

# Board of County Commissioners

## Agenda Request

**Date of Meeting:** April 2, 2024

**Date Submitted:** March 20, 2024

**To:** Honorable Chairman and Members of the Board

**From:** Edward J. Dixon, County Administrator  
Allan Meeks, Facilities Manager

**Subject:** Approval of the Johnson Control Planned Service Agreement for Backflow and Hydrant Inspection at the W.A. Woodham Building

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### **Statement of Issue:**

This agenda item seeks Board approval of the Johnson Controls Planned Service Agreement for five-year inspection of backflow preventers and hydrants at the W.A. Woodham Building, 339 East Jefferson Street.

### **Background:**

Johnson Controls currently provides inspections and repairs for fire sprinklers, control panels, pull switches, abort switches, above-floor detectors, and fire suppression devices in the W.A. Woodham Justice Center, Health Department, and other County Facilities.

### **Analysis:**

Approval of the item will allow Johnson Controls to perform Annual inspections for the backflow preventers and fire hydrants at the W.A. Woodham Building.

### **Fiscal Impact:**

The fiscal impact is an annual cost that ranges from \$310.41 in the first year to \$438.17 in the fifth year, as listed below. The item is funded in the 001-0031-53400 not to exceed the value of \$3276.10 for labor and materials and is funded from the Facilities 0031 Repair and Maintenance budget.

1. 02/01/2024 - 01/31/2025 \$310.41
2. 02/01/2025 - 01/31/2026 \$338.35

3. 02/01/2026 - 01/31/2027 \$368.80
4. 02/01/2027 - 01/31/2028 \$401.99
5. 02/01/2028 - 01/31/2029 \$438.17

**Options:**

1. Approve the Johnson Control Planned Service Agreement for Backflow and Hydrant Inspection at the W.A. Woodham Building and authorize the Chairman to sign all related documents.
2. Do not approve.
3. Board direction.

**County Administrator's Recommendation:**

Option 1.

**Attachments:**

- Gadsden County Sheriff Department Planned Service Agreement-32272601

# Gadsden County Sheriff Dept- 32272601

## Planned Service Agreement



**Johnson Controls Fire Protn LP**  
14200 E Exposition Ave  
Aurora CO80012-2540  
USA

**Proposal Presented On:**  
01-12-2024



# SERVICE SOLUTION

**Customer #: 543630**  
**Gadsden Co Board of County**  
**Commissioners**  
**Date: 12-Jan-24**  
**Proposal #: CPQ-511062 Term:**  
**1-Feb-24 to 31-Jan-29**  
**External Contract # 32272601**  
**Subscription ERP #:**

**Billing Customer:**  
**Gadsden Co Bldg Maintenance**  
**1-b E Jeferson St 1 E Jeferson St Po Box**  
**1799 # B**  
**Quincy, FL 32353**

**Service Location:**  
**Gadsden County Sheriff Dept**  
**339 E Jefferson St,**  
**Quincy, FL 32351-2531**

**Johnson Controls Fire Protection LP**  
**Sales Representative:**  
**Tracy Maddamma**  
**14200 E Exposition Ave**  
**Aurora CO 80012-2540**  
**tracy.maddamma@jci.com**

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## INVESTMENT SUMMARY

*(Service Solution Valid for 30 Days)*

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SERVICE/PRODUCT DESCRIPTION	QUANTITY	FREQUENCY	INVESTMENT
<b>SYSTEM-SP-BACKFLOW</b>			
<b>BACKFLOW SYSTEM</b>		<b>Est. First Inspection: April</b>	
Backflow Preventer-Fire	1	Annual	
<b>SPRINKLER ESSENTIAL SERVICE OFFER Total:</b>			<b>\$233.33</b>
<b>SYSTEM-SP-UNDRGRND/HYDRNT</b>			
<b>HYDRANT SYSTEM</b>		<b>Est. First Inspection: April</b>	
Hydrant Test & Inspect	2	Annual	
<b>SPRINKLER ESSENTIAL SERVICE OFFER Total:</b>			<b>\$77.08</b>

Johnson Controls has **not** included an estimate for all state and local sales tax for this quote based on the understanding that a valid exemption and/or resale certificate is received by Johnson Controls from Purchaser. Otherwise, actual sales tax due will be calculated and billed



# SERVICE SOLUTION

## SUMMARY OF SERVICES

The summary of services is intended to cover the following locations:

Location	Address	City	State	Zip	Sprinkler
Gadsden County Sheriff Dept	339 E Jefferson St,	Quincy	FL	32351-2531	\$310.41

### SPRINKLER ESSENTIAL SERVICE OFFER

#### SYSTEM-SP-BACKFLOW

#### SYSTEM-SP-UNDRGRND/HYDRNT

##### TEST AND INSPECTION:

Inspections and diagnostic tests for the accessible fire sprinkler devices listed and currently connected to fire sprinkler system. Tests will be scheduled in advance.

##### DOCUMENTATION:

Accessible components and devices logged for: Test results Any discrepancies found noted Inspection documentation provided to Customer. NOTE: Certain additional services may be required by the Authority Having Jurisdiction. AHJ or internal organizational requirements may be more restrictive than state/provincial requirements. Building owners and managers should make themselves aware of applicable codes and references in order to ensure that contracted Services fulfill requirements.

### Hydrant Test & Inspect

#### SYSTEM-SP-UNDRGRND/HYDRNT

Hydrants to be fully opened and closed annually and flowed until all foreign material is cleared [not less than one minute]. Hydrant is lubricated and checked for proper drainage.

### Customer Portal (Basic)

#### SYSTEM-SP-BACKFLOW

#### SYSTEM-SP-UNDRGRND/HYDRNT

Basic Customer Portal functionality will be provided.



# SERVICE SOLUTION

This Service Solution (the "Agreement") sets forth the Terms and Conditions for the provision of equipment and services to be provided by Johnson Controls Fire Protection LP ("Company") to **Gadsden Co Bldg Maintenance** and is effective **1-Feb-24** (the "Effective Date") to **31-Jan-29** (the "Initial Term"). Customer agrees that initial inspections may be performed within 45 days from the Effective Date.

**PAYMENT FREQUENCY:** Annual In Advance

Initials

**PAYMENT TERMS:** Net 30

*For applicable taxes, please see Section 3 of the Terms & Conditions*

**PAYMENT AMOUNT: \$310.41 - Proposal #: CPQ-511062**

**PAYMENT SUMMARY:**

Year	Term	PSA Charges
1	02/01/2024 - 01/31/2025	\$310.41
2	02/01/2025 - 01/31/2026	\$338.35
3	02/01/2026 - 01/31/2027	\$368.80
4	02/01/2027 - 01/31/2028	\$401.99
5	02/01/2028 - 01/31/2029	\$438.17

**CUSTOMER ACCEPTANCE:** In accepting this Agreement, Customer agrees to the Terms and Conditions on the following pages and any attachments or riders attached hereto that contain additional terms and conditions. It is understood that these terms and conditions shall prevail over any variation in terms and conditions on any purchase order or other document that Customer may issue. Any changes in the system requested by Customer after the execution of Agreement shall be paid for by Customer and such changes shall be authorized in writing.

