

or on behalf of EEC whether or not written, and relating directly or indirectly to one or more of the Licensed Patents, and any modifications, variations, derivative works and improvements of or relating to any of the foregoing.

1.5. “**Licensed Patents**” means U.S. patent no. 9,410,752 B2 (“752 Patent”), and U.S. Continuation Application No. 15/202,370 filed with the U.S. Patent and Trademark Office on July 5, 2016, and all divisionals, continuations, continuations-in-part, any patents that issue from such patents, applications, revivals, reexaminations, reissues, renewals, or extensions of such patents, and any other application or patent of EEC claiming priority to any of the foregoing **Patent Applications**”).

1.6. “**Licensed Technology**” means the Licensed Patents and Licensed Know-how.

1.7. “**Location**” means the parcel or parcels of real property owned or leased by Licensee identified in Schedule A to this Agreement.

1.8. “**Proprietary Information**” of a Disclosing Party shall mean the following, to the extent previously, currently or subsequently disclosed to the other Party or any of its Affiliates hereunder or otherwise: confidential information relating to the Licensed Technology (including, without limitation, the properties, composition, structure, manufacture, or sourcing thereof), or to the Disclosing Party’s business (including, without limitation, computer programs, algorithms, names and expertise of employees and consultants and suppliers, customers, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, customer and product development plans, forecasts, strategies and information). The terms of this Agreement shall be the Proprietary Information of each Party.

1.9. “**Proprietary Rights**” shall mean patent rights, copyrights, mask work rights, trade secret rights, sui generis database rights, and all other intellectual and industrial property rights.

1.10. “**Receiving Party**” means a Party that receives Proprietary Information of the other Party.

1.11. “**System**” means an integrated heating and cooling system for enclosed buildings with or without a ground or process heat exchanger, and related controls, the manufacture, use, operation, maintenance, offer for sale, sale, or import of which, absent the License (as defined in Section 3 below), would infringe a Valid Claim in a jurisdiction where such a Valid Claim exists, or incorporate, use, or misappropriate any element of the Licensed Know-how in its design or manufacture.

1.12. “**Territory**” means anywhere in the world.

1.13. “**Valid Claim**” means, on a country-by-country basis, a claim of an unexpired issued or granted Licensed Patent as long as the claim has not been admitted by EEC or otherwise caused to be invalid or unenforceable through reissue, disclaimer or otherwise, or held invalid or unenforceable by a governmental authority of competent jurisdiction in the respective country from whose judgment no appeal is allowed or timely taken.

2. LICENSE GRANT

2.1. **Non-Exclusive License.** As of the Effective Date, subject to the terms and limitations of this Agreement, EEC grants to Licensee during the applicable License Term (as defined in Section 12.2, below, and set forth in Schedule A hereto) a non-exclusive, personal, non-assignable and non-sublicensable (except as expressly set forth in Section 13.4, below), fee-bearing, the right and license (“**License**”) under all its Proprietary Rights in the Licensed Technology to practice the Licensed Technology to use, operate and maintain a single System at each Licensee Location for which Licensee has paid the applicable License Fee (as defined in Section 3.1, below).

2.2. **Transfer of Technology.** To transfer the Licensed Know-how from EEC to Licensee, EEC shall provide to Licensee a tangible or electronic manual containing the Licensed Know-how, promptly after the Effective Date, and in its discretion may from time to time disclose to Licensee in tangible or electronic form Improvements (as defined in Section 4.1, below) in the Licensed Technology as they may be developed during the Agreement Term. EEC may update Schedule A periodically as appropriate, to describe such Improvements.

2.3. Licensee understands and agrees that, notwithstanding any Patent Applications pending and listed in Schedule A, until a patent actually issues (if at all) from such application (as it may be amended and prosecuted after the Effective Date), third parties may practice the technology in the Patent Application.

2.4. **Reservation of Rights.** This Agreement does not confer any rights in the Licensed Technology or in any Improvements that are not explicitly granted in this Agreement.

