

Vindicator Technologies, Inc.

General Terms and Conditions

1. WORKING HOURS

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

2. TAXES

Vindicator's pricing excludes all taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), duties and charges (collectively, "Taxes"). Buyer will pay all Taxes resulting from this Agreement or Vindicator's performance under this Agreement, whether imposed, levied, collected, withheld, or assessed now or later. If Vindicator is required to impose, levy, collect, withhold or assess any Taxes on any transaction under this Agreement, then in addition to the purchase price, Vindicator will invoice Buyer for the such Taxes unless at the time of order placement, Buyer furnishes Vindicator with an exemption certificate or other documentation sufficient to verify exemption from the Taxes.

If any Taxes are required to be withheld from amounts paid or payable to Vindicator under this Agreement, (a) such withholding amount will not be deducted from the amounts due Vindicator as originally priced (b) Buyer will pay the Taxes on behalf of Vindicator to the relevant taxing authority in accordance with applicable law, and (c) Buyer will forward to Vindicator within 60 days of payment proof of Taxes paid sufficient to establish the withholding amount and the recipient.

In no event will Vindicator be liable for Taxes paid or payable by Buyer. This clause will survive expiration or any termination of this Agreement.

3. NON-DISCLOSURE AND NON-USE OF PROPRIETARY INFORMATION

"Proprietary Information" means: (1) any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, maskworks and artwork, that is clearly identified as being confidential, proprietary or a trade secret, (2) business related information including but not limited to pricing, manufacturing, or marketing, (3) the terms and conditions of any proposed or actual agreement between the parties or their affiliates, (4) either party's or its affiliates business policies, or practices, and (5) the information of others identified as confidential, proprietary or a trade secret that is received by either party under an obligation of confidentiality.

The receiving party will keep all Proprietary Information disclosed confidential for 10 years following the expiration, termination or completion of the work of this Agreement whichever period is longer. Each party will retain ownership of its Proprietary Information including, without limitation, all rights in patents, copyrights, trademarks and trade secrets. No right or license is granted hereby to either Party or its buyers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent, patent application or other proprietary right of the other Party, notwithstanding the expiration of the confidentiality obligations stated in this clause. Vindicator agrees to use the Proprietary Information of Buyer only to provide products or services for Buyer from Vindicator and not from any other source. Buyer agrees that it will not use or disclose Vindicator's Proprietary Information for any other purpose.

The receiving Party has no duty to protect information that is: (a) known, publicly, at the time of disclosure or becomes publicly known through no fault of recipient, (b) known to recipient at the time of disclosure through no wrongful act of recipient, (c) received by recipient from a third party without restrictions similar to those in this clause, or (d) independently developed by recipient.

4. INSURANCE OBLIGATIONS

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

- a. Commercial General Liability Insurance to include contractual liability and products/completed operations liability with a minimum combined single limit of \$5,000,000 per occurrence. Such policy will be written on an occurrence form basis;
- b. Automobile Liability Insurance with a minimum combined single limit of \$5,000,000. Coverage will include all owned, leased, non-owned and hired automobiles.
- c. Where applicable, All Risk Property which includes Construction All Risk/Erection All Risk (CAR/EAR) insurance for physical damage to property which is assumed in the Contract;
- d. Workers' Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of \$1,000,000 per accident as required by the laws and regulations at the Site in which the work is carried out.

Prior to the commencement of the Contract, Vindicator will furnish evidence of said insurance coverage in the form of a Memorandum of Insurance that is accessible at: <http://www51.honeywell.com/moi/>. All insurance required in this Article will be written by companies with a rating of no less than "A-, XII" by A.M. Best or equivalent rating agency and such insurer's will endeavor to provide thirty day (30) notice of cancellation or non-renewal to the Buyer. In the event that Vindicator implements a self-insured program, Vindicator will provide adequate proof of financial responsibility.

