

### **Honeywell BGA Engine Rental Bank (ERB) Bailment Agreement**

**Template Owner:** Jerry Cullen

**Description:** These are the standard terms and conditions posted on myaerospace.com and are referenced in page one of the document populated by the ERB and/or the Service Center. This bailment agreement is only for use by the BGA Mechanical Service Centers. The bailment covers Honeywell owned engines and APUs that are loaned to BGA owner/operators to allow continued flight operations while their aircraft engines/APUs are having off-wing services performed. The document is signed by the Service Center as Honeywell attorney-in-fact. The authority to sign for Honeywell is provided in the Service Centers MSCA. An owner/operator is not clear to continue flight operations with an ERB asset until this bailment agreement is fully executed. Page one is an Excel document and under separate cover.

# **HONEYWELL STANDARD BAILMENT TERMS AND CONDITIONS FOR COMMERCIAL AVIATION (BGA AIRCRAFT)**

## **1. LIMITED RIGHT TO USE, TITLE, FINANCING STATEMENTS.**

**1.1 Limited Use, Title.** Customer's right to use the rental engine under this Agreement is strictly limited to installation and operation on the designated aircraft and engine position. Any change to the aircraft of engine position will require the prior written consent of Honeywell and the execution of a new bailment agreement. Honeywell makes available for use to Customer, and Customer accepts from Honeywell, the Honeywell-Owned or Honeywell-Provided Rental Equipment (individually and collectively "Equipment") for the period specified in section 25 "Period of Rental/Loan" on the signature page of this Agreement, subject to the terms of this Agreement. Title to the Honeywell-Owned Equipment is and will remain vested in Honeywell; title to Honeywell-Provided Equipment is and will remain vested in the owner of the Honeywell-Provided Equipment provider at all times. Customer will not:

- (A) acquire any title or other interest in the Equipment; or any right except the limited and conditional right to use as expressly set forth in this Agreement;
  - (B) permit any lien, encumbrance or security interest to attach to the Equipment;
  - (C) permit the Equipment to be subjected to any interchange or pooling arrangement, or
  - (D) permit the Equipment to be operated by or to be in the possession of any person other than Customer or Honeywell's Authorized Service Center ("Service Center").
- Any unauthorized use, transfer, or reassignment will constitute a breach of this Agreement.

**1.2 Financing Statements.** Customer agrees to execute documents upon request by Honeywell, including, UCC-1 and or FAA financing statements and/or other documents required under the Convention on International Interests in Mobile Equipment, for the purpose of, among other things, evidencing this Agreement and the transaction contemplated hereby, Honeywell's title in the Equipment and providing notice of Customer's limited and conditional right to use the Equipment under this Agreement. The cost of such filing will be paid by Customer. Until Equipment is installed on aircraft, Customer will ensure the Equipment is stored in a secured facility suitable for the storage of aircraft parts, at no charge to Honeywell. Customer will permit Honeywell or its designee to visit and inspect the Equipment, work performed on the Equipment by Customer or its agents, and related records.

## **2. RENT, PAYMENT, SECURITY.**

### **2.1 Rent.**

- (A) Customer will pay the Operating Charges, Minimum Charge, Deposit, Advance Payment, and other charges/fees (as applicable) (collectively "Rent") provided on the signature page of this Agreement. Operating charges begin on the date Equipment is delivered to Customer and end on the date Honeywell receives the Equipment (including the logbook and all components originally delivered with the Equipment) at its designated facility indicated in section 27 "Equipment to be returned to:" on the signature page of this Agreement. Customer will advise Honeywell, in writing, the number of operating hours accumulated for the Equipment in each calendar month by the 10th day of the subsequent calendar month. Charges and fees described in this article two are in addition to any charges and fees that may be due by Customer as described elsewhere in this Agreement.
- (B) If Honeywell provides Equipment as a rental or bailment under a maintenance plan or agreement identified in sections six through eight, and
  - (i) Customer's equipment covered under the maintenance plan or agreement ceases to be covered under that maintenance plan or agreement; or
  - (ii) Honeywell determines after the execution of Honeywell's standard bailment agreement, that repairs of Customer's equipment covered under the maintenance plan or agreement are in fact not covered by that maintenance plan or agreement, then, Honeywell may charge Customer Honeywell's standard Equipment operating charges.