3. FEES; PAYMENTS

3.1. **License Fee.** Upon or prior to executing this Agreement, Licensee shall pay to EEC a non-refundable, non-recurring, non-creditable, up-front fee in the amount set forth in Schedule B hereto (“**License Fee**”). The License Fee may be based upon the square footage (“**Size**”) of the real property improvements owned or leased by Licensee at each Location, or as the Parties may otherwise determine as set forth in Schedule B. Licensee shall promptly notify EEC in accordance with Section 13.7 below of any increase in Size of any Location during the Agreement Term, and shall promptly pay any higher License Fee (less the initial License Fee if previously paid) that applies based on the pricing schedule in Schedule B. If at any time EEC determines that the License Fee should be increased based on the actual Size of Licensee’s Locations, EEC may invoice the Licensee for such additional amounts, plus the costs of any audit, and Licensee shall promptly pay the additional License Fee and audit costs. For clarity, Licensee shall not be entitled to any credits or refunds or other adjustments if the Size of one or more Locations decrease for any reason or are determined to have been understated.

3.2. **Payments and Reports.** Licensee shall complete and certify annually to EEC no later than February 15 of each year of the Agreement Term on forms provided by EEC the Size and Locations of each System. Any additional License Fees shall be paid within thirty (30) days of EEC’s invoice. Any outstanding amounts shall be subject to an administrative late fee equal to the lesser of 1.5% per month or the maximum rate, if any, allowed by law.

3.3. **Audit Rights.** EEC shall have the right to audit Licensee's Locations, and all relevant documents and systems, during normal business hours to determine Licensee's compliance with the terms of this Agreement.

4. IMPROVEMENTS

4.1. **Improvements by EEC.** Subject to Licensee's compliance with the terms of this Agreement, any modifications or improvements made to any Licensed Technology related to any Systems ("**Improvements**") by EEC (except Improvements created specifically for a third party) before the earlier of (i) termination of this Agreement or (ii) three (3) years following the Effective Date of this Agreement shall be included in the License without additional charge to Licensee.

4.2. **Improvements by or for Licensee.** Licensee shall notify EEC promptly, and discuss and cooperate with EEC with respect to any Improvements made by or for Licensee. Licensee agrees to grant and hereby grants to EEC a perpetual, worldwide, irrevocable, fully paid-up, royalty-free, non-exclusive, transferrable, sublicensable (through multiple tiers) license to use, execute, reproduce, display, perform, distribute, prepare derivative works of, and otherwise fully exploit any Improvements made by or for Licensee during the same period to or on the Licensed Know-how. (The foregoing shall be deemed to include, without limitation, (A) any patent covering an invention the manufacture, use or sale of which would be covered by or within the scope of a claim of a Licensed Patent and (B) any patent that (alone or together with others) tends to define, describe or surround any part of the Licensed Technology or any invention claimed in a Licensed Patent.) Notwithstanding anything to the contrary herein, Licensee shall not license to any third parties any Improvements derived from or based on any EEC Proprietary Information.

5. COMPLIANCE OBLIGATIONS

5.1. **Compliance with Laws.** Licensee, at its sole expense, comply with all applicable laws, statutes, ordinances, rules, regulations, building codes, safety standards, and any other requirement or rule of law of any federal, state, local or foreign government or political subdivision or agency thereof, or any arbitrator, court, official or tribunal of competent jurisdiction ("**Applicable Laws**"), concerning any Systems made, used, maintained, repaired, disassembled or decommissioned by or under the authority of Licensee, and obtain all necessary governmental approvals, permits and licenses for such manufacture, use, maintenance, repair, disassembly, and decommissioning of Systems by or under the authority of Licensee.

5.2. **Compliance with Third-Party Licenses.** Licensee shall have exclusive responsibility for and provide suitable warning labels, packaging and instructions as to the manufacture, use, maintenance, repair, disassembly, and decommissioning of such Systems. Licensee shall, at its sole expense, also comply with all applicable third-party licenses for the use of System components.

