

Honeywell Scanning and Mobility Service Contract Terms and Conditions

CUSTOMER'S PAYMENT OF APPLICABLE SERVICE FEES/CHARGES AND/OR SUBMITTAL OF ITS PRODUCT(S) TO HONEYWELL FOR SERVICE SIGNIFIES ITS ACCEPTANCE OF AND AGREEMENT TO THESE TERMS AND CONDITIONS

These Terms and Conditions and any Honeywell-generated Service acknowledgement or confirmation constitute a binding agreement ("Agreement") between Hand Held Products, Inc., d/b/a Honeywell Scanning and Mobility ("Honeywell") and Customer which applies to any and all product-related repair services performed by Honeywell ("Services") for Customer's covered product(s) (the "Product" or "Products") for which Customer has purchased Coverage, whether such Services are described in a Statement of Work ("SOW") or otherwise. The Customer and the applicable Coverage ("Service Description") for the Products are identified on the coverpage(s) accompanying this Agreement and/or the Service acknowledgment or confirmation issued by Honeywell. This Agreement does not cover minor accessories included with the Product, such as cables or wearable or field replaceable portions of the Product, unless otherwise stated on the cover page. This Agreement only covers Products listed by serial number on the cover page(s) of this Agreement. If Customer and Honeywell have signed a separate agreement for Services, then the terms of that agreement will supersede these Terms and Conditions and govern the Services. **THESE TERMS AND CONDITIONS PROVIDE THE FUNDAMENTAL BASIS FOR HONEYWELL'S PERFORMANCE OF THE SERVICES. PROVISIONS IN ANY CUSTOMER-RELATED WEBSITE, PURCHASE ORDER, DOCUMENT, TRANSMITTAL OR COMMUNICATION THAT CONFLICT WITH, ADD TO, OR OTHERWISE MODIFY THESE TERMS AND CONDITIONS ARE HEREBY REJECTED BY HONEYWELL AND OF NO LEGAL EFFECT, REGARDLESS OF THE TIME OF TRANSMITTAL.**

1. **Service.** All Services will be performed Monday through Friday, 8:00 a.m. - 4:30 p.m. Local time based on the Honeywell Service Center location, excluding applicable holidays. If Customer requests Services outside such time, charges for overtime and additional expenses will be billed to and pre-paid by Customer. Services are limited to attempting to restore the Products to working condition. Customer will promptly notify Honeywell of any malfunction or request for service for any of the Products covered under this Agreement. Honeywell is not obligated to provide Services that result in a significant betterment or capital improvement to the Products covered hereunder. Honeywell reserves the right to discontinue Services or refuse to perform any Services, in its sole and commercially reasonable discretion(i) due to Honeywell's inability to support a Product after a required component is no longer available for purchase on a commercially reasonable basis, (ii) after a Product has reached its End of Service date, or (iii) Product has been subjected to excessive and chronic abuse that is not successfully corrected by a joint Honeywell/Customer remediation plan. Product servicing shall not serve to extend the term of the Product warranty. Honeywell may provide the Services at Honeywell owned Service Centers or Honeywell Authorized Service Centers at Honeywell's discretion.

Detailed descriptions of the applicable Coverage are set forth in the applicable Service Description found at: www.Honeywellaidc.com/agreements

2. Customer Requirements.

2.1 **Product Condition.** Customer warrants that all Products are in working condition as of the Effective Date of this Agreement stated on the cover page. Honeywell may require Product to be inspected at current on-site inspection rates prior to coverage being offered or effective if Product is not new or has not been continuously covered by a Honeywell service contract. If remedial repairs are required, Honeywell will provide a cost estimate at current parts and labor rates or at current flat rate repair rates. Such repairs must be completed before Product can be covered under this Agreement.

2.2 **On-Site Conditions.** Customer agrees to provide a suitable environment for the Product as specified by Honeywell, and when Services are provided at Customer site, to provide Honeywell full and safe access to the Product.

