

# Honeywell Building Solutions

## SERVICE AGREEMENT

Date: Jan 10, 2022

Proposal Number: F6217091516002

Agreement Number: TBD

(HONEYWELL)

Honeywell Building Solutions  
230 Vista Park Drive  
Pittsburgh, PA 15205

(CUSTOMER)

Baldwin-Whitehall School District  
4900 Curry Road  
Pittsburgh, PA 15236-1898

Service Location Name: **Baldwin High School**  
Service Location Address: **4653 Clairton Blvd. Pittsburgh, PA 15236**

Scope of Work: HONEYWELL INTERNATIONAL INC., through its Honeywell Building Solutions business unit (sometimes referred to as "HBS", "Honeywell" or "Honeywell Building Solutions"), shall provide the following equipment and services ("the Work") in accordance with the attached work scope documents and terms and conditions, which form a part of this Agreement.

- |   |  |
|---|--|
| <input type="checkbox"/> Preferred Temperature Control Services             | <input type="checkbox"/> Site Services                                     |
| <input type="checkbox"/> Flex Temperature Control Services                  | <input type="checkbox"/> Honeywell Energy Analysis Reporting               |
| <input type="checkbox"/> Preferred Automation Maintenance Services          | <input type="checkbox"/> Air Filter Services                               |
| <input checked="" type="checkbox"/> Flex Automation Services                | <input type="checkbox"/> Water Treatment Services                          |
| <input type="checkbox"/> Preferred Fire Alarm Maintenance Services          | <input type="checkbox"/> Critical Parts Stocking                           |
| <input checked="" type="checkbox"/> Fire Alarm Test and Inspect Services    | <input type="checkbox"/> Thermography Services                             |
| <input type="checkbox"/> Preferred Security System Inspect Services         | <input type="checkbox"/> Emergency Generator Services                      |
| <input type="checkbox"/> Flex Security System Services                      | <input type="checkbox"/> In Suite Services                                 |
| <input type="checkbox"/> Preferred Mechanical Maintenance Services          | <input type="checkbox"/> Remote Monitoring/Radionics                       |
| <input type="checkbox"/> Flex Mechanical Maintenance Services               | <input type="checkbox"/> Indoor Air Quality Auditing Services              |
| <input type="checkbox"/> ServiceNet™ Remote Monitoring and Control Services | <input type="checkbox"/> Service Management Software                       |
| <input checked="" type="checkbox"/> EB1 Services                            | <input type="checkbox"/> FM Worksite                                       |
| <input type="checkbox"/> Online Services                                    | <input type="checkbox"/> Other/Special Provisions _____                    |
| <input type="checkbox"/> Advanced Support                                   | <input type="checkbox"/> Honeywell Users Group                             |
| <input type="checkbox"/> Attune™ Advisory Services - Operations             | <input type="checkbox"/> Attune™ Advisory Services - Energy Optimization   |
| <input type="checkbox"/> Attune™ Advisory Services – Energy Awareness       | <input type="checkbox"/> Attune™ Advisory Services – Lobby Digital Signage |
| <input type="checkbox"/> Outcome Based Service—Assurance Automation         | <input type="checkbox"/> Outcome Based Service—Dynamic Automation          |
| <input type="checkbox"/> Outcome Based Service—Vision                       | <input type="checkbox"/> Cybersecurity Services                            |

Contract Term: **Five (5) years** from the Effective Date. Customer\_\_\_\_ Honeywell\_\_\_\_  
(INITIALS)

Contract Effective Date: **September 1, 2021**

### Price:

Year 1: 9/1/21 – 6/30/22: Thirty-Three Thousand Five Hundred Forty-Two Dollars and 50/100.....	\$33,542.50
Year 2: 7/1/22 – 6/30/23: Forty-One Thousand Four Hundred Fifty-Eight Dollars and 53/100.....	\$41,458.53
Year 3: 7/1/23 – 6/30/24: Forty-Two Thousand Seven Hundred Two dollars and 29/100.....	\$42,702.29
Year 4: 7/1/24 – 6/30/25: Forty-Three Thousand Nine Hundred Eighty-Three Dollars and 36/100.....	\$43,983.36
Year 5: 7/1/25 – 6/30/26: Forty -Five Thousand Three Hundred Two Dollars and 86/100.....	\$45,302.86

Payment Terms: **Monthly in advance**

Anniversary date will be July 1<sup>st</sup>, 2021 (due to fiscal year). Year 1 price has been pro-rated for period of performance September 1, 2021 – June 30, 2022

Renewal: The Contract Term will automatically be renewed for consecutive terms of one year unless terminated by either party by the delivery of written notice to the other at least sixty (60) days prior to the end of such term, or unless terminated as provided herein.