6. CONFIDENTIALITY

6.1. **Restrictions on Disclosure and Use.** Licensee agrees all times to: (i) hold EEC's Proprietary Information in strict confidence and to take all reasonable precautions to protect such

Proprietary Information (including, without limitation, all precautions Licensee employs with respect to its confidential materials), (ii) not divulge any such Proprietary Information or any information derived therefrom to any third person, (iii) not make any use whatsoever at any time of such Proprietary Information except as expressly authorized in this Agreement, and (iv) not to remove or export from the United States or re-export any such Proprietary Information or any direct product thereof except in compliance with and with all licenses and approvals required under applicable U.S. and foreign export laws and regulations. Any employee or contractor of Licensee given access to any such Proprietary Information must have a legitimate need to know, and shall be similarly bound in writing, with EEC as an express intended third-party beneficiary, to confidentiality obligations at least restrictive as those contained herein. Without granting any right or license, the foregoing clauses (i), (ii) and (iii) shall not apply with respect to information that Licensee can document (i) is in or (through no improper action or inaction by Licensee or any agent or employee) enters the public domain and is readily available without substantial effort, or (ii) was rightfully in its possession or known by Licensee prior to receipt from EEC, or (iii) was rightfully disclosed to it by a third party that is not bound by similar confidentiality or proprietary restrictions, or (iv) was independently developed by it by persons without access to and without use of any Proprietary Information of EEC. Licensee must promptly notify EEC of any information it believes comes within any circumstance listed in the immediately preceding sentence and will bear the burden of proving the existence of any such circumstance by clear and convincing evidence.

6.2. Terms of Agreement. Notwithstanding the foregoing, Licensee shall have the right to disclose the terms of this Agreement and other Proprietary Information: (i) to its attorneys, financial institutions, accountants or other professional advisors in the course of seeking professional advice, or (ii) to the extent required by a court or governmental agency, or by applicable law, order, rule or regulation.

6.3. Return of Proprietary Information. Upon termination of the License, Licensee will turn over to EEC all of EEC's Proprietary Information and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof.

6.4. Equitable Relief. Licensee acknowledges and agrees that due to the unique nature of EEC's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow Licensee or third parties to unfairly compete with EEC resulting in irreparable harm to EEC, and therefore, that upon any such breach or any threat thereof, EEC shall be entitled to appropriate equitable relief (without the posting of any bond) in addition to whatever remedies it might have at law and to be indemnified by Licensee from any loss or harm, including, without limitation, lost profits and attorney's fees, in connection with any breach or enforcement of Licensee's obligations hereunder or the unauthorized use or release of any such Proprietary Information. Licensee will notify EEC in writing immediately upon the occurrence of any such unauthorized release or other breach.

7. OWNERSHIP

7.1. **Technology and Proprietary Information.** As between the parties, EEC and its licensors retain all title to and, except as expressly and unambiguously Licensed herein, all rights in and to: (i) the Licensed Technology and EEC Proprietary Information, all related

documentation and materials, and all derivative works of any of the foregoing, all of which Licensee hereby assigns to EEC; and (ii) all Proprietary Rights in or related to Licensed Technology and EEC Proprietary Information. The License does not constitute a sale of the Licensed Technology or EEC Proprietary Information, or any portion or copy thereof.

7.2. **Improvements.** As between the Parties, EEC owns all rights, title and interest in and to all Improvements conceived, reduced to practice, or otherwise developed, in whole or in part, by or for either Party or the Parties. Licensee shall assign promptly and hereby assigns to EEC any Improvements made by or for Licensee. In the event Licensee has unassignable rights in and to any Improvements, Licensee unconditionally and irrevocably waives enforcement of such rights against Licensor, its affiliates, and its or their licensees. If Licensee has any rights with respect to such Improvements that cannot be waived, Licensee grants to EEC a royalty-free, fully paid-up, worldwide, perpetual, irrevocable, exclusive license (with the right to sublicense through multiple tiers) to use, copy, modify, perform, display, offer for sale, distribute, lease, sell, and transfer such Improvements for any and all legal purposes.

