

## EXHIBIT A

### SOFTWARE LICENSE AGREEMENT

#### EnergyAxis Metering Automation Server (MAS)

This Software License Agreement (this "License Agreement") is made and entered into by and between Elster Electricity, LLC, a Delaware limited liability company, with offices at 208 South Rogers Lane, Raleigh, NC 27610, USA, ("Elster"), and the City of Ocala, and existing under the laws of the State of Florida, with offices at 201 SE Third Street Ocala, FL 34471-217 ("Licensee").

In consideration of their mutual promises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. Definitions

- 1.1 "Authorized User" shall mean the number of users authorized to Use the Program, as more particularly described in Appendix A-1 attached hereto and incorporated herein by this reference.
- 1.2 "Documentation" means Elster's published software manuals and all other written materials or documents provided by Elster to Licensee to explain the operation of the Software and to aid in its use. All Documentation shall be written in the English language.
- 1.3 "Equipment" shall mean the computer equipment specified in Appendix A-2.
- 1.4 "Meter Point" shall mean an individual device, from which Licensee collects and analyzes data using the Program.
- 1.5 "Operating System" shall mean the computer software system installed in a computer that controls and monitors the computer's function and provides support for the Program, as more specifically specified in Appendix A-2.
- 1.6 "Program" shall mean the Software and the Third Party Software.
- 1.7 "Software" shall mean the computer software developed and owned by Elster or its affiliates and all updates, enhancements and upgrades thereto, all in the English language, as more particularly described in Appendix A-2, attached hereto and incorporated herein by this reference.
- 1.8 "Third Party Software" shall mean the computer software (in the English language) which is distributed by Elster under this Agreement, but which is owned by other parties (other than Elster affiliates), and listed in Appendix A-2 as Third Party Software.
- 1.9 "Supported System" shall mean the combination of Equipment, Operating System and third-party software specified by Elster for use with the Program and required to be procured by Licensee, as described in Appendix A-2.
- 1.10 "Use" means to load, execute, employ, utilize, store or display the Program.

#### 2. License Grant

- 2.1 Elster hereby grants to Licensee a nonexclusive, nontransferable license, subject to the terms and conditions set forth in this Agreement, to Use the Program (in object code only) and the applicable Documentation during the term of this Agreement as follows:
  - 2.1.1 To Use the Program, in object code only, solely in connection with Licensee's business purposes.

- 2.1.2 To make one copy of the Program for backup purposes only as long as that copy is not running on a server.
  - 2.1.3 To run a non-production backup of the software for purposes of testing and as a backup for the operational system subject to payment of the incremental license fee in Appendix A-1.
- 2.1 Licensee's use of the Program is limited to use in connection with the maximum number of Authorized Users, Meter Points and computers specified in Appendix A-1. Licensee may increase the number of Authorized Users, Meter Points or computers upon written request and payment of additional fees. Licensee shall use the Program on the Supported System only.
- 2.2 Additional license terms, if any, for Third Party Software are contained in Appendix A-3. To the extent such terms in Appendix A-3 are inconsistent or are in addition to the terms of this Agreement, the terms of Appendix A-3 shall control with respect to the referenced Third Party Software. Licensee shall not configure, use or install any Third Party Software separately or independently of the Programs.
- 2.3 The license granted in Section 2.1.1 above shall be effective on the date hereof and shall continue in effect unless terminated in accordance with Section 14 of this Agreement.
- 2.4 Licensee shall procure the Supported System required to operate the Program, as specified in Appendix A-2, either from Elster or a third party.