Submitted by HBS: (signature) \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**This proposal is valid for 30 days.**

**Acceptance:** This proposal and the pages attached shall become an Agreement in accordance with Article 13 below and only upon signature below by an authorized representative of HONEYWELL and CUSTOMER.

### **Flex Automation Services**

**1.1 Scope -** HONEYWELL will maintain and inspect the temperature control system components and related accessories listed below:

**List of Covered Equipment:**

Quantity	Description
All	Analog and digital input sensors, analog output controllers and digital output relays associated with DDC Controllers Miscellaneous
2	DDC Controllers with modems XL+
75	DDC Controllers XL50
360	DDC Controllers XL10
All	Engineered Air DDC Controllers for AHU's

**List of Covered Software:**

Quantity	Description
1	EBI 500 Operator Workstation Software

**1.2 Preventative Maintenance –** Each inspection call will be scheduled by a computer-scheduled service report detailing the tasks to perform, the skill levels required, and the special tools and instrumentation required to inspect the systems for optimum system performance, both from a hardware and software perspective. Typical activities include:

- Checking software schedules against occupancy schedules
- Inspecting hardware operator - machine interface and field panels for proper operation.
- Review false alarm activity
- Review trend logs
- Random sampling of temperature sensors to identify need to calibrate

These inspection calls will be based on One Hundred Ninety-Two (192) hours per year:

- (2) days a month for twelve months.

Other objectives of the HONEYWELL Site Services professional are:

- to provide value-added performance results and a high level of responsiveness through a team-based relationship;
- to help achieve HONEYWELL and CUSTOMER performance and cost-savings goals;
- to assist the plant operations staff in producing efficient facility operations consistent with the design parameters and operating budget;
- to develop with the CUSTOMER additional value-added solutions for operational needs in the CUSTOMER's facilities.
- To provide on-site preventative maintenance and operations support according to design and manufacturers' recommendations.
- Receive work direction from the CUSTOMER'S staff for any required automation issues.

**1.3 Coverage –** This Agreement includes all travel, and living expenses to perform the inspection services described above for the Equipment and Software. The costs for labor and travel for repair work, emergency service, and any replacement materials are not included in this Agreement. If emergency service is required, CUSTOMER will receive a priority response and will be billed at a preferred maintenance labor rate. If necessary equipment repairs are approved, CUSTOMER will be billed on a Time-and-Material (T&M) basis, with labor costs reflecting the preferred rate.

**1.4 Performance Review** – A review of the Services provided within this Agreement will be performed by HONEYWELL on an annual basis if requested by CUSTOMER. HONEYWELL and CUSTOMER will discuss work performed since the last review, answer questions pertaining to Service delivery, and identify opportunities to further improve performance of the Equipment.

**Fire Alarm Test and Inspect Services**

**1.1 Scope** - HONEYWELL will inspect the fire alarm components listed below:

**List of Equipment to Be Tested:**

Quantity	Description	Model Number
1	Fire Alarm Control Panel	XLS1000
1	Fire Alarm Printer	XLS-PTR
2	Fire Alarm Annunciators	XLS-ANN
15	Fire Alarm Power Boosters	XLS-BPS
42	Fire Alarm Pull Stations	S4645 Addressable Series
66	Fire Alarm Smoke Sensor	TC806 Intelligent
2	Fire Alarm Heat Sensor	TC808 Intelligent
44	Fire Alarm Door Holder	S4005 Series
64	Fire Alarm Monitor Module	TC809 Addressable
247	Fire Alarm Control Module	TC810 Addressable
88	Fire Alarm Duct Detector	TC806D Addressable
139	Fire Alarm Horn	MT-24-R Series
376	Fire Alarm Strobe Light	RSS-24 Series
32	Fire System Battery	SLA1075 Type
1	Fire System Software	XLS-1000 Software Package

**1.2 Inspection Maintenance** - Each inspection call will be scheduled by a computer-generated service report detailing the tasks to perform, the skill levels required, and the special tools and instrumentation required to inspect the systems. Upon completion of each service call, a summary of the tasks completed will be provided to CUSTOMER. If repair requirements on covered Equipment are identified during the service call, a corrective action plan will be discussed with CUSTOMER. Inspection activities may, if applicable, include:

- Test initiating and output zones for response to alarm/trouble condition
- Verify communication from Remotes to Central
- Check for damaged/misaligned devices and loose connections; tighten all terminals
- Test each loop and verify proper LED annunciation

**1.3 Testing** – HONEYWELL will perform \_1\_test(s) per year per initiating device and, (1) one panel test at CUSTOMER’S request, furnish a written report certifying that such have been completed. These tests will take place during visit(s) throughout the year.

