

1. PROPOSAL AND PURCHASE ORDER

- 1.1. *Proposal Validity.* Unless otherwise stated, all Honeywell proposals are valid and may be accepted by Buyer for 60 days from the date proposal is issued by Honeywell. Buyer's attempted acceptance of the proposal after this period does not create any obligation on Honeywell unless subsequently accepted by Honeywell in writing. "**Order**" means a Buyer purchase order or other contract form ("**Purchase Order**") accepted by Honeywell in writing.
- 1.2. *Terms and Conditions.* All Honeywell proposals are conditioned upon Buyer acceptance of these terms and conditions (including all Exhibits, this "**Agreement**"), unless otherwise expressly agreed in writing by Honeywell and Buyer. Any Buyer terms and conditions on the Purchase Order are deemed excluded. Honeywell acknowledgment of receipt of a Purchase Order does not constitute acceptance by Honeywell. Honeywell acceptance of a Purchase Order is subject exclusively to Buyer's acceptance of this Agreement.
- 1.3. *Purchase Order Requirements.* Purchase Orders must be in writing and specify: (a) Purchase Order number; (b) Honeywell proposal number; and (c) that the Purchase Order is governed exclusively by the terms and conditions of the Honeywell proposal and this Agreement.
- 1.4. *Definitions.* "**Honeywell Group**" means Honeywell Limited ("**Honeywell**"), Honeywell Affiliates, subcontractors or vendors of any tier, and shareholders, officers, directors, employees, temporary workers (including agency personnel), agents, joint venturers, consultants and insurers of foregoing. "**Affiliate**" means any legal entity which controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to "control" another if it owns directly or indirectly 50% or more of the voting interest and has the ability to elect a majority of directors or managing authority or otherwise direct the affairs or management of other entity. "**Buyer**" means Honeywell's customer, whether a buyer, consignee, lessee or licensee. "**Parties**" mean Honeywell and Buyer. "**Work**" means Products, Software and Services supplied in the Order.

2. DELIVERY

Delivery terms of the tangible items, including hardware, parts and components except Software, provided by Honeywell in the Order ("**Product**") are, unless otherwise agreed to in writing by the Parties F.C.A. (Free Carrier) (Incoterms 2000), Honeywell facility in Toronto, Ontario. Honeywell will schedule delivery in accordance with its standard lead time unless the Order states a later delivery date. If Honeywell prepays transportation charges, Buyer must reimburse Honeywell upon receipt of an invoice for those charges. Title to Product will pass to Buyer and delivery will occur when Honeywell places Product at the disposal of Buyer at Honeywell facility in Toronto. Honeywell reserves the right to quote additional charges for any special routing, packing, labelling, storage, handling or insurance requested by Buyer.

3. PAYMENT

Payment is due 30 calendar days from date of invoice. Payment must be made in Canadian currency unless agreed otherwise in writing. If Buyer is delinquent in payment to Honeywell, Honeywell may immediately stop shipment of Product or Software and provision of services under the Order ("**Services**"), and future shipments and Services until all delinquent amounts and late interest are paid. Additionally, Honeywell may at its option: (a) repossess Products or Software for which payment has not been made; (b) charge interest on delinquent amounts at the lower of 1.5% per month or partial month during which amount was due, or the highest rate allowed by law, from due date to payment date; (c) recover all costs of collection, including without limitation reasonable attorneys' fees; or (d) combine any of the above rights and remedies under applicable law. These remedies are in addition to those available at law or equity. Honeywell may re-evaluate Buyer's credit standing at all times, and modify or withdraw credit. Buyer may not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from any member of Honeywell Group.