### **3 Ownership and Intellectual Property Rights.**

- 3.1 Licensee hereby acknowledges and agrees that the Software, the applicable Documentation and all patents, copyrights and trademarks related thereto are the exclusive property of Elster or its affiliates and that Elster or its affiliates own all rights, title and interest, including, without limitation, all worldwide patent, copyright, trade secret and trademark rights and all goodwill associated therewith, in and to the Software. In addition, Licensee hereby acknowledges and agrees that all ideas, concepts, know-how, techniques, inventions and other copyrightable works of authorship related to the Software and the applicable Documentation are proprietary to and the exclusive property of Elster or its affiliates and shall be deemed Confidential Information for the purposes of Section 5 of this Agreement. Licensee agrees to assign, and hereby assigns, to Elster all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in such ideas, concepts, know-how, techniques, inventions and copyrightable works of authorship related to the Software and the applicable Documentation developed in whole or in part by Licensee's employees or contractors. Notwithstanding the foregoing, Licensee shall have a non-exclusive, non-transferable, royalty-free license which shall be subject to Section 5, to use for its own internal business purposes any ideas, concepts, know-how, techniques, inventions and other copyrightable works of authorship related to the Software that are developed solely by employees of Licensee or its contractors.
- 3.2 Except for the license granted by Elster to Licensee pursuant to Section 2.1.1 of this Agreement, Licensee shall acquire no right, title or interest of any kind or nature whatsoever in or to the Program or any patent, copyright, trade secret or trademark of Elster, Elster's affiliates or Elster's licensors.
- 3.3 The Program is protected under United States and international copyright, trade secret and other intellectual property laws. Without limiting the generality of the foregoing, the parties acknowledge and agree that the source code, object code and all visual, printed and other outputs of the Program are trade secrets of Elster and its affiliates and licensors. Except as otherwise expressly permitted under this Agreement, Licensee may not copy, translate, modify, display, patch, alter or otherwise change or make derivative works of the Program, the applicable Documentation or any individual part thereof. Licensee shall not alter or remove any

copyright notice or any propriety legend contained in or located on any part of the Program or the applicable Documentation and shall reproduce and maintain all such copyright notices or proprietary legends in and on any copy of the Program or Documentation that Licensee makes as permitted by this Agreement.

**4. Restrictions on Use, Transfer and Provision of Services.** Licensee shall not derive or attempt to derive the source code or structure of all or any portion of the Program by reverse engineering (except as required by law for interoperability), disassembly, decompilation or any other means. Licensee shall not give, sell, rent, lease, pledge, encumber, hypothecate, timeshare, provide subscription services for, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the Program or the applicable Documentation or other rights to any third party, including but not limited to Licensee's subsidiaries and affiliates. Licensee shall not publish the results of any benchmark tests run on the Program and shall treat such results as Confidential Information of Elster. Licensee's primary business involves the generation, transmission or distribution of electricity, water or gas. The licensee is not in the business of providing meter reading services and shall not use the system for the purpose of providing meter reading or other services and does not provide meter reading and/or other services to other corporate entities using the system. This license specifically prohibits the use of the system for provision of meter reading and AMI services to other corporate entities. Additional recurring license fees and an amendment to this software license agreement is required if the Licensee's business model requires provision of meter reading and AMI services to other utilities.

**5. Confidentiality.** Licensee shall not disclose the Program, the Documentation, the terms of this Agreement, or any other information disclosed by Elster and identified by Elster as confidential to any third parties without Elster's prior written consent and then only after obtaining an appropriate nondisclosure agreement with each such third party. The information referred to in the preceding sentence is collectively referred to herein as the "Confidential Information." Licensee further agrees to use its best efforts and to take all reasonable precautions, including such efforts and precautions as are fully commensurate with those employed for the protection of its own confidential information (but in no event less than reasonable care), to maintain strict confidentiality with respect to the Confidential Information and to prevent disclosure thereof to persons other than its employees and agents who require access thereto in order to use the Program as permitted under this Agreement. Licensee agrees to take all reasonable precautions to insure that its employees and agents who are given access to the Confidential Information shall make no further disclosure thereof either to other employees or to other persons. Licensee shall not use, or permit the use of, the Confidential Information for any purpose other than performing this Agreement and exercising the rights granted under this Agreement. Licensee acknowledges that the rights of the Elster in the Confidential Information are unique and, accordingly, Elster shall, in addition to such other remedies as may be available to it at law or in equity, have the right to enforce its rights hereunder by an action for injunctive relief and specific performance to the full extent permitted by law. Upon termination of this Agreement, Licensee shall return all copies of the Program and all Confidential Information to Elster. The provisions of this Article shall survive any termination of this Agreement or of any license granted hereunder.