**ATTENTION IS DIRECTED TO THE LIMITATION OF LIABILITY, WARRANTY, INDEMNITY AND OTHER CONDITIONS CONTAINED IN THIS AGREEMENT.**



# SERVICE SOLUTION

## Multi Year Contract Rider AGREEMENT

Acknowledgement of Multi-Year Term. Customer agrees that issuance of a Purchase Order does not amend any provision of the service agreement, including without limitation the duration/term of the service agreement. Customer agrees to issue Purchase Orders sufficient to satisfy its obligations under the multi-year service agreement. Should Customer fail to issue additional Purchase Orders, Company will still be permitted to invoice Customer for services performed, and Customer shall not dispute the validity of such invoices.

Customer Initials:

Unless otherwise agreed to by the parties, pricing is based upon the following billing and payment terms: Invoices will be delivered via Email ( ), payment is Net 30, and invoices are to be paid via Electronic Funds Transfer. Johnson Controls Electronic Funds Transfer transfer details will be forth coming upon contractual agreement.

This offer shall be void if not accepted in writing within thirty (30) days from the date first set forth above.

To ensure that JCI is compliant with your company's billing requirements, please provide the following information:

PO is required to facilitate billing:  NO: This signed contract satisfies requirement  
 YES: Please reference this PO Number: \_\_\_\_\_

Gadsden Co Bldg Maintenance	Johnson Controls Fire Protection LP
Signature: _____	Authorized Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Phone #: _____	Phone #: _____
Fax #: _____	Fax #: _____
Email: _____	License #: _____ (if applicable)
Date: _____	Date: _____

# SERVICE SOLUTION

## TERMS AND CONDITIONS

**1. Term.** The Initial Term of this Agreement shall commence on the date of this Agreement and continue for the period indicated in this Agreement. At the conclusion of the Initial Term, this Agreement shall automatically extend for successive terms equal to the Initial Term (subject to Section 3) unless either party gives written notice to the other party at least thirty (30) days prior to the end of the then-current term (each a "Renewal Term").

**2. Payment and Invoicing.** Unless otherwise agreed by the parties in writing, fees for Services to be performed shall be paid annually in advance. Unless otherwise agreed to by the parties, amounts are due upon receipt of the invoice by Customer. Invoices shall be paid by Customer via electronic delivery via EFT/ACH. Invoicing disputes must be identified in writing within 21 days of the invoice date. Payments of any disputed amounts are due and payable upon resolution. Payment is a condition precedent to Company's obligation to perform Services under the Agreement. Work performed on a time and material basis shall be at the then-prevailing Company rate for material, labor, and related items, in effect at the time supplied under this Agreement. Customer acknowledges and agrees that timely payments of the full amounts listed on invoices is an essential term of this Agreement and Customer's failure to make payment in full when due is a material breach of this Agreement. Customer further acknowledges that if there is any amount outstanding on an invoice, it is material to Company and will give Company, without prejudice to any other right or remedy, the right to, without notice: (i) suspend, discontinue or terminate performing any Services and/or withhold further deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or suspend Company's obligations under or terminate this Agreement; and (ii) charge Customer interest on the amounts unpaid at a rate equal to the lesser of one and one half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full. Company's election to continue providing future services does not, in any way diminish Company's right to terminate or suspend services or exercise any or all rights or remedies under this Agreement. Company shall not be liable for any damages, claims, expenses, or liabilities arising from or relating to suspension of Services for non-payment. In the event that there are exigent circumstances requiring services or the Company otherwise performs Services at the premises following suspension, those services shall be governed by the terms of this Agreement unless a separate contract is executed. If Customer disputes any late payment notice or Company's efforts to collect payment, Customer shall immediately notify Company in writing and explain the basis of the dispute. Customer agrees to pay all of Company's reasonable collection costs, including legal fees and expenses. Customer shall provide financial information requested by Company to verify Customer's ability to pay for goods or services. If Customer fails to provide financial information or if Company, in its sole discretion determines that reasonable grounds exist to question Customer's ability or willingness to make payments when due (e.g., not making payments when due, late payments, or a reduction in Customer's credit score), Company may defer shipments, change payment terms, require cash in advance and/or require other security, without liability and without waiving any other remedies Company may have against Customer. Company shall provide Customer with advance written notice of changes to payment terms.

**3. Pricing.** The pricing set forth in this Agreement is based on the number of devices and services to be performed as set forth in this Agreement. If the actual number of devices installed or services to be performed is greater than that set forth in this Agreement, the price will be increased accordingly. Company may increase prices upon notice to Customer to reflect increases in material and labor costs. All stated prices are exclusive of and Customer agrees to pay any taxes, fees, duties, tariffs, false alarm assessments, installation or alarm permits and levies or other similar charges imposed and/or enacted by a government, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement. This Agreement is entered into with the understanding that the services to be provided by Company are not subject to any local, state, or federal prevailing wage statute. If it is later determined that local, state, or federal prevailing wage rates apply to the services to be provided by Company, Company reserves the right to issue a modification or change order to adjust the wage rates to the required prevailing wage rate. Customer agrees to pay for the applicable prevailing wage rates. Prices in any quotation or proposal from Company are subject to change upon notice sent to Customer at any time before the quotation or proposal has been accepted. Company will provide Customer with notice of any pricing adjustments applicable to any Renewal Term no later than 45 days prior to the commencement of that Renewal Term. Unless Customer terminates the Agreement at least thirty (30) days prior to the start of such Renewal Term, the adjusted price shall be the price for the Renewal Term.

Prices for products covered by this Agreement may be adjusted by Company, upon notice to Customer at any time prior to shipment and regardless of Customer's acceptance of the Company's proposal or quotation, to reflect any increase in Company's cost of raw materials (e.g., steel, aluminum) inability to secure Products, changes or increases in law, labor, taxes, duties, tariffs or quotas, acts of government, any similar charges, or to cover any extra, unforeseen and unusual cost elements.

**4. Code Compliance.** Company does not undertake an obligation to inspect for compliance with laws or regulations unless specifically stated in this Agreement. Customer acknowledges that the Authority Having Jurisdiction (e.g., Fire Marshal) may establish additional requirements for compliance with local codes. Any additional services or equipment required will be provided at an additional cost to Customer.