4. TAXES

- 4.1. *Exclusion.* Honeywell pricing excludes all taxes, duties and charges, regardless of when imposed, levied, collected, withheld or assessed. If Honeywell must impose, levy, collect, withhold or assess any taxes, duties or charges on any transaction as to the Order, then in addition to the purchase price, Honeywell will invoice Buyer for those taxes, duties, and charges unless at the time Buyer places the Purchase Order Buyer furnishes Honeywell with an exemption certificate or other documentation sufficient to verify exemption from the taxes, duties or charges.
- 4.2. *Withholding.* If any taxes must be withheld by Buyer from amounts paid or payable to Honeywell, (a) the amount Honeywell is entitled to receive net

of taxes withheld will equal the amount Honeywell would have received had no taxes been withheld, (b) Buyer will withhold the required amount of taxes and pay those taxes on behalf of Honeywell to the relevant taxing authority in accordance with applicable law, and (c) Buyer will forward to Honeywell within 60 days of payment proof of the withholding sufficient to establish the withholding amount and recipient. In no event is Honeywell liable for taxes paid or payable by Buyer.

5. FORCE MAJEURE AND BUYER CAUSED DELAY

- 5.1. *Force Majeure.* Except for payment obligations, neither Party will be liable to the other for any failure to meet its obligations due to any Force Majeure event. If the inability to perform continues for longer than 90 days, either Party may terminate the Order and this Agreement by providing written notice to the other Party and Buyer will pay Honeywell for Products and Software delivered and Services performed prior to termination. Force Majeure is an event beyond the reasonable control of the non-performing Party and may include but is not limited to: (a) delays or refusals to grant an export license or the suspension or revocation thereof, (b) any other acts of any government that would limit a Party's ability to perform the Order or this Agreement, (c) fires, earthquakes, floods, tropical storms, hurricanes, tornadoes, severe weather conditions, or any other acts of God, (d) quarantines or regional medical crises, (e) labor strikes or lockouts, (f) riots, strife, insurrection, civil disobedience, landowner disturbances, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property), and (g) shortages or inability to obtain materials or components, and. If a Force Majeure event causes a delay, then the date of performance will be extended by the period of time that the non-performing Party is actually delayed or for any other period as the Parties may agree in writing.
- 5.2. *Buyer Delays.* Honeywell is not liable for any project delays or increased costs caused by delays in obtaining products, services or software from Buyer-designated supplier or Buyer's failure to timely provide information required for the Work. If Buyer-caused delay occurs, and the delay is not Force Majeure related, then the price and other affected terms will be adjusted to reflect increased cost, delay and other adverse impact suffered by Honeywell. If delivery of Products, Services, Software manuals, or other information necessary for performance of the Work is delayed due to conduct of Buyer or Buyer-designated supplier, then Honeywell may store Products and Software at Buyer risk and expense and may charge Buyer for the delay.

6. ACCEPTANCE

Unless other acceptance criteria have been agreed in the Order, Buyer must inspect Products within 30 days of delivery. If Buyer does not provide Honeywell with a written notice of rejection explaining the basis for rejection within the 30-day period, then the Products are deemed accepted. Buyer will give Honeywell a reasonable opportunity to repair or replace properly rejected Products. Honeywell assumes shipping costs in an amount not to exceed normal surface shipping charges to the Honeywell-designated facility for the return of properly rejected Products. Following initial delivery, the shipping Party will bear the risk of loss or damage to Products in transit. If Honeywell reasonably determines that rejection was improper, Buyer must reimburse Honeywell for all expenses incurred by Honeywell as a result.

7. SOFTWARE LICENSE

The definitions, grant of license to Software, and terms and conditions of grant including warranty, are in Exhibit 1 to this Agreement. If there is any conflict between the terms in the body of this Agreement and Exhibit 1, the Exhibit 1 terms prevail.

8. WARRANTIES

- 8.1. *Product.* Honeywell warrants that at time of shipment to Buyer, Products will materially comply with applicable Honeywell specifications and will be free from material defects in workmanship and material. This warranty runs to Buyer, its successors, and permitted assigns, and customers. This warranty is valid for 12 months from date of shipment.
- a. Buyer must notify Honeywell in writing during the warranty period of: (1) any failure of a Product to materially comply with the applicable Honeywell specifications and (2) any material defects in workmanship or material of the Product (collectively "**Nonconformance**"). Normal wear and tear, consumable items and the need for regular overhaul and periodic maintenance do not constitute Nonconformance. Buyer must return the Product to Honeywell's designated facility within 30 calendar days of discovery of the Nonconformance.