5. HAZARDOUS SUBSTANCES, MOLD AND UNSAFE WORKING CONDITIONS

5.1 Definitions:

- 5.1.1** "Hazardous substance" includes all of the following, and any by-product of or from any of the following, whether naturally occurring or manufactured, in quantities, conditions or concentrations that have, are alleged to have, or are believed to have an adverse effect on human health, habitability of a Site, or the environment: (a) any dangerous, hazardous or toxic pollutant, contaminant, chemical, material or substance defined as hazardous or toxic or as a pollutant or contaminant under state or federal law, and (b) any petroleum product, nuclear fuel or material, carcinogen, asbestos, urea formaldehyde, foamed-in-place insulation, polychlorinated biphenyl (PCBs), and (c) any other chemical or biological material or organism, that has, is alleged to have, or is believed to have an adverse effect on human health, habitability of a Site, or the environment.
- 5.1.2** "Mold" means any type or form of fungus or biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing. This includes any related or any such conditions caused by third parties.
- 5.1.3** "Covered Equipment" means the equipment covered by the Services to be performed by Vindicator under this Agreement, and is limited to the equipment included in the respective work scope attachments.
- 5.2** Buyer has not observed or received notice from any source (formal or informal) of (a) Hazardous Substances or Mold, either airborne or on or within the walls, floors, ceilings, heating, ventilation and air conditioning systems, plumbing systems, structure, and other components of the Site, or within furniture, fixtures, equipment, containers or pipelines in a Site; or (b) conditions that, to Buyer's knowledge, might cause or promote accumulation, concentration, growth or dispersion of Hazardous Substances or Mold on or within such locations.
- 5.3** Vindicator is not responsible for determining whether the Covered Equipment or the temperature, humidity and ventilation settings used by Buyer, are appropriate for Buyer and the Site except as specifically provided in an attached Work Scope Document.
- 5.4** If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by Vindicator or others and provide an unsafe condition for the performance of the work or Services, the discovery of the condition constitutes a cause beyond Vindicator's reasonable control and Vindicator may cease the work or Services until the area has been made safe by Buyer or Buyer's representative, at Buyer's expense. Vindicator may terminate this Agreement if Buyer has not fully remediated the unsafe condition within sixty (60) days of discovery.
- 5.5** Buyer represents that Buyer has not retained Vindicator to discover, inspect, investigate, identify, prevent or remediate Hazardous Substances or Mold or conditions caused by Hazardous Substances or Mold.
- 5.6** **TO THE FULLEST EXTENT ALLOWED BY LAW, BUYER INDEMNIFIES AND HOLDS VINDICATOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND COSTS OF WHATEVER NATURE, INCLUDING BUT NOT LIMITED TO, CONSULTANTS' AND ATTORNEYS' FEES, DAMAGES FOR BODILY INJURY AND PROPERTY DAMAGE, FINES, PENALTIES, CLEANUP COSTS AND COSTS ASSOCIATED WITH DELAY OR WORK STOPPAGE, THAT IN ANY WAY RESULTS FROM OR ARISES UNDER THE BREACH OF THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION, THE EXISTENCE OF MOLD OR A HAZARDOUS SUBSTANCE AT A SITE, OR THE OCCURRENCE OR EXISTENCE OF THE SITUATIONS OR CONDITIONS DESCRIBED IN THIS SECTION, WHETHER OR NOT BUYER PROVIDES VINDICATOR ADVANCE NOTICE OF THE EXISTENCE OR OCCURRENCE AND REGARDLESS OF WHEN THE HAZARDOUS SUBSTANCE OR OCCURRENCE IS DISCOVERED OR OCCURS. THIS INDEMNIFICATION SURVIVES TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.**

6. WARRANTY AND LIMITATION OF LIABILITY

6.1 Vindicator will replace or repair any product manufactured by Vindicator under this Agreement that fails within the warranty period of 3 years after shipment to Buyer because of defective workmanship or materials, except to the extent the failure results from Buyer negligence, or from fire, lightning, water damage, or any other cause beyond the control of Vindicator. This warranty applies to all products manufactured by Vindicator. Commercial warranties applicable to products supplied by third-parties and other Honeywell business entities to include Honeywell Access and Video will be transferred to Buyer. This warranty runs to the Buyer, its successors, assigns, and its buyers; the end user.

6.2 Products that are normally consumed in operation or which have a normal life inherently shorter than the foregoing warranty period including, but not limited to, consumables (e.g. printer ribbons, lamps, batteries) are not covered under this warranty.

