



Commercial Terms of Sale

These Commercial Terms of Sale (“**Terms**”) are entered into by and between Johnson Controls, Inc. with a corporate address at 5757 N. Green Bay Ave, Milwaukee, WI 53201 USA (“**JCI**”) and Customer, as defined below, for Software and Services, and, together with each Purchase Order and Ordering Document, constitutes the entire, integrated agreement between the parties with respect to the subject matter of these Terms (“**Agreement**”). If a conflict arises between these Terms, a Purchase Order and an Ordering Document, these Terms shall prevail unless otherwise expressly agreed to by the parties. Notwithstanding the foregoing, in the event that JCI and Customer are parties to an existing, mutually executed agreement that governs the license of the Software, or purchase of the Services (“**Existing Agreement**”), the Existing Agreement shall be deemed to supersede these Terms for the specific purpose set forth therein. If Customer is accepting these Terms on behalf of another person or other legal entity, Customer represents and warrants that Customer has full authority to bind that person or legal entity to these Terms.

1.0 DEFINITIONS.

“**Confidential Information**” means any information, data, business plans, technical specifications, trade secrets or know how disclosed previously or during the Term of this Agreement by either party to the other party, either directly or indirectly, in writing, electronic means, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, plants or equipment), which is designated as “Confidential”, “Proprietary” or some similar designation. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Notwithstanding the above, Confidential Information shall also include information which due the inherent nature and the circumstances of its disclosure, a reasonable party would know is confidential or proprietary, as well as, in the case of JCI, any information posted on JCI.io (to the extent such information is not publicly accessible). Confidential Information may also include information disclosed to a disclosing party by third parties.

“**Customer**” means the person, firm or company named in the Ordering Document.

“**Customer Equipment**” means any equipment, systems or facilities owned or operated by Customer which may be used directly or indirectly in the provision of the Services.

“**Customer Material**” means any and all processes, formulas, tools, ideas, concepts, methodologies, software, know-how, business practices, trade secrets, object code, source code, documentation, information and ideas developed by Customer or its licensors, and all intellectual property rights therein.

“**Deliverables**” means those reports, analyses and/or other materials specifically identified in a Statement of Work to be provided to Customer by JCI, provided, however that Deliverables shall not mean or include any improvements, enhancements, additions, modifications or derivatives of JCI’s generally available commercial offerings or TPP.

“**Documentation**” means user manuals, training materials, descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to Software or Services offered by JCI, whether distributed in print, electronic, CD-ROM or video format.

“**Effective Date**” means the date these Terms are electronically accepted, click-accepted or, if signed in hard copy by Customer, the date of last signature, or in the absence of any of the forgoing, these Terms shall be effective from the date an order is placed by Customer in response to an Ordering Document.

“**JCI Materials**” means any and all processes, formulas, tools, ideas, concepts, methodologies, software, know-how, business practices, trade secrets, object code, source code, documentation, information and ideas developed by JCI or its licensors, and all intellectual property rights therein. For clarity, JCI Materials do not include Third Party Products.

“**Ordering Document**” means a JCI quote, order form, proposal and/or SOW.

“**Purchase Order**” or “**PO**” means a written or electronic order to JCI for Software or Services to be provided by JCI under these Terms of Sale.

“**Services**” means those services which may include configuration, integration, implementation, installation, and/or training (but shall not include any custom code development), specified in one or more Ordering Documents.

“**Software**” means the machine readable (object code) version of the computer programs made generally available by JCI for license to Customer, and any copies made, bug fixes for, updates to, or upgrades thereof.

“**Statement of Work**” or “**SOW**” means the Statement of Work as signed between the parties, and any subsequent written instrument substantially in the form of a Statement of Work that at a minimum: (a) is signed on behalf of both parties by their authorized representatives; (b) contains a description of the Services to be performed and the Deliverables, if any, to be delivered to Customer; (c) the amount, schedule, and method of payment; and (d) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work.

“**Third Party Products**” or “**TPP**” means hardware or software products that: (a) are sourced from third parties; (b) may be made generally available by JCI to its customers; and (c) are not marketed under any JCI trademark or tradename.