- b. Honeywell's obligation and Buyer's sole remedy under this warranty with respect to any Nonconformance is repair or replacement of the Product, at the option of Honeywell. All Products repaired or replaced are warranted only for the remainder of the original warranty period.
- c. Honeywell assumes round trip shipping costs for Nonconforming Products up to normal surface shipping charges to and from Honeywell's nearest warranty repair facility for Products. The shipping Party will bear the risk of loss or damage to Products in transit. If Honeywell reasonably determines after analysis that a Nonconformance does not exist, then Buyer must pay all expenses incurred by Honeywell related to the improper return including, without limitation, analysis and shipping charges.
- 8.2 *Services.* Honeywell warrants that Services will comply with the requirements stated in the Order. This warranty is valid for 30 days from date Services are performed. Honeywell's obligation and Buyer's sole remedy under this warranty is to correct or re-perform defective Services, at Honeywell election, if Buyer notifies Honeywell of defective Services within the warranty period. All Services corrected or re-performed are warranted only for remainder of the original warranty period.
- 8.3 *Exclusion from Coverage.* Honeywell is not liable under these warranties if the Product or Service has been exposed or subjected to any:
- maintenance, repair, installation, handling, packaging, transportation, storage, operation or use which is improper or otherwise not in compliance with Honeywell's instructions;
 - alteration, modification or repair by a third party not specifically authorized by Honeywell;
 - accident, contamination, foreign object damage, abuse, or negligence after shipment or performance;
 - damage caused by failure of any item or service not supplied by Honeywell as part of the Order; or
 - use of counterfeit or replacement parts that are neither manufactured nor approved by Honeywell for use in Honeywell-manufactured Products.
- 8.4 *Records.* Honeywell has no obligation under these warranties unless Buyer maintains records that accurately document warranty coverage requirements for the Product or Services. Upon Honeywell request, Buyer must give Honeywell access to these records for substantiating warranty claims.
- 8.5 *EXCLUSIVITY.* THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. NO WARRANTY EXTENSION WILL BE BINDING ON HONEYWELL UNLESS SIGNED BY AUTHORIZED HONEYWELL REPRESENTATIVE.
- 9 PATENT AND COPYRIGHT INDEMNITY**
- 9.1 *Honeywell Indemnity.* Honeywell must defend any suit against Buyer arising out of any actual or alleged infringement of a valid United States or Canadian patent or copyright, to the extent the alleged infringement is based on the Product or Licensed Software as delivered by Honeywell, and indemnify Buyer for any final judgment against Buyer resulting from the suit if Buyer notifies Honeywell when Buyer is apprised of the third-party claim, and gives complete authority, information and assistance (at Honeywell expense) for disposition of the claim. Honeywell will not be responsible for any compromise or settlement made without Honeywell written consent.
- 9.2 *Exclusions.* Honeywell has no liability as to: (a) Products or Provided Software supplied pursuant to Buyer designs, customizations, drawings or manufacturing specifications; (b) Products or Provided Software used other than for their ordinary purpose; (c) infringement claims resulting from combining any Product or Provided Software with any third-party supplied product or software; (d) use of other than latest version of Licensed Software released by Honeywell; or (e) any modification of Product or Provided Software other than a modification by Honeywell.
- 9.3 *Buyer Indemnity.* Buyer must indemnify and defend Honeywell Group to the same extent and subject to the same restrictions set forth in Honeywell's obligations to Buyer in this Patent and Copyright Indemnity clause for any suit against Honeywell Group based on infringement claims resulting from the events or circumstances described in the Exclusions clause above.

