

ELSTER AMCO, INC.
END USER LICENSE AND WARRANTY AGREEMENT

This End User License and Warranty Agreement ("Agreement") is made between Elster AMCO, Inc., a Florida corporation, ("Elster AMCO"), and _____ ("End User"). This Agreement provides the terms and conditions under which Elster AMCO authorizes and licenses End User's use of the Equipment, Licensed Software, and Related Documentation, as those terms are defined below. Elster AMCO requires End User to execute this Agreement prior to delivery of any Equipment, Licensed Software or Related Documentation to End User by an authorized Elster AMCO distributor ("Distributor").

SECTION 1. DEFINITIONS

When used herein, the following terms, whether plural or singular, shall have the meaning set forth below:

- 1.1 **"Equipment"**. The components and devices manufactured and/or marketed by Elster AMCO and provided to End User by Distributor.
- 1.2 **"Licensed Software"**. The program products in binary form and any subsequent modifications, corrections or revisions to the program products licensed to End User by Elster AMCO.
- 1.3 **"Related Documentation"**. Any human-readable program listings, flow charts, input and output forms, manuals, specifications, instructions, and other materials, and any copies of any of the foregoing, in any medium, related to the Equipment and/or Licensed Software and delivered to the End User.

SECTION 2. THE LICENSED SOFTWARE

- 2.1 **License**. Elster AMCO hereby grants to End User a nonexclusive, nontransferable, perpetual license to use the Licensed Software, including the Related Documentation for the purpose of reading up to _____ meters. In the event that End User's use of the Licensed Software exceeds such number of meters in any combination of use, End User agrees to pay additional, incremental license fees. The End User's current meter population is _____ meters.
- 2.2 **Elster AMCO's Property**. The Licensed Software, including without limitation, programs, Related Documentation and methods of processing, shall remain the sole and exclusive property of Elster AMCO and shall not be sold, revealed, disclosed or otherwise communicated, directly or indirectly, by End User to any person, company or institution whatsoever except as set forth herein.
- 2.3 **Scope of License**. End User may use the Licensed Software on hardware used or owned by End User. The Licensed Software shall be used only for the processing of End User's own business, which shall include servicing and maintaining records on behalf of its customers. End User shall not: (a) permit any third party to use the Licensed Software, (b) use the Licensed Software in the operation of a service bureau, or (c) reverse engineer, disassemble, modify, prepare derivative works of, or otherwise alter the Licensed Software. Without the payment of an additional license fee, End User shall not use the Licensed Software to process business information concerning customers derived through merger, asset acquisition or other entity combination.
End User may, at its own expense, copy all or part of the Related Documentation for its internal use. End User shall reproduce and include any copyright or trade secret notices on any such copies.
Elster AMCO reserves all rights to the Licensed Software, the Related Documentation and the Equipment not specifically granted to End User in this Agreement.
- 2.4 **Proprietary Information**. In addition to the rights and obligations set forth in paragraph 5.4 herein, End User acknowledges and agrees that the information contained in the Licensed Software and Related Documentation is proprietary or confidential information and is the property of Elster AMCO (or another party who has licensed to Elster AMCO), and that the proprietary information is being made available to End User by Elster AMCO in confidence and solely on the basis of End User's confidential relationship with Elster AMCO. The proprietary information is considered by Elster AMCO to be a trade secret of Elster AMCO. End User will not provide or otherwise make available any Licensed Software or Related Documentation, in any form, except as required by law or judicial or governmental order, without Elster AMCO's prior written consent, except to employees or consultants of End User whose access to the information is necessary to enable End User to exercise its rights under this license and who are themselves subject to an obligation to maintain the confidentiality of such information.

SECTION 3. PAYMENT

End User acknowledges that Distributor must provide payment to Elster AMCO for the Equipment and Licensed Software and to provide consideration of this Agreement.

If End User purchases Equipment and Licensed Software directly from Elster AMCO, Elster AMCO will invoice such Equipment and Licensed Software upon shipment to End User.

All payments required to be made by End User shall be paid within thirty (30) days from date of receipt of invoice. All payments received more than thirty (30) days after the date of receipt of invoice shall be subject to a late charge of one and one-half percent (1-1/2%) per month for each month that the invoice remains unpaid.