6.3 "Nonconformance" means failure to operate due to defects in workmanship or material. Normal wear and tear and the need for regular overhaul and periodic maintenance do not constitute Nonconformance. "Product" means end items, line replaceable units and components thereof, including those returned for exchange.

6.3.1 Buyer must notify Vindicator in writing during the warranty period of a Nonconformance and, within 30 calendar days of discovery of the Nonconformance and disposition the Product in accordance with Vindicator's written instructions.

6.3.2 Vindicator's obligation and Buyer's sole remedy under this warranty is repair or replacement, at Vindicator's election, of any Product Nonconformance. All Products repaired or replaced are warranted for the unexpired portion of the original warranty period.

6.4 Buyer assumes round trip shipping costs for nonconforming Products. Vindicator will not accept return goods shipped C.O.D., unless prearranged with Vindicator in writing. Items returned to Vindicator require a "Return Authorization" (RA) number. For issuance of an RA number, contact Vindicator Buyer Service at (800) 367-1662. Vindicator may repair or replace, at its sole and exclusive option, such defective Products, except for shipping and insurance charges which is borne by the buyer.

6.5 Vindicator will not be liable under this warranty if the Product has been exposed or subjected to any:

- 6.5.1** Maintenance, repair, installation, handling, packaging, transportation, storage, operation or use that is improper or otherwise not in compliance with Vindicator's instruction;
- 6.5.2** Alteration, modification or repair by anyone other than Vindicator or those specifically authorized by Vindicator;
- 6.5.3** Accident, contamination, foreign object damage, abuse, neglect or negligence after shipment to Buyer;
- 6.5.4** Damage caused by failure of a Vindicator supplied Product not under warranty or by any hardware or software not supplied by Vindicator; or
- 6.5.5** Use of counterfeit or replacement parts that are neither manufactured nor approved by Vindicator for use in Vindicator's manufactured Products.

6.6 Vindicator's warranty will remain valid when Trained/Certified personnel install, configure, perform advanced programming, or maintain the system. When non-trained/certified personnel work on a Vindicator system, the manufacturer's warranty will become null and void.

6.7 Vindicator has no obligation under this warranty unless Buyer maintains records that accurately document operating time, maintenance performed and the nature of the unsatisfactory condition of Vindicator's Product. Upon Vindicator's request, Buyer will give Vindicator access to these records for substantiating warranty claims.

6.8 Vindicator warrants that Services acquired direct from Vindicator will comply with the requirements stated in the Agreement for a period of one year from the date Services are performed. Vindicator's obligation and Buyer's sole remedy under this warranty is to correct or re-perform defective Services, at Vindicator's election, if Buyer notifies Vindicator in writing of defective Services within the warranty period. All Services corrected or re-performed are warranted for the remainder of the original warranty period.

6.9 THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT WILL VINDICATOR BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY OF THESE DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NO EXTENSION OF THIS WARRANTY WILL BE BINDING UPON VINDICATOR UNLESS SET FORTH IN WRITING AND SIGNED BY VINDICATOR'S AUTHORIZED REPRESENTATIVE.

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

7. INDEMNITY

Vindicator will indemnify, defend, and hold the Buyer (including, without limitation, the other Buyer's employees) harmless against third party claims for personal injury, death or loss of or damage to property caused solely by its negligence in the performance of this Agreement. Vindicator's obligations under this Clause are conditioned on receiving prompt notice of a claim from the Buyer. Vindicator will be entitled exclusively to control the defense. At Vindicator's expense, the Buyer will provide reasonable assistance in defense of the claim including, but not limited to, promptly furnishing Vindicator with all relevant information within its possession or control. Because Vindicator will provide the defense, Vindicator will not be liable for any attorney fees or costs of the Buyer. The Buyer may participate in the defense at its own cost. The Buyer may not enter into any settlement, assume any obligation or make any concession without the prior written approval of Vindicator, which may not be unreasonably withheld. Notwithstanding the foregoing, Buyer agrees that Vindicator will not be responsible for any damages caused by Mold or any other fungus or biological material or agent, including but not limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effect or any special, consequential, punitive, exemplary or other damages, regardless of whether such damages may be caused by or otherwise associated with defects in the Services.

