RESOLUTION NO. 2025-05

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
SCHEDULE WITH AMERICAN MUNICIPAL POWER, INC. FOR PARTICIPATION
IN THE COMMUNITY ENERGY SAVINGS SMART THERMOSTAT PROGRAM AND
DECLARING AN EMERGENCY**

WHEREAS, the Village of Arcanum, Ohio ("Municipality") owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, American Municipal Power, Inc. ("AMP") is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise, for the generation, transmission or distribution of electric power and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of AMP members ("Members"), such Members, including Municipality, being, as of the date hereof, political subdivisions that operate, or whose members operate, municipal electric utility systems in Delaware, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia; and

WHEREAS, AMP and Municipality have entered into a Master Services Agreement, AMP Contract No. C-10-2005-4397, pursuant to which AMP provides certain services to Municipality as set forth in various schedules to the Master Services Agreement (the "Schedules"); and

WHEREAS, AMP and EnergyHub, Inc. ("EnergyHub") will enter or have entered into an agreement (the "EH Agreement") to provide Software as a Service ("SaaS") and program management services in order to provide a thermostat-based demand management program that has the advantages to participating AMP Members of economies of scale, mitigation of risk from local technology deployment and support, and reduced burden of ongoing support;

WHEREAS, AMP and Municipality desire to enter into a Schedule ("Smart Thermostat Schedule"), under the MSA, which provides that AMP will obtain and sell to Municipality, and Municipality will agree to take and pay for the services which AMP will acquire through the EH Agreement; SNF

WHEREAS, entering into the Smart Thermostat Schedule is necessary for the continuation of vital public services;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF ARCANUM, DARKE COUNTY, OHIO:

SECTION 1: That the Smart Thermostat Schedule between Municipality and AMP, substantially in the form attached hereto or on file with the Clerk, including Appendices thereto, are approved, and the Village Administrator of Municipality is hereby authorized to execute and deliver the Smart Thermostat Schedule, with such changes as the Village Administrator may approve as neither inconsistent with this Resolution nor materially detrimental to the Municipality, his or her execution of the Smart Thermostat Schedule to be conclusive evidence of such approval.

SECTION 2. That the Village Administrator is hereby authorized to take any action necessary for Municipality to fulfill its obligations under the Smart Thermostat Schedule.

SECTION 3.   That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in conformance with applicable open meetings laws and that all deliberations of this [Council /Board of Public Affairs] and of any committees that resulted in those formal actions were in compliance with all legal requirements including any applicable open meetings requirements.
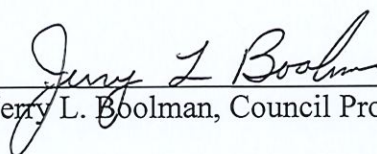
SECTION 4.   If any section, subsection, paragraph, clause or provision or any part thereof of this Resolution shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Resolution shall be unaffected by such adjudication and all the remaining provisions of this Resolution shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

SECTION 5.   That this Resolution is an emergency measure necessary for the immediate preservation of the public health, peace and welfare of the citizens of Arcanum, Ohio and shall therefore take effect immediately.

Passed this 11th day of February, 2025.

_____
Bonnie L. Millard, Mayor

_____
Jerry L. Boolman, Council Pro Tem

ATTEST:

_____
Karen L. Deao, Fiscal Officer

1st Reading: 2/11/2025
2nd Reading:
3rd Reading:
Three Reading Rule Waived:2/11/2025
Emergency Declared: 2/11/2025

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SCHEDULE TO MASTER SERVICES AGREEMENT
BETWEEN
AMP AND THE VILLAGE OF ARCANUM, OHIO
FOR PARTICIPATION IN THE
COMMUNITY ENERGY SAVINGS SMART THERMOSTAT PROGRAM

WHEREAS, the Village of Arcanum, Ohio (herein "Municipality") owns and operates a municipal electric system that provides electric power and energy to its customers; and

WHEREAS, American Municipal Power, Inc. ("AMP", and together with Municipality, the "Parties") is a not for profit corporation that provides various services to its members, directly or indirectly through various affiliated entities; and

WHEREAS, Municipality is a member of AMP and has executed a Master Services Agreement with AMP, designated as Contract No. C-10-2005-4397 (the "Master Services Agreement"); and

WHEREAS, Municipality desires AMP to provide peak shaving services under its Community Energy Savings Smart Thermostat Program (the "Smart Thermostat Program"); and

WHEREAS, AMP has entered into an agreement (the "Vendor Agreement") with EnergyHub, Inc. ("Vendor") to provide Software as a Service ("SaaS") and program management services in connection with the Smart Thermostat Program in order to provide a comprehensive program that has the advantages to participating AMP members of economies of scale, mitigation of risk from local technology deployment and support, and reduced burden of ongoing support; and

WHEREAS, AMP has provided the Municipality with a copy of the Vendor Agreement.

NOW THEREFORE, this Schedule to Master Services Agreement (this "Schedule") is hereby entered into as of this ___ day of _____, 2025 (the "Effective Date") between Municipality and AMP, and the parties hereby agree as follows.

ARTICLE I. SERVICES

A. For the term of this Schedule, AMP agrees to provide to Municipality, and Municipality agrees to take and pay for, the services set forth in Exhibit A, Scope of Services (the "Services"), attached hereto and incorporated by reference herein.

B. The Services shall be completed in consultation with the Municipality, and the Services shall begin on a mutually agreeable date.

C. AMP's obligations to provide Services hereunder are contingent upon, and subject to, the delivery to AMP of Services by the Vendor, in accordance with the Vendor Agreement, or AMP's ability to secure replacement Services in the event of a failure or inability to deliver or default by Vendor.

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D. AMP shall, in the event of a failure or inability to deliver or default by Vendor, and whether or not such failure or default leads to termination of the Vendor Agreement, in good faith use its best efforts to substitute for actual delivery replacement Services in a timely and reasonable manner.

