

Terms Related to the EnergyCAP Modules

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

1. Additional Definitions:

1.1. "Meter" means a point of service as itemized on a vendor bill or tracked in the Services as a meter/logical device that tracks a commodity or resource. A Meter can track bills, interval, or channel data, and may represent points of service for which no physical meter exists, including but not limited to a sewer, waste, recycling, fire lines, outdoor lighting, fuel oil tanks, storm drainage, internet service provider, telephone service. Meter records that are formula based or used in split, calculated, and virtual bill processes for chargeback, cost allocation, and distribution purposes are included in the total Meter count for purposes of this Agreement.

2. The Fees listed in the applicable Order are based upon the Subscriber's Meter inventory and Subscriber's current software module utilization needs as of the Effective Date. All Meters present in the database, including those listed as inactive, will count against the total Meter count. The number of Meters will be reviewed quarterly. Excess utilization (i.e., Meters in excess of the amount stated in the applicable Order) will be billed quarterly in arrears at the per Tier annualized "Cost per Meter" set forth on the Order.

Terms Related to SUBSCRIPTION DATA SERVICES

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

1. The Subscription Products and contents therein are property of ENC or its independent third-party providers. Third party content and/or data may be imported or may be accessible via links from our Products. Subscriber acknowledges and agrees that ENC is not responsible for and assumes no liability for any loss or damages which may be incurred as a result of any mistakes, omissions, or incorrect data or representations or any other form of content provided by ENC.
2. The SUBSCRIPTION PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Neither ENC, nor any data suppliers or third-party providers make any warranty whatsoever as to the accuracy or completeness of the content or the results to be obtained from using the information contained therein, and neither ENC nor any data suppliers or third-party providers will be responsible for any claims attributable to errors, omissions, or other inaccuracies in the information contained in the content or results thereof. The entire risk for the results and performance of the Subscription Products is assumed by Subscriber.

Terms Related to Bill CAPture Services

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

1. Definitions:
 - 1.1. "Bill Pay Processing" is the period beginning when onboarding, implementation, and transition of bill pay responsibilities is complete and ENC becomes responsible for paying bills on behalf of the Subscriber.
 - 1.2. "Current Bills" are bills with a statement date within sixty (60) calendar days of the receipt date after live processing begins.
 - 1.3. "Enrolled Meter" means each point of service that is setup as a meter, which has a unique account, that Subscriber wants the Bill CAPture service to process Transactions for. Enrolled Meters only process bills with bill dates on or after the date the Meter is set up in the Subscription Services. Historical Bills are not included in Enrolled Meters.
 - 1.4. "Historical Bills" are bills having a statement date greater than sixty (60) calendar days from the receipt date.
 - 1.5. "Live Processing" is the period beginning when meter enrollment is complete, and all bills received by ENC for the enrolled meters can be processed.
 - 1.6. "Receipt Date" is the date bills are received by ENC.
 - 1.7. "Transaction" means each Enrolled Meter present on a utility bill invoice. Utility bills that include multiple Enrolled Meters are counted as multiple Transactions on the basis of one Transaction for each Meter.

2. Subscriber Responsibilities

- 2.1. Bill CAPture Services fees are bundled and invoiced based on per Transactions pricing.
- 2.2. Subscriber must enroll/identify all the Enrolled Meters at one time unless the parties mutually agree in the applicable Order that Meters can be enrolled in phases. Meter enrollment and setup will commence within sixty (60) days after ENC's receipt of all Enrolled Meters from Subscriber and be completed within a mutually agreed upon period.
- 2.3. It is expected that account numbers and all data will be set up correctly in Subscriber's EnergyCAP database prior to enrollment in Bill CAPture Services. In the event the initial entry of account information is unsuccessfully imported and rejected, Subscriber is responsible for making the necessary corrections in the EnergyCAP database to resolve the kick-outs.
- 2.4. Subscriber is responsible for all EnergyCAP data revisions and maintenance including: the creation of new accounts, Meters, places, and vendors, managing account number changes, and taking action on bill kick-out reports, and for notifying ENC about any expected changes to Enrolled Meters a utility vendor may make. If Subscriber requires ENC's assistance in connection with the performance of these responsibilities (collectively, "Professional Services" or "Managed Services"), ENC may provide a Change Order to Subscriber to address the scope of work to edit existing account, Enrolled Meter, and vendor fields and, upon acceptance, invoice Subscriber for the additional services.