**5. Limitation of Liability; Limitations of Remedy.** Customer understands that Company offers several levels of protection services and that the level described has been chosen by Customer after considering and balancing various levels of protection afforded and their related costs. **It is understood and agreed by Customer that Company is not an insurer and that insurance coverage shall be obtained by Customer and that amounts payable to Company hereunder are based upon the value of the services and the scope of liability set forth in this Agreement and are unrelated to the value of Customer's property and the property of others located on the premises. Customer agrees to look exclusively to Customer's insurer to recover for injuries or damage in the event of any loss or injury. Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no guaranty or warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or service was designed to detect or avert. It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its obligations under this Agreement. Accordingly, Customer agrees that Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences therefrom, which the equipment or service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or service in any respect, Company's liability for Services performed on-site at Customer's premises shall be limited to an aggregate amount equal to the Agreement price (as increased by the price for any additional work) or, where the time and material payment term is selected, Customer's time and material payments to Company. Where this Agreement covers multiple sites, liability shall be limited to the amount of the payments allocable to the site where the incident occurred. Company's liability with respect to Monitoring Services is set forth in Section 17 of this Agreement. Such sum shall be complete and exclusive. IN NO EVENT SHALL COMPANY BE LIABLE, FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY SERVICING, ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE COVERED SYSTEM(S), AS HEREINAFTER DEFINED, OR ANY OF ITS COMPONENT PARTS BY CUSTOMER OR ANY THIRD PARTY. To the maximum extent permitted by law, in no event shall Company and its affiliates and their respective personnel, suppliers and vendors be liable to Customer or any third party under any cause of action or theory of liability, even if advised of the possibility of such damages, for any (a) special, incidental, consequential, punitive or indirect damages of any kind; (b) loss of profits, revenues, data, customer opportunities, business, anticipated savings or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyber-attacks or failures or interruptions to network systems. The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of Company, whether direct or indirect, Company's employees, agents, officers and directors.**

**6. Reciprocal Waiver of Claims (SAFETY Act).** Certain of Company's systems and services have received Certification and/or Designation as Qualified Anti-Terrorism Technologies ("QATT") under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, 6 U.S.C. §§ 441-444 (the "SAFETY Act"). As required under 6 C.F.R. 25.5 (e), to the maximum extent permitted by law, Company and Customer hereby agree to waive their right to make any claims against the other for any losses, including business interruption losses, sustained by either party or their respective employees, resulting from an activity resulting from an "Act of Terrorism" as defined in 6 C.F.R. 25.2, when QATT have been deployed in defense against, response to, or recovery from such Act of Terrorism.

**7. Indemnify.** Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third party claims for personal injury, death, property damage or economic loss, arising in any way from any act or omission of Customer or Company relating in any way to this Agreement, including but not limited to the Services under this Agreement, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action. Customer's responsibility with respect to indemnification and defense of Company with respect to Monitoring Services is set forth in Section 17 of this Agreement.

**8. General Provisions.** Customer has selected the service level desired after considering and balancing various levels of protection afforded and their related costs. All work to be performed by Company will be performed during normal working hours of normal working days (8:00 a.m. - 5:00



# SERVICE SOLUTION

p.m., Monday through Friday, excluding Company holidays), as defined by Company, unless additional times are specifically described in this Agreement. All work performed unscheduled unless otherwise specified in this Agreement. Appointments scheduled for four-hour window. Additional charges may apply for special scheduling requests (e.g. working around equipment shutdowns, after hours work). Company will perform the services described in the Service Solution ("Services") for one or more system(s) or equipment as described in the Service Solution or the listed attachments ("Covered System(s)"). UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY INSPECTION (AND, IF SPECIFIED, TESTING) PROVIDED UNDER THIS AGREEMENT DOES NOT INCLUDE ANY MAINTENANCE, REPAIRS, ALTERATIONS, REPLACEMENT OF PARTS, OR ANY FIELD ADJUSTMENTS WHATSOEVER, NOR DOES IT INCLUDE THE CORRECTION OF ANY DEFICIENCIES IDENTIFIED BY COMPANY TO CUSTOMER. COMPANY SHALL NOT BE RESPONSIBLE FOR EQUIPMENT FAILURE OCCURRING WHILE COMPANY IS IN THE PROCESS OF FOLLOWING ITS INSPECTION TECHNIQUES, WHERE THE FAILURE ALSO RESULTS FROM THE AGE OR OBSOLESCENCE OF THE ITEM OR DUE TO NORMAL WEAR AND TEAR. THIS AGREEMENT DOES NOT COVER SYSTEMS, EQUIPMENT, COMPONENTS OR PARTS THAT ARE BELOW GRADE, BEHIND WALLS OR OTHER OBSTRUCTIONS OR EXTERIOR TO THE BUILDING, ELECTRICAL WIRING, AND PIPING

**9. Customer Responsibilities.** Customer shall regularly test the System(s) in accordance with applicable law and manufacturers' and Company's recommendations. Customer shall promptly notify Company of any malfunction in the Covered System(s) which comes to Customer's attention. This Agreement assumes any existing system(s) are in operational and maintainable condition as of the Agreement date. If, upon inspection, Company determines that repairs are recommended, repair charges will be submitted for approval by Customer's on-site representative prior to work. Should such repair work be declined, Customer shall be relieved from any and all liability arising therefrom. Customer further agrees to:

- provide Company clear access to Covered System(s) to be serviced including, if applicable, lift trucks or other equipment needed to reach inaccessible equipment;
- supply suitable electrical service, heat, heat tracing adequate water supply, and required system schematics and/or drawings;
- notify all required persons, including but not limited to authorities having jurisdiction, employees, and monitoring services, of scheduled testing and/or repair of systems;
- provide a safe work environment;
- in the event of an emergency or Covered System(s) failure, take reasonable precautions to protect against personal injury, death, and/or property damage and continue such measures until the Covered System(s) are operational; and
- comply with all laws, codes, and regulations pertaining to the equipment and/or Services provided under this Agreement.

Customer represents and warrants that it has the right to authorize the Services to be performed as set forth in this Agreement. Customer is solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply Company secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Customer and/or end user against unauthorized access. Customer is responsible to take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

**10. Repair Services.** Where Customer expressly includes repair, replacement, and emergency response services in the Service Solution section of this Agreement, such Services apply only to the components or equipment of the Covered System(s). Customer agrees to promptly request repair services in the event the System becomes inoperable or otherwise requires repair. The Agreement price does not include repairs to the Covered System(s) recommended by Company as a result of an inspection, for which Company will submit independent pricing to Customer and as to which Company will not proceed until Customer authorizes such work and approves the pricing. Repair or replacement of non-maintainable parts of the Covered System(s) including, but not limited to, unit cabinets, insulating material, electrical wiring, structural supports, and all other non-moving parts, is not included under this Agreement.

**11. System Equipment.** The purchase of equipment or peripheral devices, (including but not limited to smoke detectors, passive infrared detectors, card readers, sprinkler system components, extinguishers and hoses) from Company shall be subject to the terms and conditions of this Agreement. If, in Company's sole judgment, any peripheral device or other system equipment, which is attached to the Covered System(s), whether provided by Company, Customer or a third party, interferes with the proper operation of the Covered System(s), Customer shall remove or replace such device or equipment promptly upon notice from Company. Failure of Customer to remove or replace the device shall constitute a material breach of this Agreement. If Customer adds any third party device or equipment to the Covered System(s), Company shall not be responsible for any damage to or failure of the Covered System(s) caused in whole or in part by such device or equipment.

**12. Reports.** Where inspection and/or test services are selected, such inspection and/or test shall be completed on Company's then current report form, which shall be given to Customer, and, where applicable, Company may submit a copy thereof to the local authority having jurisdiction. The report and recommendations by Company are only advisory in nature and are intended to assist Customer in reducing the risk of loss to property by indicating obvious defects or impairments noted to the system and equipment inspected and/or tested. They are not intended to imply that no other defects or hazards exist or that all aspects of the Covered System(s), equipment, and components are under control at the time of inspection. Final responsibility for the condition and operation of the Covered System(s) and equipment and components lies with Customer.

