

CONDITIONS OF SALE – HONEYWELL SMART ENERGY

Honeywell International, Inc. – Supplemental Terms – Smart Grid Solutions

Capitalized terms used in this Addendum and not otherwise defined shall have the meaning ascribed to such terms in the applicable agreements, between the Parties.

1. SUPPLEMENTAL TERMS RELATED TO HAZARDOUS OR UNSAFE SITE CONDITIONS (if applicable):

1.1 Buyer recognizes that Honeywell employees have the right to a safe and healthy work environment and agrees that Honeywell may suspend services at Buyer's expense if Honeywell determines that unsafe conditions at the site may compromise Honeywell employee safety. Services will be resumed once the unsafe conditions have been corrected by Buyer. Honeywell will not be liable for failure to meet contractual obligations in the event it suspends performance due to hazardous or unsafe conditions.

1.2 Buyer represents that Buyer has not retained Honeywell to discover, inspect, investigate, identify, prevent or remediate hazardous substances or mold or conditions caused by hazardous substances or mold.

1.3 **TO THE FULLEST EXTENT ALLOWED BY LAW, BUYER SHALL INDEMNIFY AND HOLD HONEYWELL 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 EXISTENCE OF HAZARDOUS CONDITIONS, MOLD OR A HAZARDOUS SUBSTANCE AT A SITE, WHETHER OR NOT BUYER PROVIDES HONEYWELL ADVANCE NOTICE OF THE EXISTENCE OR OCCURRENCE AND REGARDLESS OF WHEN THE HAZARDOUS CONDITION, SUBSTANCE OR OCCURRENCE IS DISCOVERED OR OCCURS. THIS INDEMNIFICATION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR ANY REASON.**

2. SUPPLEMENTAL TERMS RELATED TO TELEMARKETING AND EMAIL MARKETING

Buyer acknowledges and agrees that any and all communications made by Honeywell to Buyer's Buyers in connection with this Agreement utilizing telephone numbers and/or e-mail addresses provided by Buyer (collectively, "Buyer Contact Information") are performed by Honeywell on your behalf. Buyer represents and warrants that (i) Buyer has obtained all necessary consents and authorizations under applicable state, federal, and local laws and regulations to permit Honeywell to use Buyer Contact Information to contact Buyers by telephone, text message, and e-mail in connection with this Agreement, and (ii) Honeywell's use of Buyer Contact Information to contact Buyers by telephone, text message, or e-mail in connection with this Agreement will not result in a violation of any applicable state, federal, and local law or regulation. To the extent that any Buyer whose Buyer Contact Information was provided by Buyer to Honeywell requests to exercise their right under any applicable state, federal, and/or local law or regulation to opt out of receiving telephone calls, text messages, and/or e-mail messages, Buyer agrees to notify Honeywell of that request in a time and manner that allows Honeywell to comply with the opt-out request within the timeframe required by applicable state, federal, and/or local law or regulation. Buyer agrees to indemnify, defend, and hold Honeywell harmless and to reimburse Honeywell for all costs, losses, damages, and expenses relating to or resulting from a breach of Buyer's obligations under this Section.

3. SUPPLEMENTAL TERMS RELATED TO AUTOMATED DEMAND RESPONSE SYSTEM ("ADR SUPPLEMENT") IF APPLICABLE:

3.1. The Honeywell Automated Demand Response System is a tool accessible to Buyer over the Internet and allows Buyer, among other things, to communicate power usage and power load information to users of Buyer's utility services that Buyer permits to access the System ("Users"). Users are able to input power demand shed strategies into the System and thus enable the System to signal User equipment during a shed event. These shed event communications can interact with a User's pre-defined information and strategies and certain equipment installed at User's facility to automatically adjust User power usage. Buyer acknowledges and agrees, however, that the System is only used to send communications between Buyer and Users and it is the decision and responsibility of Buyers and Users to define whether and, if so, to what extent User power usage is affected given Buyer's power

demands. Additionally, Buyer acknowledges and agrees that the System does not itself adjust or require Users to adjust power usage and Users have the ability to ignore or override any communications that would adjust their actual power usage. Accordingly, Buyer acknowledges and agrees that the System is merely a tool that might or might not impact actual power usage for all or part of Buyer's service area.