**6. Delivery.** Elster shall deliver the number of copies of the Program specified in Appendix A-1.

**7. License Fees and Payment.**

7.1 Licensee shall pay the Software License Fee set forth in Appendix A-1 upon execution of this Agreement or as noted in Appendix A-1. Licensee shall pay all other fees as set forth in Appendix A-1. Licensee shall pay Elster interest on any late payments at the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by law.

7.2 License fees do not include shipping charges, or any sales, use, withholding, excise or other taxes now or hereafter imposed on the production, storage, transportation, import, export, licensing or use of the products or services provided under this Agreement. Such expenses and taxes shall be paid by Licensee. Licensee shall indemnify Elster for any such expenses or taxes which Elster is required to pay.

## 8. Warranties.

- 8.1 Elster warrants that the media on which the Software is recorded is free from defects in materials and workmanship. Elster warrants that the Software will perform substantially in accordance with the Documentation during the Warranty Period (as defined below). THIRD PARTY SOFTWARE IS PROVIDED AS-IS, AND WITHOUT WARRANTY OF ANY KIND.
- 8.2 If within a period of 90 days from the date the Software is delivered to Licensee (the "Warranty Period"), it is discovered that the Software does not conform to the foregoing warranty and written notice of such nonconformity is promptly provided to Elster, Elster will provide an exclusive remedy as follows:
- 8.2.1 With respect to any defect in the media, Elster will replace such media;
  - 8.2.2 With respect to any portion of the Software that does not perform in accordance with the Documentation, Elster will, at its option, repair or replace the Software and
  - 8.2.3 With respect to any descriptive error in the Documentation, Elster will correct such error by providing addenda or substitute pages.

Elster shall, in its sole discretion, determine whether any discrepancy between the Documentation and the functioning of the Software represents an error in the Documentation or an error in the Software. If Elster determines, in its discretion, that it is not possible to correct a Software nonconformity, Elster shall refund the license fees paid by Licensee for the Program upon Licensee's return of all copies of the Program and any associated materials, whereupon all licenses granted hereunder shall terminate. The foregoing remedies shall constitute Licensee's exclusive remedies and Elster's sole liability for any failure of the Program or Software to conform to any warranty.

- 8.3 EXCEPT AS SPECIFICALLY SET FORTH HEREIN, ELSTER AND ITS LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE), OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT. ELSTER AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, PERFORMANCE, EFFORT, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF THIRD-PARTY RIGHTS OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION. ELSTER AND ITS LICENSORS MAKE NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE PROGRAM. ELSTER AND ITS LICENSORS DO NOT WARRANT THAT LICENSEE'S USE OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE, AND ELSTER AND ITS LICENSORS DO NOT WARRANT AS TO ANY RESULTS THAT MAY BE OBTAINED BY LICENSEE'S USE OF THE PROGRAM. ELSTER AND ITS LICENSORS DO NOT WARRANT THAT EVERY FEATURE OR ERROR IN THE PROGRAM WILL BE CORRECTED, OR THAT THE PROGRAM WILL MEET LICENSEE'S REQUIREMENTS.

## 9. Infringement Remedy.

- 9.1 Elster shall, at its expense, defend any suit which may be brought against Licensee based on a claim that the Software infringes upon any United States patent or copyright, and Elster shall pay all judgments and costs recovered against Licensee in any such suit and shall reimburse Licensee for costs or expenses incurred by Licensee in the defense of any such suit, provided that Licensee gives Elster prompt notice of such suit no later than ten (10)

days after Licensee receives notice of such suit, or sooner if required by applicable law; reasonable assistance in the defense thereof; and full opportunity to control all aspects of the defense thereof, including settlement. In the event the Software is held to be infringing, and the use of the Software is enjoined, Elster shall, at its option, procure for Licensee the right to continue using the Software; replace it with non-infringing software; modify it so it becomes non-infringing; or remove the Software or the infringing portion thereof and refund the license fees applicable thereto.