8. LIMITATION OF LIABILITY

IN NO EVENT WILL VINDICATOR BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, STATUTORY, OR INDIRECT DAMAGES, LOSS OF PROFITS, REVENUES, OR USE, OR THE LOSS OR CORRUPTION OF DATA, EVEN IF INFORMED OF THE POSSIBILITY OF THESE DAMAGES. THE AGGREGATE LIABILITY OF VINDICATOR FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL IN NO CASE EXCEED THE CONTRACT PRICE FOR THE SPECIFIC PRODUCT OR SERVICE THAT GIVES RISE TO THE BREACH. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT, OPERATION OF LAW, OR OTHERWISE.

9. EXCUSABLE DELAYS (FORCE MAJEURE)

Except for payment obligations, neither party will be liable to the other for any failure to meet its obligations due to any Force Majeure event. If the inability to perform continues for longer than 90 days, either party may terminate this Agreement by providing written notice to the other party and Buyer will pay Vindicator for Products delivered and Services performed prior to termination. Force Majeure is an event beyond the reasonable control of the non-performing Party and may include but is not limited to: (a) delays or refusals to grant an export license or the suspension or revocation thereof, (b) any other acts of any government that would limit a party's ability to perform the Agreement, (c) fires, earthquakes, floods, tropical storms, hurricanes, tornadoes, severe weather conditions, or any other acts of God, (d) quarantines or regional medical crisis', (e) labor strikes or lockouts, (f) riots, strife, insurrection, civil disobedience, landowner disturbances, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property), (g) shortages or inability to obtain materials or components and (h) inability or refusal by Buyer's directed third party suppliers to provide Vindicator parts, services, manuals, or other information necessary to the Products or services to be provided by Vindicator under this Agreement. If a force majeure event causes a delay, then the date of performance will be extended by the period of time that the non-performing party is actually delayed or for any other period as the parties may agree in writing.

10. BUYER CAUSED DELAY

Vindicator is not liable for any delays or increased costs caused by delays in obtaining required Goods or Services from Buyer or Buyer designated suppliers. If Buyer-caused delay occurs, and the delay is not Force Majeure related, then the price and other affected terms will be adjusted to reflect increased costs, delay, and other adverse impact suffered by Vindicator. If delivery of Goods, Services, or other information necessary for performance of this Agreement is delayed due to conduct of Buyer or Buyer-designated supplier, then Vindicator may store Goods at Buyer risk and expense and may charge Buyer for the delay.

11. INDEMNITIES AGAINST PATENT AND COPYRIGHT INFRINGEMENT

Vindicator will defend any suit against the Buyer arising out of any actual or alleged patent or copyright infringement of a valid United States patent or copyright, to the extent based on the Product as delivered by Vindicator, and indemnify for any final judgment assessed against Buyer resulting from the suit provided that Buyer notifies Vindicator at the time it is apprised of the third-party claim, and agrees to give sole and complete authority, information and assistance (at Vindicator's expense) for the defense and disposition of the claim. Vindicator will not be responsible for any compromise or settlement made without Vindicator's consent.

Vindicator will have no obligation or liability with respect to: (a) Products provided pursuant to Buyer's designs, drawings or manufacturing specifications; (b) Products used other than for their ordinary purpose; (c) claims of infringement resulting from combining any Product furnished under this Agreement with any article not furnished by Vindicator; (d) use of other than the latest version of software Product released by Vindicator; or (e) any modification of the Product other than a modification by Vindicator.

Further, Buyer agrees to indemnify and defend Vindicator to the same extent and subject to the same restrictions as set forth above in Vindicator's obligations to Buyer for any suit against Vindicator based upon a claim of infringement resulting from (a), (b), (c), (d) or (e) of the preceding paragraph.

Because Vindicator has exclusive control of resolving infringement claims under this Agreement, in no event will Vindicator be liable for Buyer's attorney fees or costs.

If a claim is made or if Vindicator believes that a claim is likely, Vindicator may, at its option, and at its expense, procure for Buyer the right to continue using the Product, replace or modify the Product so that it becomes non-infringing; or accept return of the Product or terminate Buyer's license to use the infringing Product and grant Buyer a credit for the purchase price or license fee paid for that product, less a reasonable depreciation for use, damage, and obsolescence. Further, Vindicator may cease shipping infringing Products without being in breach of this Agreement.