- 9.4 *Buyer Attorneys Fees.* Because Honeywell has exclusive control of resolving infringement claims, Honeywell will not be liable for attorney fees or costs incurred by Buyer or its Affiliates.
- 9.5 *Remedies.* If an infringement claim is made or if Honeywell believes one likely, Honeywell may at its expense, (a) procure for Buyer the right to continue using the Product or Licensed Software; (b) replace or modify the Product or Licensed Software so that it becomes non-infringing; or (c) accept return of the Product or Provided Software and terminate Buyer right to use infringing Product or terminate the applicable Buyer Software license and credit Buyer for the purchase price paid for the Product or Licensed Software, less a reasonable depreciation for use, damage and obsolescence. Further, Honeywell may cease shipping infringing Product or Provided Software without breaching the Order.
- 9.6 *Limitation.* Any liability of Honeywell under this Patent and Copyright Indemnity clause is subject to the Limitation of Liability clause.
- 9.7 *DISCLAIMER.* THIS PATENT AND COPYRIGHT INDEMNITY CLAUSE STATES THE PARTIES' ENTIRE LIABILITY, SOLE RECOURSE AND THEIR EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT. ALL OTHER WARRANTIES AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS OR IMPLIED ARE DISCLAIMED.

10 LIMITATION OF LIABILITY

IN NO EVENT WILL HONEYWELL GROUP BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, STATUTORY OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES OR USE, EVEN IF INFORMED OF THE POSSIBILITY OF THESE DAMAGES. THE AGGREGATE LIABILITY OF HONEYWELL GROUP FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THE ORDER WILL IN NO CASE EXCEED 25% OF INITIAL ORDER PRICE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS IF LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), OPERATION OF LAW, OR OTHERWISE.

11 INVENTIONS AND INTELLECTUAL PROPERTY

Any inventions, discoveries, innovations, documents, materials, Software (including source code), information and deliverables (whether or not copyrightable or patentable) conceived or developed by any member of Honeywell Group in connection with the Work is the sole property of Honeywell and may not be copied, reproduced or otherwise used by Buyer or its Affiliates except as permitted in the Order or in writing by Honeywell. At the request and expense of Honeywell, Buyer will execute the documents and take any other steps as Honeywell deems necessary or appropriate to obtain, vest, confirm or record ownership of all right, title and interest in the foregoing in the name of Honeywell or its Affiliate, including without limitation patent, trademark and copyright ownership. Nothing in this Agreement will be construed to restrict, impair or deprive Honeywell of any of its right, title or proprietary interest in Intellectual Property, technology, know-how or products which existed prior to and independent of the performance of the Order.

12 CONFIDENTIAL AND PROPRIETARY INFORMATION AND PUBLICITY

- 12.1 *Confidentiality.* Receiving Party must hold confidential until 5 years after completion of the Work or termination of the Order, all technical information, technical data or know-how in whatever form, including without limitation: (a) documented information, machine readable or interpreted information, information contained in physical components, mask works and artwork, clearly identified as "confidential" or "proprietary"; (b) business-related information including pricing, manufacturing or marketing information; (c) terms and conditions of any proposal or agreement between the Parties or their Affiliates; (d) either Party's or its Affiliate's business policies or practices; and (e) third-party information disclosed to receiving Party (collectively, "**Confidential Information**"). Receiving Party must not disclose or use Confidential Information, except as permitted in this Agreement. Receiving Party must protect Confidential Information using the same degree of care as it uses to protect its own confidential information, but in no event less than a reasonable degree of care. Neither Party will be liable for inadvertent disclosure or use, if on discovery of the inadvertent disclosure or use, receiving Party notifies disclosing Party immediately, and endeavors to prevent further disclosure or use.