2.3 **Customer Data.** Customer is responsible for all processes and safeguards required to store, preserve and protect Customer data.

3. **Service Fees & Payment.** Service Coverage is subject to Customer's prepayment of non-refundable Service Fees. Honeywell shall not be obligated to perform Services if applicable Service Fees and charges are not timely paid, and Honeywell has the right to suspend Services until its receipt of the applicable Service Fees and other Service Charges and amounts due to Honeywell. Honeywell's suspension of Services shall not extend the Term of Service Coverage. If Customer wishes to receive Services, if

available, Fees will be charged in accordance with the applicable prices published by Honeywell from time to time. Service Fees and charges are non-refundable.

Unless Company has been approved for credit terms by Honeywell, payment for all orders will be made at the time of order placement. In the event Company has been approved for credit terms, payment for that order will be due no later than 30 calendar days from the date of the invoice, unless a shorter time period is specified on the invoice or otherwise communicated to Company in writing. Honeywell will determine in its sole discretion if Company qualifies for credit terms. If credit terms are granted, Honeywell may change Company's credit terms at any time in its sole discretion and may, without notice to Company, modify or withdraw credit terms for any order, including open orders.

Partial shipments will be invoiced as they are shipped. Honeywell is not required to provide a hard copy of the invoice. Payments must be made in U.S. currency unless agreed otherwise in writing and must be accompanied by remittance detail containing at a minimum the Company's order number, Honeywell's invoice number and amount paid per invoice; Company agrees to pay a service fee in the amount of \$500 for each occurrence for its failure to include the remittance detail and minimum information described above.

Payments must be in accordance with the "Remit To" field on each invoice. If Company makes any unapplied payment and fails to reply to Honeywell's request for instruction on allocation within seven (7) calendar days, Honeywell may set off such unapplied cash amount against any Company past-due invoice(s) at its sole discretion. An unapplied payment shall mean payment(s) received from Company without adequate remittance detail to determine what invoice the payment(s) shall be applied to.

Disputes as to invoices must be accompanied by detailed supporting information and are deemed waived 15 calendar days following the invoice date. Honeywell reserves the right to correct any inaccurate invoices. Any corrected invoice must be paid by the original invoice payment due date or the issuance date of the corrected invoice, whichever is later.

If Company is delinquent in payment to Honeywell, Honeywell may at its option:

- A. withhold performance until all delinquent amounts and late charges, if any, are paid;
- B. repossess Products or software for which payment has not been made;
- C. assess late charges on delinquent amounts at the lower of 1.5% per month or the maximum rate permitted by law, for each full or partial month;
- D. recover all costs of collection, including but not limited to reasonable attorneys' fees;
- E. 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. Honeywell may re-evaluate Company's credit standing at any time and modify or withdraw credit. Company may not set off any invoiced amounts against sums that are due from Honeywell.

Customer shall pay any and all sales and use taxes assessed by any governmental authority in connection with Services provided to Customer as well as any new or increased taxes or governmental charges upon labor or Services, or the production, shipment, sale, installation, or use of equipment, parts or software in connection with the Services which may be hereafter effective. If Customer claims any such taxes do not apply to transactions covered by this Agreement, Customer shall provide Honeywell with a tax exemption certificate acceptable to the applicable taxing authorities.

4. Delivery and Return of Products. Customer shall send Products requiring service to Honeywell in accordance with Honeywell's directives and shall be responsible for all actions and costs related to delivery of its Product(s) to Honeywell. Customer shall be solely responsible for providing adequate insurance for its Products and Customer shall bear the risk of loss for its Product(s), whether located at Honeywell or in transit to or from Honeywell.