2.0 SCOPE. These Terms set forth the terms and conditions for Customer’s license of Software, purchase of Services and if applicable, Third Party Products, solely for Customer’s internal business use, and not for resale or redistribution. Customer shall not transfer or make the Software available for use by, or otherwise transfer title to any TPP it does not own to, any third party JCI objects to, and the parties shall not be bound by, any additional or different terms in any Purchase Order, portal, or other communication from Customer, and these Terms prevail over any preprinted terms and conditions contained in any order or other document. Such additional or different terms shall be deemed a material alteration of these Terms and deemed void and unenforceable unless otherwise agreed to in a signed writing by both parties. The parties expressly disclaim the application or incorporation of the Uniform Commercial Code to any Purchase Order or Ordering Document. Except as may be set forth in an Existing Agreement, Customer’s acceptance or use of the Software, Services or any TPP, or execution of an Ordering Document or placement of a Purchase Order, constitute acceptance of these Terms

3.0 THIRD PARTY PRODUCTS.

3.1 Loan. If in the course of providing Services JCI agrees to provide Customer with temporary use of, or a loan of, Third Party Product(s), Customer shall: (a) use reasonable care in the operation and use of the TPP; (b) protect the TPP from theft, damage, or misuse; and (c) be responsible for risk of loss, damage, or theft with respect to the TPP (regardless of cause) from the time of delivery to the Customer location until final return to JCI. Customer shall not move the TPP to another location without JCI’s prior written approval. Upon the expiration or completion of the SOW (whichever occurs sooner), Customer shall, at its expense, return the TPP to and into the custody of JCI, in the same condition and working order as at the



commencement of the SOW, reasonable wear and tear resulting from proper use excepted.

3.2 Purchase. If an Ordering Document or a Purchase Order lists a Third Party Product(s), title and risk of loss or damage to such TPP passes from JCI to Customer EXW JCI's facility. Notwithstanding the foregoing, title to any TPP that is software will remain with the applicable licensor(s) and Customer's use of such software is subject to the license agreement between such licensor(s) and Customer. Any returns of purchased TPP is subject to and governed by the third party supplier's return policy(ies), if any, in effect on the date of the invoice.

4.0 SERVICES.

4.1 JCI shall use commercially reasonable efforts to perform (or cause to be performed), for Customer the Services as set forth in each SOW. If JCI uses subcontractors, JCI will be solely responsible for ensuring that they comply with their respective contractual requirements. If JCI's performance of any of its obligations is prevented or delayed by Customer: (a) JCI shall without limiting its other rights or remedies under these Terms or as otherwise provided by law or equity, have the right to suspend performance of the Services; and (b) Customer shall be liable for any costs and expenses sustained or incurred by JCI therein. Without limiting the foregoing, completion times referenced in an SOW are only estimates. To the extent that certain Services are to be provided by a third party on behalf of Seller, JCI shall not be liable for any performance delays or failures caused by such third party.

4.2 A change order to any Statement of Work shall be made only in a writing executed by authorized representatives of both parties (a "Change Order"). No changes to an SOW, including performance date or any other aspect of the scope will be binding on the parties unless expressly stated in a mutually executed written Change Order, and where such changes affect JCI's time or cost of performance, an equitable adjustment in estimated shipping/performance date or price, or both, will be made. The foregoing notwithstanding, if JCI, at the request of or with written approval from Customer, performs work that is not covered by a Statement of Work or that exceeds the scope of Services defined in the applicable Statement of Work, such work shall be deemed Services provided pursuant to this Agreement for which Customer shall compensate JCI. JCI agrees to notify Customer promptly of any factor, occurrence, or event coming to its attention that may affect JCI's ability to meet the requirements of any Statement of Work issued under this Agreement, or that is likely to cause any material delay in delivery of Deliverables.

4.3 JCI shall, before the date on which the Services are to start, obtain, and at all times during the term of the applicable SOW, maintain, all necessary licenses and consents and comply with all relevant laws applicable to JCI's provision of the Services.

4.4 Customer shall obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services, to the extent that such licenses, consents and laws relate to Customer's business, premises, staff and Customer Equipment, before the date on which the Services are to start.

