



Elizabeth Comfort
Finance Director

Department of Finance

Public Services Building

2051 Kaen Road, Suite 490 | Oregon City, OR 97045

December 12, 2024

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract with Johnson Controls, Inc. for heating, venting and air conditioning system controls at the Clackamas County Stabilization Center. Contract Value is \$164,228 for 1 year. Funding is through the Oregon Department of Administrative Services. No County General Funds are involved.

Previous Board Action/Review	Briefed at Issues 12/10/2024		
Performance Clackamas	Build (maintain) a strong infrastructure. Ensure safe, healthy and secure communities.		
Counsel Review	Yes	Procurement Review	Yes
Contact Person	Marcus Gorton	Contact Phone	503-781-3221

EXECUTIVE SUMMARY: On behalf of the Health, Housing & Human Services Department and the Clackamas County Sheriff's Office, the Finance Department is seeking approval of a Public Improvement Contract with Johnson Controls, Inc. to provide the Metasys Controller System for monitoring and regulating the HVAC equipment for the former Women's Center building at 9200 McBrod Avenue in Milwaukie for the new Clackamas County Stabilization Center.

Metasys provides an intuitive interface for monitoring key parameters like air exchange, temperature, lighting, and exhaust levels. Real-time alerts enable swift corrective action by managers for HVAC system issues. Metasys is a county standard and currently we use their system in 21 of our buildings.

RECOMMENDATION: Staff respectfully requests that the Board of County Commissioners approve this Contract (#1055) and authorize Chair Smith to sign on behalf of Clackamas County.

Respectfully submitted,

Elizabeth Comfort

Elizabeth Comfort
Director Finance



CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract # 1055

This Goods and Services Contract (this “Contract”) is entered into between **Johnson Controls Inc.**, (“Contractor”), and Clackamas County, a political subdivisions of the State of Oregon (“County”), on behalf of its Department of Finance, Facilities Division, for the purposes of providing the HVAC controls at McBrod Crisis Center located at 9200 SE McBrod Avenue.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties and shall remain in effect until **December 31, 2025**, or until completion of all obligations provided herein, whichever is earlier.
- 2. Scope of Work.** The Contractor shall provide the goods and services identified in **Exhibits A and B** (the “Work”), attached hereto and incorporated by reference herein. Work shall be performed in accordance with a schedule approved by the County. Contractor hereby grants County a non-exclusive license to use the software included as a part of the Work. County agrees to use the software provided by Contractor in accordance with the terms of the End User License Agreement attached hereto as Exhibit B.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **One Hundred and Sixty-Four Thousand Two Hundred Twenty-Eight dollars** (\$164,228.00), for performing the Work required by this Contract. Consideration rates are on a fixed fee basis in accordance with the rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor within forty-five (45) days following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding. Invoices shall reference the above Contract Number and be submitted to:
- 5. Travel Expense Reimbursement.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- 6. Contract Documents.** This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, and

Exhibit A, and the End User License Agreement in Exhibit B.

7. Contractor and County Contacts.

Contractor Administrator: Zach Bradcocich Phone: 971-865-1354 Email: zack.bradcovich@jci.com	County Administrator: Marcus Gorton Phone: Email: mgorton@clackamas.us
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ARTICLE II.

- 1. Access to Records.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, prior thirty (30) days of written notice, throughout the completion of the Contract, and after completion as here established, one time each year, during normal business hours that does not disrupt business operations. which are directly pertinent to this Contract for the purpose of making audit and examination. Contractor shall maintain such books and records for two (2) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. All records, data, or other information provided or made available to County in accordance with this audit section shall be considered Contractor's Confidential Information and is not subject to any copy, retrieval nor storage of any kind by County.
- 2. Availability of Funds.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. Captions.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. Compliance with Applicable Law.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. Governing Law.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 6. Hazard Communication.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but

not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

7. **Responsibility for Damages; Indemnity.** Contractor shall be responsible for all damage to property, injury to persons, loss, and expense which are caused by, or result from, the negligent acts or omissions of Contractor, its subcontractors, agents, or employees. Contractor shall indemnify and defend the County, and its officers, elected officials, agents, and employees, from and against all third-party claims, actions, losses, liabilities, including reasonable attorney and accounting fees, and all expenses incidental to the investigation and defense thereof, caused by, or resulting from Contractor's negligent acts or omissions in performing under this Contract.

However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County, purport to act as legal representative of County, or settle any claim on behalf of County, without the approval of the Clackamas County Counsel's Office. County may assume its own defense and settlement at its election and expense.

8. **Independent Contractor Status.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract and Contractor's responsibility; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

9. **Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required coverage indicated below. The insurance requirement outlined below do not in any way limit, expand upon, alter, supplant, or supersede Contractor's contractual obligations under this Contract, including any indemnification obligation. Contractor shall provide proof of said insurance and show the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

<input checked="" type="checkbox"/> Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.

<input checked="" type="checkbox"/> Required – Commercial General Liability: Combined single limit, or the equivalent, of \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.

<input checked="" type="checkbox"/> Required – Professional Liability: Combined single limit, or the equivalent, of \$1,000,000 per claim, with an annual aggregate limit of \$1,000,000 for damages caused by error, omission or negligent acts.
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Required – Automobile Liability: Combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policies shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

10. Limitation of Liabilities. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Notwithstanding anything to the contrary, in no event, whether in contract, tort (including negligence) or otherwise, shall either party shall be liable to the other for (i) any indirect, incidental, consequential or special damages arising from, relating to, or in connection with this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

11. Notices. Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

12. Reserved.

13. Representations of Warranties. Contractor represents and warrants the following:

- A. Contractor has the power and authority to enter into and perform this Contract;
- B. This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- C. Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
- D. Contractor is an independent contractor as defined in ORS 670.600.

If providing goods, all goods provided by Contractor under this Contract shall meet all standards and specifications set forth in Exhibit A, that the goods shall be, as described in Exhibit A. As necessary, the County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this warranty. Failure of Contractor to promptly correct problems within a reasonable time and in good faith effort after written notice and pursuant to this warranty shall be deemed a material breach of this Contract.

- E. If providing services, the services provided by Contractor under this Contract will be performed in a workmanlike manner and in accordance with the professional standards of the industry.

Contractor's warranty obligation under Subsection (D) is for a period of one (1) year from substantial completion; provided, however, that if the equipment is not manufactured by Contractor and is covered under a manufacturer's warranty for a shorter period, Contractor's warranty will be limited to the term of the manufacturer's warranty (the "Warranty Period"). Contractor's warranty obligation under Subsection (E) shall be for be ninety (90) days from when services have been performed. If during the Warranty Period, any part of the equipment

does not function as warranted and provided, as a condition precedent, that the County notifies Contractor during the Warranty Period, Contractor will determine, at its sole discretion, to either (i) repair the equipment; or (ii) replace it with a new or functionally operative part, which shall be Contractor's sole obligation for breach of this warranty. This limited warranty does not cover failures caused in whole or in part by (i) improper installation or maintenance performed by anyone other than Contractor; (ii) improper use or application; (iii) corrosion; (iv) normal deterioration; or (v) if Contractor's serial numbers or warranty date decals have been removed or altered.

The warranties set forth in this section are exclusive and in lieu of, any other express or implied warranties including, without limitation, any warranty of merchantability or fitness for a particular purpose, which are hereby disclaimed.