HONEYWELL will test the fire alarm system: in accordance with the schedule and tasks outlined in NFPA 72 (1999), Chapter 7 (National Fire Alarm Code) in the United States and in accordance with ULC-536-xx Standard For The Inspection And Testing Of Fire Alarm Systems in US, using the date of the contract execution or renewal as the starting date for determining when each test must be conducted except as described below:

- Testing of initiating devices
- Inspect (1) Honeywell XLS1000 Panels, test imitating and output zones for response to alarm, trouble condition. Verify communication from Remotes to Central. Check for damaged/misaligned devices and loose connections.
- Customer will perform required testing of water flow devices, fire pump monitoring and valve tamper/supervisory devices.
- Customer will perform required visual inspections of smoke detectors; Honeywell will conduct only required functionality and sensitivity testing.
- No fire alarm equipment included in this agreement.

Customer will perform required testing of visual and audible notification appliances.

**1.4 Coverage** - This Agreement includes all labor, travel, and living expenses to perform the inspection services described above for the Equipment. The costs of labor and travel for repair work, emergency service, or other parts and materials required for Equipment repairs, are not included in this Agreement. If emergency service is required, CUSTOMER will receive a priority

response and will be billed at a preferred maintenance labor rate. If necessary, Equipment repairs are approved, CUSTOMER will be billed on a time-and-material basis, with labor costs reflecting the preferred rate.

**1.5 Performance Review** - A review of the Services provided within this Agreement will be performed by HONEYWELL on an annual basis at CUSTOMER'S request. HONEYWELL and CUSTOMER will discuss work performed since the last review, answer questions pertaining to Service delivery, and identify opportunities to further improve performance of the Equipment.

**1.6 Honeywell Service Portal** – HONEYWELL will provide customer access to an Internet-based application that will allow the CUSTOMER to securely submit non-emergency service requests online; view status of all service calls, whether scheduled, open or closed; view appointments and task detail of work performed on contracted service calls; and view contract and equipment coverage details (12 month history and includes only service performed per the HONEYWELL contract). Functionality enhancements or deletions are at the discretion of HONEYWELL.

## **EBI Services**

### **1.1 Scope:**

Honeywell will provide software and hardware enhancement and support for Customer's UL Enterprise Building Integrator (EBI) system, which consists of Honeywell Life Safety Manager. The services are more specifically described below.

#### **List of Covered Software**

Drawing number(s) and date(s) (if applicable)				
<b>Quantity</b>	<b>Software Product Number</b>	<b>Version</b>	<b>Product Description</b>	<b>Location</b>
1		500	EBI R500	High School

(If software embedded in network hardware is to be covered, include it in the List of Covered Software.)

### **1.2 Software Enhancement and Support**

For software included in the List of Covered Software and originally installed by Honeywell, Honeywell will, on a scheduled basis, (a) evaluate the condition of the software, (b) apply any available updates to the currently installed EBI version (R500) and Windows that are applicable to the software (but for third-party software only after it has been qualified by Honeywell) and that have not been previously applied, (c) perform a system back-up, and (d) save the back-up files. EBI and Windows upgrades are not included in this agreement.

For the same software, Honeywell will apply critical software updates as they become available (but for third-party software only after it has been qualified by Honeywell). Critical software updates are updates that correct a problem that substantially compromises the overall system operation or security.

Customer shall not install any software on systems covered by this addendum without Honeywell's written approval. This addendum does not include any services on software installed by others, and Honeywell will not be liable for any damage to any such software installed without Honeywell's written approval that results from these services.

### **1.3 Hardware Support**

For hardware included in the List of Included Hardware and originally furnished by Honeywell, Honeywell will, on a periodic basis, evaluate the performance of the hardware and recommend any enhancements needed to allow the software to perform as specified. If the Refresh Option is selected, Honeywell will replace the listed hardware with new hardware that satisfies the requirements of the upgraded or updated software on or about the two-year anniversary of the initiation of these EBI Software Enhancement and Support Services and on or about any succeeding two-year anniversary, for as long as these services remain in effect.