4.5 Customer agrees to respond promptly to any JCI request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for JCI to perform Services in accordance with the requirements of the applicable SOW, and to provide such Customer information and Customer Materials as JCI may reasonably request, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects.

4.6 Customer will ensure that all Customer Equipment is and remains in good working order and meets the specifications, if any, set forth in the applicable Statement of Work.

4.7 Where the Services are provided on a time and materials basis: (a) the fees payable for the Services shall be calculated in accordance with

JCI's hourly fee rates set forth in the applicable Statement of Work; and (b) JCI shall issue invoices to Customer monthly in arrears for its fees for time for the immediately preceding month with a detailed breakdown of any expenses for such month. Where Services are provided for a fixed price, the total fees for the Services shall be the amount stated in the applicable Statement of Work. The total price may be payable to JCI in installments, as stated in the Statement of Work. JCI shall issue invoices to Customer for the fees that are then payable, together with a detailed breakdown of any expenses incurred.

4.8 Customer agrees to reimburse JCI for all reasonable travel and out-of-pocket expenses incurred by JCI in connection with the performance of the Services, provided, that such expenses conform to Customer's standard travel and expense policy.

5.0 ORDERS.

5.1 Customer shall license Software or purchase Services (and Third Party Products, if applicable), by issuing a Purchase Order, signed, if requested by JCI, or (in the case of electronic transmission) sent by its authorized representative, indicating the specific Software, Services and if applicable Third Party Products; the JCI SKU numbers, quantity, unit price, total purchase price, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference, and identity of the end user for each Software subscription. No contingency contained on any Purchase Order shall be binding upon JCI. These Terms shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to JCI, and any such additional or conflicting terms are deemed rejected by JCI. If Customer's purchase is made through an authorized JCI reseller, then the terms regarding invoicing and payment will be as agreed upon between Customer and such reseller.

5.2 JCI shall use commercially reasonable efforts to provide order acknowledgement information within five (5) business days of receipt of a Purchase Order, however, JCI's failure to timely respond shall not be deemed acceptance of a Purchase Order. JCI has the right, in its sole discretion, to accept or reject any Purchase Order. Any change requested by the Customer to the specifications, quantities, Software, Services, TPP or any other aspect of the scope of an Ordering Document must be agreed to in writing by the parties and may result in a price and/or delivery adjustment as determined by JCI.

6.0 PRICES, TAXES AND PAYMENT.

6.1 Prices on JCI's website or in JCI Ordering Documents are based on the latest information available and may be subject to change without notice. Unless otherwise extended in writing, all prices listed in an Ordering Document will be deemed to expire and become invalid upon the expiration date listed in the applicable Ordering Document, provided however, JCI reserves the right to update its Ordering Document in the event of a material exchange rate fluctuation, adjustments in TPP or other third party components, tariff or duties increases, importation cost increases, or supplier price increases. In such event, JCI will provide an updated Ordering Document and will not provide the affected Software, Services or TPP until a Purchase Order with the correct price is received from Customer. Any mathematical, stenographic, technical, or clerical errors are not binding and JCI reserves the right to cancel Ordering Documents arising from such errors.

6.2 All prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon these Terms. Customer shall pay any taxes related to Software, Services and TPP provided pursuant to these Terms (except for taxes based on JCI's net income) or shall present an exemption certificate acceptable to all relevant taxing authorities. If any applicable law requires Customer to withhold amounts from any payments to JCI hereunder: (a) Customer shall effect such withholding, remit



such amounts to the appropriate taxing authorities and promptly furnish JCI with tax receipts evidencing the payments of such amounts; and (b) the sum payable by Customer upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, JCI receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount JCI would have received and retained in the absence of such required deduction or withholding. Sales tax for software downloads is based on Customer's "Bill To" address. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.