8. PATENT MATTERS

8.1. **Patent Prosecution; Maintenance.** During the applicable Licensed Patent Term, EEC shall use reasonable efforts to prepare, file, prosecute, and maintain the '752 Patent, and EEC may in its discretion prepare, file, prosecute, and maintain other Licensed Patents, including but not limited to the specific Patent Applications identified in Schedule A hereto.

8.2. **Third-Party Infringement of any Licensed Technology.** If Licensee becomes aware of any product or activity of any third party that may involve the infringement, violation, or misappropriation of any Licensed Technology or related Proprietary Rights in the Territory, then Licensee shall promptly notify EEC in writing of such actual or suspected infringement, violation, or misappropriation.

8.3. **Right to Bring or Defend Action.** EEC has the sole right and discretion to prevent or abate any actual or threatened misappropriation or infringement and attempt to resolve any claims relating to the Licensed Patents and Licensed Know-how, including by (a) prosecuting or defending any opposition, derivation, interference, declaratory judgment, federal district court, US International Trade Commission, patent office, or other proceeding of any kind, and (b) taking any other lawful action that EEC, in its sole discretion, believes is reasonably necessary, to protect, enforce or defend any Licensed Patent or Licensed Know-how.

8.3.1. EEC has the right to prosecute or defend any such proceeding in its own name or if required by applicable law or otherwise necessary or desirable for such purposes, in the name of Licensee and may join Licensee as a party if a court of competent jurisdiction determines Licensee is an indispensable party to such proceeding. Licensee shall and hereby does irrevocably and unconditionally waive any objection to any such joinder on any grounds whatsoever, including on grounds of personal jurisdiction, venue or *forum non conveniens*. Licensee shall cooperate with EEC and assist in all reasonable ways in the conduct of any such proceedings. EEC shall bear its own costs and expenses in all such proceedings and have the right to control the conduct thereof and be represented by counsel of its own choice therein.

8.3.2. If any suit, action or other proceeding alleging invalidity or non-infringement of any Licensed Patent is brought against Licensee or any permitted sub-licensee, EEC, at its option, shall have the right, within one hundred eighty (180) days after commencement of such suit, action or other proceeding, to intervene and take over the sole defense of the suit, action or other proceeding at its own expense.

8.3.3. If EEC undertakes the enforcement or defense of any Licensed Patent: (i) any recovery, damages or settlement derived from such suit, action or other proceeding shall be retained in its entirety by EEC; and (ii) EEC may settle any such suit, action or other proceeding, whether by consent order, settlement or other voluntary final disposition, without the prior written approval of Licensee or any sub-licensee.

8.3.4. Licensee understands that EEC has not conducted comprehensive patent searches in all of the countries in the Territory. Licensee shall cooperate with EEC regarding issues concerning patents and Proprietary Rights and similar matters and shall exercise reasonable business judgment in carrying out the objects of this Agreement to avoid exposing either party to liability under patent or similar laws in any of the countries in the Territory.

8.4. **License Termination**. If, during the applicable Licensed Patent Term, Licensee institutes or actively participates as an adverse party in, or otherwise provides material support to, any action, suit or other proceeding in the Territory to invalidate or limit the scope of any Licensed Patent claim or obtain a ruling that any Licensed Patent claim is unenforceable or not patentable, or that any System would not, but for the licenses granted hereunder, infringe one or more claims of any Licensed Patent (“**Licensed Patent Challenge**”), EEC has the right to immediately terminate this Agreement with notice to Licensee and with no opportunity for Licensee to cure.

8.5. **Patent Marking**. Licensee will not alter or obscure any patent marking on any part of the System or in any Licensed Know-how without EEC’s prior written consent.