3. Bill Acquisition

- 3.1. ENC will provide Bill Acquisition services at its sole discretion when it determines that such services are operationally advantageous and cost-effective. This includes, but is not limited to, situations where electronic data interchange (EDI) or comparable automated methods are available. ENC will not acquire bills from vendors that require manual retrieval methods—such as downloading from vendor websites or portals—as such processes are not scalable, efficient, or consistent with ENC's service model.
- 3.2. The following Service Levels apply to Bill Processing Services:

Service	Service Level	Definition
Bill Acquisition for both Pre-Payment and Post-Payment	An additional five (5) business days in addition to business days listed in Bill Processing SLA section for Pre-Payment and Post-Payment Bills	Bill Acquisition is a method of delivery where a bill in PDF format is downloaded directly from vendor websites using Subscriber's login credentials.

- 3.3. Exceptions for the Bill Acquisition Service Level: In the event of credential failures, missing bills, website changes, or other issues outside of ENC's control that prevent the system from accessing bill images, these incidents are excluded from SLA calculations. Bill Acquisition services are limited to utility vendors that ENC has verified are able to consistently provide a quality utility bill within this SLA. ENC continuously

evaluates the quality of the vendors for which Bill Acquisition is available and may, at its discretion and in writing to Subscriber, discontinue service when the level of consistency prevents ENC from meeting or exceeding this SLA agreement. When ENC discontinues Bill Acquisition for a utility vendor, ENC will identify the new preferred bill delivery method which may require Subscriber to manually upload PDFs or switchover to another Bill Acquisition method.

- 3.3.1. ENC will provide notice to Subscriber in the event Subscriber needs to be responsible for bill acquisitions for vendor bills which cannot be efficiently acquired by ENC.
- 3.3.2. Bill acquisition services are included as part of the Bill Pay pricing. ENC reserves the right to assess additional fees for BC customers who request Bill Acquisition without subscribing to Bill Pay.
- 3.3.3. As part of ongoing service improvements, ENC may work with legacy BC customers to transition from PDF-based billing to EDI or other automated formats, with the goal of enhancing efficiency and reducing manual intervention.

4. Bill Processing

- 4.1. Bill Processing will be provided for the term set forth on the applicable Order and subject to payment of the applicable annual fees based on the number of Transactions set forth on the applicable Order. ENC counts a Transaction when data is first submitted by Subscriber or via automated delivery method authorized by Subscriber during Meter enrollment. Refunds will not be provided based on Subscriber failure to update.
- 4.2. Upon the anniversary date of the applicable term, ENC will invoice Subscriber based on the current Transactions for the next annual term. ENC will notify Subscriber of any changes to the fees payable for the Bill CAPture Services at least thirty (30) days prior to the end of the then current term. If the total number of Transactions (by delivery type and format; historical and annual) processed in the completed term exceeds the amount set forth in the original Order, the volumes will be increased accordingly, and ENC will invoice Subscriber for the additional fees. When the total committed volume processed in the completed term is less than the amount set forth in the original Order, such excess volume will be forfeited.
- 4.3. If the total number of Transactions processed through the Bill CAPture Service exceeds the committed quantity specified in the applicable Order Form during the Initial Term or and Renewal Term, EnergyCAP reserves the right to automatically increase the contracted committed volume mid-Term on actual usage and invoice any increases as well as reflect any increases in volumes in the invoices in any Renewal Term. Subscriber may request current transaction usage summaries through ENC support.
- 4.4. The annual Bill Processing fee is based on the assumption that Subscriber, and utility vendors on behalf of Subscriber, will provide bills to ENC in the following formats: paper, pdf, scanned images, and flat files such as EDI 810, .xls, .csv, .txt, and xml. Subscribers agree to support bill delivery method at ENC discretion. Options that data files may be transferred include website upload, secure FTP transfer, mail redirect, website download or other means as mutually agreed by the parties. If the Subscriber requests a change in utility bill formats causing the scope of bill delivery to change at any point, ENC may provide a Change Order to Subscriber and, upon acceptance, invoice Subscriber for any changes in costs due to the task change(s).
- 4.5. Bill Processing Service Levels. ENC will process Subscriber's utility bills in accordance with the Order and as defined below. ENC's processing includes all body lines from the utility bills. If available, an electronic image of each bill will be linked to each utility bill processed by ENC.