E. In addition to other terms defined elsewhere in this Schedule, the following terms, as used herein, have the following meanings:

   a. "Authorized Municipality User" means designated employees, agents, and contractors of Municipality who are authorized to use the Software provided by Vendor as part of the Services.

   b. "Confidential Information" means scientific or business information, trade secrets or know-how, including software and related documentation, marketing, sales, operating, performance, cost, business and technical information, the Mercury Platform and related documentation, Personal Information, Program Materials, Platform-Generated Data, and enrollment and/or marketing processes used by Vendor to recruit and enroll customers in the program, in any form, tangible or intangible, which may be disclosed or otherwise made available to Municipality by either AMP or Vendor.

   c. "Configuration Guide" means the working document completed by AMP and Vendor during the launch process. It captures program design, goals, incentives, eligibility rules, brand and marketing guidelines, and other program details, and may be updated over time.

   d. "Customer(s)" means Municipality's utility customers who are eligible to participate in and who agree in writing (including via electronic signature) to participate in the Smart Thermostat Program.

   e. "Deliverable" means any work product or other item (whether tangible or intangible) created by Vendor or provided by Vendor to AMP or Municipality pursuant to this Schedule.

   f. "Device Partners" means any third-party device manufacturer, connected-home security provider or other company that makes connected devices available to consumers through retail, trade, or other channels and whose devices are connected to the Vendor platform, subject to the terms and conditions contained in agreements between the Device Partner and Vendor.

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g. "Firm Load Dispatch" means an optimization tool of the Mercury Platform which optimizes the load curve around a utility's grid service objective, allowing for a more consistent result.

h. "Google Security Assessment" or "GSA" means the security assessment provided by Google, Inc., which assesses Municipality's IT security processes and procedures.

i. "GSA Approval Process" means the process authorized by Google, Inc. to review and approve Municipality's completed Google Security Assessment.

j. "Marks" means trademarks, service marks, logos, trade names and other indicia of origin.

k. "Mercury Platform" means Vendor's distributed energy resource software provided as part of the Services.

l. "Personal Information" means any information about an identified or identifiable individual or information that is not specifically about an identifiable individual but, when combined with other information, may identify an individual, this includes names, email addresses, postal addresses, telephone numbers, government identification numbers, financial account numbers, payment card information, credit report information, biometric information, online identifiers (including IP addresses and cookie identifiers), network and hardware identifiers, and geolocation information, and any information that constitutes "personal data" within the meaning of (i) the GDPR; and, (ii) any other applicable data protection laws or regulations modeled on the GDPR. As used herein, "GDPR" means the General Data Protection Regulation (EU) 2016/679 on data protection and privacy for all individuals within the European Union ("EU") and the European Economic Area ("EEA").

m. "Platform Generated Data" means usage, savings, load and other data generated in connection with use of the Mercury Platform and any Customers' participation, including Personal Information collected from or about a Customer when such Customer enrolls in the Smart Thermostat Program.

n. "Program Materials" means marketing materials, project plans, documentation on automated verification, and program documentation created or developed by Vendor.

o. "Software" means any Vendor proprietary software used in connection with the Smart Thermostat Program, including the Mercury Platform, firmware, and third-party software embedded in any of the foregoing.

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ARTICLE II. OWNERSHIP OF DELIVERABLES

A. Exclusive of Municipality Marks, which will remain owned by Municipality, Municipality is not acquiring a copyright, patent, trade secret or other intellectual property or proprietary right in the Mercury Platform, Deliverable, or in any data, modifications, customizations, enhancements, changes or work product related thereto.

B. Vendor owns and will own all right, title, and interest to the Deliverables (other than Municipality's Marks), and Municipality will execute and deliver to Vendor any documents reasonably necessary to vest in Vendor all right, title and interest therein. Municipality grants to AMP the limited right to use its Marks solely to the extent necessary to provide the Deliverables as contemplated by this Schedule and the Vendor Agreement.

ARTICLE III. STANDARD OF CARE AND LIABILITY

A. The standard of care for all services performed or furnished by AMP under this Schedule will be the care and skill ordinarily used by professionals practicing under similar conditions at the same time and in the same locality as services performed pursuant to this Schedule. AMP shall not be responsible for the accuracy or completeness of (a) any information reported or supplied by Municipality to Vendor in accordance with the Vendor Agreement or (b) any reports derived from any inaccurate or incomplete information reported or supplied by Municipality pursuant thereto.

B. In connection with the Services, AMP shall use reasonable diligence in assuring the software provided in connection with the Services sufficiently performs in accordance with applicable industry standards.

C. Exhibit B attached hereto sets forth Vendor-provided service levels and credits and warranties. In the event of termination of the Vendor Agreement, AMP shall use reasonable diligence to procure from the replacement vendor(s) warranties and/or service level credits for the Services performed by such vendor(s) that provide Municipality with benefits no less favorable than those described in Exhibit B. To the extent permitted, AMP will assign to Municipality all Vendor or other third-party warranties, guarantees and service level credits related to the Services. If AMP is not permitted to assign such warranties, guarantees and service level credits, it will otherwise provide to Municipality the financial benefit thereof. However, AMP does not warrant or guarantee any specified level of performance with respect to the Services beyond the warranties and performance guarantees AMP receives from Vendor and assigns to the Municipality. If the Services fail or are rendered partially or completely inoperable for any reason whatsoever, except to the extent caused by AMP's willful, wanton or intentional acts or omissions or recklessness, AMP shall not be liable for damages caused thereby to Municipality and such events shall not constitute a breach of AMP's obligations under this Schedule.

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In the case of a material Vendor default, AMP shall promptly exercise its rights under the Vendor Agreement, or otherwise under the law, for the benefit of Municipality, provided that out-of-pocket costs and expenses associated with AMP's exercise of such rights will be at Municipality's expense.

D. The Vendor is contractually required to meet the insurance requirements set forth in Exhibit C.

E. Notwithstanding anything in the foregoing, AMP's liability for any injury or damage that is caused by the actions or omissions of AMP in the provision of any Services is limited to the limits of applicable insurance, excluding umbrella coverage, maintained by AMP, irrespective of whether such damages arise out of negligence, gross negligence, recklessness, intentional acts or omissions, or strict liability, and irrespective of whether the theory of recovery of such damages sounds in tort, contract, or any other legal theory. In the event that AMP does not maintain insurance applicable to the aforementioned injury or damage, AMP's liability shall be limited to two times (2x) the amount paid for the Services hereunder, or $50,000, whichever is greater. This Article III.E shall survive the voluntary or involuntary termination of the Master Services Agreement, this Schedule, or any extension of either. This Article III.E does not limit or modify in any way Vendor's indemnification obligations found in Section 8.1 of the Vendor Agreement.

ARTICLE IV. MUNICIPALITY'S RESPONSIBILITIES

A. Municipality shall designate in writing an employee of Municipality to act as Municipality's representative with respect to its responsibilities and the Services (the "Municipality Representative"). Such person shall have complete authority to transmit instructions, receive information, and interpret and define Municipality's policies and decisions with respect to the Services. The Municipality Representative shall attend any kickoff, progress and other related meetings.

