

ATTACHMENT B

ITRON, INC. END USER LICENSE AND WARRANTY AGREEMENT

CONTRACT NO. _____

This Agreement, is made this 7th day of October, 19 91, by and between Itron, Inc., a Washington corporation, hereinafter "Itron", and City of Newberg, Oregon

_____, hereinafter "End User".

WHEREAS, Itron is in the business of designing, manufacturing, licensing and selling electronic and computer products which are distributed to end users by Orcom Systems Inc. hereinafter "Distributor";

WHEREAS, Distributor intends to provide such electronic and computer products to End User; and

WHEREAS, Itron requires End User to execute this End User License and Warranty Agreement prior to delivery of the electronic and computer products to End User.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Itron and End User hereby agree as follows:

SECTION 1. DEFINITIONS

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

- 1.1 **"Equipment"**. The components and devices designed and manufactured by Itron and provided to End User by Distributor.
- 1.2 **"Licensed Software"**. The program products in machine-readable form and all other programs recorded on the media to be licensed to End User, including, but not limited to:
 - (a) any form of Itron written programming language source code and machine-readable code derived from the source code or otherwise licensed to End User and
 - (b) any subsequent modifications, corrections or revisions to the program products licensed to End User by Itron.
- 1.3 **"Live Operation"**. The point in time, after delivery and installation of the System, when Distributor or Itron arrives on site to train End User's meter readers and PC operators to use the Equipment and Licensed Software.
- 1.4 **"Related Documentation"**. Any human-readable program listings, flow charts, input and output forms, manuals, specifications, instructions, and other materials, and any copies of any of the foregoing, in any medium, related to the Equipment and/or Licensed Software and delivered to the End User.
- 1.5 **"System Specification Document"**. This document is produced by Itron and contains a narrative and chart of the Licensed Software flow, functional description of Licensed Software, a definition of input and output file structures and record layouts including the data definitions.

SECTION 2. THE LICENSED SOFTWARE

- 2.1 **License**. Itron hereby grants to End User a nonexclusive, nontransferable, perpetual license to use the Licensed Software, including the Related Documentation.
- 2.2 **Itron's Property**. The Licensed Software, including without limitation, programs, Related Documentation and methods of processing, shall remain the sole and exclusive property of Itron and shall not be sold, revealed, disclosed or otherwise communicated, directly or indirectly, by End User to any person, company or institution whatsoever except as set forth herein.
- 2.3 **Scope of License**. End User may use the Licensed Software on hardware used or owned by End User. The Licensed Software shall be used only for the processing of End User's own business, which shall include servicing and maintaining records on behalf of its customers. End User shall not: (a) permit any third party to use the Licensed Software, (b) use the Licensed Software in the operation of a service bureau, or

(c) reverse engineer, disassemble, modify, prepare derivative works or otherwise alter the Licensed Software.

End User may, at its own expense, copy all or part of the Related Documentation for its internal use. End User shall reproduce and include any copyright or trade secret notices on any such copies.

- 2.4 **Programming Language**. The Licensed Software is written in a specific programming language for use with operating system software. Itron shall not be responsible for the performance of the Licensed Software in any other programming language and operating system combination not approved by Itron.

- 2.5 **Proprietary Information**. In addition to the rights and obligations set forth in paragraph 5.4 herein, End User acknowledges and agrees that the information contained in the Licensed Software and Related Documentation is proprietary or confidential information and is the property of Itron (or another party who has licensed to Itron), and that the proprietary information is being made available to End User by Itron in confidence and solely on the basis of End User's confidential relationship with Itron. The proprietary information is considered by Itron to be a trade secret of Itron. End User will not provide or otherwise make available any Licensed Software or Related Documentation, in any form, except as required by law or judicial or governmental order, without Itron's prior written consent, except to employees or consultants of End User whose access to the information is necessary to enable End User to exercise its rights under this License.

SECTION 3. PAYMENT

End User acknowledges that Distributor will provide payment to Itron on End User's behalf to provide consideration of this Agreement and that End User is the beneficiary of such payment. End User further understands that End User is reimbursing Distributor for such payment as part of End User's agreement for obtaining the Equipment and Licensed Software.

SECTION 4. WARRANTY AND WARRANTY EXCLUSIONS

- 4.1 **Warranty**. Itron warrants that each item of Equipment will be free from defects in material and workmanship and the Licensed Software shall perform substantially in accordance with the System Specification Document for a period of ninety (90) days from date of Live Operation. Itron shall repair or provide an equivalent replacement of any item of Equipment and Licensed Software deemed defective at no charge to End User during this warranty period after properly packaged and returned prepaid to Itron's designated service center. End User agrees to furnish Itron reasonable access to said Equipment and Licensed Software.