**1.4 Emergency Service** - Activities performed under this Agreement are designed to minimize the incidence of emergency situations. However, should an emergency arise, HONEYWELL personnel will assess the situation either by phone or remote diagnostics, or both, and will determine the required course of action with CUSTOMER. If it is determined that a site visit is required, HONEYWELL personnel will arrive at CUSTOMER site within 4 hours. If the resolution of the emergency service call requires HONEYWELL to provide service for equipment that is not listed in the List of Covered Equipment above, CUSTOMER will be liable for charges prevailing for such service.

Emergency Service will be provided during the following periods during the term of this Agreement (check box for desired level of emergency service coverage):

- Continuous Emergency Service:**  
24 hours per day, seven days per week, federal holidays included
- Extended Hours Emergency Service:**  
12 hours per day, five days per week, federal holidays excluded.  
Specified hours: 6:00 a.m. - 6:00 p.m., Monday through Friday.
- Regular Business Hours Emergency Service:**  
8.5 hours per day, five days per week, federal holidays excluded.  
Specified hours: 8:00 a.m. - 4:30 p.m., Monday through Friday.

**Accepted by:**

**HONEYWELL INTERNATIONAL INC., through  
its Honeywell Building Solutions business unit**

**Customer's Name**

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**General Terms and Conditions**

**1. WORKING HOURS**

Unless otherwise stated, all labor and services under this Agreement will be performed during the hours of 8:00 a.m. - 4:30 p.m. local time Monday through Friday, excluding federal holidays. If for any reason Customer requests Honeywell to furnish any labor or services outside of the hours of 8:00 a.m. - 4:30 p.m. local time Monday through Friday (or on federal holidays), any overtime or additional expenses, such as repairs or material costs not included in this Agreement, will be billed to and paid by Customer.

**2. TAXES**

**2.1** Customer agrees to pay the amount of any new or increased taxes or governmental charges upon labor or the production, shipment, sale, installation, or use of equipment or software which become effective after the date of this Agreement. If Customer claims any such taxes do not apply to transactions covered by this Agreement, Customer shall provide Honeywell with a tax exemption certificate acceptable to the applicable taxing authorities.

**2.2 Tax-Related Cooperation.** CUSTOMER agrees to execute any documents and to provide additional reasonable cooperation to HONEYWELL related to HONEYWELL tax filings under Internal Revenue Code Section 179D. HONEYWELL will be designated the sole Section 179D beneficiary.

**3. PROPRIETARY INFORMATION**

**3.1** All proprietary information (as defined herein) obtained by Customer from Honeywell in connection with this Agreement will remain the property of Honeywell, and Customer will not divulge such information to any third party without prior written consent of Honeywell. The term "proprietary information" means written information (or oral information reduced to writing), or information in machine-readable form, including but not limited to software supplied to Customer which Honeywell deems proprietary or confidential and characterizes as proprietary at the time of disclosure to Customer by marking or labeling the same "Proprietary", "Confidential", or "Sensitive". The Customer shall incur no obligations hereunder with respect to proprietary information which: (a) was in the Customer's possession or was known to the Customer prior to its receipt from Honeywell; (b) is independently developed by the Customer without the utilization of such confidential information of Honeywell; (c) is or becomes public knowledge through no fault of the Customer; (d) is or becomes available to the Customer from a source other than Honeywell; (e) is or becomes available on an unrestricted basis to a third party from Honeywell or from someone acting under its control; (f) is received by Customer after notification to Honeywell that the Customer will not accept any further information.

**3.2** Customer agrees that Honeywell may use nonproprietary information pertaining to the Agreement, and the work performed under the Agreement, for press releases, case studies, data analysis, promotional purposes, and other similar documents or statements to be publicly released. The rights and obligations in this Section 3 shall survive expiration or termination of this Agreement.

**4. INSURANCE OBLIGATIONS**

Honeywell shall, at its own expense, carry and maintain in force at all times from the effective date of the Contract through final completion of the work the following insurance. It is agreed, however, that Honeywell has the right to insure or self-insure any of the insurance coverages listed below:

- (a) Commercial General Liability Insurance to include contractual liability, products/completed operations liability with a combined single limit of USD \$5,000,000 per occurrence. Such policy will be written on an occurrence form basis;
- (b) If automobiles are used in the execution of the Contract, Automobile Liability Insurance with a minimum combined single limit of USD \$5,000,000 per occurrence. Coverage will include all owned, leased, non-owned and hired vehicles.
- (c) Where applicable, "All Risk" Property Insurance, including Builder's Risk insurance, for physical damage to property which is assumed in the Contract.
- (d) Workers' Compensation Insurance Coverage A - Statutory limits and Coverage B-Employer's Liability Insurance with limits of USD \$1,000,000 for bodily injury each accident or disease.

