

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM395781

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Portland Energy Conservation, Inc.		08/19/2014	Corporation: OREGON
RECEIVING PARTY DATA			
Name:	CLEAResult Operating, LLC		
Street Address:	4301 Westbank Drive, Building A, Suite 150		
City:	Austin		
State/Country:	TEXAS		
Postal Code:	78746		
Entity Type:	Limited Liability Company: DELAWARE		
PROPERTY NUMBERS Total: 3			
Property Type	Number	Word Mark	
Registration Number:	4038654	AIRCARE PLUS	
Registration Number:	3995678	ENERGY FOR CHANGE	
Registration Number:	4111743	GROCERSMART	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	5034670918		
Email:	robin.seifried@clearesult.com		
Correspondent Name:	Robin Seifried		
Address Line 1:	100 SW Main St, Suite 1500		
Address Line 4:	Portland, OREGON 97204		
NAME OF SUBMITTER:	Robin B Seifried		
SIGNATURE:	/Robin B Seifried/		
DATE SIGNED:	08/19/2016		
Total Attachments: 14			
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EXECUTION

ASSET PURCHASE AGREEMENT

by and among

CLEARESLT OPERATING, LLC,

CLEARESLT CONSULTING INC.

and

PORTLAND ENERGY CONSERVATION, INC.

Dated as of August 19, 2014

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “*Agreement*”) is made and entered into as of August 19, 2014, by and among CLEAResult Operating, LLC, a Delaware limited liability company (“*Buyer*”), Portland Energy Conservation, Inc., an Oregon nonprofit corporation (the “*Company*”) and, solely with respect to Section 9.14 of this Agreement, CLEAResult Consulting Inc., a Texas corporation and the parent company of Buyer (“*CLEAResult*”).

RECITALS

- A. The Company owns and operates the Business (as defined below);
- B. The Company desires to sell, and Buyer desires to purchase, substantially all of the assets of the Company relating to the Business, on the terms and subject to the conditions set forth in this Agreement;
- C. Buyer is willing to assume certain liabilities of the Business specified in this Agreement, on the terms and subject to the conditions set forth in this Agreement; and
- D. Concurrently with the execution and delivery of this Agreement, each of the PECCI Executives has entered into a Retention and Integration Bonus Agreement with CLEAResult.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale of Assets

(a) On the terms and subject to the conditions of this Agreement, effective as of the Closing, the Company will sell, assign, transfer, convey, and deliver to Buyer, and Buyer will purchase and acquire from the Company, free and clear of any Encumbrances, except for Permitted Encumbrances, all of the Company’s right, title, and interest in and to all rights, properties and assets of every kind owned, held, used, developed, conceived, licensed or offered by the Company in connection with the Business, except Excluded Assets, including the following assets (collectively, the “*Transferred Assets*”):

(i) All Contracts relating to the Business, including those as set forth on subsection (i) of Schedule 1.1(a), but excluding those described in Section 1.1(b)(vi) (collectively, the “*Assumed Contracts*”);

(ii) All Intellectual Property Rights owned by the Company or relating to the conduct of the Business, including the Intellectual Property Rights described in subsection (ii) of Schedule 1.1(a), but excluding the Company Retained Intellectual Property;

(iii) All licenses, sublicenses or similar agreements described, including those set forth in subsection (iii) of Schedule 1.1(a) providing the Company any right or concession to use any Intellectual Property Rights (the "*Company-Licensed IP Rights*"), but excluding any Off-the-Shelf Software Agreements;

(iv) All of the Company's rights, claims, credits, causes of action or rights of set-off against third parties relating to the Transferred Assets, including rights under warranties;

(v) All inventory;

(vi) All Permits relating to the Business that are necessary to Buyer's operation of the Business, including those set forth on subsection (vi) of Schedule 1.1(a);

(vii) The fixed assets, equipment, computer hardware, fixtures and other tangible personal property, including those set forth on subsection (vii) of Schedule 1.1(a);

(viii) Deposits, advances, pre-paid expenses and credits under the Assumed Contracts;

(ix) All accounts receivable, notes receivable, and other receivables of the Company, but excluding Excluded Accounts Receivable;

(x) All Operating Cash;

(xi) A right to receive any cash or cash equivalents related to customer incentives, rebates, and other promotions, which amounts are held by the Company on behalf of any other Person pursuant to an Assumed Contract, at the time the Assumed Contract pursuant to which the cash or cash equivalents are held by the Company is assigned to Buyer in accordance with the Assumed Contract and related consent, if applicable;

(xii) All express or implied guarantees, warranties, representations, covenants, indemnities and similar rights under the Assumed Contracts;

(xiii) All goodwill associated with the Transferred Assets;

(xiv) All rights to insurance policies and claims, refunds, and proceeds; and

(xv) All books, records, files, and data of the Company other than those described in Section 1.1(b)(v), in electronic or intangible form, including customer lists and information, and employee files.