9. WARRANTIES AND REPRESENTATIONS

9.1. **Mutual Representations and Warranties**. Each Party represents and warrants to the other that as of the Effective Date:

9.1.1. it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

9.1.2. it has the right and power, and is properly authorized to enter into this Agreement and perform its obligations hereunder;

9.1.3. when executed and delivered by such party, this Agreement shall constitute the legal, valid and binding obligation of that party, enforceable against that party in accordance with its terms; and

9.1.4. to its knowledge, it has not received any notice or threat of any claim, suit, action or proceeding, and has no knowledge or reason to know of any information, that could: (a)

invalidate or render unenforceable any claim of any Licensed Patent; or (b) cause any claim of any Licensed Patent to fail to issue or be materially limited or restricted as compared with its currently pending scope.

9.2. **Disclaimer of Licensor's Representations and Warranties.** EEC EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED STATUTORY OR OTHERWISE, CONCERNING THE VALIDITY, ENFORCEABILITY AND SCOPE OF THE LICENSED TECHNOLOGY, THE ACCURACY, COMPLETENESS, SAFETY, USEFULNESS FOR ANY PURPOSE OR, LIKELIHOOD OF SUCCESS (COMMERCIAL, REGULATORY OR OTHER) OF ANY SYSTEM, LICENSED KNOW-HOW, PROPRIETARY INFORMATION, AND ANY OTHER TECHNICAL INFORMATION, TECHNIQUES, MATERIALS, METHODS, PRODUCTS, PROCESSES OR PRACTICES AT ANY TIME MADE AVAILABLE BY EEC, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, EEC SHALL HAVE NO LIABILITY WHATSOEVER TO LICENSEE OR ANY OTHER PERSON FOR OR ON ACCOUNT OF ANY INJURY, LOSS, OR DAMAGE, OF ANY KIND OR NATURE, SUSTAINED BY, OR ANY DAMAGE ASSESSED OR ASSERTED AGAINST, OR ANY OTHER LIABILITY INCURRED BY OR IMPOSED ON LICENSEE OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM (A) THE DESIGN, MANUFACTURE, USE, MAINTENANCE, REPAIR, DECOMMISSIONING, OFFER FOR SALE, SALE, OR IMPORT OF ANY SYSTEM, OR THE PRACTICE OF THE LICENSED PATENTS; (B) THE USE OF OR ANY ERRORS OF OMISSIONS IN ANY KNOW-HOW, TECHNICAL INFORMATION, TECHNIQUES, OR PRACTICES DISCLOSED BY EEC; OR (C) ANY ADVERTISING OR OTHER PROMOTIONAL ACTIVITIES CONCERNING ANY OF THE FOREGOING.

10. LIMITATIONS OF LIABILITY.

10.1. **INCIDENTAL AND CONSEQUENTIAL DAMAGES.** TO THE FULLEST EXTENT PERMITTED BY LAW, EEC SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY INJURY TO OR LOSS OF GOODWILL, REPUTATION, BUSINESS, PRODUCTION, REVENUES, PROFITS, ANTICIPATED PROFITS, CONTRACTS OR OPPORTUNITIES (REGARDLESS OF HOW THESE ARE CLASSIFIED AS DAMAGES), OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE OR BREACH OF THIS AGREEMENT), REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR EEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2. **LIMITATIONS OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, EEC'S MAXIMUM AGGREGATE LIABILITY RELATING TO THIS

AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE OF THE FEES PAID BY LICENSEE UNDER THIS AGREEMENT PRIOR TO THE DETERMINATION OF THE LIABILITY.

11. INDEMNIFICATION

11.1. **Licensee Indemnification.** Licensee shall defend, indemnify, and hold harmless EEC and its Affiliates, and each of EEC's and its Affiliates' respective officers, directors, employees, agents, successors and assigns (each an "**Indemnitee**") against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers ("**Losses**") arising out of or resulting from any third party claim, suit, action or other proceeding related to or arising out of or resulting from (a) Licensee's breach of any representation, warranty, covenant or obligation under this Agreement, or (b) use by Licensee of Licensed Patents or Licensed Know-how, or modification thereof, or (c) any use, sale, transfer or other disposition by Licensee or any transferee of any System or part or modification thereof made by use of any Licensed Patents or Licensed Know-how (each an "**Action**").