- 12.2 *Exclusions.* Receiving Party has no duty to protect information that is:
- developed by receiving Party independently of and without reference to disclosing Party's Confidential Information;
 - rightfully obtained without restriction by receiving Party from a third party who had no obligation of confidentiality, either directly or indirectly with respect to the information;
 - publicly available other than through negligence of receiving Party;
 - released without restriction by disclosing Party;
 - known to receiving Party at time of disclosure, without an existing duty to protect information; or
 - disclosed by receiving Party with prior written approval of disclosing Party.

The Receiving Party may disclose Confidential Information required to be disclosed as a matter of law, provided the Receiving Party notifies disclosing Party and, upon the disclosing Party's request, agrees to cooperate in all reasonable respects to contest the disclosure or obtain a protective order or other remedy.

- 12.3 *Disclosure to Personnel.* Receiving Party may disclose Confidential Information only to its employees and temporary workers including agency personnel) having a "need to know". Receiving Party must ensure that each employee or temporary worker is aware of this Agreement and has signed a contract making the employee or temporary worker subject to confidentiality obligations no less stringent than those imposed under this Agreement. If authorized in writing by disclosing Party, receiving Party may disclose Confidential Information to a third party if:

- receiving Party requires third party to sign a confidentiality agreement with terms and conditions no less stringent than those imposed under this Agreement; and
- the signed agreement is delivered to disclosing Party prior to disclosure of any Confidential Information; and
- receiving Party remains responsible to disclosing Party for any disclosure by the third party in violation of this Agreement or the confidentiality agreement signed by third party.

- 12.4 *Confidential Use Restriction.* Honeywell may use Confidential Information of Buyer only to perform Work for Buyer. Buyer may not use or disclose Honeywell Confidential Information for any purpose other than purchase or use of Products, Services or Software.

- 12.5 *Return of Information.* Upon written request of disclosing Party, receiving Party must return, destroy or delete from its system disclosed Confidential Information and all copies, as directed by disclosing Party; and provide a written certificate of disposition to disclosing Party.

- 12.6 *Copies.* Honeywell may make a limited number of copies of Buyer Confidential Information as necessary to perform the Work. All copies made must reproduce any restrictive legends of the original.

- 12.7 *Public Announcement.* Neither Party may issue any public announcement on subject matter of the Order without prior written approval of other Party, which approval may not be unreasonably withheld. Either Party may issue any public disclosure it believes in good faith is required by law or regulatory agency with jurisdiction over publicly-traded securities of the Party or its Affiliate.

- 12.8 *Ownership.* Each Party retains ownership of its Confidential Information and all of its copyrights, trademarks, trade secrets, patents, know-how, mask works and other Intellectual Property rights recognized in any jurisdiction worldwide, including all applications and registrations (collectively "**Proprietary Information**"). Unless otherwise stated, no right or license is granted to either Party or its customers, employees, temporary workers or agents, expressly or by implication, with respect to Proprietary Information or any patent, patent application or other proprietary right of other Party, even in the event of termination of the confidentiality and use restrictions in this Ownership clause.

13 **EXPORT COMPLIANCE**

- 13.1 *Responsibility.* Buyer is responsible for compliance with all import and export control laws and regulations. Buyer must obtain at its sole cost and expense all import and re-export approvals and licenses required for Products, Services, Software, transfers and technical data delivered and will retain documentation evidencing compliance with those laws and regulations. If Buyer designates the freight forwarder for export shipments from Canada, then Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to

comply with all applicable export requirements. Honeywell will provide Buyer's designated freight forwarder with required commodity information.

- 13.2 *Disclaimer.* Honeywell is not liable for any failure to provide Products, Services, Software, transfers or technical data as a result of government actions that impact Honeywell's ability to perform, including: (a) failure to provide or cancellation of export or re-export licenses, (b) any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after effective date of the Order, or (c) delays due to Buyer failure to follow applicable import, export, transfer, or re-export laws and regulations.