End User agrees that the above remedies are End User's exclusive remedies in the event of breach of warranty. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

- 4.2 **Warranty Exclusions.** The warranties provided by Itron under this Agreement do not include the following services, but if such services are available, they can be provided by Itron under this Agreement at Itron's then applicable time and material charges and travel expenses.
- (a) Repair of damage or increase in service time caused by failure to continually provide a suitable installation environment.
 - (b) Repair of damage or increase in service time caused by the use of the System for other than data processing purposes for which designed; or neglect or misuse.
 - (c) Repair of damage caused by accident or disaster, which includes, but is not limited to fire, flood, submersion in water, wind, lightning, transportation subsequent to delivery, or force majeure.
 - (d) Inspection of altered Equipment, repair of damage or increase in service time caused by alterations not authorized by Itron, which alterations include, but are not limited to, any deviation from Itron's physical, mechanical or electrical Equipment design.
 - (e) Repair of damage or increase in service time caused by the conversion from one Itron model to another or the installation or removal of an Itron feature whenever any of the foregoing was performed by other than Itron or its authorized agents.
 - (f) Service time and materials associated with the rearrangement or relocation of Equipment.

SECTION 5. RIGHTS AND OBLIGATIONS

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

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

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

Itron has no liability for any claim based upon the combination, operation or use of any Equipment or Licensed Software supplied hereunder with equipment or software not approved by Itron, or based upon End User's alteration of the Equipment or modification of any Licensed Software supplied hereunder. The foregoing states the entire obligation of Itron with respect to infringement of patents, copyrights, trade secrets or other proprietary property.

- 5.2 **Limitation of Liability.** IN NO EVENT SHALL ITRON BE LIABLE, WHETHER IN CONTRACT, NEGLIGENCE, TORT, OR ON ANY OTHER BASIS, FOR COVER OR FOR INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION IN THE OPERATION OF THE EQUIPMENT OR LICENSED SOFTWARE.

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

- 5.4 **Confidentiality.** Except as required by law or judicial or governmental order, Itron and End User agree to hold in strictest confidence all information and material which is related to either party's business, which is designated as proprietary and confidential herein, or which is related to the performance, by the parties of their obligations under this Agreement. Proprietary and confidential information includes, but is not limited to the terms of this Agreement, information related to research, development, pricing, trade secrets, customer lists, salaries or business affairs of the parties to this Agreement. The parties' obligations of confidentiality under this Agreement shall survive termination of this Agreement.

- 5.5 **Equipment or Licensed Software Modification.** Itron's obligations hereunder may be adversely affected in the event End User modifies the Equipment or Licensed Software or uses any attachment, feature, or device on the Equipment, without first obtaining Itron's written approval.

- 5.6 **Law Compliance.** Itron shall comply with provisions of the Federal Fair Labor Standards Act and with all other applicable federal, state and local laws, rules, regulations and ordinances in the design, manufacture, sale, pricing, delivery and installation of the Equipment and Licensed Software, including all laws prohibiting discrimination in employment, to the extent that such laws pertain to Itron.

- 5.7 **Term and Termination.**

- (a) **Termination.** This End User License and Warranty Agreement shall become effective upon execution by Itron and End User and may terminate:

- (1) Thirty (30) days after a party gives the other party written notice of that party's material breach of this Agreement, unless the other party has made progress in curing the breach to an extent satisfactory to the nonbreaching party;
- (2) At a party's option, upon ten (10) days written notice of termination, upon any attempt by a party to assign, delegate, sublicense or otherwise transfer this Agreement, the Licensed Software, the Related Documentation, or any of its rights or obligations under this Agreement without the prior written consent of the other party; or

- (3) At a party's option, upon ten (10) days written notice of termination, if the other party becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings.
- (b) Rights and Obligations Upon Termination.
Upon termination of this Agreement:
- (1) End User's obligations under paragraph 2.5 ("Proprietary Information") and the parties' obligations under paragraph 5.4 ("Confidentiality") shall survive the termination;
- (2) End User's Software License rights under Section 2 shall immediately cease; End User shall delete the Licensed Software from all other software into which it has been merged; and End User shall immediately deliver to Itron or destroy all copies of the Licensed Software and Related Documentation; however, End User may, upon Itron's prior written consent, retain one (1) copy of the Licensed Software and Related Documentation for archive purposes only; and
- (3) End User shall, within one (1) month after the termination of this Agreement, certify in writing to Itron that, to the best of End User's knowledge, all copies of the Licensed Software and Related Documentation have been returned or destroyed, except for any archive copy permitted under paragraph 5.7(b)(2).
- (c) Other Rights. Each party's right to terminate as expressed in this Agreement shall be in addition to any other rights, legal or equitable, provided by law.

SECTION 6. GENERAL

- 6.1 Force Majeure. Neither party hereto shall be responsible for any failure or delay in the performance of any obligation hereunder if such failure or delay is due to a cause beyond the party's control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.
- 6.2 Sublease and Assignment. Neither party may sublease or assign its rights or obligations under this Agreement without the written consent of the other party.