3.2. USE OF SYSTEM

3.2.1. During the term as set forth in and in accordance with the applicable Scope of Work, Honeywell will operate and maintain the System and will make the System available to Buyer via the Internet for its permitted use under and subject to the terms and conditions of this ADR Supplement and the Agreement. Honeywell hereby grants to Buyer the limited, non-exclusive, non-transferable, non-sublicensable (except with respect to use of the System by Users) right to access and use the System via the Internet solely to use the System as set forth in the Agreement, during the term as set forth in and in accordance with the applicable Scope of Work and subject to the terms and conditions of this ADR Supplement and the Agreement.

3.2.2. Buyer will not and will not authorize or permit its Users or any other third party to (a) access, view or use any part of the System, except as expressly authorized in this ADR Supplement; (b) resell, distribute, rent, lease, sublicense, lend, give, market, commercialize, assign or otherwise transfer rights or usage of all or any part of the System to any third party, except as expressly authorized in this ADR Supplement; (c) reverse engineer, translate, disassemble, decompile, or cause or allow discovery of the source code for any part of the System or attempt to do so; (d) use any unauthorized System login information or permit any third party to use Buyer's System login information; (e) engage in conduct intended to or likely to damage the System, for example, by knowingly introducing any viruses, worms or other malicious code to the System; or (f) use the System for any purpose not set forth in this ADR Supplement or the Agreement. Buyer will notify Honeywell immediately of any known or suspected problems or operational issues with the System.

3.2.3. Honeywell reserves the right, in its sole discretion, to deny, limit or terminate access to the System or any portion thereof, at any time, as necessary or advisable to protect the security and integrity of the System. Whenever Honeywell is able to do so without compromising the security or integrity of the System, Honeywell will give Buyer reasonable notice before taking such action. If Honeywell determines, in its sole discretion, that it is advisable to take immediate action, without prior notice to Buyer, Honeywell will notify Buyer as soon as reasonably practicable of its action and, if it can do so without compromising the security of the System or any investigation, the reason for the action.

3.2.4. Buyer acknowledges and agrees that, as between Honeywell and Buyer, Honeywell owns all rights, title and interests in and to the System, including all intellectual property rights therein or appurtenant thereto. Buyer further acknowledges and agrees that the System contains the valuable trade secrets of Honeywell and third parties. Buyer will not acquire any right, title or interest in the System or any portion or component thereof pursuant to this ADR Supplement or the Agreement, other than the right to access and use the System as expressly granted in this ADR Supplement, subject to the terms and conditions of this ADR Supplement and the Agreement. This Section 1.4 does not affect Buyer's rights in and to confidential data belonging to Buyer or regarding any User contained in the system.

3.2.5. Honeywell retains the right, in its sole and absolute discretion, to modify, alter or enhance the operation and functionality of the System without prior notice to Buyer; provided, that such modifications, alterations and enhancements do not materially affect the operation of the System in a detrimental manner.

3.3 WARRANTY

The System will be made available to the Buyer and Users as outlined in the applicable Scope of Work and this ADR Supplement. Buyer acknowledges and agrees that in the event the System is unavailable for use by Buyer or any User, Honeywell's sole and exclusive responsibility, and Buyer's sole and exclusive remedy, is for Honeywell to use commercially reasonable efforts to correct or

replace, at no additional charge to Buyer, any functionality of the System found to be defective.

3.4 **TERMINATION**

Upon termination or expiration of the Agreement, (i) Buyer will cease all access and use of the System; (ii) Users will no longer be permitted to access and use the System; and (iii) all of Buyer's payment obligations for its use of the System up to the date of termination or expiration will be due and payable to Honeywell.