**2.2 Payment.** Unless Customer has been approved for credit terms by Honeywell, payment for all orders will be made at the time of order placement. In the event Customer 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 Customer in writing. Honeywell will determine in its sole discretion if Customer qualifies for credit terms. If credit terms are granted, Honeywell may change Customer's credit terms at any time in its sole discretion and may, without notice to Customer, modify or withdraw credit terms for any order, including open orders. Honeywell may, at its sole discretion require additional security (e.g., bank guarantee, standby letter of credit, corporate guarantee, etc.) for a Customer with no established credit terms and will be determined by Honeywell on a case-by-case basis.

Partial shipments will be invoiced as they are shipped. Honeywell is not required to provide a hard copy of the invoice and may submit invoices electronically. Payments must be made in U.S. currency unless agreed otherwise in writing and must be made via electronic fund transfer. Unless otherwise agreed to by Honeywell, payment by credit card is not permitted. Customer will send an email to GCTSAERORemittance@Honeywell.com on or before the date of such electronic fund transfer advising remittance detail containing at a minimum Customer's order number, Honeywell's invoice number and amount paid per invoice. Customer agrees to pay a service fee in the amount of \$500.00 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 Customer 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 Customer past-due invoice(s) at its sole discretion. An unapplied payment shall mean payment(s) received from Customer 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 days following the invoice date. Honeywell reserves the right to correct any inaccurate invoices. Any corrected invoice or invalid dispute must be paid by the original invoice payment due date or the issuance date of the corrected invoice, whichever is later. Customer must pay the undisputed amount of the invoice within the original invoice payment due date.

**[IF SBG DOES NOT ACCEPT CREDIT CARDS, THIS PARAGRAPH SHOULD BE DELETED]** Unless agreed otherwise in writing by Honeywell, Honeywell allows the Customer to pay by credit card an amount not to exceed [INPUT: SBG to insert fixed monetary amount here] and accepts [INPUT: SBG to insert Credit Cards Accepted: Visa, MasterCard, American Express, Discover]; provided, however, that the Customer's credit card must be charged on the same day that Honeywell invoices the Customer. If User is paying by credit card, it acknowledges and agrees that:

- a. Payment for every Order is due upfront prior to Honeywell activating the Services ordered;
- b. User may not split Orders on between multiple credit cards;
- c. User is obligated to provide a valid credit card via the Portal which has sufficient credit to be charged for any Order being placed;
- d. The credit card provided by User (or, where multiple credit cards have been provided, the credit card selected by User) will be automatically charged upon placement of an Order for Services via the Portal; and
- e. Unless Honeywell has received a timely notice of termination, User's credit card (or, where multiple credit cards have been provided, the credit card selected by User as its default card) will also be charged automatically on the anniversary date of when the original Subscription Services were activated. For avoidance of doubt, Honeywell has no obligation to refund any automatic recurring Subscription Services charges to User's credit card where User failed to provide a timely notice of termination, and User agrees not to contest such charges with its credit card provider.