- 13.3 *Prohibited Uses.* Buyer may not sell, transfer, export or re-export any Honeywell Products, Services, Software or technical data for use in activities that involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Honeywell Products, Services or Software or technical data in any facility that engages in activities relating to weapons or missiles. In addition, Honeywell Products, Services, Software or technical data may not be used in connection with any activity involving nuclear fission or fusion, or any use or handling of any nuclear material. Honeywell may approve the uses restricted in this Export Compliance clause if Buyer, at Buyer expense, provides Honeywell with insurance coverage, indemnities, and waivers of liability, recourse and subrogation acceptable to Honeywell.

14 **CHANGE ORDERS AND PRODUCT CHANGES**

- 14.1 *Change Order.* Buyer may issue a written change order to request changes within the scope of the Order, subject to acceptance by Honeywell. Honeywell will inform Buyer if the change will cause an increase in Honeywell costs or time required to perform. The change will be effective and Honeywell may begin Work, upon signature of a change order by authorized representatives of both Parties. But Honeywell may charge Buyer for the costs of any Work for the change even if performed prior to signature of the change order. The change order must include at minimum: (a) description of each change and cost; (b) related Order number; (c) effective date; (d) Honeywell and Buyer entity name and address; (e) reference to Order section affected; (f) any revised project milestones; and (g) signature of Buyer, or agent or representative.

- 14.2 *Product Changes.* Honeywell may make changes to Products that do not alter the form, fit, or function of the Products delivered to Buyer.

15 **TERMINATION**

Either Party may terminate this Agreement and unperformed Order by giving written notice to the other Party on the following events:

- material breach of this Agreement or the Order and failure to remedy breach within 60 calendar days after receipt of written notice specifying the grounds of the breach;
- failure of other Party to make any payment required under the Order when due, and failure to remedy the breach within 3 calendar days after receipt of written notice of non-payment; or
- insolvency or suspension of other Party's operations or any petition filed or proceeding made by or against other Party under any provincial, state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for benefit of creditors or other similar proceedings.

16 **SERVICES PERFORMED AT BUYER SITE**

- 16.1 *Work on Live Systems.* If performance of an Order requires that Honeywell or subcontractor personnel perform Services on Buyer equipment, products, software or systems while on-line or operating in a live process, Buyer must defend, indemnify and hold Honeywell Group harmless from any costs, damages or liabilities (including attorneys' fees and related costs) arising from any injury or death to persons or damage to or loss of property (of Buyer or third party) arising from the Services performed, including without limitation hot cutover work as defined in the proposal or Order.

- 16.2 *Employee Access.* If Services are to be performed at a Buyer site located outside Canada, Buyer will assist Honeywell in obtaining all applicable permits, visas or other governmental approvals necessary for Honeywell to perform the Services.

- 16.3 *Plant and Facility Drawings.* Prior to starting Services, Buyer must supply Honeywell with current drawings of the facility or plant where Honeywell will perform any Services at Buyer site. Buyer warrants that all drawings will accurately reflect the current design, layout and equipment in the facility or plant, including any pending changes, at the time the Services are performed.

16.4 *Hazard-Free Environment.* Buyer will provide a hazard-free environment for performance of the Services. Honeywell may not perform Services at Buyer site if Honeywell determines that performance of Services may compromise the safety of Honeywell or subcontractor personnel. Injury or death to persons or damage to or loss of property due to hazardous environmental conditions is the sole responsibility of Buyer. Buyer must defend, indemnify and hold Honeywell Group harmless from any liabilities (including attorneys' fees and related costs) arising from hazardous environmental conditions. These conditions include without limitation, presence of hazardous substances, mold, asbestos, lead, mercury, corrosive atmospheres, electrical spikes or noise or severe ambient temperature changes at Buyer site or immediate vicinity. If Honeywell discovers any unsafe conditions at Buyer site, Honeywell may suspend Services until corrected by Buyer. Buyer must investigate and correct any unsafe conditions reported by Honeywell. All costs incurred by Honeywell as a result of any suspension must be paid by Buyer.