(b) Notwithstanding anything to the contrary set forth herein, the Transferred Assets will not include the following assets, properties and rights of the Company (collectively, the "*Excluded Assets*"):

(i) Any cash or cash equivalents held by the Company on behalf of any other Person pursuant to an Assumed Contract, unless and until the Assumed Contract pursuant to which the cash or cash equivalents related to customer incentives, rebates, and other promotions are held

IN WITNESS WHEREOF, the parties hereto have entered into and signed this Agreement as of the date and year first above written.

CLEARRESULT OPERATING, LLC

By: *G. A. Garland*
Name: Glenn Garland
Title: President

CLEARRESULT CONSULTING INC.

By: *G. A. Garland*
Name: Glenn Garland
Title: Chief Executive Officer

**PORTLAND ENERGY
CONSERVATION, INC.**

By: _____
Name: _____
Title: _____

{Signature Page to Asset Purchase Agreement}

IN WITNESS WHEREOF, the parties hereto have entered into and signed this Agreement as of the date and year first above written.

CLEARRESULT OPERATING, LLC

By: _____
Name:
Title:

CLEARRESULT CONSULTING INC.

By: _____
Name: Glenn Garland
Title: Chief Executive Officer

**PORTLAND ENERGY
CONSERVATION, INC.**

By: *Phil Welker*
Name: *Phil Welker*
Title: *Executive Director*

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

ANNEX A

DEFINITIONS

"Affiliate": With respect to a Person means any other Person that, directly or indirectly, controls or is controlled by or is under common control with the first Person.

"Agreement": Is defined in the first paragraph of this Agreement.

"Assumed Contracts": Is defined in Section 1.1(a)(i).

"Assumed Liabilities": Is defined in Section 1.2(a).

"Base Cash Consideration": Is defined in Section 2.1(a).

"Breach" or **"Breached"**: A **"Breach"** of a representation, warranty, certification, covenant, obligation or other provision of this Agreement or any Transaction Documents will be deemed to have occurred, or a representation, warranty, certification, covenant, obligation or other provision of this Agreement or any Transaction Documents will have been **"Breached,"** if there is or has been (a) any inaccuracy in or breach of, or any failure to perform or comply (in whole or in part) with, such representation, warranty, certification, covenant, obligation or other provision; or (b) any Claim (by any Person) or other occurrence or circumstance that is or was inconsistent with such representation, warranty, certification, covenant, obligation or other provision, and the term **"Breach"** means any such inaccuracy, breach, failure, Claim, occurrence or circumstance.

"Business": The business, operations and activities of the Company conducted as of the date hereof relating to the design and management of energy efficiency programs.

"Business Day": Any day that is not a Saturday, a Sunday or any other day on which banks generally are required or authorized to be closed in Portland, Oregon.

"Buyer": Is defined in the first paragraph of this Agreement.

"Claim": Any claim, demand, cause of action, suit, proceeding, arbitration, audit, hearing, investigation or inquiry (whether formal or informal).

"Claiming Party": Is defined in Section 7.3(a).

"Claim Objection Notice": Is defined in Section 7.3(b).

"Claim Objection Period": Is defined in Section 7.3(b).

"Closing": Is defined in Section 1.4.

"Closing Date": Is defined in Section 1.4.

"Closing Escrow": Is defined in Section 2.1(d).

“Closing Operating Cash Statement”: Is defined in Section 2.2(a).

“Closing Purchase Price”: Is defined in Section 2.1(d).

“COBRA”: Means the provisions of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and all regulations thereunder and any similar law.

“Code”: The Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated thereunder, as in effect from time to time.

“Company”: Is defined in the first paragraph of this Agreement.

“Company Balance Sheet”: Is defined in Section 3.6.

“Company Employees”: All employees of the Company engaged in the Business as of the date of the Agreement.

“Company IP Rights”: Collectively, the Company-Owned IP Rights and the Company-Licensed IP Rights.

“Company-Licensed IP Rights”: Is defined in Section 1.1(a)(iii).