14. Delivery and Inspections.

- A. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

- B. Goods furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County in its sole discretion, prior 30 days of written notice. If the County finds the goods furnished to be incomplete or not in compliance with the Contract, the County, in its sole discretion, may either reject the goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods to the County at a reduced price. If Contractor is unable or refuses to cure any defects within a time deemed reasonable, the County may reject the goods, terminate the Contract, and pursue any and all rights and remedies available to County at law, in equity, or under this Contract. Nothing in this paragraph shall in any way affect or limit the County's rights as a buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

15. Survival All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 5, 6, 7, 10, 12, 13, 15, 16, 17, 18, 21, 22, 23, 27, and 31, and all other terms and conditions which by their context are intended to survive termination of this Contract.

16. Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17. Subcontractors and Assignments. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Article II, Sections 1, 7, 8, 13, 22, and 31, as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

18. Successors in Interest. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

19. Tax Compliance and Certifications. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this

Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract, as defined in ORS 279B.045 “Contractor warranty and covenant concerning tax law compliance” and shall entitle County to terminate this Contract, seek damages and to pursue other relief available under the terms of this Contract or applicable law, as permitted by ORS 279B.045.

- 20. Termination.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County’s request, Contractor shall surrender to anyone County designates, all documents, objects or other tangible things needed to complete the Work.

- 21. Remedies.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it at law, in equity, or under this Contract including, but not limited to, any remedy available under ORS Chapter 72. If this Contract is terminated for any other reason, Contractor’s sole remedy is payment for the goods and services delivered and performed.

- 22. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys’ fees and expenses.

- 23. No Third Party Beneficiaries.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

- 24. Time is of the Essence.** Contractor agrees that time is of the essence in the performance of this Contract.

- 25. Foreign Contractor.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

- 26. Force Majeure.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County’s or Contractor’s reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

- 27. Waiver.** The failure of either Party to enforce any provision of this Contract shall not constitute a waiver by said Party of that provision in subsequent incidents or any other provision.

- 28. Public Contracting Requirements.** Pursuant to the public contracting requirements contained in

Exhibit A
Scope of Work

Submitted by:
Jonathan Torres
Johnson Controls, Inc.
Sales Engineer
4011 SE International Way Ste 605,
Milwaukie, OR 97222
(503) 462-3803
Jonathan.torres@jci.com

Presented to:
Marcus Gorton
Clackamas County
MGorton@clackamas.us

1. Executive Summary

Johnson Controls will Perform work below to assist with the HVAC controls at McBrod Crisis Center located at 9200 SE MCBROD AVENUE.

Proposal Based on:
Mechanical Drawings dated: 4/30/2024

2. Metasys Control System

Controls Scope:

- RTU-1
 - Furnish and install (1) NEMA 3R panel
 - Furnish and install (1) CGM controller
 - Furnish and install discharge air temp sensor
 - Furnish and install duct static pressure sensor
 - Furnish and install damper actuator
 - Furnish and install supply and return temperature sensors
 - Furnish and install supply fan command/status relay
 - Furnish and install NSB zone thermostat
- RTU-2, 3, 4
 - Furnish and install (1) CGM controller
 - Furnish and install discharge air temp sensor
 - Furnish and install duct static pressure sensor
 - Furnish and install damper actuator
 - Furnish and install supply and return temperature sensors
 - Furnish and install supply fan command/status relay
 - Furnish and install NSB zone thermostat
- Furnish and install (5) NSB thermostats
- Furnish and install (6) flat plate thermostats for Dorms
- (8) Exhaust fans
 - Furnish and install start/stop/status relay
 - Furnish and install (1) panel with controller and expansion module

- (1) Furnish and install (1) panel with network engine

3. Exceptions and Clarifications

- All work to be performed under safe conditions with reasonable access to all systems and work areas
- Assumes work to be performed during normal business hours (7-5, M-F)
- No warranty for existing parts
- No cutting, patching, painting
- Provide (1) year warranty on all material and workmanship from date of completion of the above referenced project.
- No BIM Coordination Drawings
- No fireproofing included
- Permits and fees not included
- Excludes underground coring and drilling
- Network drop by others
- Assumes all BACnet gateways needed for system integrations will be provided by others
- All 3rd party field devices provided by others, assumed to be installed and wired by others
- Includes time for coordination with 3rd party commissioning agent
- Any valves, sensors, water meters, and all other mechanical devices associated with piping systems will be installed by mechanical contractor or others.

4. Financial Overview

Controls Scope..... \$164,228.00

**This proposal and signed option/s listed below are hereby accepted and Johnson Controls is authorized to proceed with work; subject, however to credit approval by Johnson Controls, Inc., Milwaukee, Wisconsin.
This proposal is valid until: 11/30/24 Estimated Completion Date: 10/15/25**

This Quote is Per JCI Sourcewell Contract Number 070121-JHN

Exhibit B

General EULA

END USER LICENSE AGREEMENT

IMPORTANT NOTICE: This End User License Agreement (“Agreement”) is a binding legal contract between you (“you”) and Johnson Controls International plc. (including its Affiliates such as Johnson Controls, Inc.) with a corporate address at 507 E. Michigan St., Milwaukee, WI (“JCI”, “we”, or “us”). By downloading, installing, accessing or using the accompanying software (the “Software”) you will be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, JCI is not willing to grant you any right to use or access the Software. In such event, you may not download, install, access, use or copy the Software. If this agreement is being agreed to by a company or other legal entity, then the person agreeing to this agreement on behalf of that company or entity represents and warrants that he or she is authorized and lawfully able to bind that company or entity to this agreement. You should print and retain a copy of this agreement for your records. Unless a separate agreement is provided, other JCI application software distributed by this Software will also be subject to the terms of this agreement.

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING, INSTALLING, ACCESSING OR USING THE SOFTWARE.

Agreement Structure. This Agreement includes Part 1 – General Terms and Part 2 – Country Specific Terms, as applicable. The terms of Part 2 may replace or modify those of Part 1. In the event of a conflict between the terms of any or all of Part 1 and Part 2, the terms of Part 2 shall prevail over Part 1.

PART 1 – General Terms

- 1. Grant of License.** During the term of this Agreement, JCI grants you and your individual employees a revocable, non-transferable, non-sublicensable, nonexclusive license to use the object code version of the Software and any Documentation for your internal use only, subject to all Scope Restrictions. The order document under which you have licensed the Software may contain additional terms limiting the scope your license, including, but not limited to, a specified number of users or specific systems, licensed facilities, geographic areas, etc. (collectively, “**Scope Restrictions**”). In the event the Software is furnished for use in connection with a particular JCI system or hardware product, it may only be used in conjunction with that JCI system or hardware product. If the Software is furnished embedded in a JCI system or hardware product, the Software may not be extracted or used separately from that system or product. “**Documentation**” means JCI then current generally available documentation for use and operation of the Software. Documentation is deemed included in the definition of Software. The term “Software” will be deemed to include any updates, bug fixes, and versions (collectively, “**Enhancements**”) that JCI may, in its discretion, make available to you. You are responsible for ensuring your employees comply with all relevant terms of this Agreement and any failure to comply will constitute a breach by you. The Software is licensed, not sold. Except for the limited license granted above, JCI and its licensors retain all right, title and interest in the Software, all copies thereof, and all proprietary rights in the Software, including copyrights, patents, trademarks and trade secret rights.