17 SEVERABILITY

If any provision of this Agreement or the Order is determined to be illegal, invalid, or unenforceable, the validity of the remaining provisions will not be affected and, in lieu of an illegal, invalid, or unenforceable provision, there are deemed added provisions as similar in terms as may be legal, valid and enforceable under applicable law.

18 WAIVER

The failure of either Party to enforce at any time any provision of this Agreement or the Order may not be construed to be a continuing waiver of any provision of the Agreement or Order. Nor will any failure to enforce prejudice the right of the Party to take any action in the future to enforce any provisions of the Agreement or Order.

19 DISPUTE RESOLUTION AND CHOICE OF LAW

19.1 *Executives.* Before either Party may initiate any dispute resolution process other than injunctive relief, the Parties must schedule a mandatory executive resolution conference in a mutually agreeable neutral location to be held within 30 days of receipt of a Party's written request. The conference must be attended by at least 1 executive from each Party. At the conference, each Party must present its view of the dispute in detail and the executives must enter into good faith negotiations in an attempt to resolve the dispute. If the dispute is not resolved within 30 days of the beginning date of the conference, then either Party may pursue resolution of the dispute under this Dispute Resolution and Choice of Law clause.

19.2 *Governing Law.* This Agreement and the Order are governed by the laws of the province of Ontario, without regard to conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor law will not apply. The courts within the province of Ontario have exclusive jurisdiction to adjudicate any dispute under this Agreement or the Order.

19.3 *Jury Waiver.* The Parties waive any right to a trial by jury for disputes.

20 ASSIGNMENT

Neither Party may assign any rights or obligations under the Order or this Agreement to a third party other than an Affiliate without the prior written consent of other Party, which consent may not be unreasonably withheld. Either Party may assign the Order and this Agreement in connection with the sale or transfer of all or substantially all assets of the product line or business to which it pertains. Any attempt to assign or delegate in violation of this Assignment clause is void.

21 NON-HIRING

Buyer may not employ or contract directly or through third party, any personnel assigned to the Work by Honeywell under the Order at any time during the term of the Order, and for 1-year period after termination of the Order. Honeywell has incurred substantial costs in recruiting or contracting, training and assigning to Buyer Orders personnel who have and continue to receive specialized training required to support the Work. Honeywell will suffer damages if Buyer, either directly or through a third party, hires or contracts away from Honeywell any personnel at any time assigned to the Work. Further, the amount of damages may not be easily determined. Thus, if Buyer hires or contracts Honeywell personnel in violation of this Non-Hiring clause, Buyer must pay to Honeywell on demand as liquidated damages the greater of C \$100,000 or fully burdened annual salary or contract rate based on employee or contractor total compensation by Buyer of hired or contracted personnel. This sum is a reasonable approximation of the amount to compensate Honeywell for its loss, and is not a penalty in nature.

22 ENTIRETY, AMENDMENT, AND SURVIVAL

This Agreement and the Order contain the entire agreement between the Parties as to the subject matter and supersede any prior representations or agreements, oral or written, and all other communications between the Parties relating to the subject matter. Neither this Agreement nor the Order may be varied except by an instrument signed by authorized representatives of each Party. If there is any inconsistency between this Agreement and the Order, this Agreement prevails. All provisions of this Agreement which by their nature should continue in force beyond the term of this Agreement or the Order will remain in force after termination of this Agreement or the Order.

23 RELATIONSHIP OF PARTIES

The Parties acknowledge that they are independent contractors and no other relationship, including partnership, joint venture, employment, franchise, master/servant or principal/agent is intended by this Agreement or the Order. Neither Party has the right to bind the other.

24 SUBCONTRACTING

Honeywell may subcontract its obligations under the Order. Use of subcontractors does not release Honeywell from obligations for performance of subcontracted obligations.

25 NOTICES

Each notice between the Parties relating to the Order and this Agreement must be made in writing to the authorized representative of the Party at the address stated in the Order. Notices under this Agreement will be deemed received either:

- a. two calendar days after mailing by certified mail, return receipt requested and postage prepaid; or
- b. one business day after deposit for next-day delivery with a commercial overnight carrier if carrier obtains written verification of receipt from receiving Party.