“Company Material Adverse Effect”: Any material adverse effect on the business, operations, assets, liabilities (absolute, accrued, contingent or otherwise), condition (financial or other) or prospects of the Company; *provided, however* that in no event shall any of the following constitute a Company Material Adverse Effect: (a) any change resulting from conditions affecting the industry in which the Company operates or from changes in general business or economic conditions; or (b) any change to any Assumed Contract resulting from any of the Transactions or the performance of this Agreement.

“Company-Owned IP Rights”: All Intellectual Property Rights owned or purported to be owned by the Company.

“Company Retained Intellectual Property”: Collectively, those assets set forth in subsection (vii) of Schedule 1.1(b).

“Contract”: Any contract, agreement, permission, consent, lease, license, release, covenant not to sue, commitment, plan, arrangement, undertaking and understanding, oral or written, including a purchase order, security agreement, publication contract, license agreement, sublicense agreement, website terms of service, software development agreement, service agreement, independent contractor agreement, freelancer agreement, distribution agreement, joint venture agreement, reseller agreement, credit agreement, co-marketing/content agreement, membership agreement or instrument relating to the borrowing of money and any amendment, supplement or modification thereto.

“Employee Benefit Plan”: Any retirement, pension, profit sharing, deferred compensation, equity bonus, savings, bonus, incentive, cafeteria, medical, dental, vision, hospitalization, life insurance, accidental death and dismemberment, medical expense

reimbursement, dependent care assistance, tuition reimbursement, disability, sick pay, holiday, vacation, severance, change of control, equity purchase, equity option, restricted equity, phantom equity, equity appreciation rights, fringe benefit or other employee benefit or compensatory plan, program, policy, practice, Contract or fund (including any "employee benefit plan," as defined in Section 3(3) of ERISA) or any employment, consulting or personal services contract, whether written or oral, funded or unfunded or domestic or foreign, (a) sponsored, maintained or contributed to by the Company or to which the Company is a party, (b) covering or benefiting any current or former employee, agent, manager or independent contractor of the Company (or any dependent or beneficiary of any such individual), or (c) with respect to which the Company has (or could have) any obligation or Liability.

"Encumbrance": Any security interest, mortgage, lien, pledge, encumbrance, charge, deed of trust, option, easement, license, adverse claim or restriction of any kind, including any restriction on the use, transfer, voting, receipt of income or other exercise of any attributes of ownership.

"Environment": The air, ground (surface and subsurface) or water (surface and groundwater), or natural resources.

"Environmental Claim": Any Claim by any Person alleging potential Liability of or for which the Company could become liable (including potential Liability for investigatory Remedial Action, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, or emission, discharge or release into the Environment, of, or exposure to, any Hazardous Materials at any location, whether or not owned or operated by the Company, or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

"Environmental Law": All laws relating to pollution or protection of human health and safety (including occupational health and safety) or the Environment, including laws relating to (a) emissions, discharges, releases or threatened releases of, or exposure to, Hazardous Materials, (b) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, (c) recordkeeping, notification, disclosure and reporting requirements regarding Hazardous Materials, and (d) endangered or threatened species of fish, wildlife and plant and the management or use of natural resources.

"Escrow Agent": Is defined in Section 2.3.

"Escrow Agreement": Is defined in Section 2.3.

"Escrow Amount": The sum of the Indemnity Escrow Amount, the Retention Escrow Amount and the Operating Cash Escrow Amount.

"Escrow Fund": Is defined in Section 2.3.

“ERISA”: The Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder, all as in effect from time to time.

“Estimated Operating Cash”: Is defined in Section 2.1(b).

“Excluded Assets”: Is defined in Section 1.1(b).

“Excluded Accounts Receivable”: Is defined in Section 1.1(b)(viii).

“Excluded Liabilities”: Is defined in Section 1.2(b).

“Excluded Representations”: Is defined in Section 7.6.

“Financial Statements”: Is defined in Section 3.6.

“Foreign Official”: Any officer or employee of a foreign government or any department, agency or instrumentality thereof, or of a public international organization, or any person acting in an official capacity or on behalf of any such government, department, agency or instrumentality or for, or on the behalf of, such public international organization, including directors, officers, managers, employees and other agents of any enterprise owned directly or indirectly by an foreign government or public international organization.

“Fraud”: Fraud, or other intentional misrepresentations or willful misconduct.

“GAAP”: Generally accepted accounting principles in the United States.