2. **Restrictions.** Your use of the Software must be in accordance with the Documentation. You will be solely responsible for ensuring your use of the Software is in compliance with all applicable foreign, federal, state and local laws, rules and regulations. You may not (i) copy or distribute the Software except to the extent that copying is necessary to use the Software for purposes set forth herein; provided you may make a single copy of the Software for backup and archival purposes; (ii) modify or create derivative works of the Software; (iii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets embodied in the Software, except and only to the extent that such activity may be expressly permitted, notwithstanding this limitation or another limitation contained in this agreement, either by applicable law or, in the case of open source software, the applicable open source license; (iv) use the Software for purposes of developing a competing product or service; (v) remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Documentation and Software; (v) assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Software, or directly or indirectly permit any third party to use or copy the Software. Under no circumstances will JCI be liable or responsible for any use, or any results obtained by the use, of the services in conjunction with any services, software, or hardware that are not provided by JCI. All such use will be at your sole risk and liability.
3. **Third Party Software.** To the extent any software licensed from third parties, including open source software, (collectively, “**Third Party Software**”) is provided with or incorporated into the Software, you will comply with the terms and conditions of the applicable third party licenses associated with the Third Party Software, in addition to the terms and restrictions contained in this Agreement. All relevant licenses for the Third Party Software are provided at www.johnsoncontrols.com/buildings/legal/digital. By using the Software you are also agreeing to be bound to the terms of such third party licenses. If provided for in the applicable third party license, you may have a right to reverse engineer such open source software or receive open source code for such open source software for use and distribution in any program that you create, so long as you in turn agree to be bound to the terms of the applicable third party license, and your programs are distributed under the terms of that license. If applicable, a copy of such open source code may be obtained free of charge by contacting your Johnson Controls representative. JCI MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY SOFTWARE. ALL THIRD PARTY SOFTWARE IS PROVIDED "AS-IS," WITHOUT WARRANTIES OF ANY KIND. IN NO EVENT WILL JCI BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE THIRD PARTY SOFTWARE, EVEN IF JCI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.
4. **Metering Devices.** The Software may contain technology based metering devices and passive restraints to regulate usage. For example, the Software may contain a license file limiting use to the licensed number of concurrent users or named users or may temporarily restrict usage until license and other fees have been paid in full. You acknowledge that such restraints and metering devices are a reasonable method to ensure compliance with the license and have been factored into the license and other fees and the Agreement as a whole. You agree that You will not circumvent, override, or otherwise bypass such metering devices and restraints that regulate the use of the Software.
5. **Term and Termination.** Unless provided otherwise in an accompanying order document, this Agreement will commence on the earlier of the date you first download, install, access or use the Software (the “Effective Date”) and continue in effect for the term specified in the order document or, if no term is specified, until it is terminated (the “Term”) as provided in this Section. Either party may terminate this Agreement on written notice to the other party if the other party is in material breach of its obligations hereunder and fails to cure the breach within thirty (30) days of such written notice. In addition, either party may, in its sole discretion, elect to terminate this Agreement on written notice to the other party upon the bankruptcy or insolvency of the other party or upon the bankruptcy or insolvency of the other party upon the

commencement of any voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the other party. In the event of any claim of infringement relating to the Software, JCI may terminate this Agreement on written notice to you and, as your sole and exclusive remedy, refund the license fees paid, if any, hereunder (less depreciation calculated on a three (3)-year straight-line basis commencing on the date of initial delivery to you). Sections 9 and 10 shall remain unaffected. Upon any termination or expiration of this Agreement, the license granted in Section 1 will automatically terminate and you will have no further right to possess or use the Software. On JCI's request, you will provide JCI with a signed written statement confirming that the Software has been permanently removed from your systems.

6. **Fees; Taxes.** You will pay the fees, if any, associated with the Software. All amounts due hereunder shall be paid within thirty (30) days of the date of the invoice. Payments not made within such time period shall be subject to late charges equal to the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. If the license granted to You is a term or subscription license: then, unless set forth in your applicable ordering document, any renewal of such license shall be at then-current JCI list price and any such license shall automatically terminate upon nonpayment of amounts due hereunder. All taxes, duties, fees and other governmental charges of any kind (including sales and use taxes, but excluding taxes based on the gross revenues or net income of JCI) that are imposed by or under the authority of any government or any political subdivision thereof on the fees for the Software shall be borne solely by you, unless you can evidence tax exemption and shall not be considered a part of a deduction from or an offset against such fees. If you lose tax exempt status, you will pay any taxes due as part of any renewal or payment. You will promptly notify JCI if your tax status changes.
7. **Limited Warranty; Disclaimer.** JCI warrants that (i) for a period of thirty (30) days from delivery initial delivery to you (the "**Warranty Period**"), the Software will operate in substantial conformity with its Documentation; and (ii) it shall use screening software to scan the Software prior to delivery for viruses, Trojan horses, and other malicious code. If, during the Warranty Period, you notify JCI of any non-compliance with the foregoing warranties, JCI will, in its discretion: (a) use commercially reasonable efforts to provide the programming services necessary to correct any verifiable non-compliance with the foregoing warranties; or (b) replace any non-conforming Software; or if neither of foregoing options is reasonably available to JCI, (c) terminate this Agreement in whole or in part, and refund to You the fees, if any, paid for the non-conforming Software (less depreciation calculated on a three (3)-year straight-line basis commencing on the date of initial delivery to you). JCI shall not be liable for failures caused by third party hardware and software (including your own systems), misuse of the Software, or your negligence or willful misconduct. EXCEPT AS PROVIDED IN THIS SECTION, THE SOFTWARE IS PROVIDED ON AN "AS AVAILABLE," "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, JCI AND ITS AFFILIATES, AND THEIR RESPECTIVE SUPPLIERS AND VENDORS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. JCI AND ITS AFFILIATES AND THEIR RESPECTIVE SUPPLIERS AND VENDORS DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY JCI OR ANY OF ITS PERSONNEL OR AGENTS SHALL CREATE ANY ADDITIONAL JCI WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF JCI'S OBLIGATIONS HEREUNDER.

8. **Indemnities.** JCI will indemnify, defend, and hold you harmless from any claim, demand, action, proceeding, judgment, or liability arising out of a claim by a third-party that your use of the Software in conformance with the terms of this Agreement infringes a United States patent, copyright, or trade secret of that third party. The foregoing indemnification obligation of JCI is contingent upon you promptly notifying JCI in writing of such claim, permitting JCI sole authority to control the defense or settlement of such claim, and providing JCI reasonable assistance in connection therewith. If a claim of infringement under this Section occurs, or if JCI determines a claim is likely to occur, JCI will have the right, in its sole discretion, to either: (i) procure for you the right or license to continue to use the Software free of the infringement claim; or (ii) modify the Software to make it non-infringing, without loss of material functionality. If either of these remedies is not reasonably available to JCI, JCI may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by you for the Software, prorated on a three (3)-year straight-line basis commencing on the date of initial delivery to you. Notwithstanding the foregoing, JCI shall have no obligation with respect to any claim of infringement that is based upon or arises out of (the "Excluded Claims"): (i) the use or combination of the Software with any third party hardware, software, products, data or other materials, including your own systems and data; (ii) modification or alteration of the Software by anyone other than JCI; (iii) your use of the Software in excess of the rights granted in this Agreement; or (iv) any Third Party Software. The provisions of this Section state the sole and exclusive obligations and liability of JCI and its JCI's and suppliers for any claim of intellectual property infringement arising out of or relating to the Software and/or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed. Section 9 shall remain unaffected. You will, subject to your culpability, indemnify, defend, and hold JCI harmless from any claim, demand, action, proceeding, judgment, or liability from a third-party claim arising out of an Excluded Claim. JCI must promptly notify you in writing of any such claim, permit you sole authority to control the defense or settlement of the claim, and provide you reasonable assistance in connection therewith.
9. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL JCI AND ITS AFFILIATES AND THEIR RESPECTIVE SUPPLIERS AND VENDORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, WHICH SHALL INCLUDE, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT TO THE EXTENT ARISING OUT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE ENTIRE AGGREGATE LIABILITY OF JCI AND ITS AFFILIATES AND THEIR RESPECTIVE SUPPLIERS AND VENDORS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL BE LIMITED TO FEES PAID BY YOU FOR THE SOFTWARE, IF ANY, DURING ONE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY.
10. **Confidentiality.** You acknowledge that the ideas, methods, techniques, and expressions thereof contained in the Software (collectively, "JCI Confidential Information") constitute confidential and proprietary information of JCI, the unauthorized use or disclosure of which would be damaging to JCI. You agree to hold the Software and JCI Confidential Information in strictest confidence, disclosing information only to permitted individual employees who are required to have access in order to perform under this Agreement and to use such information only for the purposes authorized by this Agreement. You are responsible for and agree to take all reasonable precautions, by instruction, agreement or otherwise, to ensure that your employees who are required to have access to such information in order to perform under this Agreement, are informed that the Software and JCI Confidential Information are confidential proprietary information belonging to JCI and to ensure that they make no unauthorized use or disclosure of such information. You may disclose JCI Confidential Information if you are required to do so