4.5.1. The following Service Levels apply to Bill Processing:

Service	Service Level	Definition
Pre-Payment Bills	Within three (3) business days of receipt by ENC from Subscriber or Subscriber's vendor(s)	Pre-Payment Bills are Current Bills that have not yet been processed for payment by Subscriber.
Post-Payment Bills	Within five (5) business days of receipt by ENC from Subscriber or Subscriber's vendor(s)	Post-Payment Bills are Current Bills that have already been processed for payment by Subscriber via a means other than the Bill CAPture Services.
Historical Bills	Varies based on volume	Historical Bills are Post-Payment Bills that have an end date greater than sixty (60) calendar days from the receipt date.

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

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

5. Bill Pay. The Bill Pay service allows ENC the ability to facilitate movement of funds automatically from Subscriber's bank account to various utility vendors.

5.1. Subscriber requirements for Bill Pay. As part of the Bill Pay service. Subscriber agrees to complete and maintain the conditions:

- 5.1.1. Subscriber will provide ENC's payments partners with all financial information and documentation required as part of AML/KYC and Customer Due Diligence (CDD) process mandated by regulatory authorities and sign all associated authorization forms.
- 5.1.2. Subscriber will provide an authorized operating bank account to withdraw sufficient funds via Automated Clearing House / Electronic Funds Transfer (ACH/EFT Debit or Pull) for ENC's payments partners to successfully make utility payments.
- 5.1.3. Subscriber will approve ENC's integrated payments partners' custodial bank account to allow successful ACH/EFT Debit of Subscriber's operating bank account throughout the subscription period.
- 5.1.4. Subscriber will opt for a 2-Day Bank Hold for ACH/EFT Debits, which can typically be moved to a 1-Day Bank Hold post 60 Days of successful Debits.
- 5.1.5. Subscriber will regularly maintain a minimum balance of 125% - 150% of the maximum expected monthly utility expense in their operating bank account to prevent ACH/EFT Debit failures from insufficient funds. ENC is not responsible for any fees resulting from insufficient funds.
- 5.1.6. Subscriber is responsible for understanding the contract that they have directly with each vendor which may include variances in late fees, delivery fees, and due dates.

5.2. ENC does not currently support funding of utility bill payments from Subscriber via depositing funds via ACH/EFT Credit (or Push Payment) into ENC's integrated partners' custodial bank accounts.

5.3. Hold Payment. Subscriber will have the option to "Hold" a bill from payment to review suspected errors and discrepancies. When in Hold, Subscriber will review and rectify those errors and discrepancies within two (2) calendar days and release the bill for payment. If a bill is on Hold beyond 2 days, ENC will no longer be subject to potential late fees and penalties incurred from a late payment of the associated bill/invoice.

5.4. ENC Bill Payment Best Practice.

- 5.4.1. ENC will only pay the current charges on each bill.
- 5.4.2. When there is a prior balance in the first bill post Go Live, ENC will only pay the current charges and not the prior balance. If Subscriber requires that ENC pay the prior balance, ENC, with assistance from the Subscriber, will acquire the prior unpaid bill and pay the current charges on that bill and will not be responsible for any late fees and penalties.
- 5.4.3. ENC, at its discretion, may make an exception to this best practice, should there be a prior balance impacting timely payments, incurring late fees, or resulting in service interruption.

