



END USER LICENSE AGREEMENT

This End User License Agreement (the “**Agreement**”) is entered into as of the last date signed below (the “**Effective Date**”) by and between ConSol Home Energy Efficiency Rating Services, a California corporation whose mailing address is 5757 Pacific Avenue, Suite #220, Stockton CA 95207 (“**CHEERS**”), and “**Licensee**” more specifically identified as:

Licensee <i>(person or entity executing the Agreement)</i>	
Licensee Name:	_____
Type of Entity (corporation, LLC, sole proprietor, etc.):	_____
Street Address:	_____
City, State, Zip:	_____
Primary Contact <i>(contact person for information and notices)</i>	
Primary Contact Name:	_____
Email:	_____
Phone:	_____
Fax:	_____

Quotation:

Licensed Product Name	Territory:
SNGBP Software	The State of Nevada
Initial Term	License Fee:
1 year	\$35 per SNGBP Certification (as defined in Section 1.1)

Billing Options: Please check one

- Invoice on Net-30 terms.
- Pre-payment: 50% deposit at time of project submittal, 50% balance paid at time of completion of services.

By signing below, the parties agree to the terms and conditions contained within this Agreement.

CHEERS:

LICENSEE:

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

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This End User License Agreement (the “**Agreement**”) is entered into as of the Effective Date set forth on the cover page to this Agreement (the “**Effective Date**”) by and between ConSol Home Energy Efficiency Rating Services, Inc., a California corporation whose mailing address is 5757 Pacific Avenue, Suite #220, Stockton CA 95207 (“**CHEERS**”) and the Licensee set forth on the cover page to this Agreement (the “**Licensee**”).

1. Definitions.

1.1 “**Certification**” means a SNGBP per lot certificate that documents (a) that all construction has been performed in a manner consistent with the design specifications, and (b) that third party inspection verification has been provided to an eligible certifier.

1.2 “**Documentation**” means the Software documentation provided by CHEERS to Licensee under this Agreement. Documentation is provided for the exclusive use to participate in the SNGBP “Above Code” Program. Other documentation uses must be approved in writing by CHEERS.

1.3 “**EnergySoft**” means EnergySoft, LLC, a Wyoming limited liability company.

1.4 “**Named Users**” means named individuals who are authorized by Licensee to Use the Software, for whom licenses have been given by CHEERS, and who have been supplied user identifications and passwords by Licensee (or by CHEERS at Licensee’s request). Named Users may include but are not limited to employees and agents of Licensee.

1.5 “**SNGBP**” means Southern Nevada Green Building Partnership “Above Code” Program.

1.6 “**Software**” means (i) all software specified in the cover page to this Agreement and delivered to Licensee hereunder; (ii) any and all alterations, revisions, releases, and versions thereof; and (iii) any complete or partial copies of any of the foregoing.

1.7 “**Proprietary Information**” means (i) with respect to CHEERS and EnergySoft (the licensor of the EnergySoft Proprietary Information to CHEERS), the Software and Documentation, any other third-party software licensed with or as part of the Software, benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, and functional specifications; (ii) the concepts, techniques, ideas, and know-how embodied and expressed in the Software; and (iii) information reasonably identifiable as the confidential and proprietary information of CHEERS or EnergySoft or their licensors, including without limitation information and materials relating to employee, vendor, client or customer information, sales and marketing material and methodologies, financial or business affairs and any intellectual property, processes patents, trade secrets, proprietary products or materials.

1.8 “**Use**” means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

2. License.

2.1 License Grant. During the Term and subject to the terms and conditions of this Agreement, CHEERS hereby grants, Licensee, a non-exclusive license to Use the Software and Documentation provided that Licensee (i) pays all fees when due, and (ii) uses the Software and Documentation within the Territory in accordance with the restrictions set forth in Section 2.2.

2.2 License Restrictions.

(a) Copies of the Software created or transferred pursuant to this Agreement are licensed, not sold, and Licensee receives no title to or ownership of any copy or of the Software or Documentation itself. Licensee receives no rights to the Software or Documentation other than those specifically granted in this Section 2.

(b) Licensee shall not (i) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Software or Documentation; (ii) use the Software for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Software; or (iii) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Software’s source code.

(c) Licensee agrees to install the Software only on hardware identified by Licensee pursuant to this Agreement that has been previously approved by CHEERS in writing (the “**Designated Unit**”). Any individuals that Use the Software (including employees or agents of Licensee) must be licensed as Named Users. Licensee agrees to

only allow individuals identified by Licensee, and licensed by CHEERS, as Named Users to access and Use the Software.

3. **Price; Payment; Delivery.**

3.1 License Fees. Licensee shall pay to CHEERS license fees specified on the cover page to this Agreement (the “**License Fees**”). The License Fees are fixed for the duration of the Initial Term specified on the cover page to the Agreement, but may be modified by CHEERS thereafter by providing one (1) month’s prior written notice to Licensee.

3.2 Payment.

(a) Licensee will make payments on the undisputed amounts of each invoice provided by CHEERS to Licensee within thirty (30) days of receiving the invoice; provided that if an invoice is sent electronically to the email address provided by Customer for billing, then the Invoice shall be deemed received by Customer as of the date it was properly sent by CHEERS to Licensee.

3.3 Delivery of Software. CHEERS and Licensee agree CHEERS will deliver all Software by making it available for download or other electronic transmission.

4. **Term.**

4.1 Term. Unless earlier terminated in accordance with the provisions of this Section 4, (a) this Agreement shall become effective as of the Effective Date and shall continue for the Initial Term period set forth on the cover page to this Agreement (the “**Initial Term**”), and (b) thereafter, the Agreement shall automatically renew for successive one (1) year periods (each a “**Renewal Term**” and together with the Initial Term the “**Term**”) unless either party gives written notice to the other party of its intent not to renew at least thirty (30) days prior to the expiration of the then current Initial Term or Renewal Term.