pursuant to a governmental agency, a court of law or to any other competent authority so long as you provide JCI with written notice of such request prior to such disclosure and cooperate with JCI to obtain a protective order. Prior to disposing of any media reflecting or on which is stored or placed any Software, you will ensure any Software contained on the media has been securely erased or otherwise destroyed. You recognize and agree a remedy at law for damages will not be adequate to fully compensate JCI for the breach of Sections 1, 2, or 10. Therefore, JCI will be entitled to temporary injunctive relief against you without the necessity of proving actual damages and without posting bond or other security. Injunctive relief will in no way limit any other remedies JCI may have as a result of breach by You of the foregoing Sections or any other provision of this Agreement.

Notwithstanding anything to the contrary, Clackamas County's obligations under this Agreement are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 et. seq., and any other applicable state or federal law. While Clackamas County will make good faith efforts to perform under this agreement, Clackamas County's disclosure of Confidential Information, in whole or in part, will not be a breach of the agreement if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If Clackamas County is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, Clackamas County shall notify JCI within a reasonable period of time of the request. JCI is exclusively responsible for defending JCI's position concerning the confidentiality of the requested information. Clackamas County is not required to assist JCI in opposing disclosure of Confidential Information, nor is Clackamas County required to provide a legal opinion as to whether the Confidential Information is protected under ORS Chapter 192, et. seq., or other applicable state or federal law.

11. **Data Collection and Use.** You acknowledge and agree that the Software and/or hardware used in connection with the Software may collect data resulting from or otherwise relating to your use of the Software and/or hardware ("Data") for purposes of providing you with service/product recommendations, benchmarking, energy monitoring, and maintenance and support. JCI shall be the exclusive owner of all Data. JCI shall have the right to de-identify your Data so that it does not identify you directly or by inference (the "De-Identified Data"). JCI shall have the right and ability to use the De-Identified Data for its business purposes, including improvement of the Software, research, product development, product improvement and provision of products and services to JCI's other customers (collectively, "JCI's Business Purposes". In the event JCI does not own or is unable to own the De-Identified Data as a result of applicable law, or contractual commitments or obligations, you grant JCI a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty free license to use, copy, distribute, and otherwise exploit statistical and other data derived from your use of the De-Identified Data for JCI's Business Purposes.
12. **Feedback.** You may provide suggestions, comments, or other feedback (collectively, "Feedback") to JCI with respect to its products and services, including the Software. Feedback is voluntary and JCI is not required to hold it in confidence. JCI may use Feedback for any purpose without obligation of any kind. To the extent a license is required under your intellectual property rights to make use of the Feedback, you grant JCI an irrevocable, non-exclusive, perpetual, world-wide, royalty-free license to use the Feedback in connection with JCI's business, including enhancement of the Software, and the provision of products and services to JCI's customers.
13. **Reserved.**
14. **General.** Except for the goods and services contract between Clackamas County and JCI executed contemporaneously herewith, this Agreement constitutes the entire understanding and agreement between the parties with respect to the transactions contemplated in this Agreement and supersedes all prior or contemporaneous oral or written communications with respect to the

subject matter of this Agreement, all of which are merged in this Agreement. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by JCI to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. The following provisions shall survive any termination or expiration of this Agreement: Sections 2 (Restrictions), 4 (Term and Termination), 6 (Fees and Taxes) (to the extent of any fees accrued prior to the date of termination), 9 (Limitation of Liability), 10 (Confidentiality), 11 (Feedback), 13 (Governing Law), 14 (General), and 16 (U.S. Government Rights). JCI may assign any of its rights or obligations hereunder as it deems appropriate. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.**

15. **Export/Import.** The Software is licensed for use in the specific country authorized by JCI. You may not export or import the Software to another country without JCI's written permission and payment of any applicable country specific surcharges. You agree to comply fully with all relevant and applicable export and import laws and regulations of the United States and foreign nations in which the Software will be used ("**Export/Import Laws**") to ensure that neither the Software nor any direct product thereof are (a) exported or imported, directly or indirectly, in violation of any Export/Import Laws; or (b) are intended to be used for any purposes prohibited by the Export/Import Laws. Without limiting the foregoing, you will not export or re-export or import the Software: (a) to any country to which the United States or European Union has embargoed or restricted the export of goods or services or to any national of any such country, wherever located, who intends to transmit or transport the Software back to such country; (b) to any user who you know or have reason to know will utilize the Software in the design, development or production of nuclear, chemical or biological weapons; or (c) to any user who has been prohibited from participating in export transactions by any federal or national agency of the U.S. government or European Union. You will defend, indemnify, and hold harmless JCI and its affiliates and their respective licensors and suppliers from and against any and all damages, fines, penalties, assessments, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of any your breach of this Section.
16. **U.S. Government Rights.** The Software is a "commercial item" as that term is defined at 48 CFR 2.101 (October 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 CFR 12.212 (September 1995), and is provided to the U.S. Government only as a commercial end item. Consistent with 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.
17. **Electronic Acceptance.** This Agreement may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent) and your acceptance will be deemed binding between the parties. Neither party may contest the validity or enforceability of this Agreement, including under any applicable statute of frauds, because it was accepted or signed in electronic form. Electronically maintained records when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records.

PART 2 - Country Specific Terms

For licenses granted in the countries specified below, the following terms replace or modify the referenced terms in Part 1 and Part 3. All terms in Part 1 and Part 3 that are not changed by these

amendments remain unchanged and in effect. This Part 2 is organized as follows:

13.1 Governing Law

The phrase “the laws of the country in which You entered into this Agreement” in Section 13.1 (Governing Law) is replaced by the following language as it applies to the countries identified below:

Americas

Canada: the laws in the Province of Ontario; Mexico: the federal laws of the Republic of Mexico; United States, Anguilla, Antigua/Barbuda, Aruba, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia, Saint Maarten, and Saint Vincent and the Grenadines: the laws of the State of Wisconsin, United States; Venezuela: the laws of the Bolivarian Republic of Venezuela;

Asia Pacific

Cambodia and Laos: the laws of the State of Wisconsin, United States;

Australia: the laws of the State or Territory in which the transaction is performed;

Hong Kong SAR and Macau SAR: the laws of Hong Kong Special Administrative Region (“SAR”);

Taiwan: the laws of Taiwan;

Europe, Middle East, and Africa

Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan: the laws of Austria;

Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the laws of France;

Estonia, Latvia, and Lithuania: the laws of Finland;

Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the laws of England and Wales; and South Africa, Namibia, Lesotho, and Swaziland: the laws of the Republic of South Africa.