“Governmental Body”: Any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“Hazardous Materials”: All chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products, asbestos or asbestos-containing materials or products, polychlorinated biphenyls, lead or lead-based paints or materials, radon, fungus, mold, mycotoxins or other substances that may have an adverse effect on human health or the Environment.

“Hired Employees”: Is defined in 5.13(a).

“Indemnifiable Amount”: Any losses, lost profits, damages, diminution in value, liabilities, obligations, claims, judgments, settlements, fines, costs, and expenses (including attorneys’ and expert fees, costs of defense and cost of investigation).

“Indemnification Claim”: Any Claim for indemnification under Article VII.

“Indemnifying Party”: Is defined in 7.3(a).

“Indemnity Escrow Amount”: Is defined in 2.1(c).

“Independent Accounting Firm”: Is defined in 2.2(c).

“Intellectual Property Rights”: All worldwide intellectual property rights of any kind or nature (and all applications or rights to apply, and all registrations, renewals, extensions, future equivalents, and restoration thereof, now or hereafter in force or effect), including without limitation all domestic and foreign trade names, trademarks (including common-law trademarks), service marks, domain names, art work, packaging, plates, emblems, logos, insignia, works of authorship, and copyrights, and all goodwill associated therewith, all domestic and foreign patents and patent applications, all technology, know-how, show-how, trade secrets, processes, formulae, drawings, inventions, methods, designs, schematics, specifications, algorithms, systems, forms, technical and user manuals, data, databases and database rights, compilations, computer programs and software, object and source code, software and data licenses, firmware, applications, tools and toolsets, interfaces, product information and development work-in-progress and all documentary evidence of any of the foregoing, and versions, derivatives, enhancements and improvements of any of the foregoing, and all copies and tangible embodiments thereof (in whatever form or medium), together with all statutory, contractual and other claims, demands and rights for royalties, fees or other income from any of the foregoing, and all rights to sue for infringement or violation of any of the foregoing, and all proceeds thereof.

“IRS”: The United States Internal Revenue Service.

“Judgment”: Any judgment, order, award, writ, injunction, ruling or decree of any Governmental Body or arbitrator.

“Knowledge”: The actual knowledge, after reasonable inquiry, of Phil Welker, Lisa Wojcicki, Daniele Joudene, Matt Tsugawa, and Joe Mattoon.

“Liability” means any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmaturing, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several, or secondary liability).

“M&A Qualified Beneficiary”: Is defined in Section 3.15(i).

“Material Contract”: Is defined in Section 3.10.

“Minimum Operating Cash”: \$4,000,000.

“NDA”: Is defined in Section 5.7.

“Off-the Shelf Software Agreements”: Any binary or object code license agreements for standard “shrink wrapped,” “click-through,” or other form licensed-based “off-the-shelf” third party software programs that are generally commercially available for annual license fees of less than \$1,000.

“Open Source Materials”: Is defined in Section 3.16(k).

“Operating Cash”: All of the Company’s cash, cash equivalents, securities and short term investments, in aggregate, as of 11:59 p.m. Pacific time on the Closing Date, but

excluding all cash and cash equivalents related to customer incentives, rebates, and other promotions held by the Company on behalf of any other Person together with all cash and cash equivalents held or deposited in escrow or pursuant to other restrictions (such as a security deposit).

“Operating Cash Escrow Amount”: Is defined in Section 2.1(c).

“PECI Executives”: Lisa Wojcicki, Daniele Joudene, Jeremy Litow, Joe Mattoon, Amanda Potter, Brett Scantlebury, Scott Shuetz, and Matt Tsugawa.

“Permit”: Any permit, license, approval, certification, endorsement or qualification of any Governmental Body or any other Person.

“Permitted Encumbrances”: (a) assessments for current Taxes not yet due and payable, or (b) statutory liens securing indebtedness owed by the Company that is in the aggregate less than \$10,000, was incurred in the ordinary course of business and is not yet due and payable.

“Person”: Any individual, corporation, partnership, trust, joint venture, limited liability company, association, organization, other entity or Governmental Body or regulatory authority.

“Proposed Excluded Accounts Receivable”: Is defined in Section 5.9(c).

“Purchase Price”: Is defined in Section 2.1(a).

“Real Property”: Is defined in Section 3.9.

“Remedial Action”: Any investigation, site assessment, monitoring or other evaluation of conditions relating to the Environment at a site, or any clean-up, treatment, containment, removal, restoration, corrective action or remedial work involving any Hazardous Materials.