6.3 Customer agrees to pay the amounts set forth on Ordering Documents and invoices within thirty (30) days from invoice date, with interest accruing after the due date at the lesser of 1.5% per month or the highest lawful rate, unless otherwise agreed to in writing by the parties, without any right to offset, counterclaim, holdback or deduction. JCI retains a security interest in TPP until payment in full is received. JCI may invoice parts of an Ordering Document separately or together in one invoice. Customer must provide notice of any payment dispute within ten (10) days of the date of the invoice or Customer waives any right to dispute such invoice; however, any such dispute shall not delay timely payment to JCI. Any invoices issued by JCI are deemed to include any special terms identified on the applicable Ordering Document as if fully incorporated within the invoice. JCI reserves the right to require guarantees, security or payment in advance from any Customer. In the event Customer fails to pay the total purchase price within the time indicated on the face of the invoice, the entire outstanding balance due to JCI on all invoices shall be accelerated and become due in full immediately and the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts commencing from the due date of the invoice until paid. JCI shall also be entitled, in addition to all other remedies available at law or in equity, to recover reasonable attorneys' fees and/or other expenses in collecting the purchase price or otherwise enforcing or successfully defending these Terms. JCI may set off any amount due from Customer to JCI from any amounts due to Customer.

6.4 Customer agrees to give JCI at least seven (7) business days' notice if its financial position changes or it becomes a credit risk, intends to make an assignment for the benefit of creditors, file for relief under the U.S. Bankruptcy Code, or seek the appointment of a receiver. In which case, in addition to any other remedies available, all amounts due to JCI shall be accelerated and become immediately due and payable.

7.0 SHIPPING AND DELIVERY.

7.1 Unless otherwise agreed to in writing, all Software shall be delivered electronically. Shipping charges, if any, shall be the responsibility of Customer, and include all applicable freight, shipping, insurance, and handling charges unless otherwise agreed to by the parties. Title to Software remains with JCI and risk of loss passes to Customer upon delivery. Software is deemed accepted by Customer upon delivery of a license key. Shipping and other applicable performance dates are estimated on the basis of all information, drawings, responsibilities and approvals to be furnished by Customer, and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond JCI's reasonable control.

7.2 JCI shall use commercially reasonable efforts to deliver all Deliverables to Customer in accordance with the schedule set forth in the Statement of Work. Acceptance criteria, if applicable, will be as set forth in the Statement of Work. Except as may be otherwise agreed by JCI in a subsequent Statement of Work, JCI is not responsible for the obsolescence of any Deliverable that may result from changes in Customer's requirements or future versions of JCI software.

7.3 Delivery or performance dates mentioned in any Ordering Document, SOW or elsewhere are approximate only and not of any contractual effect, and time for delivery shall not be made of the essence

by notice. Shipping dates for TPP are approximate and subject to the TPP supplier's then current lead times. JCI shall not be under any liability to Customer in respect of any delay in delivery howsoever arising. In the event Customer defers a completion, milestone or performance date in a SOW, Customer will reimburse JCI for any costs and expenses incurred by JCI for such delay.

8.0 PROPRIETARY RIGHTS.

8.1 Customer Material. As between Customer and JCI, Customer owns all right, title, and interest in and to all Customer Materials and other items provided by Customer to JCI under these Terms. Customer agrees to provide Customer Material to JCI solely to the extent necessary for JCI to perform the Services under the applicable Ordering Document. JCI has no right to Customer Material, except as strictly necessary for the performance of the Services. Customer grants to JCI a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license, during the term of any applicable SOW, to use Customer's proprietary information to perform the Services and provide the Deliverables under these Terms.