5. Confidential Information. Each party agrees not to disclose to third parties or employees without a need to know, information received from the other party, which has been identified in writing as proprietary or confidential (collectively, "Confidential Information"). Confidential information shall not include any information which (i) was rightfully in recipient's possession prior to disclosure; (ii) is or becomes public knowledge through no fault of the recipient or recipient's employees; (iii) is rightfully received by recipient from a third party without restriction and without knowledge of any obligation of confidentiality between the third party and the discloser; (iv) is independently developed by recipient without reliance on the confidential information (by personnel to whom the confidential information was not disclosed); (v) is disclosed under operation of law; or (vi) is disclosed by recipient with discloser's prior written approval.

6. Limited Service Warranty and Liability. Honeywell warrants that the Services shall be performed in a good and workmanlike

manner and upon return shipment of the Product to Customer; any material included in the Services shall be free from defects under normal and proper use. Honeywell reserves the right to use new or refurbished parts and products in connection with the Services. Honeywell's liability under this Service warranty is limited to Products returned as directed by Honeywell, transportation prepaid, to Honeywell's designated Service facility within ninety (90) days after Service, and found by Honeywell to have failed to function solely because of Honeywell's defective workmanship or Honeywell's installation of defective materials during the applicable Service. Honeywell's Service warranty is limited to repairing and returning said Products using new or refurbished parts and/or products. The Service warranty will be void for Products which have been: set up, operated and/or installed contrary to Honeywell's product documentation; subjected to misuse, abuse, neglect (including without limitation failure to follow proper maintenance service and cleaning schedules), or intentional, reckless or malicious acts or omissions; used in a manner or for a purpose for which it was not designed, including without limitation use of the Product outside of its operational and environmental specifications; subjected to attempted or completed Product service, repair, disassembly, alteration or modification by Customer or unauthorized third party; subjected to accident or natural or man-made disasters (including without limitation fire, theft, water damage and floods) that would cause internal and external component damage or destruction; subjected to improper shipping or handling, improper installation, static electricity or electro-static discharge, or excessive voltage or current supplied to or drawn from interface connections.

THE FOREGOING WARRANTY IS MADE AND ACCEPTED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. TO THE EXTENT ALLOWABLE BY APPLICABLE LAW, HONEYWELL'S SOLE RESPONSIBILITY AND CUSTOMER'S SOLE REMEDY UNDER THIS SERVICE WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCT WITH NEW OR REFURBISHED PARTS OR PRODUCTS, AT HONEYWELL'S OPTION. ALL OTHER REMEDIES ARE DISCLAIMED, AND CUSTOMER HEREBY RELEASES HONEYWELL FROM ANY OBLIGATION OTHER THAN SAID REPAIR OR REPLACEMENT.

HONEYWELL SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION ANY AND ALL DAMAGES FROM BUSINESS INTERRUPTION, LOSS OF PROFITS OR REVENUE, DATA, COST OF CAPITAL OR LOSS OF USE OF ANY PROPERTY

OR CAPITAL) WITH RESPECT TO, ARISING OUT OF, OR IN CONNECTION WITH ANY SERVICES PROVIDED HEREUNDER, EVEN IF HONEYWELL HAS BEEN APPRISED OF THE LIKELIHOOD OF, OR IS OTHERWISE AWARE OF, THE POSSIBILITY OF SUCH DAMAGES OCCURRING. THIS AGREEMENT IS NOT AN INSURANCE POLICY AND SHALL NOT BE CONSIDERED AS A WARRANTY FOR UNINTERRUPTED SERVICE. THE LIMITATIONS CONTAINED IN THIS SECTION ENTITLED "LIMITED SERVICE WARRANTY AND LIABILITY" ARE A FUNDAMENTAL PART OF HONEYWELL'S BARGAIN HEREUNDER, AND HONEYWELL WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS.