Equipment shall be shipped F.O.B. shipping point. Title and risk of loss to Equipment shall pass to End User upon shipment thereof. Freight will be prepaid by Elster AMCO and billed to Customer at the actual freight charges. Sales tax, if applicable, will be added by Elster AMCO to each invoice for all goods and services provided.

SECTION 4. WARRANTY AND WARRANTY EXCLUSIONS

4.1 Warranty. Elster AMCO warrants that from date of shipment from Elster AMCO and for the periods specified in Exhibit A, each item of Equipment will be free from defects in material and workmanship and the Licensed Software shall perform substantially in accordance with Elster AMCO's then current specifications

Elster AMCO shall repair or provide an equivalent replacement of any item of Equipment and Licensed Software found defective at no charge to End User during this warranty period after properly packaged and returned prepaid to Elster AMCO's designated service center. Any costs associated with uninstalling defective Equipment and Licensed Software and installing replacement Equipment and Licensed Software will be the responsibility of End User. End User agrees to furnish Elster AMCO reasonable access to said Equipment and Licensed Software. End User agrees that the above remedies are End User's exclusive remedies and Elster AMCO's sole liability in the event of breach of warranty.

THE WARRANTIES SET FORTH IN THIS SECTION 4.1 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

4.2 Warranty Exclusions. The warranties provided by Elster AMCO under this Agreement do not include the following services, but if such services are available, they can be provided by Elster AMCO under this Agreement at Elster AMCO's then applicable time and material charges and travel expenses.

- (a) Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment.
- (b) Repair of damage or increase in service time caused by the use of the Equipment or Licensed Software for other than data processing purposes for which designed; or neglect or misuse.
- (c) Repair of damage caused by accident or disaster, which includes, but is not limited to fire, flood, wind, lightning, transportation subsequent to delivery, or force majeure.
- (d) Inspection of altered Equipment, repair of damage or increase in service time caused by alterations not authorized by Elster AMCO, which alterations include, but are not limited to, any deviation from Elster AMCO's physical, mechanical or electrical Equipment design.
- (e) Repair of damage or increase in service time caused by the conversion from one Elster AMCO model to another or the installation or removal of an Elster AMCO feature whenever any of the foregoing was performed by other than Elster AMCO or its authorized agents.
- (f) Service time and materials associated with the rearrangement or relocation of Equipment.
- (g) Service time and materials associated with Licensed Software and/or Equipment nonperformance when used with an operating system or configuration not recommended by Elster AMCO.

SECTION 5. RIGHTS AND OBLIGATIONS

5.1 **Infringement Indemnity.** Elster AMCO will defend End User against a claim that Equipment or Licensed Software supplied hereunder infringes a U.S. patent, copyright, trade secret or other proprietary property right or that the Equipment's operation pursuant to a current Elster AMCO release and modification level of any Licensed Software supplied by Elster AMCO infringes a U.S. patent, copyright, trade secret or other proprietary property right, and Elster AMCO will pay resulting costs, damages and attorney fees finally awarded, provided that:

- (a) End User promptly notifies Elster AMCO in writing of the claim; and
- (b) Elster AMCO has sole control of the defense and all related settlement negotiations.

Elster AMCO's obligation under this Section is conditioned on End User's agreement that if the Equipment, or the operation thereof, or the Licensed Software, becomes, or in Elster AMCO's opinion is likely to become the subject of such a claim, End User will permit Elster AMCO, at Elster AMCO's option and expense, either to procure the right for End User to continue using the Equipment or Licensed Software or to replace or modify the same so that they become noninfringing; such replacements or modifications shall be functionally equivalent to the Equipment and Licensed Software; and if the foregoing alternatives are not available on terms which are reasonable in Elster AMCO's judgment, End User will return the Equipment or Licensed Software on written request to Elster AMCO. Elster AMCO shall refund to End User the End User's then book value of such returned Equipment and Licensed Software as depreciated.

Elster AMCO has no liability for any claim based upon the combination, operation or use of any Equipment or Licensed Software supplied hereunder with equipment or software not approved by Elster AMCO, or based upon End User's alteration of the Equipment or modification of any Licensed Software supplied hereunder.