If Customer is delinquent in its payment obligations to Honeywell for any undisputed amount, Honeywell may, at Honeywell's sole option and until all delinquent amounts and late charges, if any, are paid:

- A. be relieved of its obligations with respect to guarantees, including without limitation, turnaround times, spares support and lead-times;
- B. refuse to process any credit to which Customer may be entitled;
- C. set off any credit or sum owed by Honeywell to Customer against any undisputed amount owed by Customer to Honeywell including but not limited to amounts owed under any contract or order between the Parties;
- D. withhold performance, including, without limitation, suspending all work, the prior grant of any license rights and future shipments to Customer;
- E. declare Customer's performance in breach and terminate any order;
- F. repossess products, reports, technical information or any other items delivered pursuant to this Agreement for which payment has not been made;
- G. deliver future shipments on a cash-with-order or cash-in-advance basis;
- H. assess late charges on delinquent amounts at a rate of 1.5% per month or the maximum rate permitted by law, if lower, for each month or part thereof;
- I. charge storage or inventory carrying fees on products, parts, or raw material;
- J. recover all costs of collection including, without limitation, reasonable attorneys' fees;

- K. if Customer is delinquent on a payment schedule, accelerate all remaining payments and declare the total outstanding balance then due and owing;
- L. require Customer provide Honeywell, a payment improvement plan on terms and conditions satisfactory to Honeywell, as signed and assured by Customer's senior finance officer that may include, but not limit to additional security (e.g., bank guarantee, standby letter of credit, corporate guarantee, etc.); or
- M. combine any of the above rights and remedies as may be permitted by applicable law.
- 2.3 Security.** Upon Honeywell's reasonable request, Customer grants to Honeywell a security interest in the Aircraft described on signature page of this Agreement and in Customer's equipment delivered to Honeywell for repair or overhaul to secure payment of Customer's liabilities to Honeywell under this Agreement. If Customer is unable to grant this security interest in favor of Honeywell, Customer will establish an alternative form of security acceptable to Honeywell, such as an irrevocable standby letter of credit in favor of Honeywell in the form, amount, and duration specified by Honeywell.
- 3. DELIVERY, INSTALLATION, SHIPPING CHARGES.** Delivery terms are EXW Honeywell's facility, or a Honeywell authorized facility, as applicable, (Incoterms 2010). Honeywell will schedule delivery in accordance with its standard lead time unless: (A) Customer's order requests a later delivery date; or (B) Honeywell agrees in writing to a different delivery date. Customer will pay all expenses in connection with installation, removal and transportation of Equipment to and from Honeywell authorized facilities (including insurance and customs duties) or any claims to be filed with the carrier. If Honeywell prepays transportation charges, Customer will reimburse Honeywell upon receipt of an invoice for those charges. Honeywell reserves the right to impose additional charges for any special routing, packing, labeling, handling, or insurance requested by Customer.
- 4. ACCEPTANCE.** Equipment is presumed accepted unless Honeywell receives written notice of rejection from Customer explaining the basis for rejection within 10 (ten) calendar days after delivery. Customer must disposition rejected Equipment in accordance with Honeywell's written instructions. Honeywell will have a reasonable opportunity to repair or replace rejected Equipment, at its option. Subject to the terms of the article titled "Taxes", Honeywell assumes shipping costs in an amount not to exceed actual reasonable direct freight charges to Honeywell's designated facility for the return of properly rejected Equipment. Customer will provide copies of freight invoices to Honeywell upon request. The party initiating shipment will bear the risk of loss or damage to Equipment in transit. If Honeywell reasonably determines that rejection was improper, Customer will be responsible for all expenses caused by the improper rejection.