B. Municipality shall provide information, comments and approvals as required in a timely manner to AMP and/or Vendor when such input is necessary for AMP and/or Vendor to perform the Services. The Municipality Representative shall give prompt written notice to AMP whenever he or she observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of the Services or any defect or nonconformance in the Services, or in the work of Vendor or other contractor pursuant to this Schedule. Municipality shall reasonably cooperate with AMP in such a manner as to facilitate AMP's performance of its obligations under the Vendor Agreement.

C. As noted above, Municipality has been provided with a copy of the Vendor Agreement. Municipality covenants and agrees that Municipality shall comply with all terms and conditions set forth in the Vendor Agreement, insofar as those terms and conditions apply to Municipality.

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D. Municipality shall notify AMP of whether it intends to complete the GSA, which, if approved through the GSA Approval Process, will allow Municipality to review Customer enrollments, receive Platform Generated Data, and access the Mercury Platform.

E. If Municipality's GSA is approved, Municipality will comply with the terms set forth in Exhibit E.

F. If Municipality does not complete the GSA or Municipality's GSA is not approved, (1) Municipality must upload appropriate Customer data to AMP's secure file transfer site (Sharefile.com) on a monthly basis, and (2) AMP will review Municipality's Customer enrollments and Municipality will not have access to the Mercury Platform nor will it receive any Platform Generated Data.

G. In accordance with Vendor requirements, Municipality shall be solely responsible for any data relating to Customers provided by Municipality or an Authorized Municipality User to AMP, Vendor or the Software (the "Customer Data"). Municipality shall be solely responsible for ensuring compliance with any applicable laws or regulations regarding the use, security, or disclosure of Customer Data. Municipality represents and warrants that: (a) every Customer or Participant for whom Municipality or an Authorized Municipality User provides an email address to AMP or Vendor has consented to receive messages from Municipality and its agents in connection with the Services; (b) the Customer Data and any other information, data or material provided by Municipality or an Authorized Municipality User will not (i) infringe or violate any intellectual property right, proprietary right or trade secrets, rights of publicity or privacy, or any law or regulation, or (ii) contain any viruses, code, or programming routines intended to damage, copy, intercept, or misappropriate any system, data, or personal information, or damage or impair the operation of the Software.

ARTICLE V. AMP'S RESPONSIBILITIES

A. AMP shall designate in writing an employee of AMP to act as AMP's representative with respect to its responsibilities and the Services (the "AMP Representative"). Such person shall have authority to transmit instructions, receive information, and relay AMP's policies and decisions with respect to the Services. The AMP Representative will attend kickoff, progress and other related meetings on an as-needed basis.

B. The AMP Representative shall give prompt written notice to Municipality whenever he or she observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of the Services or any defect or nonconformance in the Services, or in the work of any Vendor or other contractor pursuant to this Schedule.

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C. If AMP will be reviewing Customer enrollments for Municipality, then AMP will provide Municipality with access to the Sharefile.com site so that Municipality can upload the necessary Customer data for AMP's review.

ARTICLE VI. CONFIDENTIALTY AND PUBLICITY

A. Except as otherwise expressly permitted herein or as may be required by applicable public records law, Municipality agrees to maintain all Confidential Information in strict confidence and exercise the same degree of care it employs in protection of its own Confidential Information from accidental or inadvertent disclosure, but in no event less that a reasonable degree of care, and will neither disclose nor use such Confidential Information other than as expressly permitted by this Schedule. Furthermore, Municipality recognizes that information exchanged pursuant to this Schedule may be proprietary, trade secret and/or confidential and agrees, to the extent consistent with law, to treat the same as such.

B. This Schedule will not affect Municipality's rights to use or disclose information that: (1) is or may hereafter be publicly available through no wrongful act of Municipality; (2) Municipality can show by its written records predating such disclosure that such information was known on a non-confidential basis by Municipality prior to the disclosure; (3) Municipality can prove by written records to have been lawfully disclosed on a non-confidential basis to Municipality by a third party subsequent to disclosure; or (4) which is independently developed by or for Municipality without reference to or use of the Confidential Information.

C. Except as may be prohibited by applicable public records law, in the event that a third party seeks to compel disclosure of Confidential Information from Municipality by judicial, governmental or administrative process, requirement or order, Municipality shall promptly notify the disclosing party of such occurrence and furnish to the disclosing party a copy of the demand, summons, subpoena or other process served upon Municipality to compel such disclosure, so that the disclosing party may seek a protective order or other appropriate remedy or waive compliance with the terms of this Agreement, or both. In the event that AMP waives compliance with the terms of this Schedule, a protective order is not obtained, the disclosing party otherwise fails or refuses to contest such a third-party disclosure demand, or a final judicial order is issued compelling disclosure of Confidential Information by Municipality, then Municipality must provide only that limited portion of the Confidential Information that it is advised by opinion of counsel it is legally required and to exercise reasonable efforts to obtain confidential treatment for that Confidential Information. Notwithstanding the foregoing, if any Confidential Information is required to be disclosed pursuant to this section, such Confidential Information shall otherwise for all other purposes remain Confidential Information

subject to the confidentiality obligations set forth herein. Furthermore, if Municipality is required by operation of law to file this Schedule or other Confidential Information with regulatory authorities or others, Municipality shall immediately notify AMP of such disclosure requirement (if permitted by applicable law) and use its best efforts to have this Schedule or Confidential Information kept confidential.

D. Except as expressly authorized in this Schedule, Municipality shall not (a) use the name, service mark, trademark, trade name, logo, or trade dress of Vendor; or (b) refer to Vendor in connection with any advertising, promotion, press release or publication, unless it obtains AMP's prior written approval.

ARTICLE VII. FEES AND EXPENSES

A. AMP shall be compensated for the Services in accordance with the Fee Schedule as set forth in Exhibit D.

B. All other provisions and terms for billing and payment for services rendered under this Schedule shall be governed by the Master Services Agreement.

C. Termination of this Schedule shall not relieve Municipality of its obligation to pay any fees set forth in Exhibit D.

ARTICLE VIII. TERM

A. The term of this Schedule shall begin upon execution of this Schedule by the Parties and continue until January 8, 2028 (the "Initial Term"). After the Initial Term, this Schedule shall renew for consecutive one (1) year terms until either party notifies the other in writing, no less than sixty (60) days prior to the end of the then-current term, of its intent not to renew. Pricing for any renewal term shall be established by agreement of the Parties prior to the commencement of such renewal term.

