number of Users	Unlimited

Invoicing Schedule

Total Fee

Invoice - Upon Contract Execution

Subscription Services	100%
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Terms and Conditions

1. This quote and product pricing are the proprietary property of EnergyCAP, LLC (ENC), are provided to the recipient at recipient's request, and may not be divulged to any third parties.
2. To order, please sign and return this Order Form.
3. The terms and conditions for using EnergyCAP, LLC's software products and services are governed by the current written agreement between EnergyCAP, LLC and Licensee. In the absence of a current executed agreement, the standard EnergyCAP Master Subscription Agreement will be provided and is incorporated herein and is available online at www.EnergyCAP.com/Legal
4. The terms of any Licensee-provided purchase or procurement documentation, such as a purchase order, acknowledgement form, or other similar documentation and any pre-printed terms and conditions on or attached to Licensee's purchase orders or invoices will be of no force or effect.

Acknowledgement

I signify that I am an authorized representative of the organization named above. My signature below confirms the organization's intent to purchase the above-noted products and services ("Products") and authorizes EnergyCAP, LLC to deliver and invoice for the Products under the Terms & Conditions outlined herein.

Signature: _____

Name: _____

Title: _____

Date: _____

PO #: _____



Lexington-Fayette Urban County Government

EnergyCAP Subscription Agreement

EnergyCAP, LLC

360 Discovery Drive
Boalsburg, PA 16827

T: 877-327-3702
F: 719-623-0577

EnergyCAP® Subscription Agreement

This Subscription Agreement (this “Agreement”), dated as of July 1st, 2025 (“Effective Date”), is by and between EnergyCAP, LLC, a Delaware limited liability company (“ENC”), and Lexington-Fayette Urban County Government (“Licensee”) for use of the Subscription Services (as defined below). ENC and Licensee are referred to individually as a “Party” and collectively as the “Parties.”

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

1. DEFINITIONS.

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

accordance with the Documentation, this Agreement and the limitations set forth in the applicable Order.

2.1.1. 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 Agreement. Licensee shall promptly notify ENC of any suspected unauthorized access to the Subscription Services.

2.1.2. 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.

2.1.3. 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. For purposes of this agreement ENC's hosting cloud providers and other resources used to perform the Subscription Services shall not be considered Material Subcontractors.

3. TERM.

3.1. All Subscription Services will be provided beginning on the effective date of the applicable Order (the "Order Effective Date") and continuing the initial term identified on the applicable Order (the "Initial Term") unless earlier terminated in accordance with this Agreement. Upon completion of the Initial Term, the term for all Subscription Services will automatically renew for successive one (1) year renewal terms (each, a "Renewal Term") unless a different renewal period is specified on the applicable Order. Each Party must provide at least thirty (30) days' written notice if they intend for the Subscription Services to expire at the end of the Initial Term or the then-current Renewal Term. The Fees payable during any Renewal Term will be increased by ten percent (10%) (unless the pricing in such prior Term was designated in the applicable Order as promotional or one-time) over the Fees paid during the prior Term and will be further adjusted to account for any increase in the scope of the Subscription Services. In the event that any prior term was designated in the applicable Order as promotional or one-time, ENC shall provide 30-days' notice for any price increases in a renewal term unless otherwise stated in the applicable Order.

3.2. A Party may terminate this Agreement and/or any then current Order for cause: (i) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period or such longer period as may be mutually agreed in writing; or (ii) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

3.3. ENC may terminate this Agreement and/or any then current Order if Licensee fails to remit payment within ten (10) days after written notice from ENC with respect to any unpaid invoice.

3.4. Upon any termination for cause by Licensee, ENC shall refund any prepaid Fees covering the remainder of the then current Term. Upon any termination for cause by ENC, Licensee shall pay all Fees due and to become due during the Term of any then current Order(s). In no event shall any termination relieve Licensee of its obligation to pay any Fees due for Services provided prior to the effective date of termination.

3.5. During the period of ten (10) days after the effective date of termination of the applicable Order, 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.

3.6. 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.

3.7. Surviving Provisions. Section 3.4, Section 3.6, Section 4.2, Sections 7 through 11 and Section 14 shall survive any termination or expiration of this Agreement.

4. WARRANTIES; DISCLAIMERS.

4.1. ENC warrants that during the Term the Subscription Services will perform materially in accordance with the Documentation and the functionality of the Subscription Services will not be materially decreased. In the event of any breach of the foregoing warranty, ENC will use commercially reasonable efforts to correct the reported non-conformity and/or breach, at no charge to 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.

4.2. **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.

5. HOSTING SERVICES; SECURITY; PROFESSIONAL SERVICES.

5.1. 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.

5.2. 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 Agreement and for purposes of providing the Services.

5.3. 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.

5.4. 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.