Any liability of Vindicator under this provision is subject to the "Limitation of Liability" provision of this Agreement.

This provision states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.

12. SOFTWARE LICENSE

12.1 Definition. **"Licensed Software"** means software, including all related updates, changes, revisions and documentation, if any, that Buyer is entitled to use under the terms of this Agreement and which is not subject to a separate software license between the parties. Said license is granted only for the purpose of operating, maintaining and servicing Vindicator Technologies' products.

12.2 License. Subject to Buyer's compliance with the terms of this Agreement, Vindicator grants to Buyer and Buyer accepts a nontransferable, nonexclusive license, without the right to sublicense, to use the Licensed Software in the ordinary and normal operation of the Product on which it is installed or with which it is intended to be used under this license.

12.3 Ownership. Vindicator (and its licensors, if applicable) retains all title to the intellectual property related to all material and software provided under this Agreement.

12.4 Transfer of Licensed Software. Buyer may transfer its license to use the Licensed Software to a third party only in conjunction with Buyer's sale of any Vindicator or Buyer product on which the Licensed Software is installed or with which it is used. Vindicator's transfer of the Licensed Software as authorized herein must be under terms consistent with and no less stringent than the terms set forth in this Agreement. Except as specifically permitted in this Agreement, the Licensed Software may not be sublicensed, transferred or loaned to any other party without Vindicator's prior express written consent.

12.5 Copies. Unless specifically authorized by Vindicator in writing, Buyer is prohibited from making copies of Licensed Software except for backup purposes. Buyer will reproduce and include all Vindicator proprietary and copyright notices and other legends both in and on every copy made.

12.6 Protecting Integrity. Buyer may not directly or indirectly make any effort to deconstruct the software provided, including, but not limited to: translating, decompiling, disassembling, reverse assembling, reverse engineering, creating derivative works or compilations, or performing any other operation to obtain any portion of its contents. Vindicator will take all reasonable actions necessary to prevent unauthorized access, disclosure or use of the software provided.

12.7 Refinement. Notwithstanding the warranties provided elsewhere herein, Buyer acknowledges that Licensed Software may be product, aircraft, or sensor specific and, as such, may require reasonable adjustment or refinement to suit Buyer's specific requirements. Subject to the receipt of adequate written notice and reasonable aid from Buyer, Vindicator will make reasonable, commercial efforts to accomplish reasonable adjustments or refinements for up to 90 calendar days after initial delivery of the Licensed Software.

12.8 Negation of Other Licenses. Except as expressly granted herein, no license or right, including sublicensing rights, either expressly, implicitly, by estoppel, conduct of the parties, or otherwise, is granted by Vindicator to Buyer.

13. DISPUTE RESOLUTION

Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, will be finally resolved by a sole arbitrator in accordance with the Center for Public Resources (CPR) Institute for Dispute Resolution Rules for Non-Administered Arbitration then currently in effect. The arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration will be New York, NY.

Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy.

If any dispute, or response to any dispute, includes an allegation that potentially concerns whether any intellectual property right owned, controlled or licensable by either party is invalid, unenforceable or infringed or misappropriated, or is otherwise limited in scope or application, then either party may, in its sole discretion, elect to have that dispute adjudicated before a court of competent jurisdiction and this section will not be binding on either party with respect to that dispute in its entirety or any related dispute, including any portions of a dispute that do not concern intellectual property rights.

14. ACCEPTANCE OF THE CONTRACT

14.1 Terms and Conditions of Sale. Unless a general terms agreement executed by Buyer and Vindicator applies, these Terms and Conditions of Sale apply to this offer and to any resulting order issued by Buyer during the offer period, whether or not this offer is referenced. Except as provided in the "Purchase Order" section below, all provisions on Buyer's purchase order and all other documents submitted by Buyer are expressly rejected. Vindicator will not be deemed to have waived these Terms and Conditions if it fails to object to provisions submitted by Buyer. Any modification or addition to these Terms and Conditions must be in writing and signed by the parties' authorized representatives.