11.2. **Notice and Procedures.** EEC shall notify Licensee in writing of any Action and cooperate with Licensee at Licensee's sole cost and expense. Subject to Section 8, Licensee shall immediately take control of the defense and investigation of the Action and shall employ counsel reasonably acceptable to EEC to handle and defend the Action, at Licensee's sole cost and expense. Licensee shall not settle any Action in a manner that adversely affects the rights of EEC or the Indemnitee, if any, without EEC's and the Indemnitee's prior written consent. EEC's or any Indemnitee's failure to perform any obligations under this Section shall not relieve Licensee of its obligations hereunder except to the extent that Licensee can demonstrate that it has been materially prejudiced as a result of the failure. Licensor and any Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

12. TERM; TERMINATION

12.1. **Term of Agreement.** Unless terminated earlier pursuant to Section 12.3, below, this Agreement will be deemed to have commenced on the Effective Date and shall remain in force for each Location on a Location -by- Location basis and continue for an initial term as follows:

12.1.1. For rights and obligations concerning the Licensed Patents, until the expiration of the last to expire Valid Claim of a Licensed Patent that would be infringed by the unlicensed manufacture, use, importation, offer for sale or sale of such Licensed Product in or into such country ("**Licensed Patent Term**"); and

12.1.2. For rights and obligations concerning the Licensed Know-how, until such time as the Licensed Know-how ceases to be protectable as a trade secret or otherwise under Applicable Law other than as a result of any act or omission of Licensee ("**Licensed Know-how Term**," and collectively with the Licensed Patent Term, "**Agreement Term**").

12.2. **Term of License.** Within the applicable Agreement Term, unless terminated earlier pursuant to this Section or Section 12.3, below, or extended or renewed in writing by the Parties in their respective individual discretion, each License will be deemed to have commenced and shall remain in force and continue for each Location on a Location -by- Location basis for an initial term as set forth in Schedule A (“**License Term**”). If the Parties agree in writing to extend or renew the initial License Term, Schedule A shall be amended to reflect the new License Term expiration date.

12.3. **Termination for Cause.** EEC shall have the right to terminate this Agreement immediately by giving written notice to Licensee if:

12.3.1. Licensee fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than ten (10) days after EEC’s written notice to make such payment, including the payment of interest in accordance with Section 3.2;

12.3.2. Licensee materially breaches this Agreement (other than through a failure to pay any amounts due under this Agreement) and, if such breach is curable, fails to cure such breach within thirty (30) days of EEC’s written notice of such breach;

12.3.3. Licensee: (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within sixty (60) Business Days or is not dismissed or vacated within ninety (90) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

12.3.4. Licensee undergoes a Change of Control.

12.4. **Effect of Termination of Agreement.** In the event of any termination or expiration of any License or of this Agreement, the rights and licenses granted Licensee under the applicable License or this Agreement, and any obligation of EEC to make Improvements or provide Licensed Technology or information shall cease, but all other provisions of this Agreement will continue in accordance with their terms (except that if the termination is on account of a breach by EEC, the License granted Licensee in Section 2.1 will continue for the Licensed Technology and the Agreement will not be considered terminated for purposes of Section 3 until Licensee’s License Fee obligation otherwise terminates). Any Licenses surviving termination as aforesaid may be terminated by the granting Party in the same manner as provided in Section 12.3 if Licensee materially breaches a material surviving provision of this Agreement. No sublicense will survive termination of the relevant License hereunder.

12.5. Neither Party shall incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other arising from or incident to any termination of this Agreement (or any part thereof) by such Party which complies with the terms of the Agreement whether or not such Party is aware of any such damage, loss or expenses.

12.6. Termination is not the sole remedy under this Agreement and, whether or not termination is effected, all other remedies will remain available.

13. GENERAL

13.1. **Entire Agreement.** This Agreement supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among the Parties relating to the subject matter of this Agreement and all past dealing or industry custom. Any representation, promise, or condition in connection with such subject matter that is not incorporated in this Agreement shall not be binding on either Party.