- 5. SOFTWARE LICENSE & DATA TERMS.** Subject to this Agreement's terms, Honeywell grants to Customer a nonexclusive, limited license to use any software or software documentation that may be delivered for use with the Equipment ("Licensed Software") only in the course of the normal operation of the Equipment on which it is installed. Customer may not either itself or with the assistance of others, make modifications to the Licensed Software including translating, decompiling, disassembling or reverse assembling, reverse engineering, creating derivative or merged works, or performing any other operation on Licensed Software to recover any portion of the program listing, object code or source code or any information contained therein. Honeywell may receive data output from, input to, generated by or otherwise accessible through the Equipment as a result of its use or operation (hereinafter "Equipment Data"). The Equipment may be enabled with sensing or diagnostic capabilities of automatically retrieving, recording, transmitting or storing Equipment Data. Customer gives Honeywell the irrevocable right to retain, use, copy, modify, license, and disclose the Equipment Data for any purpose.
- 6. MAINTENANCE.** Customer will perform all maintenance and maintain a true and accurate log of all maintenance performed on the Equipment as required by (1) operating procedures, manuals, service bulletins or other instructions published by Honeywell; (2) other applicable publications including aircraft flight manuals; and (3) all applicable government directives, law, rules, and regulations.
- 7. RETURN OF EQUIPMENT, EXTENDED USEAGE CHARGES.**
- 7.1 Return of Equipment.**
- (A) Customer agrees that its right of possession and use of the Equipment terminates in accordance with this Agreement's article 17 Term and Termination irrespective of whether there is a dispute of the proper amount of the charges, or responsibility for repair or overhaul of the Customer's own equipment or other charges.
  - (B) Customer will, at its expense, within five calendar days of the first to occur of the expiration or termination of this Agreement, return the Equipment, in Serviceable Condition, (including the logbook, if applicable, and all components originally delivered with the Equipment), via airfreight, to the Honeywell designated facility identified in section 27 "Equipment to be returned to:" on the signature page of this Agreement. Serviceable Condition is defined as a condition in which Equipment is in reasonable operating condition within the limits defined in Honeywell's then-current maintenance manuals, documentation, and/or publications.
  - (C) For APU's and engines only: Customer will, at its expense, ensure a serviceability inspection of the Equipment is performed to verify that it is in the same condition as when received, normal wear and tear excepted. The inspection will be witnessed and certified in the Equipment logbook by a licensed power plant mechanic.
  - (D) With the return Customer must confirm in a non-incident letter that the Equipment has not been involved in, or been removed from an aircraft which was involved in an incident or accident, major failure or fire, that the parts installed have not been subject to extreme stress or heat, and not obtained from any Government, Military, or unapproved source. Component Maintenance Modification Card ("CMMC") and Life Limited Card ("LLC") will be provided if applicable.
- 7.2 Extended Usage Charges.** Customer acknowledges the necessity for timely return of the Equipment and agrees to pay the Extended Usage Charges set forth in section 23 "Extended Usage Charges" on the signature page of this Agreement. If Customer does not perform a proper serviceability inspection of the Equipment, Honeywell will:
- (A) inspect the Equipment on behalf of Customer; and
  - (B) if applicable, invoice Customer the amount in section 22 "Test Cell Fee" on the signature page of this Agreement as the reasonable cost of performing such inspection.
- 7.3 Serviceability Delay Charges.** The following Serviceability Delay Charges apply:
- (A) Any Equipment returned to a designated Honeywell Authorized Service Center or Honeywell repair facility for post-rental inspection that is missing parts or operating information which delays the "return to service" of that Equipment, will be subject to a \$1,000.00 "Serviceability Delay Charge."
  - (B) Parts and operating information, as applicable, must be forwarded within ten calendar days from the date of notification to avoid additional charges above the \$1,000.00 Serviceability Delay Charge.
  - (C) Parts not received within ten calendar days will be subject to replacement and immediate billing at 150% of the then-current Honeywell catalog list price or published price for such parts.
  - (D) Operating Information (logbook or other missing information) not received after ten calendar days will be subject to additional fees equal to the cost Honeywell incurs to obtain operating information or replacement documents.
- Penalty billings including Serviceability Delay Charge, extended use fees, and Customer induced damage charges are not covered by any of the service protection plans described in sections six through eight on the signature page of this Agreement.
- 7.4 Additional Equipment Fees.** Customer is responsible for the following fees, as applicable, for failure to return Equipment as required under this Agreement:
- (A) If the same quantity of Equipment is not returned to Honeywell, Customer will be invoiced the then-current Honeywell catalog list price or published price for any unreturned Equipment. On a case by case basis and with written approval from Honeywell, Customer may return a like quantity of equipment in a serviceable condition as was bailed to Customer.
  - (B) If Honeywell determines the returned Equipment is not in serviceable condition, Customer will be invoiced 150% of the then-current Honeywell time and material repair price for any Equipment not returned in serviceable condition to bring the Equipment to a serviceable condition.
  - (C) If Honeywell determines the returned Equipment is scrap, Customer will be invoiced 150% of the then-current Honeywell catalog price or published price for such Equipment. For purposes of this clause, scrap is defined as Equipment that either: (1) is beyond established and approved repair criteria per the Honeywell Component Maintenance Manuals or other Honeywell Technical Data or documentation; or (2) has a repair cost that will exceed 65% of the then-current catalog price or published price for such Equipment.
  - (D) any lease fees (including extended usage fees) accrued up to the time (1) an invoice is issued for unreturned Equipment; or (2) the Equipment is returned to a serviceable condition; or (3) an invoice is issued for Equipment returned in a scrap condition; or (4) of loss, destruction, or damage.
  - (E) If Customer does not provide Honeywell a rental removal condition form to confirm that the unit was removed in serviceable condition as applicable, Honeywell will charge fee shown in section 22, "Test Cell Fee" on the signature page of this Agreement.
- 8. RISK OF LOSS AND DAMAGE.**
- 8.1** Commencing on the date Equipment is shipped to Customer and until Customer has returned Equipment to Honeywell's designated facility indicated in section 27 "Equipment to be returned to:" on the signature page of this Agreement, Customer is responsible for all loss and damage to the Equipment arising from:
- (A) any omission of maintenance or improper maintenance performed by the Customer or on behalf of the Customer;