14.2 Purchase Order. Vindicator accepts Buyer's purchase order, but acceptance is expressly made conditional on agreement by Buyer to Vindicator's terms and conditions included in this acknowledgement. Buyer agrees to Vindicator's terms (including any inconsistencies between Buyer's purchase order and this conditional acceptance), unless Buyer promptly provides written notice of objection to Vindicator.

15. MISCELLANEOUS

15.1 Entire Agreement. Unless a separate NDA executed by the Buyer and Vindicator applies, this Agreement contains the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes any prior representations or agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. This Agreement will not be varied except in writing signed by an authorized representative of each party.

15.2 Choice of Law and Forum. This Agreement will be governed by the laws of the State of New York without regard to conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto will not apply to this Agreement. The Federal and State courts within the State of New York will have exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement.

15.3 Severability. If any provision or portion of a provision of this Agreement is determined to be illegal, invalid, or unenforceable, that portion or provision will be stricken and the validity and enforceability of the remaining provisions will not be affected.

15.4 Assignment. Neither Party will assign any rights or obligations under this Agreement without the advance written consent of the other Party, which consent will not be unreasonably withheld. Either Party may assign this Agreement to any affiliate of that party or in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which it pertains. Any attempt to assign or delegate in violation of this clause will be void. Notwithstanding the above, Vindicator retains the right to assign its right to receive payment to a third party.

15.5 Independent Contractor. The Parties acknowledge that they are independent contractors and no other relationship, including without limitation partnership, joint venture, employment, franchise, master/servant or principal/agent is intended by this Agreement. Neither Party has the right to bind or obligate the other.

15.6 Special Tooling. Special Tooling includes, but is not limited to, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids and replacement items, now existing or created in the future, together with all related specifications, drawings, engineering instructions, data, material, equipment, software, processes, and facilities created or used by Vindicator in the performance of its obligations under this Agreement. Vindicator owns all Special Tooling, except to the extent an authorized representative of Vindicator specifically transfers title for any Special Tooling in writing to Buyer. Any transfer of title to Special Tooling does not include transfer of Vindicator's intellectual property used to create or that may be embodied in the Special Tooling, other than a license to use the Special Tooling.

15.7 Technical Advice. Vindicator may furnish technical assistance, advice and other information to Buyer relating to the use of the Product. Vindicator has no obligation or liability for any technical assistance, advice or information it furnishes concerning the Product. Unless otherwise specifically agreed to in writing by Vindicator, all technical assistance, advice and information are given without warranty and are accepted by Buyer who assumes responsibility for any use.

16. EXPORT

Buyer is responsible for compliance with all import and export control laws and regulations. Buyer must obtain at its sole cost and expense all import, and re-export approvals and licenses required for Products, transfers, services and technical data delivered and will retain documentation evidencing compliance with those laws and regulations.

Vindicator will not be liable to Buyer for any failure to provide Products, services, transfers or technical data as a result of government actions that impact Vindicator's ability to perform, including:

- a. The failure to provide or the cancellation of re-export licenses;
- b. Any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after the date of any order or commitment that has a material adverse effect on Vindicator's performance; or
- c. Delays due to Buyer's failure to follow applicable import, export, transfer, or re-export laws and regulations.

If Buyer designates the freight forwarder for export shipments from the United States, then Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to comply with all applicable export requirements. Vindicator will provide Buyer's designated freight forwarder with required commodity information.

17. TERMS OF PAYMENT

Subject to Vindicator's approval of Buyer's credit, payment terms are as follows:

17.1 General. Vindicator will invoice at least monthly for all materials delivered to the job site or to an off-site storage facility and for all installation, labor, and services performed, both on and off the job site. Buyer agrees to pay the full amounts invoiced upon receipt of the invoice at the address specified by the Buyer. Payment is due 30 calendar days from the date of invoice. Payments must be made in U.S. currency unless agreed otherwise in writing. If Buyer is delinquent in payment to Vindicator, Vindicator may withhold performance until all delinquent amounts and late interest, if any, are paid. Additionally, Vindicator may at its option: (a) repossess Products or Software for which payment has not been made; (b) charge interest on delinquent amounts at the lower of 1.5% per month or the maximum rate permitted by law, for each full or partial month; (c) recover all costs of collection, including but not limited to reasonable attorneys' fees; (d) combine any of the above rights and remedies as may be permitted by applicable law. These remedies are in addition to those available at law or in equity. Vindicator may re-evaluate Buyer's credit standing at any time and modify or withdraw credit. Buyer may not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Vindicator or any other Honeywell business entity.