ARTICLE IX. TERMINATION

A. Either party may terminate this Schedule (a) if the other party materially breaches any term in this Schedule and the breach is not cured within thirty (30) days of the date the non-breaching party provides written notice to the breaching party identifying the breach; or (b) upon the happening of any of the following or any other similar event: (i) insolvency of the other party; (ii) filing of any petition by or against the other party under any bankruptcy, reorganization or receivership law; (iii) execution of an assignment for the benefit of creditors; or (iv) appointment of any trustee or receiver of the other party's business or assets or any part thereof, unless such petition, assignment or appointment is withdrawn or nullified within fifteen (15) days of such event.

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B. Upon termination of this Schedule for any reason, Municipality shall, and shall ensure that all Authorized Municipality Users, immediately cease using the Mercury Platform, the Program Materials, and any Vendor provided documentation.

ARTICLE X. MODIFICATION

A. Modifications to this Schedule may, from time to time, be necessary. In the event either party believes such a modification is required, both Parties agree to negotiate any such modifications in good faith. This Schedule may only be amended, supplemented, modified, or cancelled by a duly executed written instrument.

ARTICLE XI. NOTICES

A. All notices shall be in writing and provided by either (i) overnight courier or hand delivery to an authorized representative of the party to whom directed; (ii) certified or registered mail, postage prepaid and return receipt requested; or (iii) e-mail to the address of the party shown below.

VILLAGE OF ARCANUM:

_____

_____

_____

Email: _____

AMERICAN MUNICIPAL POWER, INC.:

American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, Ohio 43229
Attn: General Counsel
Email: legalnotice@amppartners.org

B. Notice sent by registered or certified mail shall be deemed to have been given by either party to the other party upon the date received or rejected by the other party, as shown in the Post Office receipt, or if hand delivered, upon the date of receipt thereof by such other party. A notice sent by email will be deemed to have been received on the date the email is sent, unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient.

ARTICLE XII. MISCELLANEOUS

A. It is recognized by Municipality that AMP, in undertaking or causing to be undertaken the administration of the Smart Thermostat Program, must comply with the requirements of the Vendor

Agreement and other related agreements; it is therefore agreed that this Schedule should be construed in a manner consistent with compliance with the provisions of all such agreements.

B. Any provision or part of this Schedule held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties, who agree that the Schedule shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

C. This Schedule, including the Exhibits attached hereto, together with the Master Services Agreement, constitutes the entire agreement between Municipality and AMP relating to the Services and supersedes all prior written or oral understandings, which shall terminate upon the effectiveness of this Schedule.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Parties warrant and represent that all actions and authorizations necessary to authorize them to affix their signature to this Schedule have duly occurred and that they have been duly authorized to execute this Schedule on behalf of their respective party, and hereto have executed this Schedule to be effective as of the Effective Date.

VILLAGE OF ARCANUM

_____

By: _____

Title: _____

APPROVED AS TO FORM

_____

Municipal Legal Advisor

AMERICAN MUNICIPAL POWER, INC.

_____

By: Adam Ward
       Senior Vice President Member Services,
       Environmental Affairs & Policy

APPROVED AS TO FORM

_____

Lisa McAlister
Senior Vice President & General Counsel

EXHIBIT A – SCOPE OF SERVICES

AMP will deploy a Bring Your Own Thermostat ("BYOT") load control program where Municipality's customers purchase and install devices from select Device Partners on their own and register those devices into the AMP Community Energy Savings Smart Thermostat Program. As used in this SOW, a "Device Partner" is a third-party thermostat manufacturer, connected-home security provider or other company that makes connected devices available to consumers through retail, trade, or other channels where these devices are connected to the EnergyHub platform.

AMP will utilize EnergyHub's Mercury Platform and BYOT program Services to deploy the Program, including technical integration of devices with EnergyHub's platform, contracting with Device Partners, marketing, customer enrollment and management of load control events.

1. **EnergyHub Responsibilities**

    1.1.   Mercury Platform

       1.1.1.   EnergyHub will provide the Mercury Platform to operate a BYOT program that is open to all Device Partners. EnergyHub's Mercury Platform features are outlined below.

       1.1.2.   Enrollment – Municipality customers with eligible devices enroll in the program via the following steps:

          1.1.2.1.   Customer application information will be collected through the Device Partner web or mobile application enrollment experience to verify eligibility for the Program.

          1.1.2.2.   EnergyHub, in conjunction with its Device Partners, will ensure that each participating customer accepts AMP's program terms, which set forth the applicable incentives payable to its customers.

          1.1.2.3.   The enrollment module will allow Municipality to verify the eligibility of customers applying to the program.

          1.1.2.4.   EnergyHub will work with AMP and Municipality to implement EnergyHub's data exchange process to:

             1.   enable the Automated Enrollment Verification (AEV) feature of the Mercury Platform. AMP will help define business rules for matching incoming applications to verified Municipality customer records.

                 EnergyHub will ingest data files from Municipality individually to enable AEV, if required. AMP and Municipality will utilize EnergyHub's required Automated Enrollment Verification (AEV) specification.

             2.   enable Municipality to process enrollments in a mutually agreed upon process.

       1.1.3.   Load control - The Mercury Platform includes load control capabilities that AMP will leverage to dispatch demand response (DR) signals to internet-connected devices via EnergyHub's Device Partners, including the following features:

          1.1.3.1.   Ability to schedule and execute DR events on devices enrolled in the program on an ad-hoc basis.

          1.1.3.2.   Ability to schedule and execute saved DR event strategies, where event parameters have been pre-configured and saved by AMP staff.

          1.1.3.3.   Ability to track DR event performance in near real-time via the DR event dashboard.

          1.1.3.4.   Ability to run DR events using the Firm Load Dispatch load shaping feature.

          1.1.3.5.   Device Partners may require a minimum number of devices to execute an event.

1.1.4. Data and reporting - The Mercury Platform captures near real-time data from Device Partners and will make that data available to AMP and AMP will provide aggregated data to Municipality for program management and reporting purposes. This includes:

1.1.4.1. Reporting to track and manage device enrollment.

1.1.4.2. Access to near real-time data showing connectivity status and usage across devices via the Home screen in the Mercury Platform.

    1. For thermostats, data collected includes HVAC mode and state, runtime, connectivity, event participation, indoor and outdoor temperature.