- 9.2 Elster's obligations under this Section do not apply with respect to a claim of infringement if and to the extent such claim arises out of: (A) compliance with Licensee's specifications, (B) the use by Licensee of any third-party software or equipment that infringes any patent, copyright, trademark or trade secret of any third party, (C) any modification or alteration of the Software (other than by or on behalf of Elster) (D) use of a version of the Software that has been superseded or (E) use of the Software or the Program after notice of the claimed infringement has been received by Licensee. The foregoing states the exclusive remedy of Licensee and the sole liability of Elster for infringement.

**10. Limitation of Liability.** ELSTER'S TOTAL LIABILITY RELATING TO THIS AGREEMENT OR TO THE LICENSE GRANTED HEREUNDER, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), BREACH OF WARRANTY OR ANY OTHER LEGAL THEORY SHALL NOT EXCEED THE LICENSE FEES PAID BY LICENSEE TO ELSTER UNDER THIS AGREEMENT. ELSTER AND ITS LICENSORS WILL NOT BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF USE OF SYSTEMS, COST OF REPLACEMENT SOFTWARE OR SYSTEMS, LOSS OF PROFITS, LOSS OF REVENUE OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE AND EVEN IF ELSTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. Force Majeure.** Elster shall not be liable for any failure to perform or for delay in performance due to fire, flood, or other labor difficulty, act of God, government authority, or Licensee, acts of war or terrorism, riot, embargo, fuel or energy shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials or services from usual sources, or any cause beyond its reasonable control. If there is a performance delay due to any such cause, the date of delivery or time for completion shall be extended by a time period reasonably necessary to overcome the delay's effect.

**12. Audit.** Elster and its licensors shall have the right, upon notice to Licensee, to enter onto Licensee's premises to perform an audit to ensure that Licensee is in compliance with this Agreement. Licensee shall keep, and shall allow Elster to access, accurate records of each computer on which the Program or portions of the Program are installed, the locations of such computers, the number of Meter Points for which the Program is used and the number of Authorized Users Using the Program. Elster shall have the right to disclose the results of any audits to its licensors.

**13. Assignment.** Licensee shall not, by contract, operation of law, or otherwise, assign, transfer or hypothecate this Agreement (in whole or part), or delegate performance of any of its obligations under this Agreement, without in each case obtaining Elster's prior written consent. For the purposes of this Agreement, "assignment" shall include, without limitation, a merger to which Licensee is a party, a sale of all or substantially all assets of Licensee, a consolidation or reorganization of Licensee, the purchase of a controlling interest in the stock or other equity interests in Licensee and any material change in the management of Licensee (including, without limitation, any material change in the composition of the membership of Licensee's board of directors).

**14. Termination.** Either Party may terminate this Agreement and the licenses granted hereunder if the Other Party has breached any of its obligations hereunder and has failed to remedy such breach within thirty (30) days after written notice of the same. Within ten (10) days after the date of termination of this Agreement for any reason, Licensee will return to Elster or destroy the original and all copies, in whole or in

part, in any form, of the Program and Documentation and an officer of Licensee shall certify to the foregoing in writing to Elster.

**15. Government Regulations.**

- 15.1 The Program is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure of the Program or Documentation by any department or agency of the federal government is subject to restriction as set forth in subparagraph (b)(3) of the Right in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. For purposes thereof, "Contractor" is Elster Electricity, LLC, 208 S. Rogers Lane, Raleigh, NC 27610.
- 15.2 Licensee shall not export or transmit the Program or any part thereof, directly or indirectly, to any restricted countries or in any manner that would violate the Export Administration Act of 1979, as amended, or any other United States laws and regulations as shall from time to time govern the license and delivery of technology abroad by persons subject to United States law.