**13. Availability and Cost of Steel, Plastics & Other Commodities.** Company shall not be responsible for failure to provide services, deliver products, or otherwise perform work required by this Agreement due to lack of available steel products or products made from plastics or other commodities. In the event Company is unable, after reasonable commercial efforts, to acquire and provide steel products, or products made from plastics or other commodities, if required to perform work required by this Agreement, Customer hereby agrees that Company may terminate the Agreement, or the relevant portion of the Agreement, at no additional cost and without penalty. Customer agrees to pay Company in full for all work performed up to the time of any such termination.

**14. Confined Space.** If access to confined space by Company is required for the performance of Services, Services shall be scheduled and performed in accordance with Company's then-current hourly rate.

**15. Hazardous Materials.** Customer represents that, except to the extent that Company has been given written notice of the following hazards prior to the execution of this Agreement, to the best of Customer's knowledge there is no:

- Space in which work must be performed that, because of its construction, location, contents or work activity therein, accumulation of a hazardous gas, vapour, dust or fume or the creation of an oxygen-deficient atmosphere may occur;
- "permit confined space," as defined by OSHA for work Company performs in the United States;
- risk of infectious disease;
- need for air monitoring, respiratory protection, or other medical risk; or
- asbestos, asbestos-containing material, formaldehyde or other potentially toxic or otherwise hazardous material contained in or on the surface of the floors, walls, ceilings, insulation or other structural components of the area of any building where work is required to be performed under this Agreement.

All of the above are hereinafter referred to as "Hazardous Conditions." Company shall have the right to rely on the representations listed above. If Hazardous Conditions are encountered by Company during the course of Company's work, the discovery of such materials shall constitute an event beyond Company's control, and Company shall have no obligation to further perform in the area where the Hazardous Conditions exist until the area has been made safe by Customer as certified in writing by an independent testing agency, and Customer shall pay disruption expenses and re-mobilization expenses as determined by Company. This Agreement does not provide for the cost of testing involving a discharge or release, capture, containment, transport, removal, or disposal (collectively, the "Discharge Services") of any hazardous waste materials, hazardous materials, firefighting materials including without limitation any firefighting foam encountered in and/or discharged from any of the Covered System(s) and/or during performance of the Services. Said materials shall at all times remain the responsibility and property of Customer. Customer shall be responsible for any Discharge Services associated with such materials, including all discharged firefighting foam in accordance with all applicable law. Company shall not be responsible for the testing, removal or disposal of such hazardous materials. Customer shall indemnify and hold Company harmless from and against any and all claims, demands and/or damages arising in whole or in part from the use of or any Discharge Services associated with any hazardous waste, hazardous materials, or firefighting materials including without limitation firefighting foam encountered or discharged during performance of the Services.

**16. Other Services.**

**A. Remote Service.** If Customer selects Remote Service, Company shall provide support for the Customer's system by way of education, remote assistance and triage that does not require programming changes to the Customer's panel. In addition, Remote Service does not include service to address physical damage to the system or a device; troubleshoot wiring issues; programming changes and/or relocating, remounting, reconnecting, or adding a device to the system. Customer understands and agrees that, while Remote Service provides for communication regarding Customer's fire alarm system to Company via the Internet, Remote Service does not constitute monitoring of the system, and Customer understands that Remote Service does not provide for Company to contact the fire department or other authorities in the event of a fire alarm. Customer understands that if it wishes to receive monitoring of its fire alarm system and notification of the fire department or other authorities in the event of a fire alarm, it must select monitoring services as a

## SERVICE SOLUTION

separate Service under this Agreement. **CUSTOMER FURTHER UNDERSTANDS AND AGREES THAT THE TERMS OF SECTION 17.F OF THIS AGREEMENT APPLY TO REMOTE SERVICE.**

**B. Connected Fire Sprinkler Services; Connected Fire Alarm Services.** Connected Fire Sprinkler Services and Connected Fire Alarm Services each means a data-analytics and software platform that uses a cellular or network connection to gather equipment performance data about a Customer's Covered Equipment for Customer's sprinkler system or fire alarm system, as applicable, to assist Company in advising Customer on such equipment's health, performance or potential malfunction. Connected Fire Sprinkler Services and Connected Fire Alarm Services are collectively, the Connected Equipment Services. If Customer has purchased Connected Fire Sprinkler Services and/or Connected Fire Alarm Services on any Covered Equipment, Customer agrees to allow Company to install diagnostic sensors and communication hardware ("Gateway Device") or Customer will supply a network connection suitable to enable communication with Customer's Covered Equipment in order for Company to deliver the connected services. For more information on whether your equipment includes Connected Fire Sprinkler Services and/or Connected Fire Alarm Services, a subscription to such services and the cost, if any, of such subscription, please see your applicable order, quote, proposal or purchase documentation or talk to your Company sales representative. For certain subscriptions, Customer will be able to access equipment information from a mobile or smart device using the service's mobile or web app. The Gateway Device will be used to access, store, and trend data for the purposes of providing Connected Fire Sprinkler Services. Company will not use Connected Fire Sprinkler Services or the Connected Fire Alarm Services to remotely operate or make changes to Customer's Equipment. If the connection is disconnected by Customer, and a technician needs to be dispatched to the Customer site, then the Customer will pay Company at Company's then-current standard applicable contract regular time and/or overtime rate for such services.

**Company makes no warranty or guarantee relating to the Connected Fire Sprinkler Services or Connected Fire Alarm Services. Customer acknowledges that, while Connected Fire Alarm Services or Connected Sprinkler Services generally improve equipment performance and services, these services do not prevent all potential malfunction, insure against all loss or guarantee a certain level of performance and that Company shall not be responsible for any injury, loss, or damage caused by any act or omission of Company related to or arising from the proactive health notifications of the equipment under Connected Equipment Services. Customer understands that if it wishes to receive monitoring of its fire alarm system or sprinkler system and notification of the fire department or other authorities in the event of an alarm, it must select monitoring services as a separate Service under this Agreement. CUSTOMER FURTHER UNDERSTANDS AND AGREES SECTION 19 (SOFTWARE AND DIGITAL SERVICES) APPLY TO CONNECTED FIRE ALARM SERVICES AND CONNECTED SPRINKLER SERVICES. In the event of a conflict between these terms and the Software Terms, the Software Terms will control.**

**C. Dashboards and Mobility Applications for Connected Fire Sprinkler Services and Connected Fire Alarm Services.** If Customer has purchased Connected Fire Sprinkler Services and/or Connected Fire Alarm Services, Customer may utilize Company's Dashboard(s) and Mobility Application(s), as applicable, during the term of the Agreement, pursuant to the then applicable Terms of Use Agreement. Terms for the Dashboard are located at [www.johnsoncontrols.com/techterms](http://www.johnsoncontrols.com/techterms)