8.2 JCI Material. As between Customer and JCI, JCI owns all right, title, and interest in and to all JCI Materials and Deliverables. JCI grants Customer a non-exclusive, non-transferable royalty-free license to use the Deliverables solely in connection with: (a) if Customer has not yet licensed JCI software, its evaluation, integration and suitability of JCI software with Customer Equipment; or (b) its licensed use of JCI software; for its own internal purposes (and not for use, benefit, distribution or transfer to third parties), effective upon receipt of the Deliverables and payment of all applicable fees. JCI shall own and retain all right, title and interest in and to the Deliverables and derivative works thereof, including but not limited to all intellectual property rights therein. For clarity, the Deliverables shall not include any Software. Customer shall keep the Deliverables free and clear of all claims, liens and encumbrances and agrees not to, directly or indirectly, challenge the right, title and interest of JCI in and to the Deliverables or register, apply for registration or attempt to acquire any legal protection for any of the Deliverables. The Deliverables shall under no circumstances be deemed to be "joint works of authorship," "works made for hire," or any other designation tending to imply that Customer has or retains ownership or authorship rights thereto. To the extent that any such rights may vest with Customer by operation of law or for any other reason, Customer hereby perpetually and irrevocably assigns all such rights to JCI. During the Term and at any other time thereafter, at JCI's request and expense, Customer shall execute all documents and perform all acts that JCI may reasonably require in order to protect and perfect JCI's rights in the Deliverables. Customer's interest in and obligations with respect to TPP or any other programming, materials, or data to be obtained from third-party vendors, whether or not obtained with the assistance of JCI, shall be determined in accordance with the agreements and policies of such vendors. Customer may not exercise any right, title and interest in and to the Services, JCI Materials, Deliverables or any related Intellectual Property Rights beyond those listed herein. For the avoidance of doubt, JCI reserves all other rights, title, and interest not expressly granted to Customer herein. There are no implied licenses.

8.3 Software License. In the absence of an Existing Agreement, if the PO is for Software for: (a) Customer's internal evaluation and trial use, the JCI Software Evaluation End User License Agreement at <https://www.foghorn.io/EVALAGMT> shall apply; or (b) production use, the JCI End User License Agreement at <https://www.FogHorn.io/EULA> shall apply. Customer acknowledges having read, and agrees to be bound by, the foregoing applicable terms in their entirety. Customer shall notify JCI promptly of any breach or suspected breach of the JCI Software license and further agrees that it will, at JCI's request, assist JCI in efforts to preserve JCI's or its supplier's intellectual property rights including pursuing an action against any breaching third parties.

9.0 LIMITED WARRANTIES.



9.1 Mutual. Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority to enter into this Agreement, and to perform its obligations hereunder; (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

9.2 By Customer. Customer warrants that it owns all right, title, and interest in and to, or has full and sufficient right and authority to use in the manner contemplated by this Agreement, the Customer Materials, Customer Equipment and any other information, content or data furnished by Customer to JCI.

9.3 By JCI. JCI hereby warrants: (a) it has all requisite right and authority to enter into this Agreement; (b) the Services will be performed in a good and workmanlike manner; and (c) the Services will be performed, and the Deliverables will conform, in material accordance with the applicable Statement of Work. Customer's sole and exclusive remedy, and JCI's sole and exclusive liability, under the limited warranty of subsections (b) and (c) above shall be for JCI, at its own expense, to use commercially reasonable efforts to remedy any failure of a Deliverable to materially perform as specified in the Statement of Work. The limited warranties under subsections (c) and (d) above are available only if Customer provides JCI with written notice that the warranty has been violated within sixty (60) days of delivery of the applicable Deliverable and shall not apply to any defect in the Deliverables caused by: (x) operation or use of the Deliverables in a manner not in accordance with the instructions of JCI; (y) modifications to the Deliverables not made by JCI; or (z) third party hardware or software.

9.4 TPP. Customer acknowledges that JCI is not the manufacturer or publisher of Third Party Products. TPP warranties, if any, are provided by the manufacturer or publisher ("**Vendor**") of the Product. JCI EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THIRD PARTY PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THIRD PARTY PRODUCTS ARE PROVIDED BY JCI "AS IS". SHOULD ANY TPP PROVE DEFECTIVE IN ANY RESPECT, JCI ASSUMES NO OBLIGATION, COST OR LIABILITY FOR SERVICING, REPAIR, CORRECTION OR TECHNICAL SUPPORT. CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF TPP. Customer acknowledges JCI makes available TPP as a convenience, and that Customer is solely responsible for determining the appropriateness of using TPP. To the extent authorized, JCI will pass through to Customer any transferable TPP warranties, indemnities, and remedies provided to JCI by the Vendor. Customer's sole and exclusive remedy relating to TPP will be the remedy, if any, afforded by the applicable Vendor of such TPP.

9.5 Software. Software is warranted solely in accordance with the license agreement governing Customer's use of the Software.

9.6 DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 9.0, JCI HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION: (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION; OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE

INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD.