1.1.4.3. Measurement and verification capability to verify load shed following load control events.

1.1.4.4. Event summary reports, including load shed results and other summary participation statistics at the portfolio level (e.g. community, zip code, transmission zone, entire program).

1.1.4.5. Event participation reports, including usage, participation status, and other relevant data at the individual customer level.

1.1.4.6. Device interval reports, showing 15-minute interval usage data for enrolled devices during and outside load control events.

1.1.4.7. Ability to download data and reports for analysis.

1.1.5. Device Partner limitations – specific functions, features, and data/reporting may not be supported across all Device Partners.

1.2. Marketing

1.2.1. The BYOT program will be marketed and run as one program; all program parameters will remain consistent across AMP's Members.

1.2.2. EnergyHub will lead marketing efforts to recruit customers into the BYOT program. All marketing activities will be subject to AMP approval. AMP will coordinate with Municipality and other Municipality Participants to finalize marketing activities. Marketing will be comprised of the following:

1.2.2.1. BYOT marketing will include digital outreach from Device Partners through email and/or in-app notifications to customers who have already purchased and installed connected devices.

1.2.2.2. EnergyHub will provide AMP with a portfolio of all Device Partner marketing collateral templates with core messaging. AMP may request modifications to the core messaging before it is finalized and will provide drafts for Municipality review. Marketing collateral templates will allow for copy edits to sections identified as customizable only, while page designs and layouts are final. EnergyHub will only use marketing with core messaging that has been approved by AMP. Once core messaging is approved by AMP, EnergyHub may deploy approved marketing collateral without seeking additional approval.

1.2.2.3. EnergyHub will provide a Community Energy Savings Smart Thermostat program branded microsite to drive enrollment. The microsite is based on an existing template and changes can only be made to customizable sections. The microsite will provide basic program information and direct interested customers to either an enrollment page or a store/marketplace for their preferred device manufacturer.

1.2.2.4. Marketing materials will be integrated with the Community Energy Savings Smart Thermostat Program brand and name where applicable. Some Device Partner marketing may not support

inclusion of the program brand or name; however, AMP will still review and approve these collateral templates.

1.2.2.5. EnergyHub's marketing actions may include using analytics and segmentation to drive messaging if appropriate data is available. To support this, Municipality may choose to provide EnergyHub with relevant information, such as email, customer usage, demographic, and household profile data to help facilitate segmentation and targeting.

1.2.2.6. EnergyHub will provide support to help with Program-specific messaging for the Community Energy Savings Smart Thermostat Program customer-facing website and other Municipality-owned assets, such as bill inserts, bill messages, direct mail, or other outreach.

1.2.2.7. Subject to AMP approval, EnergyHub may use incentive programs including sweepstakes, gift cards, and other prizes deemed necessary to drive enrollments.

1.3. Other Program Services

1.3.1. Program management – EnergyHub's Client Success team will manage the implementation and delivery of the Program.

1.3.1.1. EnergyHub and AMP will meet regularly during the course of the Program, with standing quarterly meetings to discuss program planning and progress.

1.3.1.2. Prior to each program season, EnergyHub will lead an in-depth season preparation meeting with the AMP team.

1.3.1.3. Following each program season EnergyHub will lead an end-of-season review meeting with AMP and Municipality, where EnergyHub will provide a post-season evaluation deck summarizing event performance, event participation, progress against approved success criteria defined at the outset of the Program, customer support metrics, lessons learned, and recommendations for subsequent program seasons (e.g., changes to program design, terms and conditions, eligibility requirements).

1.3.1.4. Once per year, EnergyHub will provide a summary report of customer feedback on the Program. Based on the timing of customer surveys, customer feedback data may be provided following the end-of-season review meeting. Prior to the issuance of any customer survey, EnergyHub shall provide AMP with a copy of the intended survey for AMP and Municipality's review and approval (such approval shall not be unreasonably withheld, conditioned or delayed).

1.3.2. Device Partner management - EnergyHub will work with the AMP to identify device manufacturers and service providers who are interested in becoming Device Partners in the Program.

1.3.2.1. EnergyHub will contract directly with and manage all relationships with all Device Partners. Upon payment from AMP, EnergyHub will manage required payments to Device Partners.

1.3.2.2. EnergyHub will provide a certification process and standard set of APIs to allow Device Partners to join the program and integrate with the Mercury Platform. This may include publishing a set of technical requirements and economic incentives for Device Partner participation. EnergyHub reserves the right to manage these Device relationships following this model in a fashion that does not mirror existing Device Partner relationships.

1.3.2.3. Addition of new Device Partners will only be pursued if mutually agreed to between EnergyHub and AMP, and documented via written approval.

1.3.3. Customer support - EnergyHub will provide email-based support for all Program-related inquiries, and direct customers to Device Partner support for technical device-related questions.

1.3.3.1. EnergyHub will work with AMP to create a customer service triage plan that defines roles and responsibilities across EnergyHub support, AMP support, Municipality support, and Device Partner support. As part of the triage plan, EnergyHub and AMP will define program messaging and escalation processes for incoming customer inquiries related to incentives, device technical and connectivity issues, and other program questions.

1.3.3.2. EnergyHub will support AMP in the development of call center training materials for Municipality, if needed.

1.3.3.3. EnergyHub will provide an FAQ page to reduce support inquiries by providing information on key program questions.

1.3.3.4. program marketing and enrollment materials will direct customers to contact EnergyHub directly by providing a customer support email address. Note that the "reply to" address for customer communication emails sent by EnergyHub are not customizable.

1.3.4. Incentive processing – EnergyHub will manage enrollment incentives.

1.3.4.1. EnergyHub will provide AMP with enrollment incentive files ("EIF") on a bi-weekly basis via EnergyHub's SFTP site on a periodic basis for AMP or Municipality approval. The EIF will include a list of participants who have enrolled since the previous EIF and their corresponding incentive payment amount.

2. AMP Responsibilities

2.1. AMP representative will lead program management and assist in coordination between EnergyHub, AMP, and Municipality.

2.2. AMP will work with EnergyHub to define necessary customer data and data exchange process to create a seamless enrollment experience. AMP will assist EnergyHub in creating an enrollment experience that does not require customer account number as part of customer validation.

2.3. AMP and Municipality will support EnergyHub's marketing activities by completing the following:

2.3.1. AMP and Municipality will provide timely feedback to EnergyHub on any launch and/or marketing materials that require approval (e.g. core messaging).

2.3.2. Municipality will market the BYOT program. Channels may be physical or digital and could include bill inserts, email, or in-market promotion.