**17. Monitoring Services.** If Customer has selected Monitoring Services, the following shall apply to such Services:

**A. Alarm Monitoring Service.** Customer agrees and acknowledges that Company's sole and only obligation under this Agreement shall be to provide alarm monitoring, notification, and/or Runner Services as set forth in this Agreement and to endeavor to notify the party(ies) identified by Customer on the Contact/Call List ("Contacts") and/or Local Emergency Dispatch Numbers for responding authorities. Upon receipt of an alarm signal, Company may, at our sole discretion, attempt to notify the Contacts to verify the signal is not false. If we fail to notify the Contacts or question the response we receive, we will attempt to notify the responding authority. In the event Company receives a supervisory signal or trouble signal, Company shall endeavor to promptly notify one of the Contacts. Company shall not be responsible for a Contact's or responding authority's refusal to acknowledge/respond to Company's notifications of receipt of an alarm signal, nor shall Company be required to make additional notifications because of such refusal. The Contacts are authorized to act on Customer's behalf and, if so designated on the Contact/Call List, are authorized to cancel an alarm prior to the notification of authorities. Customer understands that local laws, ordinances or policies may restrict Company's ability to provide the alarm monitoring and notification services described in this Agreement and/or necessitate modified or additional services and related charges to Customer. Customer understands that Company may employ a number of industry-recognized measures to help reduce occurrences of false alarm signal activations. These measures may include, but are not limited to, implementation of industry-recognized default settings; implementation of "partial clear time bypass" procedures at our alarm monitoring center and other similar measures at our sole discretion from time to time. THESE MEASURES CAN RESULT IN NO ALARM SIGNAL BEING SENT FROM AN ALARM ZONE IN CUSTOMER'S PREMISES AFTER THE INITIAL ALARM ACTIVATION UNTIL THE

ALARM SYSTEM IS MANUALLY RESET. Upon receiving notification from Company that a fire or gas detection (e.g. carbon monoxide) signal has been received, the responding authority may forcibly enter the premises. Cellular radio unit test supervision, if provided under this Agreement, provides only the status of the cellular radio unit's current signaling ability at the time of the test communication based on certain programmed intervals and does not serve to detect the potential loss of radio service at the time of an actual emergency event. Company shall not be responsible to provide monitoring services under this Agreement unless and until the communication link between Customer's premises and Company's Monitoring Center has been tested. **SUCH SERVICES ARE PROVIDED WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**B. Limitation of Liability; Limitations of Remedy.** Customer understands that Company offers several levels of Monitoring Services and that the level described has been chosen by Customer after considering and balancing various levels of protection afforded and their related costs. **It is understood and agreed by Customer that Company is not an insurer and that insurance coverage shall be obtained by Customer and that amounts payable to Company hereunder are based upon the value of the Monitoring Services and the scope of liability set forth in this Agreement and are unrelated to the value of Customer's property and the property of others located on the premises. Customer agrees to look exclusively to Customer's insurer to recover for injuries or damage in the event of any loss or injury and that Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no guaranty or warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or Services supplied by Company will detect or avert occurrences or the consequences thereof that the equipment or Service was designed to detect or avert. It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its monitoring obligations under this Agreement. Accordingly, Customer agrees that Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences thereof, which the equipment or Service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or Service in any respect, Company's liability with respect to Monitoring Services shall be the lesser of the annual fee for Monitoring Services allocable to the site where the incident occurred or two thousand five hundred (\$2,500) dollars, as agreed upon damages and not as a penalty, as Customer's sole remedy. Such sum shall be complete and exclusive. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY SERVICING, ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE COVERED SYSTEM(S), AS HEREINAFTER DEFINED, OR ANY OF ITS COMPONENT PARTS BY THE CUSTOMER OR ANY THIRD PARTY. In no event shall Company and its affiliates and their respective personnel, suppliers and vendors be liable to Customer or any third party under any cause of action or theory of liability, even if advised of the possibility of such damages, for any (a) special, incidental, consequential, punitive or indirect damages of any kind, including but not limited to damages; (b) loss of profits, revenues, data, customer opportunities, business, anticipated savings or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyber-attacks or failures or interruptions to network systems. COMPANY SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM THE USE, LOSS OF THE USE, PERFORMANCE, OR FAILURE OF THE COVERED SYSTEM(S) TO PERFORM. The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of Company, whether direct or indirect, and each of their employees, agents, officers and directors.**

**C. Indemnity, Insurance.** Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third-party claims for personal injury, death, property damage or economic loss, arising in any way from any act or omission of Customer or Company relating in any way to the Monitoring Services provided under this Agreement, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action. Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies.

**D. No modification.** Modification to Sections 17 B or C may only be made by a written amendment to this Agreement signed by both parties specifically referencing Section 17 B and/or C, and no such amendment shall be effective unless approved by the manager of Company's Central Monitoring Center.

## SERVICE SOLUTION

**E. Customer's Duties.** In addition to Customer's duty to indemnify, defend, and hold Company harmless pursuant to this Section 17:

- i. Customer agrees to furnish the names and telephone numbers of all persons authorized to enter or remain on Customer's premises and/or that should be notified in the event of an alarm (the Contact/ Call List) and Local Emergency Dispatch Numbers and provide all changes, revision and modifications to the above to Company in writing in a timely manner. Customer must ensure that all such persons are authorized and able to respond to such notification.
- ii. **Customer shall carefully and properly test and set the system immediately prior to the securing of the premises and carefully test the system in a manner prescribed by Company during the term of this Agreement. Customer agrees that it is responsible for any losses or damages due to malfunction, miscommunication or failure of Customer's system to accurately handle, process or communicate data. If any defect in operation of the System develops, or in the event of a power failure, interruption of telephone service, or other interruption at Customer's premises of signal or data transmission through any media, Customer shall notify Company immediately. If space/interior protection (i.e. ultrasonic, microwave, infrared, etc.) is part of the System, Customer shall walk test the system in the manner recommended by Company.**
- iii. When any device or protection is used, including, but not limited to, space protection, which may be affected by turbulence of air, occupied airspace change or other disturbance, forced air heaters, air conditioners, horns, bells, animals and any other sources of air turbulence or movement which may interfere with the effectiveness of the System during closed periods while the alarm system is on, Customer shall notify Company
- iv. Customer shall promptly reset the System after any activation.
- v. **Customer shall notify Company regarding any remodeling or other changes to the protected premises that may affect operation of the system.**
- vi. **Customer shall cooperate with Company in the installation, operation and/or maintenance of the system and agrees to follow all instructions and procedures which may be prescribed for the operation of the system, the rendering of services and the provision of security for the premises.**
- vii. Customer shall pay all charges made by any telephone or communications provider company or other utility for installation, leasing, and service charges of telephone lines connecting Customer's premises to Company. Customer acknowledges that alarm signals from Customer's premises to Company are transmitted over Customer's telephone or other transmission service and that in the event the telephone or other transmission service is out of order, disconnected, placed on "vacation," or otherwise interrupted, signals from Customer's alarm system will not be received by Company, during any such interruption in telephone or other transmission service and the interruption will not be known to Company. Customer agrees that in the event the equipment or system continuously transmits signals reasonably determined by Company to be false and/or excessive in number, Customer shall be subject to the additional costs and fees incurred by Company in the receiving and/or responding to the excessive signals and/or Company may at its sole discretion terminate this Agreement with respect to Monitoring services upon notice to Customer.