5.5. Payment Methods

- 5.5.1. ENC supports utility bill payments in USD for United States based bills and CAD for Canada based bills. ENC may add additional geographies and payment methods at its convenience. Cross-border transactions and currency conversions are not currently supported.

- 5.5.2. When funds are received successfully, ENC will initiate payment through one of the following methods: Virtual Card, ACH/EFT Credit, Paper Check/Cheque via USPS/Canada Post.
- 5.5.3. Status and proof of payment will be made available to the Subscriber within the service.
- 5.5.4. The following payment methods to pay utility vendors by are not currently supported: ACH/EFT Debit, Electronic Check (eCheck), Wire (FedWire, TCH CHIPS, SWIFT), Instant Payments (TCH RTP, FedNow), Zelle, Venmo, CashApp, Cryptocurrencies (Bitcoin, Ripple, Ether, Stablecoin), etc.
- 5.5.5. ENC may add additional payment methods based on its convenience.
- 5.6. Expedited Payment Services. Circumstances beyond ENC's control may occur wherein payments either may not have been initiated or fail to reach the utility vendors on time. Hence, for such circumstances, provided the bill to be paid is funded by the Subscriber and there are at least five (5) business days available to pay, ENC and its payments partners offer the following expedited payment methods:
- 5.6.1. Virtual Credit Card, if accepted by the utility vendor, for a fee.
- 5.6.2. Overnighting a Paper Check via FedEx for a fee (only available within the US).
- 5.7. Emergency Payments and Backup Payment Methods. For circumstances requiring payment within five (5) business days of receipt, including, without limitation, bills accompanied by shutoff or disconnect notices, Subscriber acknowledges and agrees that it remains ultimately responsible for ensuring timely payment. In such cases, ENC will promptly notify Subscriber to take appropriate action to address the urgency. Subscriber will be responsible for initiating and completing the payment required by the utility vendor to prevent potential service interruption and, thus, have available acceptable Backup Payment Methods such as a Corporate Credit Card and Corporate Bank Account.
- 5.8. Under no circumstance shall ENC advance or otherwise use its own funds to make payments on behalf of Subscriber.
- 5.9. Late Fee Accountability. A typical utility bill/invoice offers an average of Net 15 days (Due Date – Statement Date) to make timely payments beyond which late fees and penalties may apply. Below is an example of how the key dates mentioned above can work in the Bill Pay lifecycle:

Key Dates	Day #	Delta from Due Date
Statement Date	1	14 Days
Acquired Date	2	13 Days
Approved Date	3	12 Days
Funded Date	5	10 Days
Due Date	15	0 Day

5.9.1. ENC will not be liable for late fees in the 1st month of Go Live while it is focusing on facilitating a smooth transition over from either Subscriber's in-house payments team or a previous utility bill payment provider of the Subscriber.

5.9.2. Unless it was ENC failure for not acquiring a bill/invoice, the following explains the late fee accountability between Subscriber and ENC should a delay in payment occur resulting in late fees:

Due Date – Approved Date		Due Date – Funded Date	Late Fee Accountability
> 12 Days	AND	> 10 Days	ENC
<= 12 Days	OR	<= 10 Days	Subscriber

- 5.10. ENC will respond to Subscriber's Payment requests within the following timeframes:

Service	Service Level	Definition
Payment Status	Initial Response: 2 hours Resolution: 2 business days	Routine status of payments when not easily comprehensible in EUM.
Disconnection Notice	Initial Response: 60 minutes Resolution: 1 business day	When a vendor disconnection notice is received, ENC support to mitigate disconnection risk.
Disconnection	Initial Response: 30 minutes Resolution: 3 hours	When a vendor disconnection occurs due to failure from untimely payment of a bill and ENC supports to restore service.