7. Term and Termination of Service Coverage. The Term of Service Coverage is twelve months from the Effective Date, unless another period is specified on the cover page or otherwise agreed by the parties pursuant to a fully executed agreement for Services. Service Coverage may be terminated by Honeywell for convenience upon thirty days advance written notice. Either party may terminate Service Coverage upon written notice at any time upon or after: (i) the filing by the other party under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States or any other relevant jurisdiction of a petition in bankruptcy or insolvency involving the other party; or (ii) the filing by the other party of any petition or answer seeking reorganization, readjustment, or arrangement of the business of the other party under any law relating to bankruptcy or insolvency; or (iii) the appointment of a receiver for all or substantially all the property of the other party; or (iv) the making by the other party of any assignment or attempted assignment for the benefit of its creditors; or (v) the institution of any proceedings for the liquidation or winding up of the other party's business or for the termination of its corporate charter. In the event of termination of this Agreement for convenience by Honeywell, if Customer is in compliance with its obligations under this Agreement, Honeywell shall return to Customer the unused portion of any pre-paid Service Fees less fifteen percent (15%), minus any amounts due and owing to Honeywell. Notwithstanding this provision, any Product covered by this Agreement for more than one half of the prepaid term stated on cover page will not qualify for any refund or rebate in the event of termination of this Agreement.

8. Relationship Between Parties. Nothing contained herein shall be construed to constitute either party hereto as the partner, joint venturer, employee, agent or other representative of the other party hereto.

9. Force Majeure. Except for payment obligations, any delays in or failure of performance by a party shall not constitute default hereunder if such delays or failures of performance are due to a Force Majeure event. Force Majeure is an event beyond the reasonable control of the non-performing party and may include without limitation: (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, (h) expropriation or confiscation of facilities. Except for payment obligations, 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, provided however that the delayed party's obligation to perform is subject to termination by either party for Force Majeure-caused delays in excess of forty-five days.

10. Severability. In the event that any of the provisions of this Agreement or portions thereof are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions or interpretations thereof, shall not be affected thereby.

11. Headings. The headings of this Agreement are for convenience of reference only and shall not limit, or be used as an aid in construing, the provisions of this Agreement.

12. Entire Agreement. This Agreement sets forth the full and complete understanding of the parties with respect to the Services to be performed by Honeywell for Customer and supersedes all previous understandings, written or oral, which may have existed relating to the Services to be performed by Honeywell.

13. Assignment. Customer shall not assign this Agreement or its obligations hereunder without Honeywell's express written consent in each instance. Any purported assignment in violation of this Section shall be void.

14. **Notices.** All notices pursuant to this Agreement shall be in writing and delivered in person, mailed (by certified mail, return receipt requested) to the other party at that party's address set forth on the cover page or Service acknowledgement or such other address as either party hereto may, by similar notice, furnish to the other, or, for notices and correspondence of a non-legal nature, telefaxed with proof of receipt.

15. **Choice of Law; Venue.**

15.1 If Customer is located in the United States, this Agreement shall be deemed to be executed in the State of New York and shall be interpreted and enforced according to the laws of the State of New York. Venue for any and all controversies in connection with this Agreement shall be in Federal and New York State courts in New York, New York, and any controversies arising out of the Agreement shall be decided only in such courts. Customer hereby submits to the jurisdiction of such courts for any actions or proceedings in connection with this Agreement. No action in connection with this Agreement shall be brought by Customer more than two (2) years after the cause of action arose.

15.2 If Customer is located in Mainland China, Hong Kong, Macau or Taiwan, this Agreement shall be interpreted and enforced according to the laws of the People's Republic of China. Any dispute arising from or in connection with this Agreement shall be settled by final and binding arbitration through the China International Economic and Trade Arbitration Commission ("CIETAC") in Shanghai in Chinese and English in accordance with CIETAC's arbitration rules. The arbitration panel shall consist of three (3) arbitrators appointed in accordance with CIETAC's arbitration rules. Any award rendered by the arbitration tribunal shall be final and binding on the parties, and the parties waive irrevocably their right to any form of appeal, review or recourse to any court or other judicial authority, insofar as such waiver may be valid. The arbitration tribunal shall also have the authority to award preliminary injunctions and rights to specific performance, but it shall have no authority to award "punitive damages". The parties' right to file for the awarding or enforcement of a preliminary injunction with the ordinary courts shall remain unaffected. The costs of arbitration and the costs of enforcing the arbitration award (including witness expenses and reasonable attorneys' fees) shall be borne by the losing party, unless otherwise determined by the arbitration award.