17.2 Retainage. Buyer may not withhold, as retainage, a greater percentage than is withheld from Buyer under a prime contract when progress payments are applicable. Buyer must pay all retainage to Vindicator within 30 days after Vindicator's work is substantially complete.

18. LETTER OF CREDIT

When specifically requested by Vindicator, Buyer will establish an irrevocable Commercial Letter of Credit (Letter of Credit) (or in the case of an International Agreement "Export Letter of Credit"), in a form and confirmed by a bank acceptable to Vindicator for all payments not received prior to shipment. The Letter of Credit must remain valid until final payment is made. All bank or other charges associated with opening and maintaining this Letter of Credit are Buyer's responsibility.

19. WORK BY OTHERS

19.1 Vindicator has the right to subcontract its obligations under this Agreement. Use of a subcontractor will not release Vindicator from liability under this Agreement for performance of the subcontracted obligations.

19.2 Unless otherwise indicated, the following items are to be furnished and installed by others: electric wiring and accessories, all in-line devices, equipment foundations, riggings, and all other items and work of a like nature.

19.3 Services Vindicator will provide under this Agreement specifically exclude professional services which constitute the practice of architecture or engineering unless specifically set forth in the Scope of Work. Buyer or Owner will specify all performance and design criteria that Vindicator will follow in performing Work under this Agreement. If professional design services or certifications by a design professional related to systems, materials, or equipment is required, such services and certifications are the responsibility of others. To the fullest extent permitted by law, Buyer indemnifies and holds harmless Vindicator and its agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, that in any way result from or arise under breach of the representations in this Section 17. This indemnification survives termination of this Agreement for whatever reason. Nothing in this Section 17 may be construed to require that Buyer indemnify and hold harmless Vindicator from claims and costs resulting from Vindicator's negligent actions or willful misconduct.

20. DELIVERY

Delivery terms are EX Works (EXW Incoterms 2000). Vindicator's facility except that Vindicator is responsible for obtaining the export license. Buyer is responsible for all duties, taxes and other charges payable upon export. Vindicator will schedule delivery in accordance with its standard lead time unless the Order states a later delivery date or Vindicator agrees in writing to an earlier delivery date. If Vindicator prepays charges for transportation or any special routing, packing, labeling, handling or insurance requested by Buyer, Buyer will reimburse Vindicator upon receipt of an invoice for those charges. Title will pass to Buyer upon delivery.

21. DAMAGE OR LOSS

Vindicator is not liable for damage to or loss of equipment and software after delivery to destination determined by this Agreement or any applicable prime contract. If thereafter, and prior to payment in full to Vindicator by Buyer, any such equipment or software is damaged or destroyed by any cause whatsoever, other than by the fault of Vindicator, the Buyer agrees promptly to pay or reimburse Vindicator for such loss.

22. TERMINATION

Either Party may terminate this Agreement and any or all unperformed Orders by giving written notice to the other party upon the occurrence of any of the following events:

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

Termination does not affect any debt, claim or cause of action accruing to any party against the other before the termination. The rights of termination provided in this clause are not exclusive of other remedies that either party may be entitled to under this Agreement or in law or equity.

23. CHANGES

23.1 A change order is a written order signed by Buyer and Vindicator authorizing a change in the Work or adjustment in the price or a change to the schedule.

23.2 Buyer may issue a written change order to request changes within the scope of the Agreement. If the requested change is acceptable to Vindicator, Vindicator will inform Buyer if the change will cause an increase in price (including without limitation as a result of labor rate escalation, changes in material prices and availability, and foreign exchange exposure) or time required to perform the work. Vindicator will not be obligated to proceed with a requested change until documented in a change order signed by authorized representatives of both Parties. However, if Vindicator proceeds at Buyer's direction with the change prior to signing the change order then Buyer must pay for the change as invoiced by Vindicator.