2.3.3. Municipality will market the program via customer-facing website including the Municipality homepage and a designated page specific to the BYOT Program.

2.3.4. Municipality may choose to provide EnergyHub with contact information in the form of email addresses for eligible customers to enable successful program marketing.

2.3.5. AMP and Municipality will provide logo and usage guidelines for EnergyHub's use in developing co-branded materials.

2.3.6. AMP will provide program details relevant to marketing collateral development at EnergyHub's request.

2.4. If Municipality has an approved GSA, Municipality will verify customer eligibility based on information supplied by customer via the enrollment module and/or Municipality source information. If Municipality does not have an approved GSA, Municipality must upload appropriate Customer data to AMP's secure file transfer site (Sharefile.com) on a monthly basis.

2.5. AMP will provide EnergyHub with necessary information regarding the load control program (i.e., number and frequency of events, size of customer rebate) to facilitate Device Partner onboarding and customer enrollment.

2.6. Device Partners will require AMP and Municipality (if Municipality is verifying its own Customers or otherwise receiving Platform Generated Data from the Device Partner) to comply with Device Partner data security requirements to include Device Partner devices in the Program. AMP will work with EnergyHub to ensure compliance. If AMP and Municipality are unwilling or unable to comply, Device Partner may remove their devices from the Program.

2.7. AMP will fund and fulfill the enrollment incentive needed to acquire and retain BYOT customer participation.

    2.7.1. Municipality or AMP, if verifying Customers on behalf of Municipality will be responsible for the accuracy of the contents of each approved EIF.

2.8. Should AMP and/or Municipality develop a public report on any aspect of the BYOT Program, AMP and/or Municipality will share the results and report draft with EnergyHub at least two (2) weeks prior to publishing. EnergyHub will verify accuracy and appropriate usage of customer data. Any BYOT Program-centric report or publication shall be released in accordance with EnergyHub's contractual agreement with its Device Partners. All published reports shall be made available to EnergyHub.

3. Assumptions and Dependencies

3.1. EnergyHub's performance is contingent on the following:

    3.1.1. AMP timely delivery of its input, approvals, data, materials, information, or deliverables, as applicable, including without limitation, the deliverables set forth in Section 2 AMP Responsibilities;

    3.1.2. A mutual agreement between AMP, EnergyHub and AMP's participating Members on the form of program enrollment agreement that Customers will be required to accept in order to enroll in the program.

    3.1.3. Each Device Partner's timely performance of its respective obligations in connection with the program launch; and

    3.1.4. Each Device Partner's devices functioning properly and communicating with the Mercury Platform as required to perform as anticipated in connection with the Program.

3.2. Neither (a) Amazon Web Services, Inc. ("AWS"), which provides hosting services to EnergyHub for the Mercury Platform, nor (b) the Device Partners, will be deemed to be EnergyHub's subcontractors for the purpose of this SOW.

3.3. Each party shall promptly inform the other party if it becomes aware of any breach of this SOW, or the existence of any circumstance that may impede EnergyHub's performance under the SOW, as set forth in Section 2, in which case the Parties agree to work in good faith to address any such circumstance, including by amending the Parties' obligations under this Schedule, as needed.

4. Initial Program Design

4.1. All information in the program design table will be discussed and agreed upon between AMP and EnergyHub in the Configuration Guide. Any and all future changes to program design parameters will be captured and documented in the Configuration Guide and will not require an amendment to the Schedule.

Program Parameter	AMP Defined Program Parameter
Length of Season	5 months, of each year during the Term
Season Dates	May 1 - September 30, of each year during the Term
Number of hours per season	80 hours maximum
Event parameters	Event window: 1-7 pm local time on non-holiday weekdays Event duration: 4 hours maximum Participation: Opt-outs permitted Max number of days with consecutive events: 3 AMP is permitted to call events outside the above parameters during times of emergency peak conditions.
Customer eligibility criteria	Working central A/C and connected thermostat
Program name and messaging	Community Energy Savings: Smart Thermostat Program
Customer rebate (upfront)	$55 Visa e-gift card; if Customer remains enrolled through summer season, entered for a chance to win a $250 e-gift card
Control strategy	Option to pre-cool Temperature set-back Firm Load Dispatch^{SM} (FLD)
Program branding guidelines and logos	AMP to provide

EXHIBIT B – SERVICE LEVELS, CREDITS, & WARRANTIES

SLA	Description
Platform Uptime Commitment	Vendor will provide 99.9% platform uptime (the "Uptime Percentage") for a given Program Season (the "Platform Uptime Commitment"). Vendor will evaluate the Platform Uptime Commitment using external monitoring tools taking into account the Program Season length as defined in Section 9.1 of the SOW . In the event that platform uptime does not meet the Platform Uptime Commitment, Utility will be eligible to receive a Service Credit, as defined in below. Exclusions The Platform Uptime Commitment does not include unavailability due to Scheduled Maintenance.
Command Dispatch Commitment	In any given Program Season, the total number of Dispatched Devices shall be at least 90% (the "Command Dispatch Percentage") of the total number of Targeted Devices (the "Command Dispatch Commitment"). The Command Dispatch Percentage is calculated by dividing the number of Dispatched Devices by the number of Targeted Devices across all DR Events in a given Program Season and multiplying by 100. If by September 1 of any Program Season AMP has only called one (1) DR Event, and that DR Event's Command Dispatch Percentage is below 90%, AMP agrees to call at least one (1) additional DR Event before the end of the Program Season; if AMP does not call the additional event AMP will waive the Command Dispatch Commitment for that Program Season. AMP agrees to call all enrolled devices in the program for the one (1) DR event; if not all devices are targeted than this SLA is not applicable. In this case, AMP will waive the Command Dispatch Commitment for that Program Season. Vendor will calculate the number of Dispatched Devices and Targeted Devices by reviewing the DR Event Participation Data across DR Events in a given Program Season. Vendor will report to AMP the Command Dispatch Percentage following the completion of the Program Season. For the avoidance of doubt, if there are multiple DR Events, Dispatched Devices will be the sum total of Dispatched Devices across all DR Events (sum of Dispatched Devices in the first DR Event plus the sum of Dispatched Devices in the second DR Event, and so on) and Targeted Devices will be the sum total of Targeted Devices across all DR Events (sum of Targeted Devices in the first DR Event plus the sum of Targeted Devices in the second DR Event, and so on). For example, if there are two DR Events in a season with 100 Targeted Devices and 95 Dispatched Devices in the first DR Event and 200 Targeted Devices with 190 Dispatched Devices in the second DR Event, the Command Dispatch Percentage will be calculated by summing 95 and 190 Dispatched Devices in the numerator, and dividing by the sum of 100 and 200 Targeted Devices in the denominator for a Command Dispatch Percentage of 90%.

$$\frac{95 + 190}{100 + 200} = \frac{285}{300} = 95\%$$

Assumption and Exclusions

- Dispatched Devices will include devices with a status of Dispatch Failure in cases where the failure is caused solely by the Device Partner (as determined in Vendor's reasonable discretion).