6. **Utility Interval Data Integration**

- 6.1. If elected by Subscriber, ENC will provide ongoing utility interval data processing services “EnergyCAP Utility Interval Services” to Subscriber for import into Subscriber’s EnergyCAP database. As a Subscriber of the Utility Interval Services, ENC will automate the process of extracting, transforming, and loading interval data that is available to the Subscriber.
- 6.2. Access to Data. Availability of Utility Interval Services is subject to the following conditions:
 - 6.2.1. ENC is only able to access interval data from the current list of enrolled utility vendors. The list of enrolled vendors can be provided by the support team upon request.
 - 6.2.2. ENC uses Subscriber login credentials to access vendor websites and requires the ability to access the data from the vendor portal. Vendor portals that use multi-factor authentication may not be accessible and are not included in the service.
 - 6.2.3. ENC may add new vendors to the enrolled utility vendors list. This will require additional implementation time for enrollment in Utility Interval Services.
 - 6.2.4. If ENC is unable to access the interval data from a particular vendor website, Subscriber’s interval data for that data source will not be enrolled in Utility Interval Services.
- 6.3. Process and Timing. ENC shall extract, transform, and load interval data provided from the identified data source on behalf of the Subscriber. ENC guarantees that data provided by the data source shall be loaded into Subscriber’s EnergyCAP database within one business day of ENC’s receipt of data from the identified sources.
- 6.4. Data Quality. ENC does not evaluate the accuracy or quality of the data provided by the data source, however it does ensure accuracy and quality in the extract, transform, and load process.
- 6.5. Enrollment Process and Responsibilities.
 - 6.5.1. ENC shall work with Subscriber through each step of enrollment leading up to live interval data appearing in Subscriber’s EnergyCAP database. Enrollment steps vary based on the data source providing interval data.
 - 6.5.2. If the number of required Meters to be enrolled in Utility Interval Services exceeds the initial number of Meters purchased by the Subscriber, then fees for such Meter overages will be billed to the Subscriber on a quarterly basis.
 - 6.5.3. Subscriber must (i) provide ENC with the required credentials and/or access to the data sources containing the interval data; (ii) create and maintain the credentials for each data source; (iii) configure EnergyCAP Meters to receive the interval data provided by the subscription.
- 6.6. Ongoing Service Terms and Conditions. ENC and Subscriber will schedule a time for initiation of the enrollment process. Subscriber is responsible for all EnergyCAP data revisions and maintenance including but not limited to the creation of new Meters and updates to existing Meter properties if Meter identifiers or data intervals change. Subscriber may at any time request a quote for ENC to enroll additional Meters in the service or update existing Meter properties to support ongoing enrollment in the service. If a service disruption due to factors outside of ENC’s control affects the Utility Interval Services, ENC will not be responsible for backfilling missing interval data, in this event, Subscriber may request a quote for ENC to backfill the missing interval data.

7. **Managed Services**

- 7.1. If Managed Services are purchased (as set forth in the applicable Order or Change Order), ENC will provide services to Subscriber based on the level of Managed Services purchased.
- 7.2. ENC will follow standard operating procedures to deliver the scope of Managed Services described below. Requests for non-standard processes and services can be requested and, if possible, ENC may provide a quotation for professional services.
- 7.3. All Managed Services levels include:
 - 7.3.1. Monthly status review meeting.
 - 7.3.2. Report distribution configuration of standard Managed Services reports.
 - 7.3.3. Bill flag review and resolution of EnergyCAP’s standard Managed Services audits
 - 7.3.4. Bill Kickout Resolution. Parties will collaborate to make the necessary corrections in the EnergyCAP database. This includes the creation of new accounts, meters, places, and vendors, and managing account number changes.
- 7.4. The Vendor Engagement level of managed services includes:
 - 7.4.1. Establishing LOAs with vendors to communicate with vendors on Subscriber’s behalf
 - 7.4.2. Missing bill monitoring to identify expected bills that have not arrived.