Prior to the commencement of the Contract, Honeywell will furnish evidence of said insurance coverage in the form of a Memorandum of Insurance which is accessible at: <http://honeywell.com/sites/moi/>. All insurance required in this Article will be written by companies with a rating of no less than "A-, XII" by A.M. Best or equivalent rating agency. Honeywell will endeavor to provide a thirty (30) day notice of cancellation or non-renewal to the Customer. In the event that a self-insured program is implemented, Honeywell will provide adequate proof of financial responsibility.

**5. HAZARDOUS SUBSTANCES, MOLD AND UNSAFE WORKING CONDITIONS**

**5.1** Customer has not observed or received notice from any source (formal or informal) of (a) Hazardous Substances or Mold, either airborne or on or within the walls, floors, ceilings, heating, ventilation and air conditioning systems, plumbing systems, structure, and other components of the Site, or within furniture, fixtures, equipment, containers or pipelines in a Site; or (b) conditions that, to Customer's knowledge, might cause or promote accumulation, concentration, growth or dispersion of Hazardous Substances or Mold on or within such locations.

**5.2** Honeywell is not responsible for determining whether the Covered Equipment or the temperature, humidity and ventilation settings used by Customer, are appropriate for Customer and the Site except as specifically provided in an attached Work Scope Document.

5.3 If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by Honeywell or others and provide an unsafe condition for the performance of the work or Services, the discovery of the condition shall constitute a cause beyond Honeywell's reasonable control and Honeywell shall have the right to cease the work or Services until the area has been made safe by Customer or Customer's representative, at Customer's expense. Honeywell shall have the right to terminate this Agreement if Customer has not fully remediated the unsafe condition within sixty (60) days of discovery.

5.4 Customer represents that Customer has not retained Honeywell to discover, inspect, investigate, identify, prevent or remediate Hazardous Substances or Mold or conditions caused by Hazardous Substances or Mold.

5.5 Customer is responsible for the containment of any and all refrigerant stored on or about the premises. Customer accepts all responsibility for and agrees to indemnify Honeywell against any and all claims, damages, or causes of action that arise out of the storage, consumption, loss and/or disposal of refrigerant, except to the extent Honeywell has brought refrigerant onsite and is directly and solely negligent for its mishandling.

## **6. WARRANTY**

6.1 Honeywell will replace or repair any product Honeywell provides under this Agreement that fails within the warranty period of one (1) year because of defective workmanship or materials, except to the extent the failure results from Customer negligence, fire, lightning, water damage, or any other cause beyond the control of Honeywell. This warranty is effective as of the date of Customer acceptance of the product or the date Customer begins beneficial use of the product, whichever occurs first, and shall terminate and expire one (1) year after such effective date. Honeywell's sole obligation, and Customer's sole remedy, under this warranty is repair or replacement, at Honeywell's election, of the applicable defective products within the one (1) year warranty period. All products repaired or replaced, if any, are warranted only for the remaining and unexpired portion of the original one (1) year warranty period.

6.2 EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, HONEYWELL MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ANY AND ALL WARRANTIES REGARDING HAZARDOUS SUBSTANCES OR MOLD. NO EXTENSION OF THIS WARRANTY WILL BE BINDING UPON HONEYWELL UNLESS SET FORTH IN WRITING AND SIGNED BY HONEYWELL'S AUTHORIZED REPRESENTATIVE.

6.3 Honeywell shall have no duty, obligation or liability, all of which Customer expressly waives, for any damage or claim, whether known or unknown, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effect or any special, consequential, punitive, exemplary or other damages, regardless of whether such damages may be caused by or otherwise associated with defects in the Services, in whole or in part due to or arising from any investigation, testing, analysis, monitoring, cleaning, removal, disposal, abatement, remediation, decontamination, repair, replacement, relocation, loss of use of building, or equipment and systems, or personal injury, death or disease in any way associated with Hazardous Substances or Mold.