4.2 Termination for Cause. Either party may terminate this Agreement for cause in the event of the other party’s material breach of an obligation, representation or warranty set forth in this Agreement; provided, however, that such termination will not become effective unless and until (i) the party not in default has given the other party written notice of the breach, which notice shall state in reasonable detail the nature of said breach, and (ii) the party allegedly in default shall have failed to remedy said default to the reasonable satisfaction of the party not in default within fifteen (15) days following the giving of the notice.

4.3 Termination for Insolvency. Either party may terminate this Agreement immediately if either party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors.

4.4 Effect of Termination.

(a) For clarity, except as otherwise provided herein, any early termination of this Agreement, whether for a party’s breach or otherwise, shall be without prejudice to any claims or damages or other rights of one party against the other party.

(b) Upon any termination or expiration under this Agreement: (i) Licensee shall immediately cease Use of the Software, Documentation, and all other Proprietary Information; and (ii) Licensee shall not be entitled to any refund of any payments made by Licensee.

5. **Proprietary Rights.**

5.1 Proprietary Information shall be treated as CHEERS’ proprietary and Confidential Information as defined in Section 6.1.

5.2 CHEERS shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Software and Documentation any suggestions, enhancement requests, recommendations, or other feedback provided by Licensee relating to the Software or the Documentation.

6. **Warranties.**

6.1 Authority. Each party represents and warrants to the other that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was organized; all contact and entity information is complete, correct and current, and the execution and delivery of the Agreement, and the performance

of the transactions contemplated hereby, are within its corporate powers, and have been duly authorized by all necessary corporate action.

6.2 **Performance.** CHEERS warrants to Licensee that the Software will substantially conform to the functional specifications contained in the Documentation for thirty (30) days following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification, Licensee, third-party software, or third party database. CHEERS does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially affect such performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements.

7. **Indemnification.**

7.1 Licensee will indemnify, defend, and hold CHEERS and its officers, directors, agents, and employees harmless from and against any and all actions, claims, proceedings, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and costs reasonably incurred) arising out of or in connection with (i) the Licensee Materials or Licensee's use of the Software and Documentation, (ii) any breach of Licensee's obligations under this Agreement, including without limitation any representation or warranty, (iii) any claims for any violation by Licensee, its employees or agents, of any applicable law, rule or regulation, or (iv) Licensee's products or services or the provision thereof to end users.

7.2 In the event an indemnified party is made a party to any action or proceeding by reason of any matter for which Licensee has hereby agreed to indemnify the indemnified party, the Licensee, upon notice from the indemnified party, shall defend such action or proceeding on behalf of the indemnified party at the Licensee's sole cost and expense. If the Licensee or its attorney is not vigorously or adequately defending any such claim, the indemnified party shall have the right, but not the obligation, to join and participate in, as a party if it so elects, any proceedings or actions related to such claims and to have its attorneys' fees and costs in connection therewith paid by Licensee. Notwithstanding the foregoing, CHEERS may participate at any time in proceedings with counsel of its own choosing at its own cost.

7.3 Licensee shall not consent to the entry of any judgment or enter into any settlement with respect to any third-party claim without the prior written consent of the indemnified party (not to be unreasonably withheld) unless the judgment or proposed settlement involves only the payment of money damages to be paid solely by Licensee or its insurance carrier and does not impose an injunction or other equitable relief upon the indemnified party.

8. **Limitations of Liability.**

8.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL CHEERS, OR ITS LICENSORS, BE LIABLE FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES.

8.2 CHEERS SHALL NOT BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES.

8.3 If applicable law limits the application of the provision of this Section 10, CHEERS liability will be limited to the maximum extent permissible.

9. **General.**

9.1 **Assignment.** Except as expressly set forth in this Agreement, Licensee may not, without the CHEERS' prior written consent, which shall not be unreasonably withheld or delayed, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement to any third party, whether voluntarily or by operation of law, including by way of sale of assets, merger, consolidation, or change in control.

9.2 **Severability.** It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

9.3 **No Waiver.** If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

9.4 Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

9.5 Export Control Notice. The Software, Documentation, and Proprietary Information are being released or transferred to Licensee in the United States and are therefore subject to the U.S. export control laws. Licensee acknowledges its obligation to ensure that its exports from the United States are in compliance with the U.S. export control laws. Licensee agrees that it will not submit the Software to any government agency for licensing consideration or other regulatory approval without the prior written consent of CHEERS.

9.6 Confidential Terms and Conditions. Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained therein to any third party. Licensee shall not use the Brand Features of CHEERS in publicity, advertising, or similar activity, without the prior written consent of CHEERS. Licensee agrees that CHEERS may use Licensee's name in customer listings or as part of CHEERS' marketing efforts.

9.7 Governing Law. This Agreement shall be governed by and construed under the laws of the state of California without reference to its conflicts of law principles. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the courts located within the State of California. Both parties consent to the jurisdiction and venue of such courts and irrevocably waive any objections thereto.

9.8 Notices. All notices or reports that are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of CHEERS and Licensee at the addresses first set forth on the cover page to this Agreement.

9.9 Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

9.10 Entire Agreement. This Agreement and each Schedule and Appendix hereto constitute the complete and exclusive statement of the agreement between CHEERS and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by, this Agreement. This Agreement may not be modified except by a writing signed by authorized representatives of both parties. This Agreement and each Appendix attached hereto shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by either party.

9.11 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, and fiduciary or employment relationship between the parties.

9.12 Captions. All paragraph and section captions and headings in this agreement are for convenience of reference only and shall not be considered in construing this Agreement.