10.0 CONFIDENTIALITY.

10.1 Non-Use and Non-Disclosure. Each party agrees not to use any Confidential Information of the other party for any purpose except to fulfill its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to any third parties, except to its employees, consultants and representatives who have a need to have the information in order to perform this Agreement, and who have signed (or are otherwise legally bound by) an agreement that is at least as protective as the provisions hereof, prior to any disclosure of Confidential Information to such persons, and which would protect the Confidential Information disclosed under this Agreement. The receiving party shall be responsible for the actions and inactions of its employees, consultants and representatives with respect to Confidential Information disclosed. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Confidential Information may not be used for any purpose or in any manner that would constitute a violation of any laws or regulations, including without limitation, the export control laws of the United States. Any reports or other documents, in whatever form or medium, to the extent derived from or containing Confidential Information, shall be governed by the same terms and conditions of this Agreement respecting confidentiality and use as is the Confidential Information itself.

10.2 Maintenance of Confidentiality. Each party shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own confidential information of a similar nature, but in no case less than reasonable care. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original. A party receiving Confidential Information shall promptly notify the party disclosing such Confidential Information of any use or disclosure of such Confidential Information in violation of this Agreement of which the receiving party becomes aware.

10.3 Exceptions. The obligations under sections 10.1 and 10.2 above do not apply to information that the receiving party can show: (a) was in the receiving party's possession without restriction prior to the date of the disclosure by the disclosing party; (b) was obtained by the receiving party from a third party who is not known by the receiving party to be under any obligation of confidentiality with respect to such information; (c) is now or becomes generally available to the trade, or to the public, based on existing records or through sources other than the receiving party; or (d) was developed at any time by the receiving party independent of information or materials disclosed by the disclosing party to the receiving party.

10.4 Compelled Disclosure. If either party or its respective directors, officers, employees, advisors, affiliates, consultants or agents is required by applicable law, regulation or legal process to disclose any of the Confidential Information of the other party, the party required to make such disclosure shall, if and to the extent legally permissible, give prompt notice so that the other party may seek a protective order, confidential treatment or other appropriate relief, and the party required to disclose the Confidential Information shall provide the other party reasonable assistance (at the other party's expense) in connection with any such action. To the extent such a protective order or confidential treatment is not obtained, the party required to make such disclosure may disclose only that portion of that Confidential Information that such party's counsel advises is legally required to be disclosed. Any disclosure permitted by the foregoing sentence shall not be deemed a breach of this Agreement.



10.5 Neither party shall disclose the terms and conditions of these Terms without the prior written consent of the other party. Any press release or publication regarding these Terms is subject to both the prior review and the written approval of both parties.

11.0 INDEMNIFICATION. Each party (an “**Indemnifying Party**”) agrees at its own expense to indemnify, hold harmless and defend or at its option to settle any claim, suit, action, or proceeding (each, an “**Action**”) brought against the other party (an “**Indemnified Party**”) in connection with or arising out of bodily injury or death or physical property damage directly caused by the gross negligence or willful misconduct of the Indemnifying Party, its officers, employees or agents, and to pay any and all costs, liabilities, losses and expenses (including reasonable attorneys’ fees), provided that the Indemnified Party: (a) notifies the Indemnifying Party promptly in writing of such Action; (b) gives the Indemnifying Party sole control of the defense and settlement of such Action; and (c) gives the Indemnifying Party all reasonable information and assistance requested by the Indemnifying Party.

12.0 TERM AND TERMINATION.

12.1 These Terms shall commence on the Effective Date and continue thereafter for a period of one year, unless sooner terminated, as set forth below. These Terms of Sale shall be automatically renewed thereafter, for successive one (1) year periods, unless at least forty-five (45) days prior to the date of any such renewal, either party shall have given written notice to the other of its intention that these Terms of Sale not be renewed. These Terms shall automatically terminate at the end of the annual period during which such notice is given.

12.2 Either party may terminate these Terms at any time by providing the other party with at least forty-five (45) days’ prior written notice of termination.