- 16. Notices.** Any notice required or permitted hereunder shall be in writing and shall be deemed to have been delivered on the date evidenced by receipt obtained upon transmission by fax, upon delivery by commercial delivery service, or upon delivery by certified mail to a party's address or facsimile number shown below:

If to Elster:

Elster Electricity, LLC  
208 Rogers Lane  
Raleigh, NC 27610  
Attn: Contract Manager  
Fax: 919.250-5483

If to Licensee:

201 SE Third Street  
Ocala, FL 34471-2174

A party may change its address or facsimile number for receipt of notice by providing written notice to the other party.

**17. Miscellaneous.**

- 17.1 This Agreement, including the Appendices attached hereto, contains the entire understanding of the parties with respect to the matters contained herein. This Agreement may not be modified except by writing, executed by authorized representatives of Elster and Licensee.
- 17.2 The headings and captions contained herein shall not be considered to be a part hereof for purposes of interpretation or application hereof, but are for convenience only.
- 17.3 Either party's failure to exercise any right under this Agreement shall not constitute a waiver of any other terms or conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by such party of its right at any time thereafter to require exact and strict compliance with the terms hereof.
- 17.4 The provisions of Sections 1, 3, 4, 5, 7, 9, 10, 11, 13, 14, 15, 16 and 17 of this Agreement shall survive the cancellation, termination or expiration of this Agreement for any reason.
- 17.5 If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future law effective during the term hereof, such provision shall be fully severable

and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

- 17.6 This Agreement shall be construed and governed according to the laws of the State of Florida, without regard to the choice of law or conflicts of law rules of any jurisdiction. The parties hereby agree that the Uniform Computer Information Transactions Act shall not apply to this Agreement.
- 17.7 Licensee acknowledges that this License agreement constitutes a legal agreement that obligates certain payments as noted herein. Should Licensee's business processes require that one or more purchase orders be issued to provide for payments obligated by this agreement, that these purchase orders will be issued to address these payment obligations.

INTENDING TO BE LEGALLY BOUND, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE SIGNED AND EFFECTIVE AS OF THE LAST DATE WRITTEN BELOW.

ELSTER INTEGRATED  
SOLUTIONS, LLC

By: *V. P. Bussan Development*

Title: *V. P. Bussan Development*

Date: *June 25, 2008*

CITY OF OCALA

By: *Charles Ruse Jr.*

Title: *Council President*

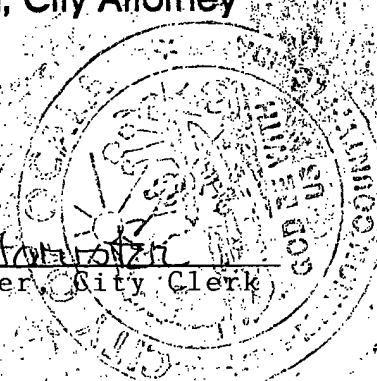
Date: *7-1-08*

*Approved as to form and legality*

*Patrick G. Gilligan, City Attorney*

ATTEST:

*Valerie J. Forster*  
Valerie J. Forster, City Clerk



ACCEPTED BY CITY COUNCIL

*July 1, 2008*

DATE

OFFICE OF THE CITY CLERK

## APPENDIX A-1 SOFTWARE LICENSE FEES

### 1. Licensee's Use of the Program is restricted to the following:

- a) **Authorized Users:** The number of authorized users is limited to the most restrictive of the following three conditions:
  - i) EnergyAxis MAS – Unlimited number of users.
  - ii) Embedded Oracle Database– Unlimited number of users accessed via the MAS GUI or standard MAS interfaces. Direct access to the data or schema is prohibited per Appendix A-3. Additional CPU licensing restrictions are noted below.
  - iii) Embedded Oracle Application Server- While Oracle Application Server may need to be embedded in the MAS Software installation to support Licensor's SOAP interfaces to the EnergyAxis MAS software. If embedded, unlimited number of users accessed via the MAS GUI standard interfaces or customer integrations. Direct access to the data, schema and the Oracle Application Server is prohibited per Appendix A-3. Additional CPU licensing restrictions are noted below.
  - iv) Windows 2003 Server – Limited to the number of Client Access Licenses (CALs) implemented by Licensee or by Elster (if provided by Elster).
- b) **Number of Processors on any Server with embedded Oracle database or application server installed:** - one (1), with a 4 processor maximum. The license fee includes the cost of middleware, database and other third party application software for:
  - i) A maximum of two Intel processors on each system supporting less than 200,000 units, each processor not to exceed two cores
  - ii) A maximum of four Intel processors on each system supporting more than 200,000 units and less than 1,000,000 units, each processor not to exceed two cores.
  - iii) A maximum of four Intel processors on the database application server and four processors on the web server on each system supporting in excess of 1,000,000 points, each processor not to exceed two cores.
  - iv) A maximum of four Intel processors on the database application server and four processors on the web server on each system supporting in excess of 1,000,000 points, each processor not to exceed four cores.

Additional per-processor fees may apply as defined in 2.d.ii and 2.d.iii.

Additional fees will also apply for additional MAS units as discussed in 2.d.

- c) **Computer Hardware:** See Appendix A-2, Section 3

### 2. LICENSE FEES: <sup>(1)(2)</sup>

- a) **Basic License Fee Structure:** The basic license fee structure applies to all standard configurations of EnergyAxis system. Fees defined in 2 b, 2c, 2d are in addition to the basic fees
  - i) **Base License Fee** for each operational Elster MAS Server: **\$21,000**. This includes per meter license fees for up to 20,000 AMI meters or AMR modules per operational Server.

**Per Meter License Fee:** <sup>(3)</sup> – One time fee applies to meters in each operational MAS server beyond 20,000 is \$.40 per meter. Does not apply to non-operational Backup or Test systems.



Example: Licensee has 77,644 electric and water end points. The per meter software license fees are calculated as follows:

Total Number of points not covered by base license fees =  $77,644 - 20,000 = 57,644$

Per Meter License Fees =  $57,644 \times .40 = \$23,058$

Standard configurations include the EnergyAxis MAS software with support for the following endpoints

- EnergyAxis residential electric, water and gas end points. Note that additional one time fees as specified below apply for gas and water configurations.
  - EnergyAxis A3 ILN (node) endpoints for residential, commercial or industrial end points.
  - EnergyAxis A3 collectors that act as concentrators within the EnergyAxis networks.
- b) **Optional Features:** The base license fee covers usage of the system for acquisition of metering data and two way metering operations such as on demand reads, service connects, disconnects to residential electric meters. Additional fees apply for optional modules and add on- services listed below
- (1) **Additional Fee for C&I support** – C& I meters are defined as single phase or polyphase meters used to meter commercial and industrial sites. The additional license fees will comprise the greater of \$5000 or the sum of
    - (a) \$0 for any A3 node within the 900Mhz EnergyAxis local area network
    - (b) \$0 for any A3 collectors that act as network concentrators within the EnergyAxis 900MHz local area network
    - (c) \$3 per direct connected A3 meter. (for e.g. an A3 with telephone or GPRS connection
    - (d) \$3 for any other C&I endpoint within the system.
- C&I support fees do not apply to non-operational Backup or Test systems.
- (2) **MV90xi HHF conversion application for C&I meters: \$3000 per operational system**
- (3) **Additional Fee for Gas support** – An additional one time fee of \$6000 applies for configuration of gas support for use within the Licensee's operational infrastructure. Fees do not apply to non-operational Backup or Test systems.
  - (4) **Additional Fee for Water support** – An additional one time fee of \$6000 applies for configuration of water support for use within the Licensee's operational infrastructure.
  - (5) **Optional Features and Interfaces.** – Elster reserves the right to commercialize new features, endpoints and interfaces as optional add-ons to the base system features. Additional license fees may apply unless the feature or interface was part of the contractual scope jointly agreed between Elster and the Licensee.
- c) **Software Maintenance Agreement Fee:** A Software Maintenance Agreement is required for the first partial year following MAS delivery, subject to the terms of a separately executed Software Maintenance Agreement (SMA).
- d) **Additional Fees :** Additional fees apply to additions specified by the Licensee to the standard Energyaxis systems
- i) **Backup or Test System License fee** (if applicable) – Elster highly recommends that the Licensee at a minimum purchase and configure a passive, cold-failover backup system as an identical replica of the production system. Additionally, Elster recommends that the Licensee purchase and configure a test system for large implementations to allow for integration testing with out compromising the integrity of the production or backup system. The licensing fees for