Definitions:
- "Uptime Percentage" is calculated by dividing the number of minutes in which the Mercury Platform is available during the Program Season by the total number of minutes in the Program Season (and multiplying by 100)
- A "Device-Event Minute" is a minute during a DR Event in which an Enrolled Device can participate in a DR Event as a Targeted Device. For example, one Targeted Device in a 4-hour DR Event (e.g. 2:00 PM – 6:00 PM) accrues 240 Device-Event Minutes
- A "Dispatched Device-Event Minute" is a minute during a DR Event in which a Device Control signal is successfully sent from the Mercury Platform to a Thermostat Partner whose customers have Targeted Devices in the DR Event. For example, if a participating device is successfully dispatched by Vendor for a 4-hour DR Event (e.g. 2:00 PM – 6:00 PM) at 2:05 PM, that customer's device accrues 235 Dispatched Device-Event Minutes. For clarity, the Dispatched Device-Event Minute calculation is not impacted by a Thermostat Partner's successful delivery of Dispatch Commands to their Targeted Devices in a DR Event
- A "Targeted Device" is an Enrolled Device included in the population of devices called into a DR Event and expected to receive the Device Control strategy defined by the operator via Dispatch Commands from the Thermostat Partners

Service Credits
Vendor charges platform fees to provide the services described in Scope of Services. If Vendor fails to meet its Service Commitments, Vendor will issue Service Credits to Utility. Vendor will evaluate its own performance against each SLA over the course of the Program Season over the Project Term. Upon completion of the Program Season, Vendor will send Utility a performance report including a calculation of any Service Credits due to Utility.

Service Credits are calculated as a percentage of the platform fees paid by Utility to Vendor after the end of the demand response season and are evaluated as follows:

Platform Uptime Commitment

Uptime Percentage (Program Season)	Service Credit Percentage
Less than 99.9%	1%
Less than 89.9%	2%
Less than 79.9%	3%
Less than 69.9%	4%
Less than 59.9%	5%

Command Dispatch Commitment

Command Dispatch Percentage (Program Season)	Service Credit Percentage
Less than 90%	0.25%
Less than 80%	0.50%
Less than 70%	0.75%
Less than 60%	1.0%
Less than 50%	1.25%

Service Credits will be awarded on a per Program Season basis.

EXHIBIT C – VENDOR INSURANCE REQUIREMENTS

Article 1   General Insurance Requirements

1.1   Throughout the performance of the Services or longer as may be described below, Vendor must obtain, pay for, and keep in force, the minimum insurance coverage described in this Schedule of Insurance.

1.2   Before starting the performance of any Services, upon renewal of any policy, and upon a change of any insurance carrier, Vendor must deliver to AMP certificates evidencing that the required insurance is in force.

1.3   With the exception of government-controlled workers compensation coverage:

1.3.1   Vendor must place the insurance with companies that (1) are satisfactory to AMP, (2) hold an A.M. Best Rating of A-, VII, or higher, and (3) are authorized to conduct business in the state where the Services will be performed;

1.3.2   the policies must be endorsed to require Vendor's insurance carrier to (1) provide at least 30 days' written notice to AMP (as certificate holder) of the cancellation of the insurance and (2) provide at least 10 days' written notice to AMP (as certificate holder) of the cancellation of the insurance for non-payment of premium; and

1.3.3   within 30 days of AMP's request, Vendor must submit insurance-company certified copies of the policies, the policy endorsements, or both.

1.4   Vendor must pay all deductibles, or self-insured retentions, or both contained in Vendor' policies of insurance required or provided in connection with the Agreement or any task order or statement of work. AMP reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing Vendor may use to comply with any insurance requirement.

1.5   AMP does not represent that required coverage or limits are adequate to protect Vendor.

1.6   Failure of AMP to demand a certificate or other evidence of full compliance with the insurance requirements or failure of AMP to identify a deficiency from evidence that is provided will not be construed as a waiver of Vendor' obligation to maintain the required insurance.

1.7   To the fullest extent permitted by applicable law, Vendor waives all rights against AMP and its agents and employees for damages to the extent covered by insurance, except rights to the proceeds of the insurance. This waiver shall not apply to any professional liability policy maintained in connection with the Services.

Article 2   Minimum Coverage Requirements

2.1   <u>Workers Compensation</u>. Vendor must maintain workers compensation coverage meeting the requirements of applicable law.

2.2   <u>Employers Liability / Stop Gap Coverage</u>. Vendor must maintain employers liability / stop gap coverage with (1) an each-accident limit of not less than $1,000,000, (2) a disease each-employee limit of not less than $1,000,000, and (3) a disease policy limit of not less than $1,000,000.

2.3   <u>Commercial General Liability</u>. Vendor must maintain commercial general liability ("CGL") coverage which provides (1) an each-occurrence limit of not less than $2,000,000, (2) a general-aggregate limit of not less than $2,000,000, and (3) a products and completed-operations aggregate limit of not less than $2,000,000.

2.3.1   The CGL insurance must be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

2.3.2 Vendor must include American Municipal Power, Inc. as an additional insured under the CGL policy using ISO endorsement CG 20 10 07 04 and ISO endorsement CG 20 37 07 04 or a substitute form(s) providing equivalent coverage.

2.3.3 The CGL insurance must apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs which cover the additional insured(s).

2.3.4 The CGL policy must not exclude coverage to the additional insured(s) for bodily injury or property damage arising out of the products/completed-operations hazard.

2.3.5 Vendor must maintain the CGL insurance in effect for no less than 5 years after the earlier of the termination the Agreement or completion of all Services.

2.4 Business Automobile Liability. Vendor must maintain business automobile ("BA") coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than $1,000,000 each accident.

2.4.1 The coverage must extend to any auto owned (if any), non-owned, leased, rented, hired, or borrowed.

2.4.2 Vendor must include American Municipal Power, Inc. as an additional insured under the BA policy.

2.5 Umbrella/Excess Liability. Vendor may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

2.6 Professional Liability. If the Services include any professional services, Vendor must maintain professional liability insurance which provides an annual-aggregate limit of not less than $2,000,000.