“Representatives” means, collectively, the respective party’s officers, directors, agents, employees, and affiliates, and any investment banker, financial advisor, attorney, accountant, or other advisor, agent, and representative.

“Restricted Activities”: Is defined in Section 5.14(a).

“Retention Bonus Amount”: Is defined in Section 5.13(e).

“Retention Escrow Amount”: Is defined in Section 2.1(c).

“Returns”: Any returns, reports, declarations, statements, and similar documents required to be filed with respect to any Tax (including any attachments thereto and any amendments thereof).

“Selling Group”: Is defined in Section 5.13(g).

“Target Operating Cash”: \$4,500,000.

“Taxes”: (a) any federal, state, local, and foreign taxes, charges, fees, levies, imposts, duties, and other similar assessments or charges of any kind whatsoever imposed by any Governmental Body, including income taxes (whether imposed on or measured by net income, gross income, income as specially defined, earnings, profits, or selected items of income, earnings, or profits), capital taxes, gross receipts taxes, environmental taxes, sales taxes, use taxes, value added taxes, goods and services taxes, transfer taxes, franchise taxes, license taxes, withholding taxes or other withholding obligations, payroll taxes, employment taxes, excise taxes, severance taxes, social security premiums, workers’ compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, ad valorem taxes, property taxes, windfall profits taxes, alternative or add-on minimum taxes, and customs duties, together with all interest, penalties, fines, additions to tax, or other amounts imposed with respect to the foregoing; (b) any Liability for any amounts of the type described in clause (a) as a result of being or ceasing to be a member of any Tax Group (including any Liability under Treasury Regulation Section 1.1502-6 or any comparable provision of state, local, or foreign law); and (c) any Liability for any amounts of the type described in clause (a) or (b) arising under contract, by operation of law, by reason of being a successor or transferee, or otherwise. The term ***“Tax”*** means any one of the foregoing Taxes.

“Tax Contest”: Any audit, examination, or other administrative or judicial proceeding with respect to any Taxes or Returns of the Company.

“Tax Group”: Any “affiliated group” of corporations within the meaning of Code Section 1504 (or any similar affiliated, combined, consolidated, or unitary group or arrangement for group relief for state, local, or foreign Tax purposes).

“Third Party Claim”: Is defined in Section 7.4(a).

“Threshold Amount”: Is defined in Section 7.7.

“Transactions”: Is defined in Section 2.4.

“Transaction Costs”: Is defined in Section 9.1.

“Transaction Documents”: Is defined in Section 2.4.

“Transfer Taxes”: Is defined in Section 2.4.

“Transferred Assets”: Is defined in Section 1.1(a).

“Transmitted Copies”: Is defined in Section 9.9.

SCHEDULES TO
ASSET PURCHASE AGREEMENT
by and among
CLEARRESULT OPERATING, LLC,
CLEARRESULT CONSULTING INC.
and
PORTLAND ENERGY CONSERVATION, INC.

Dated as of August 19, 2014

Schedule: PECI Intellectual Property

Trademarks	
Mark	Description
AirCare Plus®	Service mark for technological planning and consulting services in the field of HVAC energy efficiency. Mark consists of standard characters without claim to any particular font, style, size, or color. Reg. No. 4,038,654
Energy for Change®	Mark consists of standard characters without claim to any particular font, style, size, or color. No claim is made to the exclusive right to use "energy" apart from the mark as shown. Reg. No. 3,995,678
GrocerSmart®	Mark consists of standard characters without claim to any particular font, style, size, or color. Reg. No. 4,111,743
HiveQ™	A PECI Data Centers program process.
Inform-to-Invest™	A PECI program process which is based off of other kinds of business processes.
MPS™	Maintenance Planning System. A PECI HVAC program process and software tool.
Sprocket™	PECI customized Salesforce.com database.
Proprietary Software	
Product Name	Description
Air Conditioning, Heating, and Refrigeration Institute Energy Smart Jobs	Used as a look-up system for specifications on Residential HVAC units for energy savings review. Originally designed for the Energy Smart Jobs program (no longer running), it is now used as a demo for business development purposes.
Rebate Processing System (Questar)	Primarily used as a historical data repository. Used for entering verified and qualified applications for which approval and incentives need to be paid.
Sprocket	Core program management system components. Includes customer relationship management capabilities like Account, Lead, and Opportunity management. Also includes internally developed pieces related to program and measure management, rebate processing, field service visits, etc.