The foregoing states the entire obligation of Elster AMCO and End User's sole and exclusive remedy with respect to infringement of patents, copyrights, trade secrets or other proprietary property.

5.2 **Limitation of Liability.** ELSTER AMCO'S AGGREGATE LIABILITY FOR DAMAGES TO END USER SHALL NOT EXCEED THE AMOUNTS PAID BY END USER FOR THE EQUIPMENT AND LICENSED SOFTWARE INVOLVED IN SUCH CLAIM FOR DAMAGES. **IN NO EVENT SHALL ELSTER AMCO BE LIABLE, WHETHER IN CONTRACT, NEGLIGENCE, TORT, OR ON ANY OTHER BASIS, FOR COVER OR FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OF DATA, REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION IN THE OPERATION OF THE EQUIPMENT, LICENSED SOFTWARE OR ANY ELSTER AMCO SERVICES.**

5.3 **Service After Warranty.** The Equipment and Licensed Software are eligible for service under Elster AMCO's standard service agreement. The fee for service shall be at Elster AMCO's then prevailing rates. At End User's option, the service agreement may commence on the date of expiration of the initial warranty period for the Equipment and/or Licensed Software.

5.4 **Confidentiality.** Except as required by law or judicial or governmental order, Elster AMCO and End User agree to hold in strictest confidence all information and material which is related to the other party's business, which is designated as proprietary and confidential, or which is related to the performance by the other party of its obligations under this Agreement. Proprietary and confidential information includes, but is not limited to the terms of this Agreement, information related to research, development, pricing, trade secrets, customer lists, salaries or business affairs of the parties to this Agreement. Proprietary and confidential information shall not include any information that is: (i) known to the other prior to the effective date of this Agreement, and can be shown to have been so known by documentary evidence; or (ii) obtained by the other without restriction as to the further disclosure thereof from a source other than the party hereto having transferred such information hereunder through no breach of confidence by such source, and can be shown to be so obtained by documentary evidence; or (iii) in the public domain when received, or thereafter enters the public domain through no fault of the other; or (iv) independently developed by the other without use of such proprietary or confidential information, and can be shown to be so developed by documentary evidence; or (v) required to be disclosed by third party subpoena, applicable law or any

governmental authority having jurisdiction, provided that the recipient party gives the disclosing party advance written notice of such required disclosure and cooperates with the disclosing party to limit the scope and use of the information to be disclosed. The parties' obligations of confidentiality under this Agreement shall survive termination of this Agreement.

- 5.5 Equipment or Licensed Software Modification. Elster AMCO's obligations hereunder shall be void to the extent any Equipment or Licensed Software is adversely affected or causes damage in the event End User modifies the Equipment or Licensed Software or uses any attachment, feature, or device on the Equipment, without first obtaining Elster AMCO's written approval.
- 5.6 Law Compliance. In performing their duties and obligations under this Agreement, the parties will comply with all applicable laws, rules and regulations of governmental authorities having jurisdiction. End User shall take all steps reasonably necessary to prevent any use, disclosure or export of the Equipment, Licensed Software and Related Documentation not authorized or permitted by law or by this Agreement.
- 5.7 U.S. Government Restricted Rights. If used or acquired by the U.S. Government, the U.S. Government acknowledges and agrees that (a) the Equipment, Licensed Software and Related Documentation constitute "commercial computer software" and/or "commercial computer software documentation" for purposes of 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-3, as applicable, and (b) the U.S. Government's rights are limited to those specifically granted pursuant to this Agreement.
- 5.8 Term and Termination.
- (a) Termination. This End User License and Warranty Agreement shall become effective upon execution by End User and may terminate:
- (1) Thirty (30) days after a party gives the other party written notice of that party's material breach of this Agreement, unless the other party has made progress in curing the breach to an extent satisfactory to the nonbreaching party; or
 - (2) At a party's option, upon ten (10) days written notice of termination, if the other party becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings.
- (b) Rights and Obligations Upon Termination.
- Upon termination of this Agreement:
- (1) End User's obligations under paragraph 2.4 ("Proprietary Information") and the parties' obligations under paragraph 5.4 ("Confidentiality") shall survive the termination;
 - (2) End User's Software License rights under Section 2 shall immediately cease; End User shall delete the Licensed Software from all other software into which it has been merged; and End User shall immediately deliver to Elster AMCO or destroy all copies of the Licensed Software and Related Documentation; however, End User may, upon Elster AMCO's prior written consent, retain one (1) copy of the Licensed Software and Related Documentation for archive purposes only; and
 - (3) End User shall, within one (1) month after the termination of this Agreement, certify in writing to Elster AMCO that, to the best of End User's knowledge, all copies of the Licensed Software and Related Documentation have been returned or destroyed, except for any archive copy permitted under paragraph 5.8(b)(2).