- 7.4.3. Missing bill acquisition if the account is a Bill Acquisition account. If the bill is not a Bill Acquisition account, ENC will identify missing bill for subscriber and subscriber is responsible for retrieving and uploading the missing bill.
- 7.5. The Bill Pay level of managed services includes:
 - 7.5.1. Service interruption mitigation.
 - 7.5.2. Forwarding disconnect notices to Subscriber and communicating actions taken to intervene
 - 7.5.3. Contact the vendor on the same day to request that an extension be granted for Subscriber.
 - 7.5.4. Investigate to determine the cause of the service interruption in case the notice was generated in error.
 - 7.5.5. Expedite any payment required to return the account to good standing at an additional cost to Subscriber.
- 7.6. Payment Export
 - 7.6.1. Communication errors or payment failures identified as part of the payment workflow to Subscriber within one business day.
 - 7.6.2. Collaborate with Subscriber, Financial Partner, or utility provider as needed to resolve payment stream issues and reduce the risk of penalties or service interruptions.
- 7.7. Communication about Managed Services delivery will take place via both EUM flag management system and ENC ticketing system. Online meetings, phone calls and emails are generally reserved for monthly status meetings and service interruption scenarios. If subscriber requires online meetings, phone calls and direct email support on an ongoing basis, ENC reserves the right to charge additional fees at then applicable hourly rates.
 - 7.7.1. Subscriber is responsible for:
 - 7.7.1.1. notifying ENC about any expected Account or Meter changes the utility vendors may make to Subscriber's utility accounts, including but not limited to: account opening/closings, meter number changes, added/removed meters, and account number changes.
 - 7.7.1.2. Subscriber is responsible for reviewing and resolving Bill flags resulting from audits that are not part of standard Managed Services audits and that ENC staff assign to Subscriber for additional follow-up.
 - 7.7.1.3. Initiating requests for Managed Services support via ENC ticketing system.

Professional Services Terms

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

1. PROJECT SCHEDULE.

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

2. CHANGE REQUESTS.

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

3. CUSTOM DEVELOPMENT.

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

4. HOURLY SERVICES.

- 4.1. If ENC is to provide Professional Services on an hourly basis as described in the applicable SOW, the specified hours will be considered used during the term of the applicable SOW in accordance with the following formula: 3 calendar weeks per 10 hours unless otherwise agreed in writing by the parties. The applicable period shall begin upon Subscriber's initial request for the relevant Professional Services and end on the date calculated by the formula set forth above. ENC shall make its resources available for up to 10 hours per week during the contract period. The hours are provided on a "use it or lose it" basis and ENC will not refund any fees paid for unused or expired hours. If additional hours are needed beyond the level of service purchased in the applicable SOW, ENC will provide a quote based on the scope of work at its then current billable rates.
- 4.2. For avoidance of doubt, performance of the following Professional Services will be applied against the hours purchased: time spent on support and assistance tasks such as reviewing and manipulating Subscriber's database and data files, researching and replying to questions and issues, and consultation with other ENC resources on best practices and solutions. Typically, the contact hours with Subscriber via phone or online conference account for less than 25% of the contracted hours; provided, however, when any contracted hours are used exclusively for online training, will be applied at 100%.

5. PROFESSIONAL SERVICES WARRANTIES.

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

Terms related EnergyCAP Premium Partner package

Subscriber's right to access and use the EnergyCAP Premium Partner product package listed on the applicable Order (the "EnergyCAP Premium 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.

As part of Subscribers subscription to EnergyCAP Premium Services includes the following:

1. Additional Definitions:
 - 1.1. "Partner" means Subscriber and uses the services to track Customer data.
 - 1.2. "Customer" means a client of the Partner.
2. Premium Partner product package is access to the Subscriptions Services including all advanced features available in each product at the time of contract execution, and hosting services for one database per customer.
3. Premium Partner Pricing.
 - 3.1. The license subscription is based on the total aggregate count of Meters in all databases combined. The Fees listed in the applicable Order are based upon Partner's total inventory as of the Effective Date. All Meters present in all databases will count against the Meter total committed. The first-year subscription will be billed at the committed tier level.
 - 3.2. 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 unit cost set forth on the Order.
 - 3.3. Rates are guaranteed for the Initial Term, as defined in the applicable Order. All rates are subject to increases after the Initial Term.