## **7. INDEMNITY**

Customer agrees to indemnify, defend and hold harmless Honeywell and its officers, directors, employees, affiliates and agents (each, an "indemnitee") from and against any and all actions, lawsuits, losses, damages, liabilities, claims, costs and expenses (including, without limitation, reasonable attorneys' fees) caused by, arising out of or relating to Customer's breach or alleged breach of this Agreement or the negligence or willful misconduct (or alleged negligence or willful misconduct) of Customer or any other person under Customer's control or for whom Customer is responsible. **WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT ALLOWED BY LAW, CUSTOMER SHALL INDEMNIFY AND HOLD HONEYWELL AND EACH OTHER INDEMNITEE HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND COSTS OF WHATEVER NATURE, INCLUDING BUT NOT LIMITED TO, CONSULTANTS' AND ATTORNEYS' FEES, DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE, FINES, PENALTIES, CLEANUP COSTS AND COSTS ASSOCIATED WITH DELAY OR WORK STOPPAGE, THAT IN ANY WAY RESULTS FROM OR ARISES UNDER THE BREACH OF THE REPRESENTATIONS AND WARRANTIES OF CUSTOMER IN SECTION 5, THE EXISTENCE OF MOLD OR A HAZARDOUS SUBSTANCE AT A SITE, OR THE OCCURRENCE OR EXISTENCE OF THE SITUATIONS OR CONDITIONS DESCRIBED IN SECTION 5, WHETHER OR NOT CUSTOMER PROVIDES HONEYWELL ADVANCE NOTICE OF THE EXISTENCE OR OCCURRENCE AND REGARDLESS OF WHEN THE HAZARDOUS SUBSTANCE OR OCCURRENCE IS DISCOVERED OR OCCURS.** Customer may not enter into any settlement or consent to any judgment without the prior written approval of each indemnitee. This Section 7 shall survive termination or expiration of this Agreement for any reason.

## **8. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, (I) IN NO EVENT WILL HONEYWELL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, OR INDIRECT DAMAGES, LOSS OF PROFITS, REVENUES, OR USE, OR THE LOSS OR CORRUPTION OF DATA OR UNAUTHORIZED ACCESS TO OR USE OR MISAPPROPRIATION OF DATA BY THIRD PARTIES, EVEN IF INFORMED OF THE POSSIBILITY OF ANY OF THE FOREGOING, AND (II) THE AGGREGATE LIABILITY OF HONEYWELL FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL IN NO CASE EXCEED THE PRICE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT, OPERATION OF LAW, OR OTHERWISE.

## **9. EXCUSABLE DELAYS**

Honeywell is not liable for damages caused by delay or interruption in Services due to fire, flood, corrosive substances in the air, strike, lockout, disputes with workmen, inability to obtain material or services, commotion, war, acts of God, the presence of Hazardous Substances or Mold, or any other cause beyond Honeywell's reasonable control. Should any part of the system or any Equipment be damaged by fire, water, lightning, acts of God, the presence of Hazardous Substances or Mold, third parties or any other cause beyond the control of Honeywell, any repairs or replacement will be paid for by Customer. In the event of any such delay, date of shipment or performance will be extended by a period equal to the time lost by reason of such delay, and Honeywell will be entitled to recover from Customer its reasonable costs, overhead, and profit arising from such delay.

## **10. PATENT INDEMNITY**

10.1 Honeywell shall, at its expense, defend or, at its option, settle any suit that may be instituted against Customer for alleged infringement of any United States patents related to the hardware or software manufactured and provided by Honeywell under this Agreement ("the equipment"), provided that a) such alleged infringement consists only in the use of such equipment by itself and not as part of, or in combination with, any other devices, parts or software not provided by Honeywell hereunder, b) Customer gives Honeywell immediate notice in writing of any such suit and permits Honeywell, through counsel of its choice, to answer the charge of infringement and defend such suit, and c) Customer gives Honeywell all needed information, assistance and authority, at Honeywell's expense, to enable Honeywell to defend such suit.

10.2 If such a suit has occurred, or in Honeywell's opinion is likely to occur, Honeywell may, at its election and expense: a) obtain for Customer the right to continue using such equipment; b) replace, correct or modify it so that it is not infringing; or if neither a) or b) is not reasonable then c) remove such equipment and grant Customer a credit therefore, as depreciated.

10.3 In the case of a final award of damages in any such suit, Honeywell will pay such award. Honeywell will not, however, be responsible for any settlement made without its written consent.

10.4 THIS ARTICLE STATES HONEYWELL'S TOTAL LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT BY THE HARDWARE MANUFACTURED AND PROVIDED BY HONEYWELL HEREUNDER.

## **11. SOFTWARE LICENSE**

All software provided in connection with this Agreement shall be licensed and not sold. The end user of the software will be required to sign a license agreement with provisions limiting use of the software to the equipment provided under these specifications, limiting copying, preserving confidentiality, and prohibiting transfer to a third party. Licenses of this type are standard for computer-based equipment of the type covered by this Agreement. Customer shall be expected to grant Honeywell access to the end user for purposes of obtaining the necessary software license.