**F. Communication Facilities.**

- i. **Authorization.** Customer authorizes Company, on Customer's behalf, to request services, orders or equipment from a telephone company, wireless carrier or other company providing communication facilities, signal transmission services or facilities under this Agreement (referred to as "Communication Company"). Should any third-party service, equipment or facility be required to perform the Monitoring Services set forth in this Agreement, and should the same be terminated or become otherwise unavailable or impracticable to provide, Company may terminate Monitoring Services upon notice to Customer.
- ii. **Digital Communicator.** Customer understands that a digital communicator (DACT), if installed under this Agreement, uses traditional telephone lines for sending signals which eliminate the need for a dedicated telephone line and the costs associated with such dedicated lines.
- iii. **Derived Local Channel.** The Communication Company's services provided to Customer in connection with the Services may include Derived Local Channel service. Such service may be provided under the Communication Company's service marks or service names. These services include providing lines, signal paths, scanning and transmission. Customer agrees that the Communication Company's liability is limited to the same extent Company's liability is limited pursuant to this Section 17.
- iv. **CUSTOMER UNDERSTANDS THAT COMPANY WILL NOT RECEIVE ALARM SIGNALS WHEN THE TELEPHONE LINE OR OTHER TRANSMISSION MODE IS NOT OPERATING OR HAS BEEN CUT, INTERFERED WITH OR IS OTHERWISE DAMAGED OR IF THE ALARM SYSTEM IS UNABLE TO ACQUIRE, TRANSMIT OR MAINTAIN AN ALARM SIGNAL OVER CUSTOMER'S TELEPHONE SERVICE FOR ANY REASON INCLUDING NETWORK OUTAGE OR OTHER NETWORK PROBLEMS SUCH AS CONGESTION OR DOWNTIME, ROUTING PROBLEMS, OR INSTABILITY OF SIGNAL QUALITY. CUSTOMER UNDERSTANDS THAT OTHER POTENTIAL CAUSES OF SUCH A FAILURE OVER CERTAIN TELEPHONE SERVICES (INCLUDING BUT NOT LIMITED TO SOME TYPES OF DSL,**

**ADSL, VOIP, DIGITAL PHONE, INTERNET PROTOCOL BASED PHONE OR OTHER INTERNET INTERFACE-TYPE SERVICE OR RADIO SERVICE, INCLUDING CELLULAR OR PRIVATE RADIO, ETC. ("NON-TRADITIONAL TELEPHONE SERVICE")) INCLUDE BUT ARE NOT LIMITED TO: (1) LOSS OF NORMAL ELECTRIC POWER TO CUSTOMER'S PREMISES (THE BATTERY BACK-UP FOR THE ALARM PANEL DOES NOT POWER TELEPHONE SERVICE); AND (2) ELECTRONICS FAILURES SUCH AS A MODEM MALFUNCTION. CUSTOMER UNDERSTANDS THAT COMPANY WILL ONLY REVIEW THE INITIAL COMPATIBILITY OF CUSTOMER'S ALARM SYSTEM WITH NON-TRADITIONAL TELEPHONE SERVICE AT THE TIME OF INITIAL CONNECTION TO COMPANY'S MONITORING CENTER AND THAT CHANGES IN CUSTOMER'S TELEPHONE SERVICE'S DATA FORMAT AFTER THE INITIAL REVIEW OF COMPATIBILITY COULD MAKE CUSTOMER'S TELEPHONE SERVICE UNABLE TO TRANSMIT ALARM SIGNALS TO COMPANY'S MONITORING CENTERS. IF COMPANY DETERMINES IN ITS SOLE DISCRETION THAT IT IS COMPATIBLE, COMPANY WILL PERMIT CUSTOMER TO USE NON-TRADITIONAL TELEPHONE SERVICE AS THE SOLE METHOD OF TRANSMITTING ALARM SIGNALS, ALTHOUGH CUSTOMER UNDERSTANDS THAT COMPANY RECOMMENDS THE USE OF AN ADDITIONAL BACK-UP METHOD OF COMMUNICATION TO CONNECT CUSTOMER'S ALARM SYSTEM TO THE MONITORING CENTER REGARDLESS OF THE TYPE OF TELEPHONE SERVICE USED. CUSTOMER ALSO UNDERSTANDS THAT IF COMPANY DETERMINES IN ITS SOLE DISCRETION THAT CUSTOMER'S NON-TRADITIONAL TELEPHONE SERVICE IS OR LATER BECOMES NON-COMPATIBLE, OR IF CUSTOMER CHANGES TO ANOTHER NON-TRADITIONAL TELEPHONE SERVICE THAT IS NOT COMPATIBLE, THEN COMPANY REQUIRES THAT CUSTOMER USE AN ALTERNATE METHOD OF COMMUNICATION ACCEPTABLE TO COMPANY AS THE PRIMARY METHOD TO CONNECT CUSTOMER'S ALARM SYSTEM TO THE MONITORING CENTER. CUSTOMER UNDERSTANDS THAT TRANSMISSION OF FIRE ALARM SIGNALS BY MEANS OTHER THAN A TRADITIONAL TELEPHONE LINE MAY NOT BE IN COMPLIANCE WITH FIRE ALARM STANDARDS OR SOME LOCAL FIRE CODES, AND THAT IT IS CUSTOMER'S OBLIGATION TO COMPLY WITH SUCH STANDARDS AND CODES. CUSTOMER ALSO UNDERSTANDS THAT IF THE ALARM SYSTEM HAS A LINE CUT FEATURE, IT MAY NOT BE ABLE TO DETECT IF A NON-TRADITIONAL TELEPHONE SERVICE LINE IS CUT OR INTERRUPTED, AND THAT COMPANY MAY NOT BE ABLE TO PROVIDE CERTAIN AUXILIARY MONITORING SERVICES THROUGH A NON-TRADITIONAL TELEPHONE LINE OR SERVICE. CUSTOMER FURTHER UNDERSTANDS THAT THE ALARM PANEL MAY BE UNABLE TO SEIZE THE PHONE LINE TO TRANSMIT AN ALARM SIGNAL IF ANOTHER CONNECTION IS OFF THE HOOK DUE TO IMPROPER CONNECTION OR OTHERWISE.**

**G. Verification; Runner Service.** Some jurisdictions may require alarm verification by telephone or on-site verification ("Runner Service") before dispatching emergency services. In the event that a requirement of alarm verification becomes effective after the date of this Agreement, such services may be available at an additional charge. Company shall not be held liable for any delay or failure of dispatch of emergency services arising from such verification. Where Runner Service is indicated, such services may be provided by a third party. COMPANY WILL NOT ARREST OR DETAIN ANY PERSON.