13.2. **Amendment and Waiver.** Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or any particular instance and either retroactively or prospectively) only with the written consent of the Parties.

13.3. **Independent Contractors.** The Parties are independent contractors and not partners, joint venturers or otherwise affiliated and neither has any right or authority to bind the other in any way.

13.4. **No Assignment of Licensee's Rights.** The rights granted to and obligations of Licensee under this Agreement are personal to it, and therefore may not, except as provided below, be sublicensed, assigned, conveyed or otherwise transferred to any third party by Licensee or by operation of law (including but not limited to a Change of Control) without the prior express written consent of EEC. EEC reserves the right to withhold consent for the sublicense, assignment or transfer of this Agreement to any third party for any reason. Notwithstanding the immediately preceding two sentences, if Licensee sells a Location or there is a Change of Control the purchaser (or new controlling party, in each case, the "**Succeeding Party**"), shall acquire all of the rights and assume all of the duties of Licensee under this Agreement, without any requirement for consent of EEC; provided, however, that Licensee and Succeeding Party give written notice to EEC of the consummation of such transaction at least fifteen (15) days prior to the closing, which notice shall also provide Succeeding Party's signed agreement (effective upon such closing) to be bound by all of the provisions of this Agreement.

13.5. **Headings.** Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

13.6. **Governing Law and Legal Actions.** This Agreement shall be governed by and construed under the laws of the State of Colorado and the United States without regard to conflicts of laws rules thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

13.7. **Arbitration.** In the event of a dispute or controversy arising out of or related to this Agreement ("Dispute"), the Parties agree that they shall endeavor diligently and in good faith to resolve the Dispute amicably. If such endeavor fails they shall thereafter submit the Dispute to non-binding mediation before a third-party neutral with JAMS Endispute or other organization upon which the Parties may agree ("JAMS") within thirty (30) days of written notice by a party detailing such Dispute and the prior failed attempt of resolution. In the event

that such mediation fails to resolve the Dispute, each of the parties agrees that any Dispute shall be settled by arbitration before a single arbitrator pursuant to the Streamlined Arbitration Rules then in force of JAMS. The terms of this Agreement shall govern any inconsistency between it and the Rules or the Federal Arbitration Act. If the Parties are unable to agree on an arbitrator from the neutrals available at JAMS, they shall request from JAMS a list of five available arbitrators with experience in similar disputes, and each Party may strike two names, leaving the remaining name(s) as the arbitrator. If more than one name remains, JAMS will make the selection from the remaining names based on the experience of the arbitrator with disputes of the type that includes the Dispute. The arbitration shall be conducted in San Mateo County, California, and the proceedings shall be transcribed. The arbitrator shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrator shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrator shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrator shall not have power to award damages in connection with any Dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages. The arbitrator shall prepare in writing and provide to the parties an award including factual findings and the reasons on which his or her decision is based. If the parties find it necessary to go to court for prejudgment relief or similar proceedings, the exclusive jurisdiction and venue for actions related to the subject matter hereof shall be the federal or state courts having within their jurisdiction the location of EEC's then current principal place of business. Both Parties consent to the exclusive personal jurisdiction of such courts and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by Colorado or federal law. The arbitration award may be enforced in any court of competent jurisdiction in the United States. In any action or proceeding to enforce rights under this Agreement, EEC shall be entitled to recover its costs and attorneys' fees.

13.8. **Notices.** Notices under this Agreement shall be sufficient only if personally delivered, delivered by a major commercial rapid delivery courier service or mailed by certified or registered mail, return receipt requested to a Party at its addresses set forth in the signature block below or as amended by notice pursuant to this subsection. If not received sooner, notice by mail shall be deemed received three (3) days after deposit in the U.S. mails as set forth above.

13.9. **Further Assurances.** Licensee shall upon the request of EEC promptly execute such documents and take such further actions as may be necessary to give full effect to the terms of this Agreement.