## **12. DISPUTE RESOLUTION**

With the exception of any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of fire and/or security systems, the Parties agree that any controversy or claim between Honeywell and Customer arising out of or relating to this Agreement, or the breach thereof, will be settled by arbitration in a neutral venue, conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any award rendered by the arbitrator will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Any controversy or claim arising out of or related to the installation, monitoring, and/or maintenance of systems associated with security and/or the detection of, and/or reduction of risk of loss associated with fire will be resolved in a court of competent jurisdiction.

## **13. ACCEPTANCE**

This proposal and the pages attached shall become an Agreement upon signature above by Honeywell and Customer. The terms and conditions are expressly limited to the provisions hereof, including Honeywell's General Terms and Conditions attached hereto, notwithstanding receipt of, or acknowledgment by, Honeywell of any purchase order, specification, or other document issued by Customer. Any additional or different terms set forth or referenced in Customer's purchase order are hereby objected to by Honeywell and shall be deemed a material alteration of these terms and shall not be a part of any resulting order.

## **14. MISCELLANEOUS**

14.1 This Agreement represents the entire Agreement between Customer and Honeywell for the Work described herein and supersedes all prior negotiations, representations or Agreements between the Parties related to the work described herein.

14.2 None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order or other document unilaterally issued by Customer that relates to the subject matter of this Agreement. This Agreement may be amended only by written instrument signed by both parties.

14.3 This Agreement is governed by the law of the State where the work is to be performed.

14.4 Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Honeywell and Customer, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

14.5 Customer may not assign or transfer its rights or delegate its obligations under this Agreement, in whole or in part, without the prior written consent of Honeywell. Honeywell may assign or transfer this Agreement, in whole or in part, or any of its rights or obligations under this Agreement without consent.

14.6 Customer retains all rights that Customer already holds in data and other information that Customer or persons acting on Customer's behalf input, upload, transfer, or make accessible in relation to, or which is collected from its devices or equipment by, the services provided under this Agreement ("Input Data"). Honeywell and its affiliates have the right to retain, transfer, disclose, duplicate, analyze, modify and otherwise use Input Data to provide, protect, improve or develop their products or services. Honeywell and its affiliates may also use Input Data for any other purpose provided it is in an anonymized form that does not identify Customer. Any Customer data contained within Input Data shall only be used or processed in accordance with the data privacy terms of this Agreement and applicable law. All information, analysis, insights, inventions and algorithms derived from Input Data by Honeywell and/or its affiliates (but excluding Input Data itself) and any intellectual property rights related thereto, are owned exclusively and solely by Honeywell and its affiliates and are their confidential information. This Section survives termination or expiration of this Agreement.

## **15. COVERAGE**

15.1 Customer agrees to provide access to all Equipment covered by this Agreement. Honeywell will be free to start and stop all primary equipment incidental to the operation of the mechanical, control, automation, and life safety system(s) as arranged with Customer's representative.

15.2 It is understood that the repair, replacement, and emergency service provisions apply only to the Equipment included in the attached List of Covered Equipment. Repair or replacement of non-maintainable parts of the system such as, but not limited to, ductwork, piping, shell and tube (for boilers, evaporators, condensers, and chillers), unit cabinets, boiler refractory material, heat exchangers, insulating material, electrical wiring, hydronic and pneumatic piping, structural supports and other non-moving parts, is not included under this Agreement. Costs to repair or replace such non-maintainable parts will be the sole responsibility of Customer.

15.3 Honeywell will not reload software, nor make repairs or replacements necessitated by reason of negligence or misuse of the Equipment by persons other than Honeywell or its employees, or caused by lightning, electrical storm, or other violent weather or by any other cause beyond Honeywell's control. Honeywell will provide such services at Customer's request and at an additional charge. Customer is entitled to receive Honeywell's then current preferred Customer labor rates for such services.

15.4 Honeywell may install diagnostic devices and/or software at Honeywell's expense to enhance system operation and support. Upon termination of this Agreement, Honeywell may remove these devices and return the system to its original operation. Customer agrees to provide, at its sole expense, connection to the switched telephone network for the diagnostic devices and/or software.

15.5 Honeywell will review the Services delivered under this Agreement on an annual basis, unless otherwise noted.

15.6 This Agreement assumes that the systems and/or Equipment included in the attached List of Covered Equipment are in maintainable condition. If repairs are necessary upon initial inspection or initial seasonal start-up, repair charges will be submitted for approval. Should these charges be declined, those non-maintainable items will be eliminated from coverage under this Agreement and the price adjusted accordingly.