13.1 Jurisdiction

The following provisions replace Section 13.2 (Jurisdiction) as it applies for those countries identified below:

All rights, duties, and obligations are subject to the courts of the country in which You entered into this Agreement except that in the countries identified below all claims or proceedings arising out of or related to this Agreement, including summary proceedings, will

be brought before and subject to the exclusive jurisdiction of the following courts of competent jurisdiction:

Americas

Argentina: the Ordinary Commercial Court of the city of Buenos Aires; Brazil: the court of Rio de Janeiro, RJ;

Chile: the Civil Courts of Justice of Santiago;

Ecuador: the civil judges of Quito for executory or summary proceedings (as applicable); Mexico: the courts located in Mexico City, Federal District;

Peru: the judges and tribunals of the judicial district of Lima, Cercado; Uruguay: the courts of the city of Montevideo;

Venezuela: the courts of the metropolitan area of the city of Caracas;

Europe, Middle East, and Africa

Austria: the court of law in Vienna, Austria (Inner-City);

Algeria, Andorra, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, France, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Monaco, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna: the Commercial Court of Paris;

Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe: the courts of England and Wales;

South Africa, Namibia, Lesotho, and Swaziland: the High Court in Johannesburg; Greece: the competent court of Athens;

Israel: the courts of Tel Aviv-Jaffa; Italy: the courts of Milan;

Portugal: the courts of Lisbon; Spain: the courts of Madrid; and

Turkey: the Istanbul Central Courts and Execution Directorates of Istanbul, the Republic of Turkey

13.2 Arbitration

The following paragraph is added as a new Subsection 13.3 (Arbitration) as it applies for those countries identified below. The provisions of this Subsection 13.3 prevail over those of Subsection 13.2 (Jurisdiction) to the extent permitted by the applicable governing law and rules of procedure:

Asia Pacific

A. In Cambodia, India, Laos, Philippines, and Vietnam:

Disputes arising out of or in connection with this Agreement will be finally settled by arbitration which will be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award will be final and binding for the parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators will be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties will appoint a third arbitrator who will act as chairman of the proceedings. Vacancies in the post of chairman will be filled by the president of the SIAC. Other vacancies will be filled by the respective nominating party. Proceedings will continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator will be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

B. In the People's Republic of China:

In case no settlement can be reached, the disputes will be submitted to China International Economic and Trade Arbitration Commission for arbitration according to the then effective rules of the said Arbitration Commission. The arbitration will take place in Beijing and be conducted in Chinese. The arbitration award will be final and

binding on both parties. During the course of arbitration, this agreement will continue to be performed except for the part which the parties are disputing and which is undergoing arbitration.

C. In Indonesia:

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

Disputes arising out of or in connection with this Agreement shall be finally settled by arbitration that shall be held in Jakarta, Indonesia in accordance with the rules of Board of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the chairman of the BANI. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English and/or Indonesian language.

Europe, Middle East, And Africa

D. In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan:

All disputes arising out of this Agreement or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the

proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. JCI may, however, institute proceedings in a competent court in the country of installation.

E. In Estonia, Latvia, and Lithuania:

All disputes arising in connection with this Agreement will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

Additional Country Specific Amendments Canada

The following is added as a new Section 18:

For purposes of this Section 18, "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:

a. General

i. Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").

ii. Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

b. Security Safeguards

i. Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.

ii. Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.

iii. Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.

iv. Additional or different services required to comply with the Laws will be deemed a request for new services.

c. Use

Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

d. Access Requests

i. Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.

ii. Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.

iii. Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

e. Retention

Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

f. Public Bodies Who Are Subject to Public Sector Privacy Legislation

If you are a public body subject to public sector ^{Page.20}privacy legislation, this Section 18 applies only to

Personal Data made available to you in connection with this Agreement, and the obligations in this section apply only to ** you **, except that: 1) section (b)(i) applies only to JCI; 2) sections (a)(i) and (d)(i) apply to both parties; and 3) section (d)(ii) and the last sentence in (a)(ii) do not apply.

Peru

9.Limitation of Liability

The following is added to the end of this Section 9 (Limitation of Liability):

Except as expressly required by law without the possibility of contractual waiver, you and JCI intend that the limitation of liability in this Section 9 (Limitation of Liability) applies to

damages caused by all types of claims and causes of action. If any limitation on or exclusion from liability in this section is held by a court of competent jurisdiction to be unenforceable with respect to a particular claim or cause of action, the parties intend that it nonetheless apply to the maximum extent permitted by applicable law to all other claims and causes of action. Additionally, in accordance with Article 1328 of the Peruvian Civil Code, the limitations and exclusions specified in this section will not apply to damages caused by JCI's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

United States of America

6. Fees; Taxes

The following is added to the end of Section 6 (Fees; Taxes)

For Software delivered electronically in the United States for which you claim a state sales and use tax exemption, you agree not to receive any tangible personal property (e.g., media and publications) associated with the electronic program. You agree to be responsible for any sales and use tax liabilities that may arise as a result of your subsequent redistribution of the Software after delivery by JCI.

14. General

The following is added to the end of Section 14 (General):

Each party waives any right to a jury trial in any proceeding arising out of or related to this Agreement.

Australia

6. Fees; Taxes

The following is added to the end of Section 6 (Fees; Taxes)

Notwithstanding the foregoing, if any government or authority imposes a duty, tax (other than income tax), levy, or fee, on this Agreement or on the Software itself, that is not otherwise provided for in the amount payable, you agree to pay it when JCI invoices you. If the rate of GST changes, you may adjust the charge or other amount payable to take into account that change from the date the change becomes effective.

7. Limited Warranty; Disclaimer

The following is added to the first paragraph of Section 7 (Limited Warranty; Disclaimer):

Although JCI disclaims certain warranties, you may have certain rights under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by

the applicable legislation. If JCI is in breach of a condition or warranty implied by the Competition and Consumer Act 2010, JCI's liability is limited to the repair or replacement of the goods, or the

supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily obtained for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

Hong Kong Sar, Macau Sar, and Taiwan

For licenses obtained in Taiwan and the special administrative regions, phrases throughout this Agreement containing the word "country" (for example, " the country in which you entered into this Agreement") are replaced with the following:

- a. In Hong Kong SAR: "Hong Kong SAR"
- b. In Macau SAR: "Macau SAR" except in the Governing Law clause (Section 11.1)
- c. In Taiwan: "Taiwan."

India

14. General

The following is added to the end of Section 14 (General):

If no suit or other legal action is brought, within three years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

Indonesia

5. Term and Termination

The following is added to the end of Section 5 (Term and Termination):

Both parties waive the provision of article 1266 of the Indonesian Civil Code, to the extent the article provision requires such court decree for the termination of an agreement creating mutual obligations.

Japan

14. General

The following is added to the end of Section 14 (General):

Any doubts concerning this Agreement will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

Malaysia

7. Limited Warranty; Disclaimer

The word "SPECIAL" in Section 7 is deleted.

New Zealand

7. Limited Warranty; Disclaimer

The following is added to the first paragraph of Section 7 (Limited Warranty; Disclaimer):

Although JCI disclaims certain warranties, you may have certain rights under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which JCI provides, if you require the goods for the purposes of a business as defined in that Act.

9. Limitation of Liability

The following is added to Section 9 (Limitation of Liability):

Where the Software is not obtained for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

People's Republic of China

6. Fees; Taxes

The following is added to the end of Section 6 (Fees; Taxes)

All banking charges incurred in the People's Republic of China will be borne by you and those incurred outside the People's Republic of China will be borne by JCI.

9. Limitation of Liability

The following is added to the end of Section 9 (Limitation of Liability)

nothing in these Terms shall exclude any liability of JCI: (i) for the death of or injury to any person; (ii) for damage to property caused by wilful misconduct and/or gross negligence of JCI; (iii) for fraud or fraudulent misrepresentation; or (iv) for any matter which it would be illegal for JCI to exclude or limit or attempt to exclude or limit its liability under PRC law.