**H. Personal Emergency Response Service.** If Customer has selected Personal Emergency Response Services, Customer agrees that the very nature of Personal Emergency Response Services, irrespective of any delays, involves uncertainty, risk and possible serious injury, disability or death, for which Company should not under any circumstances be held responsible or liable; that the equipment furnished for Personal Emergency Response Services is not foolproof and may experience signal transmission failures or delays for any number of reasons, whether or not our fault or under Company's control; that the actual time required for medical emergency providers to arrive at the premises and/or to transport any person requiring medical attention is unpredictable and that many contributing factors, including but not limited to such things as telephone network operation, distance, weather, road and traffic conditions, alarm equipment function and human factors, both with responding authorities and with Company, may affect response

**18. Limited Warranty. COMPANY WARRANTS THAT ITS WORKMANSHIP AND MATERIAL, EXCLUDING MONITORING SERVICES, FURNISHED UNDER THIS AGREEMENT WILL BE FREE FROM DEFECTS FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF FURNISHING. No warranty is provided for third-party products and equipment installed or furnished by Company. Such products and equipment are provided with the third-party manufacturer's warranty to the extent available, and Company will transfer the benefits, together with all limitations, of that manufacturer's warranty to Customer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS, SYSTEMS OR EQUIPMENT, IF ANY, SUPPORTED HEREUNDER.**

Company makes no and specifically disclaims all representations or warranties that the services, products, software or third party product or software will be secure from cyber threats, hacking or other similar malicious activity, or will detect the presence of, or eliminate, treat, or mitigate the spread transmission, or outbreak of any pathogen, disease, virus or other contagion, including but

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not limited to COVID 19. Unless agreed to in writing by the parties, any technical support, assistance, or advice ("Technical Support") provided by Company, such as suggestions as to design use and suitability of the equipment or products for the Customer's application, is provided in good faith, but Customer acknowledges and agrees that Company is not the designer, engineer, or installer of record. Any Technical Support is provided for informational purposes only and shall not be construed as a representation or warranty, express or implied, concerning the proper selection, use, and/or application of equipment or products. Customer assumes exclusive responsibility for determining if the equipment and products supplied by Company are suitable for its intended application and all risk and liability, whether based in contract, tort or otherwise, in connection with its application and use of the equipment or products.

### 19. Software and Digital Services.

**Digital Enabled Services; Data.** If Company provides Digital Enabled Services under this Agreement, these Digital Enabled Services require the collection, transfer and ingestion of building, equipment, system time series, and other data to Company's cloud-hosted software applications. Customer consents to and grants Company the right to collect, transfer, ingest and use such data to enable Company and its affiliates and agents to provide, maintain, protect, develop and improve the Digital Enabled Services and Company products and services. Customer acknowledges that, while Digital Enabled Services generally improve equipment performance and services, Digital Enabled Services do not prevent all potential malfunction, insure against all loss, or guarantee a certain level of performance. Customer shall be solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network"), shall appropriately protect hardware and products connected to the Network and will supply Company secure Network access for providing its Digital Enabled Services. As used herein, "Digital Enabled Services" mean services provided hereunder that employ Company software and related equipment installed at Customer facilities and Company cloud-hosted software offerings and tools to improve, develop, and enable such services. Digital Enabled Service may include, but are not limited to, (a) remote servicing and inspection, (b) advanced equipment fault detection and diagnostics, and (c) data dashboarding and health reporting. If Customer accesses and uses Software that is used to provide the Digital Enabled Services, the Software Terms (defined below) will govern such access and use.

**Digital Solutions. Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, Company's standard terms for such Software and Software related professional services in effect from time to time at [www.johnsoncontrols.com/techterms](http://www.johnsoncontrols.com/techterms) (collectively, the "Software Terms").** Specifically, the Company General EULA set forth at [www.johnsoncontrols.com/buildings/legal/digital/generaleula](http://www.johnsoncontrols.com/buildings/legal/digital/generaleula) governs access to and use of software installed on Customer's premises or systems and the Company Terms of Service set forth at [www.johnsoncontrols.com/buildings/legal/digital/generalatos](http://www.johnsoncontrols.com/buildings/legal/digital/generalatos) govern access to and use of hosted software products. The applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, Company and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto.

Notwithstanding any other provisions of this Agreement, unless otherwise agreed, the following terms apply to Software that is provided to Customer on a subscription basis (i.e., a time limited license or use right), (each a "Software Subscription"): Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the "Subscription Start Date") and will continue in effect until the expiration of the subscription term noted in the applicable statement of work, order or other applicable ordering document. At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a "Renewal Subscription Term"), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. To the extent permitted by applicable law, Software Subscriptions purchases are non-cancelable, and the sums paid nonrefundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. Customer shall pay all invoiced amounts within thirty calendar days after the date of invoice. Payments not made within such time period shall be subject to late charges as set forth in the Software Terms. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at Company's then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement and applicable SOW will be subject to additional fees based on the date such excess use began.

**20. Taxes, Fees, Fines, Licenses, and Permits.** Customer agrees to pay all sales tax, use tax, property tax, utility tax and other taxes required in connection with the equipment and Services listed, including telephone company line charges, if any. Customer shall comply with all laws and

regulations relating to the equipment and its use and shall promptly pay when due all sales, use, property, excise and other taxes and all permit, license and registration fees now or hereafter imposed by any government body or agency upon the equipment or its use. Company may, without notice, obtain any required permit, license or registration for Customer at Customer's expense and charge a fee for this service. If Customer fails to maintain any required licenses or permits, Company shall not be responsible for performing the services and may terminate the services without notice to Customer.

**21. Outside Charges.** Customer understands and accepts that Company specifically disclaims any responsibility for charges associated with the notification or dispatching of anyone, including but not limited to fire department, police department, paramedics, doctors, or any other emergency personnel, and if there are any charges incurred as a result of said notification or dispatch, said charges shall be the responsibility of Customer.

**22. Insurance.** Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies.

**23. Waiver of Subrogation.** Customer does hereby for itself and all other parties claiming under it release and discharge Company from and against all hazards covered by Customer's insurance, it being expressly agreed and understood that no insurance company or insurer will have any right of subrogation against Company.

**24. Force Majeure.** Company shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, failure to render services, or any other failure by Company to perform an obligation under this Agreement, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of Company, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of Company. If Company's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, Company shall be excused from performance under the Agreement. Without limiting the generality of the foregoing, if Company is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, Company will be entitled to extend the relevant completion date by the amount of time that Company was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases Company's cost to perform the services, Customer is obligated to reimburse Company for such increased costs, including, without limitation, costs incurred by Company for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees, compliance with vaccination requirements or other costs and expenses incurred by Company in connection with the Force Majeure Event.

**25. Exclusions.** This Agreement expressly excludes, without limitation, provision of fire watches; reloading of, upgrading, and maintaining computer software; making repairs or replacements necessitated by reason of negligence or misuse of components or equipment or changes to Customer's premises; vandalism; power failure; current fluctuation; failure due to non-Company installation; lightning, electrical storm, or other severe weather; water; accident; fire; acts of God; testing inspection and repair of duct detectors, beam detectors, and UV/IR equipment; provision of fire watches; clearing of ice blockage; draining of improperly pitched piping; batteries; recharging of chemical suppression systems; reloading of, upgrading, and maintaining computer software; corrosion (including but not limited to micro-bacterially induced corrosion ("MIC")); cartridges greater than 16 grams; gas valve installation; or any other cause external to the Covered System(s) and Company shall not be required to provide Service while interruption of service due to such causes shall continue. This Agreement does not cover and specifically excludes system upgrades and the replacement of obsolete systems, equipment, components or parts. All such services may be provided by Company at Company's sole discretion at an additional charge. If Emergency Services are expressly included in the Service Solution, the Agreement price does not include travel expenses.