- (B) any repair, overhaul, storage, installation, inspection, service, packing, removal, shipping, and/or operation which occurs following Honeywell's shipment of Equipment to Customer and not in accordance with Honeywell manuals, instructions, service bulletins, or other applicable publications including aircraft flight manuals and government directives;
- (C) loss of Equipment logbook(s) or failure to log maintenance performed on the Equipment; or
- (D) any loss, accident, foreign object damage, or other event (excluding normal wear and tear) not caused solely by the negligence of Honeywell.
- 8.2 Customer will pay all charges (in accordance with Honeywell's then-established replacement or repair prices) necessary to replace or repair the Equipment (including the Equipment logbook, if applicable) because of any such loss, damage or diminution in value.
9. **INSURANCE.**
- 9.1 Customer will maintain at its sole cost, until return of the Equipment to Honeywell, insurance coverage naming Honeywell as an additional insured, under Customer's Aircraft Liability Insurance, including public liability, passenger liability and property damage liability in an amount of not less than \$25,000,000 unless Honeywell specifically authorizes a deviation in writing and it is noted at Section 20, "Additional Information" on the signature page of this Agreement. In addition, Customer will obtain from its hull insurance carriers a loss payee clause, in favor of Honeywell. Hull insurance will be at least the minimum amount shown in section 24 "Equipment Replacement Cost/Fair Market Value" on the signature page of this Agreement, insuring the Equipment against all risks of theft, fire, war perils, or other loss or damage, including coverage while on the ground, taxiing, in-flight as well as while in transit. Additionally, such insurance policies will:
- (A) be primary insurance, with any insurance maintained by Honeywell and its affiliates being secondary;
- (B) waive all rights of subrogation against Honeywell and its affiliates;
- (C) include breach of warranty protection in favor of Honeywell and its affiliates;
- (D) be in form and substance satisfactory to Honeywell including, without limitation, any deductibles;
- (E) cover the Equipment at each location that the Equipment may be used; and
- (F) include coverage for contractual liability assumed by Customer in this Agreement.
- 9.2 In the event that the Equipment is lost, stolen, or destroyed, Customer will pay Honeywell the amount of the insurance required in section 24 "Minimum Insurance Amount for Equipment" on the signature page of this Agreement. In the event Customer receives any proceeds of such insurance and at such time has not fully paid Honeywell hereunder, Customer will immediately pay over such proceeds to Honeywell to the extent of any outstanding obligation to Honeywell.
- 9.3 Upon execution of this Agreement and prior to Equipment being transferred to Customer or Service center, as applicable, Customer will provide evidence of such insurance and all insurance provisions as required by this Agreement.
10. **APU FOD REPAIR PROGRAM.** Foreign Object Damage (FOD) means damage to any portion of the Equipment caused by an outside or foreign object or debris, substance, or element including Skydrol, silica, de-ice fluid, and ice. If Customer elects the FOD Repair Program, Honeywell will pay for repairs on the Equipment arising from FOD up to the maximum value purchased by Customer as reflected in section 28 "APU FOD Repair Program." Customer will pay all charges exceeding this maximum value. Honeywell will direct Equipment to the repair facility of its choice.
11. **INDEMNIFICATION.** In addition to any other Customer indemnification obligations in this Agreement, Customer will indemnify, defend, and hold Honeywell and its Affiliates, directors, employees and subcontractors (collectively, "**Honeywell Indemnitees**") harmless against allegations, claims, damages, settlements, fines and penalties and costs, including consultants and attorneys' fees (collectively, "**Claims**") arising out of Customer's negligence or willful misconduct (or that of anyone under its control) due to any act or omission under this Agreement, Customer's breach of its obligations or warranties under this Agreement or Customer's infringement of any US third-party patent or copyright. In connection with these indemnification obligations, Customer agrees to the following "**Indemnification Procedures**": (a) Customer will be entitled to control the defense and Honeywell shall give prompt notice of any Claim; (b) at Customer's expense, Honeywell will reasonably cooperate in defense of the claim including promptly furnishing Customer with all relevant information within its possession or control; (c) Honeywell may participate in the defense at its own expense and through counsel of its choosing; and (d) Customer may not enter into any settlement, assume any obligation, or make any concession without the prior written approval of Honeywell, which approval may not be unreasonably withheld, conditioned or delayed.