- 6.3 Governing Law. This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Washington.
- 6.4 Enforceability and Attorney Fees. If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, both at the time of trial and on appeal.
- 6.5 Concurrent Remedies. No right or remedy herein conferred upon or reserved to either party is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise and may be enforced concurrently therewith or from time to time.
- 6.6 Notices and Requests. Notices hereunder shall be in writing and shall be given by either party to the other by delivery or by mailing the same by prepaid registered mail addressed as specified herein or to such other address as may be substituted by written notice by either party to the other:
End User: Notices to End User at
address provided below.
Itron: ITRON, INC.
E. 15616 Euclid Ave.
Spokane, WA 99216
Attn: Contract Administrator
- Any such notice so given shall be deemed to have been received by the party to whom addressed on the day of delivery thereof.
- 6.7 Entire Agreement. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties. Any terms and conditions appearing on End User's authorizations shall not apply to or become a part of this Agreement; this Agreement may be modified or altered only by a written instrument that refers to this Agreement and is duly executed by an authorized representative of each party.
- 6.8 Headings Not Controlling. Headings used in this Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provision of this Agreement.

IN WITNESS WHEREOF the parties hereto have signed this Agreement the day and year first above written by their duly authorized representative.

END USER: Duane R. Cole

By: Duane R. Cole
Title: City Manager
Address: 414 East First
Newberg, OR 97132

ITRON, INC.

By: [Signature] 10/24/91
Title: V.P. Utility Systems

If a corporation, name the State in which incorporated Oregon



SAFECO INSURANCE COMPANIES

SAFECO INSURANCE COMPANY OF AMERICA
GENERAL INSURANCE COMPANY OF AMERICA
FIRST NATIONAL INSURANCE COMPANY OF AMERICA
HOME OFFICE: SAFECO PLAZA, SEATTLE, WASHINGTON 98185

CONTRACT BOND

Bond No. 5231004

KNOW ALL MEN BY THESE PRESENTS, That we, ITRON, INC.

P.O. BOX 15288 SPOKANE, WA 99215

called the Principal, and SAFECO INSURANCE COMPANY OF AMERICA, a Washington corporation called the Surety,
are held and firmly bound unto CITY OF NEWBERG, OREGON

414 EAST FIRST STREET, NEWBERG, OR 97132

called the Owner, in the sum of EIGHTEEN THOUSAND FOUR HUNDRED FIFTEEN AND NO/100

* * * * * Dollars (\$ 18,415.00),

for the payment whereof said Principal and Surety bind themselves firmly by these presents.

WHEREAS, the Principal has, by written Agreement, dated _____

entered into a Contract with the Owner for ELECTRONIC METER READING SYSTEM

a copy of which is by reference made a part hereof;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the Principal shall faithfully perform the Contract free and clear of all liens arising out of claims for labor and materials entering into the construction, and indemnify and save harmless the Owner from all loss, cost or damage which Owner may suffer by reason of the failure so to do, then this obligation shall be void; otherwise to remain in full force and effect.

Signed and sealed this 15th day of OCTOBER 19 91

ITRON, INC.

Principal

SAFECO INSURANCE COMPANY OF AMERICA

By Carla Holt
CARLA HOLT Attorney-in-Fact



POWER
OF ATTORNEY

SAFECO INSURANCE COMPANY OF AMERICA
HOME OFFICE: SAFECO PLAZA
SEATTLE, WASHINGTON 98185

No. 946

KNOW ALL BY THESE PRESENTS:

That **SAFECO INSURANCE COMPANY OF AMERICA**, a Washington corporation, does hereby appoint

-----ROY N. ARNOLD; JAMES E. McTIGUE; CHARLES H. STEILEN; CARLA HOLT; GEORGE C. SCHROEDER; THOMAS E. KOOMLER; J. CHRISTOPHER BULGER; LINDA TICHEY; LIONEL C. GREENWOOD, Spokane, Washington-----

its true and lawful attorney(s)-in-fact, with full authority to execute on behalf of the company fidelity and surety bonds or undertakings and other documents of a similar character issued by the company in the course of its business, and to bind **SAFECO INSURANCE COMPANY OF AMERICA** thereby as fully as if such instruments had been duly executed by its regularly elected officers at its home office.

IN WITNESS WHEREOF, **SAFECO INSURANCE COMPANY OF AMERICA** has executed and attested these presents

this 4th day of August, 1988


BOH A. DICKEY, SECRETARY


J. W. CANNON, PRESIDENT

CERTIFICATE

Extract from the By-Laws of **SAFECO INSURANCE COMPANY OF AMERICA**:

"Article V, Section 13. — FIDELITY AND SURETY BONDS . . . the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business . . . On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of
SAFECO INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
- (ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
- (iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Boh A. Dickey, Secretary of **SAFECO INSURANCE COMPANY OF AMERICA**, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of this corporation, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 15th day of OCTOBER, 1991




BOH A. DICKEY, SECRETARY