3.5 **DISCLAIMER AND LIMITATION OF LIABILITY**

HONEYWELL AND ITS THIRD PARTY SUPPLIERS DO NOT WARRANT THAT THE SYSTEM WILL MEET THE REQUIREMENTS OF BUYER OR ANY USERS OR THAT THE OPERATION OR USE OF THE SYSTEM WILL BE UNINTERRUPTED OR ERROR FREE. FURTHER, HONEYWELL AND ITS THIRD PARTY SUPPLIERS DO NOT WARRANT THAT MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS THROUGH OR IN CONNECTION WITH THE SYSTEM WILL BE ACCURATELY OR SUCCESSFULLY TRANSMITTED OR RECEIVED BY USERS AND/OR BUYERS. BUYER ACKNOWLEDGES AND AGREES THAT (i) USERS MAY IGNORE OR OVERRIDE ANY SUCH MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS AND (ii) HONEYWELL AND ITS THIRD PARTY SUPPLIERS DO NOT WARRANT THAT SUCH MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS OR USE OF THE SYSTEM WILL RESULT IN A CHANGE OR REDUCTION IN POWER USAGE BY ANY USER OR PREVENT ANY LOSS OF POWER OR REDUCTION IN AVAILABLE POWER OR PREVENT ANY POWER SURGES OR POWER SPIKES.

IN NO EVENT WILL HONEYWELL OR ITS THIRD PARTY SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING FROM, RELATING TO OR CONNECTED WITH (I) THIS ADR SUPPLEMENT; (II) THE SYSTEM; (III) THE RECEIPT OR TRANSMISSION OF (OR FAILURE TO RECEIVE OR TRANSMIT OR TO ACCURATELY RECEIVE OR TRANSMIT) ANY MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS THROUGH OR IN CONNECTION WITH THE SYSTEM; (IV) BUYER'S ABILITY OR INABILITY TO PROVIDE POWER TO USERS OR ANY THIRD PARTY; OR (V) THE AVAILABILITY OR UNAVAILABILITY OF POWER TO USERS OR ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO BLACKOUTS OR BROWNOUTS, OR ANY POWER SURGES OR POWER SPIKES, AND HONEYWELL WILL HAVE NO DUTY, OBLIGATION OR LIABILITY FOR ANY OF ITEMS (I) THROUGH (V) SET FORTH IN THIS PARAGRAPH, ALL OF WHICH BUYER EXPRESSLY WAIVES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, HONEYWELL'S AND ITS THIRD PARTY SUPPLIERS' TOTAL LIABILITY ARISING OUT OF, RELATING TO OR AS A RESULT OF THE SYSTEM OR THE PERFORMANCE OR NON-PERFORMANCE UNDER THIS ADR SUPPLEMENT OR ITS APPLICABLE SCOPE OF WORK SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY BUYER TO HONEYWELL FOR ACCESS TO THE SYSTEM UNDER THIS ADR SUPPLEMENT DURING THE IMMEDIATELY PRECEDING 12 MONTHS.

This Section 3.5 will survive the expiration or termination of the Agreement or this ADR Supplement for whatever reason.

3.6 **INDEMNITY**

To the fullest extent permitted by law, Buyer will indemnify and hold harmless Honeywell and its third party suppliers, affiliates, officers, directors, managers, governors, agents and employees from and against any and all liabilities, actions, causes of action, fines, claims, damages, losses and expenses, including but not limited to attorneys' fees, that in any way result from or arise in connection with (i) the receipt or transmission of (or failure to receive or transmit or to accurately receive or transmit) any messages, data transmission or communications through or in connection with the System; (ii) Buyer's ability or inability to provide power to Users or any third party; (iii) the availability or unavailability of power to Users or any third party, including but not limited to blackouts or brownouts, or any power surges or power spikes; or (iv) this ADR Supplement. This Section 3.6 will survive expiration or termination of the Agreement or this ADR Supplement for whatever reason.

3.7 **MISCELLANEOUS**

Buyer acknowledges and agrees that Honeywell will be entitled to perform any of its obligations under these supplemental terms related to Demand Response through designated third parties.

Honeywell may assign or transfer this ADR Supplement or any of its rights or obligations hereunder in its sole discretion and without Buyer's consent. Buyer may not assign or transfer this ADR Supplement or any of its rights or obligations hereunder without Honeywell's prior written consent.