**26. Delays.** Company shall have no responsibility or liability to Customer or any other person for delays in the installation or repair of the System or the performance of our Services regardless of the reason, or for any resulting consequences.

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**27. Termination.** Company may terminate this Agreement immediately at its sole discretion upon the occurrence of any Event of Default as hereinafter defined. If Company's performance of its obligations becomes impracticable due to obsolescence or unavailability of systems, equipment, or products (including component parts and/or materials) or because the Company or its supplier(s) has discontinued the manufacture or the sale of the equipment and/or products or is no longer in the business of providing the Services, Company may terminate this Agreement, or the affected portions, at its sole discretion upon notice to Customer. Company may terminate this Agreement, or the affected portions, at its sole discretion upon notice to the Customer if Company's performance of its obligations are prohibited because of changes in applicable laws, regulations or codes.

**28. No Option to Solicit.** Customer shall not, directly or indirectly, on its own behalf or on behalf of any other person, business, corporation or entity, solicit or employ any Company employee, or induce any Company employee to leave his or her employment with Company, for a period of two years after the termination of this Agreement.

**29. Default.** An Event of Default shall include (a) any full or partial termination of this Agreement by Customer before the expiration of the then-current Term, (b) failure of Customer to pay any amount when due and payable, (c) abuse of the System or the Equipment, (d) failure by Customer to observe, keep or perform any term of this Agreement; (e) dissolution, termination, discontinuance, insolvency or business failure of Customer. Upon the occurrence of an Event of Default, Company may pursue one or more of the following remedies, (i) discontinue furnishing Services, (ii) by written notice to Customer declare the balance of unpaid amounts due and to become due under this Agreement to be immediately due and payable, (iii) receive immediate possession of any equipment for which Customer has not paid, (iv) proceed at law or equity to enforce performance by Customer or recover damages for breach of this Agreement, and (v) recover all costs and expenses, including without limitation reasonable attorneys' fees, in connection with enforcing or attempting to enforce this Agreement.

**30. One-Year Limitation on Actions; Forum Choice of Law.**

Company shall have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be submitted to a court of law or arbitrated. For Customers located in the United States, the laws of Delaware shall govern the validity, enforceability, and interpretation of this Agreement, without regard to conflicts of law principles thereof, and the exclusive venue for any such litigation or arbitration shall be in Milwaukee, Wisconsin. For customers located in Canada, this agreement shall be governed by and be construed in accordance with the laws of Ontario, without regard to conflicts of law principles thereof, and the exclusive venue for any such litigation or arbitration shall be in Ontario, Canada. The parties waive any objection to the exclusive jurisdiction of the specified forums, including any objection based on forum non conveniens. In the event the matter is submitted to a court, Company and Customer hereby agree to waive their right to trial by jury. In the event the matter is submitted to arbitration by Company, the costs of arbitration shall be borne equally by the parties, and the arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction. Except as provided below, no claim or cause of action, whether known or unknown, shall be brought by either party against the other more than one year after the claim first arose. Claims not subject to the one-year limitation include claims for unpaid: (1) contract amounts, (2) change order amounts (approved or requested) and (3) delays and/or work inefficiencies. Customer will pay all of Company's reasonable collection costs (including legal fees and expenses).

**31. Assignment.** This Agreement is not assignable by the Customer except upon written consent of Company first being obtained. Company shall have the right to assign this Agreement, in whole or in part, or to subcontract any of its obligations under this Agreement without notice to Customer.

**32. Entire Agreement.** The parties intend this Agreement, together with any attachments or Riders (collectively the "Agreement") to be the final, complete and exclusive expression of their Agreement and the terms and conditions thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties, written or oral, and shall constitute the sole terms and conditions relating to the Services. No waiver, change, or modification of any terms or conditions of this Agreement shall be binding on Company unless made in writing and signed by an Authorized Representative of Company.

**33. Headings.** The headings in this Agreement are for convenience only.

**34. Severability.** If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement will continue to be valid as to the other provisions and the remainder of the affected provision.

**35. Electronic Media.** Customer agrees that Company may scan, image or otherwise convert this Agreement into an electronic format of any nature. Customer agrees that a copy of this Agreement produced from such electronic format is legally equivalent to the original for any and all purposes, including litigation. Customer agrees that Company's receipt by fax of the Agreement signed by Customer legally binds Customer and such fax copy is legally equivalent to the original for any and all purposes, including litigation.

**36. Legal Fees.** Company shall be entitled to recover from Customer all reasonable legal fees incurred in connection with Company enforcing the terms and conditions of this Agreement.

**37. Lien Legislation.** Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall be subject to the lien legislation applicable to the location where the work will be performed, and, in the event of conflict, the applicable lien legislation shall prevail.

**38. Privacy. A. Company as : Where Company factually acts as Processor of Personal Data on behalf of Customer (as such terms are defined in the DPA) the terms at [www.johnsoncontrols.com/dpa](http://www.johnsoncontrols.com/dpa) shall apply. B. Company as : Company will collect, process and transfer certain personal data of Customer and its personnel related to the business relationship between it and Customer (for example names, email addresses, telephone numbers) as controller and in accordance with Company's Privacy Notice at <https://www.johnsoncontrols.com/privacy>. Customer acknowledges Company's Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Customer consents to such collection, processing and transfer. To the extent consent to such collection, processing and transfer by Company is mandatorily required from Customer's personnel under applicable law, Customer warrants and represents that it has obtained such consent.**

**39. FAR.** Company supplies "commercial items" within the meaning of the Federal Acquisition Regulations (FAR), 48 CFR Parts 1-53. As to any customer order for a U.S. Government contract, Company will comply only with those mandatory flow-downs for commercial item and commercial services subcontracts listed either at FAR 52.244-6, or 52.212-5(e)(1), as applicable.

**40. License Information** (Security System Customers): AL Alabama Electronic Security Board of Licensure 7956 Vaughn Road, PMB 392, Montgomery, Alabama 36116 (334) 264-9388; AR Regulated by: Arkansas Board of Private Investigators and Private Security Agencies, #1 State Police Plaza Drive, Little Rock 72209 (501)618-8600; CA Alarm company operators are licensed and regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA, 95814. Upon completion of the installation of the alarm system, the alarm company shall thoroughly instruct the purchaser in the proper use of the alarm system. Failure by the licensee, without legal excuse, to substantially commence work within 20 days from the approximate date specified in the agreement when the work will begin is a violation of the Alarm Company Act: NY Licensed by N.Y.S. Department of the State; TX Texas Commission on Private Security, 5805 N. Lamar Blvd., Austin, 78752-4422, 512-424-7710. License numbers available at [www.johnsoncontrols.com](http://www.johnsoncontrols.com) or contact your local Johnson Controls office.