**EXHIBIT 1
SOFTWARE LICENSE**

1. DEFINITIONS

- 1.1. “**Archival Copies**” means copies of Licensed Software in non-printed, machine-readable form, used solely for archival or backup purposes.
- 1.2. “**Authorized User**” means a Named User or a Concurrent User.
- 1.3. “**Concurrent User**” means a Licensee employee or temporary worker (including agency personnel) authorized by Licensee to access and use Licensed Software at any one point in time in accordance with the Order, subject to the terms of this license.
- 1.4. “**Documentation**” means Honeywell’s published user documentation for Licensed Software and Unlicensed Software, which may be in the form of user manual or other related documentation, in written or electronic form.
- 1.5. “**Intellectual Property**” means all copyrights, trademarks, trade secrets, patents, mask works and other intellectual property rights recognized in any jurisdiction worldwide, including all applications and registrations.
- 1.6. “**Licensed Processor**” means a Honeywell-approved processor (control system or product, computer, or specific number of computing devices in a network environment), owned, leased or controlled by Licensee and on which Licensee is authorized to install and use Licensed Software under this license.
- 1.7. “**Licensed Site**” means the specific address of Licensee facility where Licensed Processor is located, as specified in the Order.
- 1.8. “**Licensed Software**” means the object code format of all Software licensed to Licensee under the Order, including any updates, upgrades, error corrections, changes or revisions.
- 1.9. “**Licensed Use**” means use by Licensee for its internal purposes on Licensed Processor at Licensed Site by the number of Authorized Users as described in the Order.
- 1.10. “**Licensee**” means the Buyer entity granted the license to Licensed Software in the Order.
- 1.11. “**Named User**” means a single named Licensee employee or temporary worker (including agency personnel) authorized by Licensee to access and use Licensed Software in accordance with the Order, subject to the terms of this license.
- 1.12. “**Provided Software**” means all Documentation and Software, including Licensed Software and Unlicensed Software, which are provided to Licensee.
- 1.13. “**Software**” means machine-readable object and source code, including executable programs and firmware and any associated documentation.
- a. “**Software Information**” means: Provided Software; technology, ideas, know how, Documentation, processes, algorithms and trade secrets embodied in or related to the Licensed Software; any software keys related to the Licensed Software; and any other information related to the Provided Software, whether disclosed orally or in written or magnetic media, identified (if oral) or marked (if written) as “confidential,” “proprietary” or with similar designation at the time of disclosure.
- 1.14. “**Unlicensed Software**” means Software not licensed to Licensee that may be included on storage media containing Licensed Software, or features that Licensee has not purchased.

2. LICENSE AND RESTRICTIONS

- 2.1. *License.* Subject to Licensee compliance with the terms and conditions of this license including payment of fees, Honeywell grants to Licensee and Licensee accepts a restricted, personal, limited, nontransferable, nonexclusive license, without right of sublicense, to use Licensed Software for the Licensed Use.
- 2.2. *Ownership.* Honeywell and its third-party suppliers retain all right, title and interest in and to the intellectual property rights in all Provided Software. Except for the license expressly granted herein, no right, title, or interest in or to the Provided Software, or to any copies thereof, is transferred hereunder to Buyer. Licensee acknowledges that the Software and all copies of it, regardless of the form or media on which the original or copies may exist, are the sole and exclusive property of Honeywell and its suppliers
- 2.3. *Restriction on Use.* Except as stated in this Software license, Licensee may not without Honeywell prior written consent (a) permit any third parties or non-licensed entities to use the Licensed Software; (b) copy (except as specified in the Archival Copies clause below), modify, sublicense, rent, lease, loan, use in the operation of a service bureau, sell, distribute, disclose, publish, assign (except as specified in the Protecting Integrity clause below), encumber or transfer in any

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