5.5. ENC will provide Professional Services in accordance with the terms set forth on Exhibit 1 to this Agreement.

6. SUPPORT SERVICES.

6.1. During the Term:

6.1.1. 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.

6.1.2. 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.

6.1.3. 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.

6.1.4. Support Services 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://Helpcenter.EnergyCAP.com>.

6.1.5. 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.

6.1.6. After-Hours Support Services are available via the support ticket system and online help manuals accessible from within the Subscription Services. Support tickets submitted after 5:00 PM ET will be addressed at the start of the next business day. ENC will use reasonable efforts to respond to all support requests in accordance with the times set forth in the table below.

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

Service Level	Response	Resolution	Definition
			configuration; bug affecting a small number of users. Acceptable workaround available.

- 6.2. 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.
- 6.3. Premium Maintenance (if purchased) includes 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.
- 6.4. Except as set forth in the Premium Maintenance clause 6.3, Support Services and Premium Maintenance 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.

7. FEES, PAYMENT TERMS.

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

8. PROPRIETARY RIGHTS.

- 8.1. 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 Agreement, ENC retains all copyrights, patents, trade secrets, trademarks, and all other intellectual property interests in and to the Subscription Services and the Enhancements.
- 8.2. 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.
- 8.3. 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.
- 8.4. 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.

9. CONFIDENTIAL INFORMATION.

- 9.1. 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 Agreement. “Confidential Information” does not include information that: (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party.
- 9.2. Protection of Confidential Information. Each Party acknowledges that it will or may have access to Confidential Information of the other Party and therefore each Party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that Party’s attorneys, accountants and other advisors as reasonably necessary and providing that they agree to be bound by obligations of confidentiality at least as strict as those contained herein), nor permit any of its partners, shareholders, directors, officers, employees, agents or contracting parties to use or disclose, any of the other Party’s Confidential Information and will take precautions necessary to protect the confidentiality of such Confidential Information using the same degree of care used to protect its own Confidential Information, but in any case using no less than a reasonable degree of care.
- 9.3. Compelled Disclosure. The receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency or as required by law, provided that it gives the disclosing Party reasonable prior written notice sufficient to permit the disclosing Party to contest such disclosure. If the disclosing Party is not successful in precluding the requesting legal body from requiring disclosure of the Confidential Information, the receiving Party shall furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded with the Confidential Information.
- 9.4. Ownership of Confidential Information. All Confidential Information disclosed pursuant to this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of the disclosing Party. All such information in tangible form shall be returned to the disclosing Party promptly upon written request or the termination or expiration of this Agreement and shall not thereafter be retained in any form by the receiving Party, its Affiliates, or any employees or independent contractors of the receiving Party or its Affiliates.
- 9.5. Survival. SECTION 9 SHALL REMAIN IN FULL FORCE AND EFFECT FOR SO LONG AS EITHER PARTY RETAINS ANY CONFIDENTIAL INFORMATION OF THE OTHER PARTY.

10. INDEMNIFICATION.

- 10.1. Indemnification by ENC. ENC will defend Licensee against any claim, demand, suit, or proceeding (“Claim”) made or brought against Licensee by a third party alleging that the use of the Subscription Services as permitted hereunder infringes or misappropriates the intellectual property rights of such third party, and ENC shall indemnify and hold harmless Licensee from and against any damages finally awarded against, and for reasonable attorney’s fees incurred by, Licensee in connection with any such Claim.
- 10.2. Indemnification by Licensee. Licensee shall defend ENC against any Claim made or brought against ENC alleging that Licensee Data, or Licensee’s use of the Subscription Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify and hold ENC harmless from and against any damages finally awarded against, and for reasonable attorney’s fees incurred by, ENC in connection with any such Claim.
- 10.3. Exclusive Remedy. ENC shall have no obligation under Section 10.1 for any Claim to the extent arising out of or is based upon: (i) Licensee’s use of the Subscription Services not in compliance with this Agreement or the Documentation; (ii) Licensee’s combination of the Subscription Services with software, hardware, system, data, or other materials not supplied or authorized by ENC (unless expressly permitted by the Documentation) without ENC’s prior written authorization; (iii) ENC’s adherence to Licensee’s written specifications or written instructions pursuant to a separate SOW or (iv) the Licensee Data. In the

event an infringement or misappropriation Claim involving the Subscription Services is brought or threatened, or is likely to be brought or threatened in ENC's reasonable opinion, ENC will, at its sole option and expense: (x) procure for Licensee the right to continue to use the Subscription Services, (y) modify the Subscription Services in a manner that does not materially degrade the functionality of the Subscription Services functionality, or (z) terminate the affected Subscription Services and, with respect to such termination, refund the unearned portion of the applicable pre-paid Fees. Notwithstanding anything else herein, the foregoing indemnification obligations are ENC's only obligations and liability, and Licensee's exclusive remedy, in respect of any infringement or misappropriation Claim.