SECTION 6. GENERAL

- 6.1 Force Majeure. Neither party hereto shall be responsible for any failure or delay in the performance of any obligation hereunder if such failure or delay is due to a cause beyond the party's control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.
- 6.2 Assignment. End User shall not assign this Agreement, directly or indirectly, without the prior written consent of Elster AMCO; provided, however, that End User may assign this Agreement to its successor in a merger or to the purchaser of all or substantially all of End User's assets if such successor or purchaser agrees in writing to comply with the terms and conditions of this Agreement.
- 6.3 Governing Law. **This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Florida without reference to choice of law principles that would result in application of laws other than the laws of the State of Florida.**

- 6.4 Enforceability. If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- 6.5 Notices and Requests. Notices hereunder shall be in writing and shall be given by either party to the other by delivery or by mailing the same by prepaid registered mail addressed as specified herein or to such other address as may be substituted by written notice by either party to the other:
End User: Notices to End User at address provided below.

ELSTER AMCO, INC.
P.O. Box 1852
Ocala, FL 34478
Attn.: Contract Administrator

Any such notice so given shall be deemed to have been received by the party to whom addressed on the day of delivery thereof.

- 6.6 Entire Agreement. Each party agrees to be bound by the terms of this Agreement and further agrees that it is the complete and exclusive statement of the agreement between the parties. Any terms and conditions appearing on End User's authorizations or purchase orders shall not apply to or become a part of this Agreement; this Agreement may be modified or altered only by a written instrument that refers to this Agreement and is duly executed by an authorized representative of each party.
- 6.7 Headings Not Controlling. Headings used in this Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 6.8 English Language. The parties have expressly required that this Agreement be set forth and executed in the English language. Les parties aux presentes ont expressment exige que la presente conventions soient redigees en la langue anglaise.

DATED AND EXECUTED this _____ day of _____,
_____.

END USER: _____

By: _____

Name: _____

Title: _____

Address: _____

If a corporation or a limited liability company, name the State in which formed
_____.

EXHIBIT A - Warranty for Elster AMCO evolution Fixed Network AMI

<i>evo</i> AMI Device (endpoint)	Elster AMCO
Description	Elster AMCO Encoder evoRTM w/5' cable bare wire ends
Communications	Two Way
Transmissions/Day including:	1 - containing 24 hourly readings
Battery Size	2-A size / 1-D size
Product Warranty	20 years
Battery Warranty	20 years
Ten Years (10) years	Full Replacement
Ten Years (10) years - A prorated replacement cost of the current price list	RTM Replacement Cost
Year 11	40%
Year 12	40%
Year 13	40%
Year 14	50%
Year 15	50%
Year 16	60%
Year 17	70%
Year 18	80%
Year 19	90%
Year 20	90%

* RTM – Radio Transceiver Module (AMI device)

<i>evoGate</i>	Elster AMCO
Description	evoGate, 915MHz - 110 V-AC - external antenna
Communications	Two Way
Power / Battery Backup	AC 110V / 8 Hours
Product Warranty	24 Months

<i>evoNet Manager</i>	Elster AMCO
Description	Network management Software
Product Warranty	14 months

<i>evoWalk</i>	Elster AMCO
Description	FW900 Hand Held, 128/128MB, Bluetooth, FWL-10, Laser Scanner w/PCMCIA Waveport CF radio card and evoWalk FN SW License
Product Warranty	12 months