2.6.1 The professional liability policy must have an effective date which is on or before the date on which Vendor first started to provide any Services.

2.6.2 Upon submission of the associated certificate of insurance and at each policy renewal, Vendor must advise AMP in writing of any actual or alleged claims which may erode the professional liability policy's limits.

2.6.3 Vendor must maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination the Agreement or completion of all Services.

EXHIBIT D – FEE SCHEDULE

Fees and Rates:	2024-2027: $80 per enrolled thermostat, per year

A. Invoicing

Municipality will be billed for the Services quarterly, with fees appearing on Municipality's quarterly power invoice.

[End]

EXHIBIT E – GSA APPROVED MUNICIPALITY REQUIREMENTS

If Municipality's GSA has been approved via the GSA Approval Process and Municipality will, or could, review Customer enrollments, receive Platform Generated Data, and/or access the Mercury Platform, then Municipality must adhere to the following requirements:

1.1 Municipality shall not use the Mercury Platform (as defined in the Schedule) in a manner that violates any federal, state, provincial, or local law or regulation relating to individual privacy or the distribution of email and other marketing communications, including, without limitation, the CAN-SPAM Act and the Telephone Consumer Protection Act of 1991 ("TCPA").

1.2 Municipality will not, will not attempt to, and will not allow any Authorized Municipality User to: (i) interfere in any manner with the operation of the Mercury Platform or the hardware or network used to provide the Mercury Platform; (ii) copy, modify, alter, or make derivative works based on any part of the Mercury Platform or any associated software, documentation, or the Program Materials; (iii) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from any component of or devices connected to the Mercury Platform or any associated software or web services or permit a third party to do any of the foregoing; (iv) sublicense, assign, sell, or lease to, or otherwise allow, any person other than an Authorized Municipality User to access the Mercury Platform; (v) use the Mercury Platform for purposes of providing third-party hosting or third-party application integration, service bureau, subscription or application service provider-type services; (vi) disclose to any third party the performance measures of the Mercury Platform or benchmark tests or other comparisons of the Mercury Platform with other services or software; (vii) remove or alter any proprietary or other notice, legend or symbol on or embedded in the Mercury Platform or any associated software, documentation or Program Materials; (viii) install monitoring software or other automated monitoring mechanisms to access the Mercury Platform for benchmarking or competitive purposes; or (ix) use the Mercury Platform, any Program Materials, or any documentation or Municipality's access to any of the foregoing to design, build, market, or sell any similar, competitive or substitute service.

1.3 Municipality will designate certain of its employees, agents, and contractors as Authorized Municipality Users. An Authorized Municipality User account is not permitted to be shared among users. Each Authorized Municipality User will be assigned a unique user identification name and password for access to and use of the Mercury Platform ("Credentials"). Municipality is solely responsible for all activities that occur under Municipality's Authorized Municipality User accounts. Municipality shall use commercially reasonable efforts to ensure that its Authorized Municipality Users are responsible for maintaining the security and confidentiality of their Credentials, and to prevent unauthorized access to or use of the Mercury Platform. Municipality shall notify AMP promptly upon becoming aware of any unauthorized use of Credentials.

1.4 Municipality shall take reasonable and appropriate steps to protect the security, privacy and confidentiality of Customer information ("Safeguards") and ensure that its data use policies comply with applicable law and this Schedule, including, without limitation, compliance with Criteria Common to Security Principles (SSAE16): Group1: CC 1.1 - 1.4; Group 2: 2.1 - 2.6; Group 3: 3.1 - 3.2; Group 4: 4.1; Group 5: 5.1 - 5.8; Group 6: 6.1, 6.2; and Group 7: 7.1 - 7.4. Furthermore, Municipality shall allow Vendor (either directly or through a third party subcontractor) to conduct a security audit to determine whether Municipality's Safeguards comply with applicable law and SSAE16 provided above, and shall permit Vendor to share the findings of such security audits or reports with Vendor's connected device providers (and their respective auditors) who require evaluation of utility security procedures. Notwithstanding the foregoing, Municipality may use SOC 2 Type 2 reports or an alternative acceptable to Vendor in lieu of an independent audit by Vendor or its subcontractor. Upon request, Municipality will comply with the policies of a connected device provider relating to Protected Information that are provided to Municipality. If a material flaw in Municipality's Safeguards is found, Municipality's access to the Mercury Platform may be suspended or terminated upon immediate written notice.

1.5 Municipality shall not use Platform Generated Data for any purpose (including any internal analytics not directly related to the Services), except (i) to assist Vendor in accessing, retrieving, storing, copying, creating derivative works of, and otherwise using Platform Generated Data in connection with developing, analyzing, testing, maintaining, improving, modifying, distributing, providing, making available and/or otherwise commercializing Vendor's products and services; (ii) to assist Vendor in the adjustment of a Customer device;

(iii) for verification of Customer eligibility for and enrollment in the Smart Thermostat Program; (iv) for verification of Customer eligibility for a program participation incentive; (v) as required to meet regulatory or other legal requirements evidenced by reasonable documentation; and (vi) as approved by such connected device provider on a case-by-case basis, non-marketing communications directly to Customers about the Smart Thermostat Program.

1.6 Municipality will use commercially reasonable efforts to retain only the minimum amount of non-anonymized Platform Generated Data necessary to meet the relevant purposes of this Schedule. For the avoidance of doubt, Municipality will not, except as to the extent legally permitted, retain or store a Customer's non-anonymous Platform Generated Data for any purpose beyond (i) one year from the date Municipality received such Customer's Platform Generated Data or (ii) the date the Customer opts out of the Smart Thermostat Program, whichever period is longer. Municipality's Customer Data is not subject to the preceding limitation on data retention.

1.7 Municipality shall not, and may not permit any third party to, use Personal Information for any purpose not expressly approved in this Schedule, including (without limitation): (a) to share Personal Information with third parties, including without limitation data brokers, advertisers or advertising networks for any purpose; (b) to evaluate any Customer or their property individually or in aggregate for insurance or other financial products and services; (c) for marketing purposes; (d) to develop, create or improve another product, service or feature; (e) to develop, create or train any algorithms or machine learning models; (f) to create reporting or insights for other entities without Vendor's advance written permission; or (g) for any purpose beyond the specific permissions granted by the Customer and as otherwise permitted by this Schedule and applicable laws.

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