Philippines

9. Limitation of Liability

The following replaces the first sentence of Section 9 (Limitation of Liability):

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL JCI AND AFFILIATES AND THEIR RESPECTIVE ITS SUPPLIERS AND VENDORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, (INCLUDING NOMINAL AND EXEMPLARY DAMAGES), INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT DAMAGES, MORAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES WHICH SHALL INCLUDE, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Singapore

11. Data Collection and Use.

The following is added to the end of Section 11 (Data Collection and Use):

You have the right to request access to your personal information in the possession or under the control of JCI, and to request for corrections to be made on any errors in your personal information. Where possible, JCI will validate personal information provided using generally accepted practices and guidelines, for example, validating such personal information against pre-existing data held by JCI, or request to see supporting documentation before the personal information may be updated. JCI will retain personal information we process on behalf of our customers for as long as needed to provide services to our customers. JCI may further retain and use this personal information as necessary to comply with our legal obligations, resolve disputes, maintain accurate accounting, financial and other operational records and enforce our agreements. You consent and authorize JCI to collect, use and retain information relating to your use of the Software and/or hardware in the manner set out above.

14. General

The following is added to the end of Section 14 (General):

Subject to the rights provided to JCI's suppliers and vendors provided in Section 9 (Limitation of Liability), a person who is not a party to this Agreement will have no right under the Contracts (Right of Third Parties) Act (Cap. 53B) to enforce any of its terms.

Taiwan

9. Limitation of Liability

The following is added to the end of Section 9 (Limitation of Liability):

To the extent required by applicable law, the words "AND THEIR RESPECTIVE SUPPLIERS AND VENDORS" are deleted.

European Union Member States

7. Limited Warranty; Disclaimer

The following is added to Section 7 (Limited Warranty; Disclaimer):

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the provisions set out in this Section 7 (Limited Warranty; Disclaimer).

EU Member States And The Following Identified Countries

Iceland, Liechtenstein, Norway, Switzerland, Turkey, and any other European country that has enacted local data privacy or protection legislation similar to the EU model.

14. General

The following is added to the end of Section 14 (General):

In the European Union ("EU"), consumers have legal rights under applicable national legislation governing the sale of consumer goods. Nothing in this Agreement shall in anyway whatsoever be intended to affect or in any way limit such rights, which remain in full force and effect.

A. Definitions – For the purposes of this Section 14 (General), the following additional definitions apply:

(1) Business Contact Information – business-related contact information disclosed by you to JCI, including names, job titles, business addresses, telephone numbers and email addresses of your employees and contractors. For Austria, Italy and Switzerland, Business Contact Information also includes information about you and your contractors as legal entities (for example, your revenue data and other transactional information).

(2) Business Contact Personnel – Your employees and contractors to whom the Business Contact Information related

(3) Data Protection Authority – The authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.

(4) Data Protection & Electronic Communications Legislation – (i) the applicable local legislation and regulations in force implementing EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector), as amended or replaced from time to time (such as the General Data Protection Regulation, when and as applicable); or (ii) for non-EU countries, the legislation and/or

regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.

JCI Group – Johnson Controls International, Plc, including Johnson Controls, Inc., its subsidiaries, and their respective Business Partners and subcontractors.

B. You authorize JCI:

(1) to process and use Business Contact Information within JCI Group in support of you and your business including the provision of support services, and for the purpose of furthering the business relationship between you and JCI Group, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing JCI Group products and services (the "Specified Purpose"); and

(2) to disclose Business Contact Information to other members of JCI Group in pursuit of the Specified Purpose only.

C. JCI agrees that all Business Contact Information will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.

(1) To the extent required by the Data Protection & Electronic Communications Legislation, you represent that (a) you have obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable JCI Group to process and use the Business Contact Information for the Specified Purpose.

(2) You authorize JCI to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

Austria

9. Limitation of Liability

The following is added to the beginning of Section 9 (Limitation of Liability):

THE FOLLOWING LIMITATIONS AND EXCLUSIONS OF JCI'S LIABILITY DO NOT APPLY FOR DAMAGES CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CIRCUMSTANCES MAY ARISE WHERE, BECAUSE OF A DEFAULT BY JCI IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHER LIABILITY, YOU ARE ENTITLED TO RECOVER DAMAGES FROM JCI.

The following is added to the end of Section 9 (Limitation of Liability):

THE LIMITATIONS AND EXCLUSIONS OF JCI'S LIABILITY DO NOT APPLY FOR DAMAGES CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

The following words are deleted from Section 9 (Limitation of Liability): "(WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE)"

The following replaces the first sentence (second sentence after the above amendment) of Section 9 (Limitation of Liability):

"TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL JCI AND AFFILIATES AND THEIR RESPECTIVE ITS SUPPLIERS AND VENDORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT DAMAGES OR CONSEQUENTIAL DAMAGES, WHICH SHALL INCLUDE, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF THEY HAVE

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.”

Belgium, France and Luxembourg

9. Limitation of Liability

The following replaces the Section 9 (Limitation of Liability) in its entirety:

“EXCEPT AS OTHERWISE PROVIDED BY MANDATORY LAW, JCI’S ENTIRE LIABILITY FOR ALL CLAIMS IN THE AGGREGATE FOR ANY DAMAGES AND LOSSES THAT MAY ARISE AS A CONSEQUENCE OF THE FULFILLMENT OF ITS OBLIGATIONS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR DUE TO ANY OTHER CAUSE RELATED TO THIS AGREEMENT IS LIMITED TO THE COMPENSATION OF ONLY THOSE DAMAGES AND LOSSES PROVED AND ACTUALLY ARISING AS AN IMMEDIATE AND DIRECT CONSEQUENCE OF THE NON-FULFILLMENT OF SUCH OBLIGATIONS (IF JCI IS AT FAULT) OR OF SUCH CAUSE, FOR A MAXIMUM OF EUR 500,000 (FIVE HUNDRED THOUSAND EURO). THE ABOVE LIMITATION WILL NOT APPLY TO DAMAGES

FOR BODILY INJURIES (INCLUDING DEATH) AND DAMAGES TO REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY FOR WHICH JCI IS LEGALLY LIABLE. UNDER NO CIRCUMSTANCES IS JCI OR ANY OF ITS SUPPLIERS OR VENDORS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; AND / OR 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES.

THE LIMITATION AND EXCLUSION OF LIABILITY HEREIN AGREED APPLIES NOT ONLY TO THE ACTIVITIES PERFORMED BY JCI BUT ALSO TO THE ACTIVITIES PERFORMED BY ITS SUPPLIERS AND VENDORS, AND REPRESENTS THE MAXIMUM AMOUNT FOR WHICH JCI AS WELL AS ITS SUPPLIERS AND VENDORS ARE COLLECTIVELY RESPONSIBLE.

France

6. Fee; Taxes

The following replaces the Section 6 (Fee; Taxes) in its entirety:

You will pay the fees, if any, associated with the Software. All amounts due hereunder shall be paid within thirty (30) days of the date of the invoice. Pursuant to article L. 441-6 of the French Commercial Code, late payment penalties as well as a fixed compensation for recovery costs of the amount of 40 Euros (forty Euros) are due in the event that the amounts due are paid after the due date, and this without the necessity of a reminder without prejudice to damages and other expenses that JCI has the right to claim. The late penalties due to, under the mentioned legislation, will be claimed by JCI at the rate equal to the interest rate applied by the European Central Bank to its most recent refinancing operation plus 10 percentage points.