23.3 Vindicator may, without notice to Buyer, incorporate changes to Products that do not alter form, fit, or function. Vindicator may, at its sole discretion, also make such changes to Products previously delivered to Buyer.

23.4 Vindicator may make a written request to Buyer to modify this Agreement based on the receipt of, or the discovery of, information that Vindicator believes will cause a change to the scope, price, schedule, level of performance, or other facet of the Agreement. Vindicator will submit its request to Buyer within a reasonable time after receipt of, or the discovery of, information that Vindicator believes will cause a change to the scope, price, schedule, level of performance, or other facet of the Agreement. This request must be submitted by Vindicator before proceeding to execute the Work, except in an emergency endangering life or property, in which case Vindicator may act, in its discretion, to prevent threatened damage, injury or loss. Vindicator's request will include information necessary to substantiate the effect of the change and any impacts to the Work, including any change in schedule or contract price. If Vindicator's request is acceptable to Buyer, Buyer will issue a Change Order consistent therewith. If Buyer and Vindicator cannot agree on the amount of the adjustment in the Price, or the Schedule, it must be determined pursuant to the Dispute Resolution article of this Agreement. Any change in the Price or the Schedule resulting from such claim must be authorized by change order.

24. ACCEPTANCE OF THE WORK

Products and services are presumed accepted unless Vindicator receives written notice of rejection from Buyer explaining the basis for rejection within 10 and three calendar days after delivery for products and services respectively. Buyer must disposition rejected Product to Vindicator in accordance with Vindicator's written instructions. Vindicator will have a reasonable opportunity to repair or replace rejected Products, at its option. Vindicator assumes shipping costs in an amount not to exceed actual reasonable direct freight charges to Vindicator's designated facility for the return of properly rejected Products. Buyer will provide copies of freight invoices to Vindicator upon request. Following initial delivery, the party initiating shipment will bear the risk of loss or damage to Products in transit. If Vindicator reasonably determines that rejection was improper, Buyer will be responsible for all expenses caused by the improper rejection.

25. RETURNS AND NON-WARRANTY REPAIRS

All items returned to Vindicator require a "Return Authorization" (RA) number. For issuance of an RA number, contact Vindicator Buyer Service at (800) 367-1662. Unauthorized returns are not accepted and will be returned freight collect.

25.1 Returns.

- 25.1.1 At its option and within 30 days of delivery, Vindicator may accept as a return for credit unused product in its original package and in condition that could be sold as new.
- 25.1.2 Third Party equipment will only be accepted for return subject to the original sellers' willingness to accept a return with no resulting adverse impact to Vindicator.
- 25.1.3 Goods ordered in excess because of errant system design by Buyer are not returnable.
- 25.1.4 Damaged goods are not returnable.
- 25.1.5 Obsolete, special and custom goods to include goods such as cabinets, enclosures, etc., that are purpose built and/or assembled from components that are normally and usually sold separately are not returnable.
- 25.1.6 Credit will be issued at either, price paid or current price, whichever is lower. Returns are subject to a restocking fee of eighteen (18) percent of the item price or \$250, whichever is greater.

25.2 Non-Warranty Repairs. Buyer will be charged for repairs on out of warranty goods. Applicable charges will be calculated and quoted when a RMA number is issued. Charges may vary based on condition of goods. Buyer must pay shipping costs to the Vindicator designated repair facility. Costs to repair and return defective goods will be the responsibility of the buyer. For all non-warranty repairs, buyer will be billed for parts, labor and shipping. Non-warranty repairs for Vindicator manufactured items are warranted for one (1) year from date of repair. Commercial third party items will receive the manufacturer's repair warranty, if any, that is transferred to the buyer and will be provided upon specific request from the buyer.

26. RESALE

Purchase of Vindicator equipment and solutions is intended for direct delivery to an end-user only. Buyer may not act as a Dealer/Distributor and resell to another non-end user. Vindicator reserves the right to deviate from this policy for strategic purposes.

27. SURVIVAL

All provisions of this Agreement which by their nature should continue in force beyond the term of this Agreement will remain in force after expiration or termination of this Agreement.