- 10.4. Process. Each Party seeking indemnification hereunder shall provide the other Party with: (i) prompt written notice of any Claim for which indemnification is sought; (ii) complete control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense at the indemnifying Party's expense. Notwithstanding the foregoing, the indemnifying Party may not enter into a settlement of a claim that involves a remedy other than the payment of money by the indemnified Party (which amounts must be subject to indemnification by the indemnifying Party) without the indemnified Party's written consent.

11. LIMITATION OF LIABILITY.

- 11.1. 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 EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, A BREACH BY LICENSEE OF SECTION 2 OR LICENSEE'S FAILURE TO REMIT ALL FEES PROPERLY DUE AND OWING TO ENC.

12. INSURANCE.

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

13. GENERAL TERMS.

- 13.1. 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.

- 13.2. Notice. Any notices required by this Agreement, or any attachment hereto, shall be in writing and shall be given to the parties by hand, by nationally recognized overnight courier service or by express, registered, or certified mail, postage prepaid, return receipt requested or by email (provided the original is delivered via one of the preceding methods on or prior to the fifth (5th) day after transmission of the e-mail). Notices shall be deemed to have been given upon actual receipt thereof. Notices to ENC shall be directed via mail to EnergyCAP, LLC, 360 Discovery Drive, Boalsburg, PA, 16827, via fax: 719.623.0577, or via email: Accounts.Receivable@EnergyCAP.com.
- 13.3. Governing Law and Jurisdiction. This Agreement shall be governed by, construed in accordance, and subject to the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions. Any disputes relating to this 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.
- 13.4. Waiver of Jury Trial. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 13.5. Force Majeure. A Party shall be excused from complying with this Agreement and the Orders if, to the extent, and for as long as, such Party's compliance is delayed or prevented by a Force Majeure Event; provided, however, a Force Majeure Event shall not excuse performing duties that are unrelated to the Force Majeure Event, including discharging financial obligations.
- 13.6. Export Compliance. Each Party shall comply with the export laws and regulations of the United States in providing and using the Services. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
- 13.7. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.
- 13.8. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 13.9. Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
- 13.10. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 13.11. Attorney Fees. If either Party engages attorneys to enforce any rights out of or relating to this Agreement, the prevailing Party in any action to enforce or interpret this Agreement shall be entitled to recover any and all costs and expenses of any nature including, attorneys' and experts' fees and costs. Licensee shall be responsible for any collection fees incurred by ENC in collecting Fees.
- 13.12. Assignment. Neither Party may assign this Agreement or any Order without the prior written consent of the other Party, except to an Affiliate or an entity that acquires all or substantially all of its stock, business or assets, whether through merger, consolidation, reorganization or otherwise. Any assignment in violation of the foregoing shall be void and of no effect.
- 13.13. Entire Agreement. This Agreement, together with any Order, attachments and all documents incorporated by reference herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations, understandings, or other matters, whether oral or written, with respect to the subject matter hereof. This Agreement shall take precedence over any conflicting terms in any Order or any Licensee-provided purchase or procurement documentation, such as a purchase order, acknowledgement form, or other similar documentation and any pre-printed terms and conditions on or attached to Licensee's purchase orders or invoices will be of no force or effect.
- 13.14. Modifications. This Agreement can only be modified, changed, or amended in writing and signed by a duly authorized representative of each of the parties.

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
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507

EnergyCAP
EnergyCAP, LLC
360 Discovery Drive
Boalsburg, PA 16827

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EnergyCAP UtilityManagement Terms

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

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

1. Additional Definitions:
 - a. "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 Agreement.
2. 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. All Meters present in the database will count against the total Meter count. The number of Meters will be reviewed quarterly. Excess utilization (i.e., Meters in excess of the amount stated on the applicable Order) will be billed quarterly in arrears at the per Tier annualized "Cost per Meter" set forth on the Order.
3. 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).

ADDITIONAL TERMS FOR SUBSCRIPTION DATA SERVICES – applicable to EnergyCAP UtilityManagement and EnergyCAP CarbonHub – as set forth on the applicable Order.

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

1. The Subscription Products and contents therein are property of ENC or its independent third-party providers. Third party content and/or data may be imported or may be accessible via links from our Products. 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.
2. The SUBSCRIPTION PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Neither ENC, nor any data suppliers or third-party providers make any warranty whatsoever as to the accuracy or completeness of the content or the results to be obtained from using the information contained therein, and neither ENC nor any data suppliers or third-party providers will be responsible for any claims attributable to errors, omissions, or other inaccuracies in the information contained in the content or results thereof. The entire risk for the results and performance of the Subscription Products is assumed by Licensee.