All taxes, duties, fees and other governmental charges of any kind (including sales and use taxes, but excluding taxes based on the gross revenues or net income of JCI) that are imposed by or under the authority of any government or any political subdivision thereof on the fees for the Software shall be borne solely by you, unless you can evidence tax exemption and shall not be considered a part of a deduction from or an offset against such fees. If you lose tax exempt status, you will pay any taxes due as part of any renewal or payment. You will promptly notify JCI if your tax status changes.

You will pay all court costs, fees, expenses and reasonable attorneys’ fees incurred by JCI in collecting delinquent fees.

The following replaces the Section 11 (Data Collection and Use) in its entirety:

A. Definitions – For the purposes of this Section 11 (Data Collection and Use), the following additional definitions apply:

(1) Data – Data resulting from or otherwise relating to your use of the Software and/or hardware used in connection with the Software.

(2) Data Protection Authority – The authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.

(3) Data Protection & Electronic Communications Legislation – (i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector), as amended or replaced from time to time; or (ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.

JCI Group – Johnson Controls International, Plc., including Johnson Controls, Inc., its subsidiaries, and their respective Business Partners and subcontractors.

B. You authorize JCI:

(1) to process and use your Data within JCI Group for purposes of providing you with service/product recommendations, benchmarking, energy monitoring, and maintenance and support (the "Specified Purpose");

(2) to disclose your Data to other members of JCI Group in pursuit of the Specified Purpose only;

(3) to de-identify your Data so that it does not identify you directly or by inference (the "De-Identified Data");

(4) to use the De-Identified Data for its business purposes, including improvement of the Software, research, product development, product improvement and provision of products and services to JCI's other customers (collectively, "JCI's Business Purposes");

(5) to use, copy, distribute, and otherwise exploit statistical and other data derived from your use of the De-Identified Data for JCI's Business Purposes.

C. JCI agrees that all Data will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.

D. You authorize JCI to transfer Data outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.

E. According to the Data Protection Act of January 6th, 1978, you have at any time, a right of access to and rectification of all of your personal data. If you wish to exercise this right and gain access to your personal data, please write to us via <https://www.johnsoncontrols.com/contact-us>. You may also oppose, for legitimate reasons, the processing of your personal data."

Italy

4. Metering devices

The following is added to Section 4 (Metering devices): The metering devices and passive restraints

mentioned in this Section are those specified in the accompanying order document.

5. Term and termination

The following paragraph is deleted in its entirety from Section 5:

“In addition, either party may, in its sole discretion, elect to terminate this Agreement on written notice to the other party upon the bankruptcy or insolvency of the other party or upon the commencement of any voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the other party.”

The following wording is added to Section 5 (Term and termination): Without prejudice to the above, if no term is specified, either party shall have the right to terminate the Agreement at any time by giving the other Party a six months prior written notice.

11 Data Collection and Use

The following replaces the Section 11. (Data Collection and Use) in its entirety:

You acknowledge and agree the Software and/or hardware used in connection with the Software may collect data resulting from or otherwise relating to your use of the Software and/or hardware (“Data”) for purposes of providing you with service/product recommendations, benchmarking, energy monitoring, and maintenance and support. JCI shall have the right and ability to use the De-Identified Data for its business purposes, including improvement of the Software, research, product development, product

improvement and provision of products and services to JCI’s other customers (collectively, “JCI’s Business Purposes”). JCI shall have the right to use the Data provided that: (i) the Data have been De-Identified by JCI, so that JCI does not identify You directly or by inference; the Data, as De-Identified, will be used in compliance with the applicable local legislation and regulations in force.

9. Limitation of Liability

The following replaces the Section 9 (Limitation of Liability) in its entirety:

“TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, JCI’S ENTIRE LIABILITY FOR ALL CLAIMS IN THE AGGREGATE FOR ANY DAMAGES AND LOSSES THAT MAY ARISE IN CONNECTION WITH THE FULFILLMENT OF ITS OBLIGATIONS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR DUE TO ANY OTHER CAUSE RELATED TO THIS AGREEMENT IS LIMITED TO THE COMPENSATION OF ONLY THOSE DAMAGES AND LOSSES PROVED AND ACTUALLY ARISING AS AN IMMEDIATE AND DIRECT CONSEQUENCE OF THE NON-FULFILLMENT OF SUCH OBLIGATIONS (IF JCI IS AT FAULT) OR OF SUCH CAUSE, FOR A MAXIMUM OF EUR 500,000 (FIVE HUNDRED THOUSAND EURO). THE ABOVE LIMITATION WILL NOT APPLY TO DAMAGES FOR BODILY INJURIES (INCLUDING DEATH) AND DAMAGES TO REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY FOR WHICH JCI IS LEGALLY LIABLE. SAVE IN CASE OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES JCI OR ANY OF ITS SUPPLIERS OR VENDORS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; AND / OR 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES.

THE LIMITATION AND EXCLUSION OF LIABILITY HEREIN AGREED APPLIES NOT ONLY TO THE ACTIVITIES PERFORMED BY JCI BUT ALSO TO THE ACTIVITIES PERFORMED

BY ITS SUPPLIERS AND VENDORS, AND REPRESENTS THE MAXIMUM AMOUNT FOR WHICH JCI AS WELL AS ITS SUPPLIERS AND VENDORS ARE COLLECTIVELY RESPONSIBLE.

Germany

9. Limitation of Liability

The following replaces the Section 9 (Limitation of Liability) in its entirety:

1. JCI WILL BE LIABLE WITHOUT LIMIT FOR 1) LOSS OR DAMAGE CAUSED BY A BREACH OF AN EXPRESS GUARANTEE; 2) DAMAGES OR LOSSES RESULTING IN BODILY INJURY (INCLUDING DEATH); 3) DAMAGES CAUSED INTENTIONALLY OR BY GROSS NEGLIGENCE; AND 4) claims pursuant to the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG).

2. IN THE EVENT OF LOSS, DAMAGE AND FRUSTRATED EXPENDITURES CAUSED BY SLIGHT NEGLIGENCE OR IN BREACH OF ESSENTIAL CONTRACTUAL OBLIGATIONS (I.E. an obligation which must be fulfilled to enable a due performance of the AGREEMENT and on whose fulfilment YOU generally rely and may rely ON), JCI WILL BE LIABLE, REGARDLESS OF THE BASIS ON WHICH YOU ARE ENTITLED TO CLAIM DAMAGES FROM JCI (INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, MISREPRESENTATION, OR OTHER CONTRACT OR TORT CLAIM), PER CLAIM ONLY UP TO 500,000 EURO FOR THE PROGRAM THAT CAUSED THE LOSS OR DAMAGE. A NUMBER OF DEFAULTS WHICH TOGETHER RESULT IN, OR CONTRIBUTE TO, SUBSTANTIALLY THE SAME LOSS OR DAMAGE WILL BE TREATED AS ONE DEFAULT.

3. IN THE EVENT OF LOSS, DAMAGE AND FRUSTRATED EXPENDITURES CAUSED BY SLIGHT NEGLIGENCE, JCI WILL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF JCI WAS INFORMED ABOUT THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THIS LIMITATION SHALL NOT APPLY WHERE THE LOSS, DAMAGE AND FRUSTRATED EXPENDITURES WAS CAUSED BY A SLIGHT NEGLIGENT BREACH OF ESSENTIAL CONTRACTUAL OBLIGATIONS.

4. IN CASE OF DELAY ON JCI'S PART: 1) JCI WILL PAY TO YOU AN AMOUNT NOT EXCEEDING THE LOSS OR DAMAGE CAUSED BY JCI'S DELAY AND 2) JCI WILL BE LIABLE ONLY IN RESPECT OF THE RESULTING DAMAGES THAT YOU SUFFER, SUBJECT TO THE PROVISIONS OF ITEMS A AND B ABOVE.