13.10. **Public Statements.** Notwithstanding the confidential nature of the terms of this Agreement, EEC may make general public statements, announcements, and distribute marketing materials and the like naming or showing Licensee as a licensee, but shall not use any of Licensee's trademarks without the prior written consent of Licensee which shall not be unreasonably withheld or delayed.

13.11. **Force Majeure.** Neither Party hereto shall be responsible for any failure to perform its obligations under this Agreement if such failure is caused by acts of God, war, threatened or actual terrorist acts, strikes, revolutions, lack or failure of transportation facilities, laws or governmental regulations or other causes that are beyond the reasonable control of such

Party. Obligations hereunder, however, shall in no event be excused but shall be suspended only until the cessation of any cause of such failure. In the event that such force majeure should obstruct performance of this Agreement for more than six (6) months, the Parties hereto shall consult with each other to determine whether this Agreement should be modified or terminated. The Party facing an event of force majeure shall use reasonable efforts to remedy or minimize its effects. A Party facing a force majeure event shall notify the other Party by email within five (5) days after its occurrence, confirmed by Notice under Section .13.8.

13.12. **Export Control**. Each Party shall comply with all applicable export laws, restrictions, and regulations of any United States or foreign agency or authority and will not export or re-export, or authorize the export or re-export of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations.

13.13. **Severability**. It is the desire and intent of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular portion of this Agreement shall be adjudicated to be invalid or unenforceable, this Agreement shall not be deemed null and void and shall be deemed amended to delete therefrom the portion thus adjudicated to be invalid or unenforceable, such deletion to apply only with respect to the operation of this Agreement in that particular jurisdiction in which such adjudication is made. In the event any provisions of this Agreement relating to the time period, scope of activities or areas of restrictions shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activities or area such court deems reasonable and enforceable, the time period, scope of activities or areas of restrictions shall thereafter be deemed the maximum which such court deems reasonable and enforceable.

13.14. **Agreement Negotiated**. The Parties hereto are sophisticated and have consulted or have had the opportunity to consult with independent legal counsel with respect to this transaction. As a consequence, the Parties do not believe the presumptions of any statutory or common law rule relating to the interpretation of contracts against the drafter of any particular clause should be applied in this case, and therefore expressly and intentionally waive its effects.

13.15. **No Third Party Beneficiaries**. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity or organization any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

13.16. **Counterparts**. Each Party agrees that signatures transmitted by facsimile shall have the same effect as original signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in duplicate originals by its duly authorized representative.

Energy Environmental Corporation
a Colorado corporation

Licensee:
[a _____ corporation][an individual]

Signature: _____
Albert R. Wallace, President

Signature: _____

[print name and, if applicable, title]

Date: _____ 2018

Date: _____ 2018

Notice Address:
8295 S Krameria Way,
Centennial, CO 80112-3004

Notice Address: _____

Email – alwallace@energyhomes.org

Email: _____

Schedule A to
Non-Exclusive Patent and Know-how License Agreement
License Term

<u>Location</u>	<u>License Commencement Date</u>	<u>License Expiration Date</u>	<u>Licensed Patent</u>	<u>Patent Issue Date</u>
1.		Perpetual	9,410,752	Aug 9, 2016
2.				
3.				

Schedule B to
Non-Exclusive Patent and Know-how License Agreement
Fee Schedule

<u>Pricing Parameter</u>	<u>Pricing Rate</u>	<u>Units</u>	<u>License Fee</u>
1.			
2.			
3.			

The rates and other parameters are to be determined by the Parties. The rate may be a fixed rate based on Size, or a fixed fee per building based on type, and perpetual or annual or other term. Without limiting the generality of the foregoing, the following hypotheticals may be illustrative but shall not be indicative or suggestive of the License Fees actually determined by the Parties in any manner:

Examples

Commercial 100,000 SF	Annual	\$.30/SF	\$10,000	Annual payment
Commercial 100,000 SF	Perpetual	\$2/SF	\$200,000	One time payment
Commercial 15,000 SF	Perpetual	Fixed Fee	\$10,000	One time payment