12.3 A party may terminate these Terms immediately by written notice if: (a) the other party ceases or threatens to cease to carry on business as a going concern; (b) the other party becomes or is reasonably likely to become subject to voluntary or involuntary proceedings in bankruptcy or liquidation; (c) a receiver or similar officer is appointed with respect to the whole or a substantial part of the other party’s assets; or (d) an event similar to any of the foregoing occurs under any applicable law.

12.4 If a party breaches any of the provisions of these Terms, the non-breaching party may terminate these Terms as follows: (a) immediately upon providing written notice to the breaching party if the breach is not capable of being cured; and (b) thirty (30) days after providing written notice to the breaching party if the breaching party fails to cure such breach within such thirty (30) day period.

12.5 JCI may terminate these Terms immediately upon written notice in the event that Customer is in breach of Sections 8.3 (Software License), Section 10 (Confidentiality), or Section 14 (Export, Re-Export, Transfer & Use Controls), or Section 15 (Compliance with Laws).

12.6 Upon termination or expiration of these Terms: (a) JCI reserves the right to cease all further delivery of Software or Services; (b) all outstanding invoices immediately become due and payable by certified or cashier’s check; and (c) all rights and licenses of Customer under these Terms shall terminate, subject to the terms of the last sentence of this paragraph. If JCI agrees to complete delivery of any further Software, Services and/or TPP due against any existing Purchase Orders then Customer shall pay for such Software, Services and/or TPP in advance by certified or cashier’s check. Except for a termination of these Terms resulting from Customer’s breach of Sections 8.3 (Software License), Section 10 (Confidentiality), or Section 14 (Export, Re-Export, Transfer & Use Controls), or Section 15 (Compliance with Laws), upon termination or expiration of these Terms, Customer may continue to use, in accordance with these Terms, Software provided to it by JCI prior to the date of termination or expiration.

12.7 Upon termination or expiration of these Terms, Customer shall

immediately return to JCI all Confidential Information (including all copies thereof) then in Customer’s possession, custody or control; provided, that except for a termination resulting from Customer’s breach of Sections 8.3 (Software License), Section 10 (Confidentiality), or Section 14 (Export, Re-Export, Transfer & Use Controls), or Section 15 (Compliance with Laws), Customer may retain a sufficient amount of such Confidential Information and material to operate its installed base of Software.

13.0 RECORDS. Customer shall keep full, true, and accurate records and accounts, in accordance with generally accepted accounting principles, of each Service and Software license purchased, and/or deployed, including information regarding Software usage and export or transfer. Customer shall make such records available for review by or on behalf of JCI upon fifteen (15) days’ prior written notice, during regular business hours, at Customer’s principal place of business and shall provide JCI with reasonable assistance in order to review and secure copies of such records. In the event such review discloses non-compliance with these Terms, Customer shall promptly pay to JCI the appropriate license fees, plus the reasonable cost of conducting the review.

14.0 EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS. The Software, Services, JCI Material and TPP may be subject to U.S. and local export control laws and regulations. The parties shall comply with such laws and regulations governing use, export, re-export and transfer of Software, Services, JCI Material, TPP and technology and shall obtain all required U.S. and local authorizations, permits or licenses.

15.0 COMPLIANCE WITH LAWS. Each party shall comply with all applicable laws, statutes, rules and regulations, including but not limited to, all applicable export and import, anti-bribery and anti-corruption, anti-money laundering, anti-human trafficking and slavery, environmental protection, data privacy, trade sanctions, and health and safety laws and regulations. To the extent permitted under applicable law, Customer will indemnify and hold JCI harmless for any damages arising from its violation of any such laws, statutes, rules, and regulations. Customer will not use, transfer or access any Software, Services or TPP for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license. If JCI receives notice that Customer is or becomes identified as a sanctioned or restricted party under applicable law, JCI will not be obligated to perform any of its obligations under these Terms or an Ordering Document if such performance would violate the applicable sanctions or restrictions.