14. General

The following is added to the end of Section 14 (General):

Any claims resulting from this Agreement are subject to a limitation period of three years, except as stated in Section 7 (Limited Warranty; Disclaimer) of this Agreement.

Ireland

7. Limited Warranty; Disclaimer

The following is added to Section 7 (Limited Warranty; Disclaimer):

Except as expressly provided in these terms and conditions, or Section 12 of the Sale of Goods Act 1893 as amended by the Sale of Goods and Supply of Services Act, 1980 (the "1980 Act"), all conditions or warranties (express or implied, statutory or otherwise) are hereby excluded including, without limitation, any warranties implied by the Sale of Goods Act 1893 as amended by the 1980 Act (including, for the avoidance of doubt, Section 39 of the 1980 Act).

United Kingdom Agreement Structure

The following sentence is added:

Nothing in this paragraph shall be interpreted or construed as excluding or limiting the liability of any

person for fraud or fraudulent misrepresentation.

2. Restrictions

The following is added at the end of point (iii):

(if it is necessary for You to decompile the Software, to obtain the information necessary to create an independent program which can be operated with the Software, You will inform JCI that this is the case and will allow JCI a reasonable opportunity to provide such information to You so that it is no longer necessary for You to carry out that decompilation)

9. Limitation of Liability

The following replaces the Section 9 (Limitation of Liability) in its entirety:

FOR THE PURPOSES OF THIS SECTION, A "DEFAULT" MEANS ANY ACT, STATEMENT, OMISSION OR NEGLIGENCE ON THE PART OF JCI IN CONNECTION WITH, OR IN RELATION TO, THE SUBJECT MATTER OF AN AGREEMENT IN RESPECT OF WHICH JCI IS LEGALLY LIABLE TO YOU, WHETHER IN CONTRACT OR IN TORT. A NUMBER OF DEFAULTS WHICH TOGETHER RESULT IN, OR CONTRIBUTE TO, SUBSTANTIALLY THE SAME LOSS OR DAMAGE WILL BE TREATED AS ONE DEFAULT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL JCI AND AFFILIATES AND THEIR RESPECTIVE ITS SUPPLIERS AND VENDORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, OR INDIRECT DAMAGES; OR WASTED MANAGEMENT TIME OR LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, WHICH SHALL INCLUDE, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES..

CIRCUMSTANCES MAY ARISE WHERE, BECAUSE OF A DEFAULT BY JCI IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHER LIABILITY, YOU ARE ENTITLED TO RECOVER DAMAGES FROM JCI. REGARDLESS OF THE BASIS ON WHICH YOU ARE ENTITLED TO CLAIM DAMAGES FROM JCI AND EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER, JCI'S ENTIRE LIABILITY FOR ANY ONE DEFAULT WILL NOT EXCEED THE AMOUNT OF ANY DIRECT DAMAGES, TO THE EXTENT ACTUALLY SUFFERED BY YOU AS AN IMMEDIATE AND DIRECT CONSEQUENCE OF THE DEFAULT, UP TO 500,000 EURO (OR THE EQUIVALENT IN THEN-PREVAILING LOCAL CURRENCY) FOR THE PROGRAM THAT IS THE SUBJECT OF THE CLAIM.

NOTWITHSTANDING THE ABOVE, NOTHING IN THIS AGREEMENT WILL OPERATE TO EXCLUDE OR RESTRICT A PARTY'S LIABILITY (IF ANY) TO THE OTHER: (i) FOR DEATH OR PERSONAL INJURY; (ii) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; (iii) FOR BREACH OF ITS OBLIGATIONS ARISING UNDER SECTION 12 SALE OF GOODS ACT 1979; (iii) FOR BREACH OF ITS OBLIGATIONS ARISING UNDER SECTION 2 SUPPLY OF GOODS AND SERVICES ACT 1982; (iv)

FOR BREACH OF ITS OBLIGATIONS ARISING UNDER SECTION 8 SUPPLY OF GOODS (IMPLIED TERMS) ACT 1973; OR (v) FOR ANY MATTER FOR WHICH IT IS NOT PERMITTED BY LAW TO EXCLUDE OR LIMIT, OR TO ATTEMPT TO EXCLUDE OR LIMIT, ITS LIABILITY.

7. Limited Warranty; Disclaimer

Section 7 (limited warranty; disclaimer) is replaced with the following:

JCI warrants that (i) for a period of thirty (30) days from delivery initial delivery to you (the “Warranty Period”), the Software will operate in substantial conformity with its Documentation; and (ii) it shall use screening software to scan the Software prior to delivery for viruses, Trojan horses, and other malicious code. If, during the Warranty Period, you notify JCI of any non-compliance with the foregoing warranties, JCI will, in its discretion: (a) use commercially reasonable efforts to provide the programming services necessary to correct any verifiable non-compliance with the foregoing warranties; or (b) replace any non-conforming Software; or if neither of foregoing options is reasonably available to JCI, (c) terminate this Agreement in whole or in part, and refund to You the fees, if any, paid for the non-conforming Software (less depreciation calculated on a three (3)-year straight-line basis commencing on the date of initial delivery to you. JCI shall not be liable for failures caused by third party hardware and software (including your own systems), misuse of the Software, or your negligence or willful misconduct. EXCEPT AS PROVIDED IN THIS SECTION, THE SOFTWARE IS PROVIDED ON AN “AS AVAILABLE,” “AS IS” BASIS. THIS WITHOUT PREJUDICE THAT JCI WILL BE LIABLE FOR ANY HIDDEN FAULTS OF THE PRODUCTS PROVIDED, AS WELL AS ANY DAMAGES ARISED AS A RESULT OF PROVIDING A PRODUCT THAT DO NOT CONFORM WITH JCI’S DESCRIPTION, AND/OR THAT IT IS USELESS FOR THE PURPOSES OF THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, JCI AND ITS AFFILIATES, AND THEIR RESPECTIVE SUPPLIERS AND VENDORS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. JCI AND AFFILIATES AND THEIR RESPECTIVE ITS SUPPLIERS AND VENDORS DO NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY JCI OR ANY OF ITS PERSONNEL OR AGENTS SHALL CREATE ANY ADDITIONAL JCI WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF JCI’S OBLIGATIONS HEREUNDER.

9. Limitation of liability

The following is added to the end of this section 9 (limitation of liability):

NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY’S LIABILITY FOR: (I) DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; (II) FRAUD OR DECEIT; (III) WILLFULLY COSTS DAMAGES OR (IV) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW.

11. Data Collection and Use

Section 11 (data collection and use) is modified in the following terms:

You acknowledge and agree that the Software and/or hardware used in connection with the Software may collect data resulting from or otherwise relating to your use of the Software and/or hardware (“Data”). You hereby agree that your Data will be incorporated into a data file controlled by JCI, for the purposes of providing you with service/product recommendations, benchmarking, energy monitoring, maintenance and support, as well as for any purposes related to the execution of this agreement. You may exercise your rights of access, rectification, cancellation and opposition by writing to JCI corporate address stated above, or by contacting us at

<https://www.johnsoncontrols.com/contact-us>, accompanying the request with a copy of an official identifying document. JCI shall be the exclusive owner of all Data. JCI shall have the right to de-identify your Data so that it does not identify you directly or by inference (the “De-Identified Data”). JCI shall have the right and ability to use the De-Identified Data for its business purposes, including improvement of the Software, research, product development, product improvement and provision of products and services to JCI’s other customers (collectively, “JCI’s Business Purposes”).






FINAL 1055- JCI (HVAC Controls)- McBrod HVAC Controls

Final Audit Report

2024-11-27

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