backup and test systems are specified below and are primarily to cover Elster's costs for third party application software license fees.

- (1) 2 processor backup or test system for systems up to 200,000 end points, each processor not exceeding two cores: **\$5,000**
- (2) 4 processor backup or test system for system installations not requiring Enterprise Editions of embedded Oracle Software (usually less than 1,000,000 points), each processor not exceeding two cores - **\$35,000**
- (3) 4 processor backup or test system for system installations requiring Enterprise Editions of embedded Oracle Software (usually more than 1,000,000 points), each processor not exceeding four cores - **\$115,000**

ii) **Additional Per Processor License Fee**— License fee for each processor beyond that specified in 1b or based on other configuration recommended by Elster with embedded Oracle or Oracle Application Server installed is **\$7,500 per additional processor and** beyond the first processor. Applies to all operational and backup MAS servers.

iii) **Embedded instances of Oracle Enterprise Edition database or application software:** License fees are based on Standard Edition or Standard Edition One of the embedded Oracle database server and Oracle application server (if applicable). Additional fees will apply for use of Enterprise editions of Oracle software.

3. **Additional System Expansions and Optional Project Implementation Services:** System expansions and project implementation services beyond the standard project services defined above can be provided on time and material (T&M) basis. Current rates and additional terms that apply are listed in Appendix A-3 of the Software Maintenance Agreement.

#### **NOTES:**

1. All software license fees are in US Dollars.
2. Prices are valid for deliveries in 2007.
3. Elster reserves the right to periodically audit the user's MAS Server to determine the current number and types of meters or control points deployed for the purposes of billing an additional per point license fees. No refund is allowed for a reduced number of points determined by a given audit.
4. Elster does not limit the number of users of its MAS software, nor does Oracle for the embedded processor license provided by Elster with the MAS software. If Elster provides the server hardware and Microsoft 2003 operating system, the user is limited to the default maximum of five (5) users per the MS Windows 2003 server license. If Licensee provides the hardware or desires system accessibility for more users, the Licensee is responsible for obtaining the Microsoft 2003 Server license or license expansion, including any additional fees for the desired number of CALs (Client access licenses).
5. See Appendix A-2 Notes for hardware considerations.

## APPENDIX A-2 SOFTWARE PROGRAM

### 1. THE PROGRAM <sup>(1)</sup>

Elster Metering Automation Server (MAS) which includes:

- (i) **Data Acquisition Module** for the following supported Elster meters:
  - Residential meters with 900 MHz EnergyAxis communications
  - C & I Meters with 900 MHz EnergyAxis communications
  - A3 ALPHA Collector meters with 900 MHz EnergyAxis communications
  - A3 ALPHA meters
  - Elster AMI Water Modules
  - Elster AMI Gas Modules
- (ii) **Supported MAS Communications:**
  - Switched circuit Public Service Telephone or Cellular Networks (via Elster approved PSTN or cellular modems)
  - IP-based connections (via Elster approved IP-addressable modems with RS-232 outputs)
  - Integrated SmartSynch GPRS collector communications (when commercially available)
- (iii) **Database System** – An embedded Oracle database system is included in the MAS product. Maintenance support is available only from Elster. Maintenance for the first partial calendar year is included in the mandatory Software Maintenance Agreement. Support for subsequent years is included as part of the ongoing MAS Software Maintenance Agreement if elected by the Licensee.