15.3 If Customer is located in Asia (excluding Mainland China, Hong Kong, Macau and Taiwan), this Agreement shall be interpreted and enforced according to the laws of the Republic of Singapore. Any dispute arising from or in connection with this Agreement shall be settled by arbitration in Singapore, in accordance with the rules adopted by the Singapore International ArbitrationCentre ("SIAC") in respect to arbitrations. The language to be used with regard to the performance or termination of this Agreement or with regard to any controversies arising out of this Agreement shall be English. The arbitration shall take place before a panel of three (3) arbitrators. Each of the parties shall appoint an arbitrator and the third arbitrator who shall act as the chairperson shall be appointed by SIAC. Any award of such arbitration shall be final and binding upon both parties hereto. Unless stipulated in the award of such arbitration, the losing party shall bear costs and expenses incurred thereby. Judgment upon the award may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The parties consent to the personal and subject matter jurisdiction and the venue of the courts of Singapore for purposes of such entry of judgment upon the award, and waive notice and service of process as otherwise required by the laws applicable to such courts.

15.4 If Customer is located in Indonesia, Section 15.3 above shall apply. In addition, the parties agree to waive Section 641 of the Reglement op de Rechtvordering of Indonesia and other regulations, if any, which would otherwise give the right to appeal against an arbitral awards, so that accordingly no appeal can be made to any court or other authority against the award. In making the decision, the arbitrator shall not be entitled to render a decision ex aequo et bono. The second part of Section 631 of the Reglement op de Rechtvordering of Indonesia shall apply and that accordingly the arbitrator need not be bound by strict rules of law in making their decision, but may pronounce judgment as reasonable persons. The parties agree to waive Article 620(1) and Article 650(2) of the Reglement op de Rechtvordering of Indonesia so that the mandate of the arbitrators duly constituted in accordance with the terms of this Agreement shall remain in effect until a final arbitration award has been issued by the arbitrators.

16. **Survival.** The provisions of this Agreement that by their nature continue, including, but not limited to the warranty, limitation of liability, and confidentiality obligations set forth in this Agreement, shall survive any expiration, cancellation or termination of this Agreement.

17. **Language.** This Agreement is prepared and executed in the English language, and all amendments, notices, correspondence and other documentation provided by or on behalf of each of the parties to the other shall be in the English language only. The English language shall be controlling in all respects. Any translations of this Agreement or any amendments, notices, correspondence and other documentation into any other language are for reference only and shall have no legal or other effect.

18. **Modification.** These Terms and Conditions and any applicable Service Description may be modified or supplemented only by a separate written agreement that refers to this Agreement and/or the applicable Service Description and is signed in hand by duly authorized representatives of both parties. No modification or waiver of any of the provisions, or any future representation, promise, or addition shall be binding upon the parties unless agreed to in writing and signed in hand by both parties. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Honeywell and Customer, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision or provide the parties with the obligations and benefits of the bargain originally set forth hereunder.

19. **Compliance.** All Products and technology hereunder are subject to U.S. and other export controls. Customer shall comply with all applicable national and international laws, rules, mandates, executive orders, regulations, ordinances, proclamations, demands and requisitions of applicable governments, or of any international, federal, state or local governmental authority which may now or hereafter apply in connection with this Agreement or any Products serviced hereunder, including without limitation the European Union directives on WEEE (2002/96/EC) and RoHS (2002/95/EC) dated January 27, 2003.

20. **Trademarks.** Neither party shall acquire any right under this Agreement to use, and shall not use, any trademark of the other in any advertising, publicity or promotion or other disclosures, or in any manner or for any purpose whatsoever. The provisions of this Section shall survive completion of the Services.