15.7 In the event that the system or any equipment component thereof is altered, modified, changed or moved, this Agreement may be immediately adjusted or terminated, at Honeywell's sole option. HONEYWELL is not responsible for any damages resulting from such alterations, modifications, changes or movement.

15.8 Honeywell is not responsible for maintaining a supply of, furnishing and/or replacing lost or needed refrigerants not otherwise expressly required under this Agreement. Customer is solely responsible for the cost of material and labor of any such refrigerant not otherwise provided for under this Agreement at current market rates.

15.9 Maintenance, repairs, and replacement of Equipment parts and components are limited to restoring to proper working condition. Honeywell is not obligated to provide replacement software, equipment, components and/or parts that represent a significant betterment or capital improvement to Customer's system(s) hereunder.

15.10 Unless otherwise specified, Customer retains all responsibility for maintaining LANs, WANs, leased lines and/or other communication mediums incidental or essential to the operation of the system(s) or Equipment found included in the attached List of Covered Equipment.

15.11 Customer will promptly notify Honeywell of any malfunction in the system(s) or Equipment covered under this Agreement that comes to Customer's attention.

## **16. TERMS OF PAYMENT**

16.1 Subject to Honeywell's approval of Customer's credit, Customer will pay or cause to be paid to Honeywell the full price for the Services as specified on the first page of this Agreement. Honeywell will submit annual invoices to Customer in advance for Services to be performed during the subsequent billing period, and payment shall be due within twenty (20) days after Customer's receipt of each such invoice. Payments for Services past due more than five (5) days shall accrue interest from the due date to the date of payment at the rate of one and one-half percent (1.5%) per month, compounded monthly, or the highest legal rate then allowed. Customer will pay all attorney and/or collection fees incurred by Honeywell in collecting any past due amounts.

16.2 **Price Adjustment.** Honeywell may annually adjust the amounts charged to Customer under this Agreement, and Customer will pay to Honeywell such adjusted amounts in accordance with Section 16.1 and the other applicable provisions of this Agreement.

## **17. TERMINATION**

17.1 Customer may terminate this Agreement for cause if Honeywell defaults in the performance of any material term of this Agreement, or fails or neglects to carry forward the Services in accordance with this Agreement, after giving Honeywell written notice of its intent to terminate. If, within thirty (30) days following receipt of such notice, Honeywell fails to cure or perform its obligations, Customer may, by written notice to Honeywell, terminate this Agreement.

17.2 Honeywell may terminate this Agreement for cause (including, but not limited to, Customer's failure to make payments as agreed herein) after giving Customer written notice of its intent to terminate. If, within thirty (30) days following receipt of such notice, Customer fails to make the payments then due, or otherwise fails to cure or perform its obligations, Honeywell may, by written notice to Customer, terminate this Agreement and recover from Customer payment for Services performed and for losses sustained for materials, tools, construction equipment and machinery, including but not limited to, reasonable overhead, profit and applicable damages.

17.3 **Cancellation.** This Agreement may be canceled at Honeywell's option in the event Honeywell equipment on Customer's premises is destroyed or substantially damaged. Likewise, this Agreement may be canceled at Customer's option in the event Customer's premises are destroyed. In the event of such cancellation, neither party shall be liable for damages or subject to any penalty, except that Customer will remain liable for Services rendered to the date of cancellation.

## **18. DEFINITIONS**

18.1 "Hazardous substance" includes all of the following, whether naturally occurring or manufactured, in quantities, conditions or concentrations that have, are alleged to have, or are believed to have an adverse effect on human health, habitability of a Site, or the environment: (a) any dangerous, hazardous or toxic pollutant, contaminant, chemical, material or substance defined as hazardous or toxic or as a pollutant or contaminant under state or federal law, and (b) any petroleum product, nuclear fuel or material, carcinogen, asbestos, urea formaldehyde, foamed-in-place insulation, polychlorinated biphenyl (PCBs), and (c) any other chemical or biological material or organism, that has, is alleged to have, or is believed to have an adverse effect on human health, habitability of a Site, or the environment.

18.2 "Mold" means any type or form of fungus or biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing. This includes any related or any such conditions caused by third parties.

18.3 "Covered Equipment" means the equipment covered by the Services to be performed by Honeywell under this Agreement, and is limited to the equipment included in the respective work scope attachments.

18.4 "Services" means those services and obligations to be undertaken by Honeywell in support of, or to maintain, the Covered Equipment, as more fully detailed in the attached work scope document(s), which are incorporated herein.