### 2. THIRD PARTY SOFTWARE <sup>(1)</sup>

- a) **Operating System:** Windows 2003 Server Standard Edition <sup>(2)</sup>
- b) **Clients:** Microsoft Internet Explorer 6.0 (or approved subsequent IE release) <sup>(2)</sup>
- c) **Database:** Embedded Oracle Standard Edition or Standard Edition One (licensor maintained) <sup>(4)</sup>
- d) **Application Server:** Embedded Oracle Application Server Standard Edition or Standard edition One (licensor maintained, if applicable within the Licensee's MAS Server deployment) <sup>(4)</sup>

### NOTES:

- (1) All Elster Software, Third Party Software, documentation and any related materials shall be provided in the English language.
- (2) It is the Licensee's responsibility to acquire and maintain the Supported System and this Third Party Software. Elster will specify the third party software and versions thereof (operating system, software products, etc.) required for each Program release.
- (3) Operation of a MAS server with embedded Oracle installed that is capable of expansion to more than 4 processors is not allowed unless the server is hardware partitioned such that the MAS embedded Oracle database is running in a partition of 4 or fewer processors.
- (4) Processor Quantities for Software License Fee Purposes – Some servers include dual or multi-core processors (multiple central processing units supplied in a single chip or processor package). For the purpose of the Per Processor License fees, in any computer with dual or multi-core processors, Oracle's treatment of dual and multi-core processors will apply.
- (5) Per Oracle's distribution agreement with Elster, Embedded Oracle software can only be supplied by Elster. No access to the core Oracle functionality is allowed except via the MAS GUI interface and the import/export functionality provided as a part of Elster's MAS product.

- a. This software license is not limited in the number of meters that can be read as long as the processor, production, backup and test restrictions are satisfied. Specific hardware requirements must be agreed to with Elster depending on the total meter counts, number of meters being read for LP, etc. need to be discussed with Elster.
- b. Future changes in the Software or the Third-Party Software or running of other third-party software programs not tested or provided by Elster could impact MAS system performance on a given hardware platform. For example, running virus-scanning software during a billing read could adversely affect the system's ability to process the readings in a timely manner. These situations may or may not be rectified by various means such as changing the scheduled virus scan time or the meter read schedule time.

## APPENDIX A-3 ADDITIONAL THIRD PARTY LICENSE TERMS

### ORACLE:

1. The Oracle programs licensed as part of the Program are subject to a restricted license and can only be configured, installed and used in conjunction with the authorized use of the Program. Licensee shall not navigate the underlying data schema.
2. Licensee shall not modify any Oracle programs licensed under this Agreement.
3. Oracle shall not be liable for any damages, whether direct, indirect, incidental, or consequential arising from Licensee's use of the Program.
4. Licensee hereby acknowledges and agrees that Oracle Corporation is an intended third party beneficiary to this Agreement.

### NctBeans:

The source code for the software contained in the file **schema2beans.jar** and **schema2beansdev.jar** (the "Covered Code") is available by contacting Elster at Elster Electricity, LLC, 208 S. Rogers Lane, Raleigh, NC 27610, Attn: Contracts Manager. Upon request, Elster will make the source code for the Covered Code available to Licensee, subject to the terms of the Sun Public License, version 1.0, which can be found at <http://www.sun.com>.

COVERED CODE IS PROVIDED UNDER THIS LICENSE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES THAT THE COVERED CODE IS FREE OF DEFECTS, MERCHANTABILITY, FIT FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE COVERED CODE IS WITH LICENSEE. SHOULD ANY COVERED CODE PROVE DEFECTIVE IN ANY RESPECT, LICENSEE (NOT ELSTER, THE INITIAL DEVELOPER OR ANY OTHER CONTRIBUTOR) ASSUME THE COST OF ANY NECESSARY SERVICING, REPAIR OR CORRECTION. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS LICENSE. NO USE OF ANY COVERED CODE IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

Any terms of this License Agreement that grant any rights to Licensee with respect to the Covered Code that are in addition to the rights granted to licensees under the Sun Public License are offered by Elster only.