16.0 LIMITATION AND EXCLUSION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT SHALL JCI’S CUMULATIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, THE SOFTWARE, ANY SERVICES OR CUSTOMER’S USE OF THE DELIVERABLES EXCEED THE AMOUNT RECEIVED BY JCI FROM CUSTOMER PURSUANT TO THE APPLICABLE ORDERING DOCUMENT IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE CAUSE OF ACTION AROSE. JCI SHALL HAVE NO LIABILITY FOR USE, OPERATION OR PERFORMANCE OF ANY TPP. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE CONSIDERATION EXCHANGED HEREUNDER IS BASED IN PART UPON THE ABOVE LIMITATIONS, AND FURTHER AGREE THAT SUCH LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO EITHER PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11.0 OF THIS AGREEMENT OR



BREACH OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIAL INFORMATION.

17.0 GENERAL.

17.1 Independent Contractor. Neither party shall, for any purpose, be deemed to be an agent of the other party and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever. JCI will retain the sole and exclusive right to control or direct the manner in which the Services are performed and may subcontract or assign any of its rights or obligations under this Agreement.

17.2 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address first set forth above, or as subsequently modified by written notice.

17.3 Force Majeure. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.

17.4 Waiver. Any waiver of the provisions of this Agreement or any agreement related to this Agreement or of a party's rights or remedies under this Agreement or an agreement related to this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or agreement related to this Agreement, or its rights or remedies at any time will not be construed nor deemed to be a waiver of such party's rights under this Agreement or any agreement related to this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or any agreement related to this Agreement or prejudice such party's right to take subsequent action.

17.5 Applicable Law and Jurisdiction. This agreement will be governed by and interpreted in accordance with the laws of the State of California, USA without giving effect to principles of conflict of laws, and Customer hereby consents to the exclusive jurisdiction and venue of the state and federal courts in the County of San Francisco. This Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods. In the event this Agreement is translated into any language other than English, the original English version shall control and prevail on any question of interpretation or otherwise.

17.6 Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties will endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law. The headings in this Agreement are inserted merely for the purpose of convenience and do not affect the meaning or interpretation of this Agreement.

17.7 Relationship of Parties. This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or

implementation of this Agreement. Each party hereto is an independent contractor. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

17.8 Non-Assignment. Customer may not assign its rights or delegate any obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of JCI. Any attempted assignment or delegation without JCI's written consent will be void. The rights and liabilities of the parties under these Terms will bind and inure to the benefit of the parties' respective successors and permitted assigns.

17.9 Equitable Relief. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement will cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation and the non-breaching party is therefore entitled to obtain prompt injunctive relief to enjoin the breaching party from any and all acts in violation of those provisions without the necessity of posting a bond or other security. Such injunctive relief remedy shall be cumulative and not exclusive and the non-breaching party is entitled to seek any other relief available to such party at law or in equity.

17.10 Non-exclusivity. The parties acknowledge and agree that the arrangements set forth under these Terms are non-exclusive and that, subject to the provisions regarding Confidential Information and other restrictions herein, each party shall be free at any time during the Term and thereafter to engage and enter into similar arrangements with third parties.

17.11 No Third Party Beneficiaries. The parties acknowledge that the covenants set forth in these Terms are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of these Terms.

17.12 Non-solicitation. During the term and for a period of one (1) year after expiration or any earlier termination, Customer may not directly or indirectly solicit the employment of any employee, independent contractor or consultant of JCI or induce any employee, independent contractor or consultant of JCI to terminate or breach an employment, contractual or other relationship with JCI. Any employment offered as a result of a JCI employee, independent contractor or consultant responding to publicly announced or advertised job openings shall not be subject to this provision.

17.13 Press Releases. A party will not use the other party's name, marks or logo in any advertisements, news releases or releases to any professional or trade publications without, with the other party's prior approval, which shall not be unreasonably withheld. Notwithstanding the foregoing, Customer acknowledges and agrees that JCI may: (a) use Customer's name and logo on JCI's website to identify Customer as a customer; and (b) use the Customer's name in JCI's sales, financing and investor materials.

17.14 Entire Agreement. These Terms, including all attachments, which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written communications between the parties relating in any way to the subject matter hereof. This Agreement is intended by the parties to be a complete and wholly integrated expression of their understanding and agreement. No terms or conditions of any Customer purchase order, acknowledgement or other business form that Customer may use will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of JCI to object to such terms, provisions or conditions. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein.