

# EnergyCAP<sup>®</sup> Master Subscription Agreement

(rev. 10/27/2014)

THIS MASTER SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS YOUR 30-DAY FREE TRIAL OF THE SERVICES.

IF YOU PURCHASE OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN YOUR PURCHASE AND ONGOING USE OF THOSE SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement was last updated on October 19, 2012. This Agreement is effective between You and Us as of the date of You accepting this Agreement.

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## 1. DEFINITIONS

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control" for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Options**" means optional software features and/or modules that may be purchased by You in addition to the standard Services.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Meter**" means a point of service as itemized on a utility bill and tracked in the Services as a meter/logical device. Meters can track any commodity, including but not limited to electricity, natural gas, propane, steam, water, chilled water, hot water, steam, oil, butane, coal, and

gasoline. Meters also include points of service for which no physical meter exists, including but not limited to sewer, refuse, recycling, fire lines, outdoor lighting, fuel oil tanks, storm drainage, ISP, and telephone service or other telecom bills. On consolidated bills, where multiple accounts, meters, or commodities are represented on one bill, each individual meter or commodity will count as a separate meter; all quarterly billed meters are included in the total meter count as well as meters that are inactive.

**"Order Form"** means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Order Forms that have been reviewed and accepted in writing by US will be deemed incorporated herein by reference.

**"Purchased Services"** means Services that You or Your Affiliates purchase under an Order Form, as distinguished from those provided pursuant to a 30-day free trial.

**"Services"** means the online, Web-based applications and platform provided by Us via the energycap.com domain and/or other designated websites as described in the help tools within the application, that are ordered by You as part of a 30-day free trial or under an Order Form.

**"Users"** means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include Your employees, consultants, contractors and agents, or Your customers whose data is tracked by the Services.

**"We," "Us" or "Our"** means EnergyCAP, Inc. ("ECI") as described in Section 12 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

**"You" or "Your"** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity. **"Your Data"** means all electronic data or information submitted by You to the Purchased Services.

## **2. 30-DAY FREE TRIAL**

We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the thirtieth day after Your acceptance of this Agreement or (b) the start date of any Purchased Services ordered by You. At our option, we may make both Standard Services and Options available to you during the Trial period. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding

**ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES FOR YOU, DURING YOUR 30-DAY FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME OR GREATER COMBINATION OF STANDARD AND OPTIONAL SERVICES AS THOSE COVERED BY THE TRIAL, OR EXPORT SUCH DATA, BEFORE THE END OF THE 30-DAY TRIAL PERIOD. IF YOU PURCHASE A SUBSCRIPTION THAT DOES NOT INCLUDE OPTIONAL SERVICES AND IF YOU ENTERED DATA INTO THOSE OPTIONAL SERVICES DURING THE TRIAL PERIOD, SUCH DATA MAY BE PERMANENTLY LOST UPON ACTIVATION OF THE SUBSCRIPTION.**

NOTWITHSTANDING SECTION 8 (WARRANTIES AND DISCLAIMERS), DURING THE 30-DAY FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT IMPLIED OR EXPRESS WARRANTY OF ANY KIND WHATSOEVER.

Please review the help tools within the application during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

### **3. PURCHASED SERVICES**

**3.1. Provision of Purchased Services.** We will make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Us regarding future functionality or features.

**3.2. User Subscriptions.** Unless otherwise specified in the applicable Order Form, (i) Services are purchased as User subscriptions with invoicing based upon the number of Meters tracked and Options purchased as of the invoice date, and (ii) additional Meters and Options may be added to the Services by You at any time during the subscription term at the same pricing plan as that for the pre-existing subscriptions.

### **4. USE OF THE SERVICES**

**4.1 Our Responsibilities.** We will: (i) provide to You basic support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We will give at least 8 hours notice via the Purchased Services and which We will schedule 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 circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or Internet service provider failures or delays, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

**4.2. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and You shall notify Us in writing promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the help tools within the application and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services, (f) use the Services in connection with data from any U.S. public school district, or (g) attempt to gain unauthorized access to the Services or their related systems or networks.

**4.3. Usage Limitations.** Services shall not be utilized to track, analyze, or report on data belonging to a U.S. based public school district. In addition, You shall not access the services for purposes of monitoring the Services' availability, performance or functionality, or for any other benchmarking or competitive purposes.

### **5. FEES AND PAYMENT FOR PURCHASED SERVICES**

**5.1. User Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on services purchased, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of Meters tracked cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

**5.2. Invoicing and Payment.** You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document or payment reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 11.2 (Term of Purchased User Subscriptions). Such charges shall be made in advance, either monthly or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information in the Services.

**5.3. Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

**5.4. Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. In the case of suspended services, We hold the right to charge a Reactivation Fee of \$150.00 to reinstate Your account, due upon renewal.

**5.5. Payment Disputes.** We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.

**5.6. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable based on Our income, property, and employees.

## **6. PROPRIETARY RIGHTS**

**6.1. Reservation of Rights.** The Services and all documentation, enhancements, modifications, improvements or derivative works thereto, whether or not created or developed in conjunction with You (collectively, the "Enhancements") shall remain the sole and exclusive property of Us. We retain all copyrights, patents, trade secrets, trademarks, and all other intellectual property interests in the Services and the Enhancements. No rights are granted to You hereunder other than as expressly set forth herein.

**6.2. Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

**6.3. Ownership of Your Data.** As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data subject to Section 11.5 herein.

**6.4. Suggestions.** We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

## **7. CONFIDENTIAL INFORMATION**

**7.1 Definition of Confidential Information.** "Confidential Information" is any document or other media or tangible items that relates to research, development, trade secrets, clients, business affairs or that contains any other information of a party that was not generally available to the public when received by the other party. "Confidential Information" will also include, but not be limited to, Your technology, Your utility billing and rate information, Our 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.

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

**7.3 Compelled Disclosure.** The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or as required by law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure. If the disclosing party is not successful in precluding the requesting legal body

from requiring disclosure of the Confidential Information, the receiving party shall furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded with the Confidential Information.

**7.4 Ownership of Confidential Information.** All 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 subject to Section 11.5 hereof, 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 SECTION 7 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.**

## **8. WARRANTIES AND DISCLAIMERS**

**8.1. Our Warranties.** We warrant that the Services shall perform materially in accordance with the help tools within the applications and the functionality of the Services will not be materially decreased during a subscription term. For any breach of such warranty, Your exclusive remedy shall be as provided in Section 11.3 (Termination for Cause) and Section 11.4 (Refund or Payment upon Termination) below.

**8.2. Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code.

**8.3. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THE PRECEDING PARAGRAPHS, THE SERVICE 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. WE DO NOT WARRANT THAT THE SERVICE WILL RUN WITHOUT ERROR OR BE PROBLEM-FREE.

## **9. MUTUAL INDEMNIFICATION**

**9.1. Indemnification by Us.** We will defend You against any claim, demand, suit, or proceeding ("**Claim**") made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by, You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense.

**9.2. Indemnification by You.** You shall defend Us against any Claim made or brought against Us by a third party alleging that Your Data, or Your use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Us for any damages finally awarded against, and for reasonable attorney's fees incurred by, Us in connection with any such Claim; provided, that We (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim



(provided that You may not settle any Claim unless the settlement unconditionally release Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

**9.3. Exclusive Remedy.** This Section 9 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## 10. LIMITATION OF LIABILITY

**10.1. Limitation of Liability.** IN NO EVENT SHALL WE BE LIABLE TO YOU OR TO ANY OTHER PARTY FOR ANY CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION DATA LOSS, LOSS TO BUSINESS, OR OTHERWISE), INDIRECT, SPECIAL, INCIDENTAL OR PUNITIVE LOSS OR DAMAGE, ARISING FROM OR RELATED IN ANY WAY TO THE SERVICE AND/OR DOCUMENTATION PROVIDED BY US, WHETHER SUCH DAMAGES OR LOSS SOUND IN CONTRACT, TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY, AND ALL OTHERS), WARRANTY, OR UNDER STATUTE. WE HAVE ABSOLUTELY NO OBLIGATIONS OR LIABILITIES ASSOCIATED WITH OR ARISING OUT OF THE MANNER IN WHICH YOU USE THE SERVICE AND OTHER DATA COVERED BY THIS AGREEMENT.

10.2 Remedies. EXCEPT AS SET FORTH IN THIS AGREEMENT, THE SOLE AND EXCLUSIVE REMEDY FOR FAILURE OF US TO PROVIDE THE SERVICES OR FOR ANY BREACH OF THIS AGREEMENT BY US SHALL BE TERMINATION OF THE SERVICES BY YOU AND A REFUND OF AMOUNTS PAID UNDER THIS AGREEMENT.

## 11. TERM AND TERMINATION

**11.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a 30-day free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the 30-day free trial period.

**11.2. Term of Purchased User Subscriptions.** User subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. **Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one month (whichever is longer), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. Pricing is based on the number of Meters being tracked by You and Options purchased by You and will be determined upon each subscription renewal. Meters can be denoted as "active" or "inactive" within the Services at Your option with both counting for pricing purposes. All Meters within Your database will be counted for pricing purposes unless you delete the Meter from Your database. The pricing plan during any renewal term shall be the same as that during the prior term unless the number of meters has changed or We have given You written notice of a pricing plan change at least 30 days before the end of such prior term, in which case the pricing plan change shall be effective upon renewal and thereafter. Any pricing increase shall not exceed 3% over the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.**

**11.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, 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.

**11.4. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**11.5. Return of Your Data.** Within 10 days after the effective date of termination of a Purchased Services subscription, You may retrieve Your data via existing reports or from screen captures. After such 10-day period, We shall have no obligation to maintain or provide any of Your Data to You and may thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

11.6. Termination without cause. Either party may terminate this Agreement without cause upon 30 days written notice to the other party.

**11.7. Surviving Provisions.** Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidential Information), 8.3 (Disclaimer), 9 (Mutual Indemnification), 10 (Limitation of Liability), 11.4 (Refund or Payment upon Termination), 11.5 (Return of Your Data), 12 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

## **12. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION**

**12.1. General.** This EnergyCAP<sup>®</sup> Master Subscription Purchase Agreement (this "Agreement") is made by and between You and EnergyCAP, Inc of State College, PA.

**12.2. Manner of Giving 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. Notices shall be directed via mail to EnergyCAP, Inc., 2026 Sandy Drive, State College, PA, 16803, via fax: 719.623.0577, or via email: [accounts@EnergyCAP.com](mailto:accounts@EnergyCAP.com).

**12.3. Agreement to 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 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 Master Subscription Agreement shall be resolved exclusively in the state or federal courts located in Centre County, Pennsylvania 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.

**12.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

## **13. GENERAL PROVISIONS**



**13.1. 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.

**13.2. 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.

**13.3. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**13.4. 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.

**13.5. 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.

**13.6. Attorney Fees.** You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 5.2 (Invoicing and Payment)

**13.7. Assignment.** You 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 Us which approval shall not be unreasonably withheld.

**13.8. Entire Agreement.** This Agreement together with the Privacy Statement and Security Statement 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. However, in the event of any conflict, ambiguity or inconsistency between this Master Subscription Agreement and the attachment incorporated herein, the terms and conditions of this Master Subscription Agreement shall govern.

**NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY THEREIN, NO TERMS OR CONDITIONS STATED IN YOUR PURCHASE ORDER OR OTHER ORDER DOCUMENTATION (EXCLUDING ORDER FORMS) SHALL BE INCORPORATED INTO OR FORM ANY PART OF THIS AGREEMENT, AND ALL SUCH TERMS OR CONDITIONS SHALL BE NULL AND VOID.**