12. **TAXES.** Honeywell's pricing excludes all taxes (including but not limited to sales, use, excise, environmental, value-added, and other similar taxes or fees imposed on the sale or transfer of goods or provision of services under this Agreement), tariffs and duties (including, but not limited to, amounts imposed upon the Equipment(s) or bill of material thereof under any Trade Act, including, but not limited to, the Trade Expansion Act, section 232 and the Trade Act of 1974, section 301) and charges (collectively "Taxes"). Customer will pay all Taxes resulting from the Agreement or Honeywell's performance under the Agreement, whether imposed, levied, collected, withheld, or assessed now or later. If Honeywell is required to impose, levy, collect, withhold, or assess any Taxes on any transaction under the Agreement, then in addition to the purchase price, Honeywell will invoice Customer for such Taxes unless, at the time of Order placement, Customer furnishes Honeywell with a valid exemption certificate or other documentation sufficient to verify exemption from the Taxes, including, but not limited to, a direct pay permit. If any Taxes are required to be withheld from amounts paid or payable to Honeywell under this Agreement, (i) the amount due to Honeywell will be increased so that the amount Honeywell receives, net of the Taxes withheld, equals the amount Honeywell would have received had no Taxes been required to be withheld, (ii) Customer will withhold the required amount of Taxes and pay such Taxes on behalf of Honeywell to the relevant taxing authority in accordance with applicable law, and (iii) Customer will forward proof of such withholding sufficient to establish the withholding amount and recipient to Honeywell within sixty (60) days of payment. In no event will Honeywell be liable for Taxes paid or payable by Customer.
13. **WARRANTY/REMEDIES.** UNLESS OTHERWISE STATED IN SECTION 20 ON THE SIGNATURE PAGE OF THIS AGREEMENT, THE EQUIPMENT AND ANY RELATED DOCUMENTS ARE PROVIDED AS-IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY EXPRESS WARRANTY AS TO THE AIRWORTHINESS OR CONDITION OF THE EQUIPMENT AND **ANY IMPLIED WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT** AND THIS IS HONEYWELL'S SOLE WARRANTY OBLIGATION AND CUSTOMER'S SOLE WARRANTY REMEDY UNDER THIS AGREEMENT. NOTWITHSTANDING THE PRIOR SENTENCE, AUXILIARY POWER UNITS AND ENGINES WILL BE PROVIDED IN SERVICEABLE CONDITION.
14. **DISCLAIMER.** IN NO EVENT WILL HONEYWELL BE LIABLE FOR ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, INDIRECT DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, OR LOSS OF USE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. HONEYWELL'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT IS LIMITED TO THE GREATER OF RENT CHARGES PAID BY CUSTOMER TO HONEYWELL UNDER THIS AGREEMENT, IF ANY, OR ONE THOUSAND DOLLARS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE.
15. **THIRD PARTY BENEFICIARY, POWER OF ATTORNEY.** If this Agreement is obtained through a Honeywell Authorized Service Center (Service Center), Customer acknowledges and agrees that the Service Center signing this Agreement is an express third party beneficiary of this Agreement and that Service Center has been granted a limited power of attorney to sign this Agreement on Honeywell's behalf and to enforce the rights of Honeywell under this Agreement. The rights of Honeywell under this Agreement will be transferable to any one or more persons or entities, and all covenants and agreements under this Agreement will benefit and be enforceable by, the successors and assigns of Honeywell. Honeywell will be entitled to the benefit of this Agreement as if the Agreement had been made directly between the Customer and Honeywell. Honeywell will have no obligation to provide maintenance, support or warranties or any other services or any goods to Customer, except as otherwise agreed in writing by Honeywell.
16. **COMPLIANCE.**
- a. Customer certifies it has read, understands, and agrees to abide by the provisions of the Honeywell Code of Business Conduct (the "Code of Conduct"), available at <https://www.honeywell.com/who-Honeywell-are/integrity-and-compliance>. Customer further acknowledges and agrees that it shall, at its sole cost and expense, comply with all applicable laws, rules, regulations, decrees, and other requirements relating to or affecting this Agreement, the Equipment (including their sale, transfer, handling, storage, use, disposal, export, reexport, and transshipment), the activities to be performed by Customer, or the facilities and other assets used by Customer in performing its obligations under this Agreement, including filing all required reports relating to such performance (including tax returns), paying all filing fees and federal, state and local taxes applicable to its business as the same shall become due and paying all amounts required under the local, state and federal laws governing workers' compensation, disability benefits, unemployment insurance, and other employee benefits. This obligation further includes, but is not limited to, Customer's confirmation of an agreement with the representations and warranties set forth in the following subparagraphs. Customer will defend, indemnify and hold the Honeywell Indemnitees harmless from and against any Claims arising out of Customer's non-compliance with this Section and its subparagraphs, pursuant to the Indemnification Procedures of Section 11 (Indemnification).

- b. Sanctions Compliance. Customer represents, warrants, that
- It is not a "Sanctioned Person," meaning any individual or entity: (i) named on a governmental denied party or restricted list, including: the Office of Foreign Assets Control ("OFAC") list of Specially Designated Nationals and Blocked Persons ("SDN List"), the OFAC Sectoral Sanctions Identifications List ("SSI List"), and the sanctions lists under any other Sanctions Laws; (ii) organized under the laws of, ordinarily resident in, or physically located in a jurisdiction subject to comprehensive sanctions administered by OFAC (currently Cuba, Iran, North Korea, Syria, and the Crimea, so-called Donetsk People's Republic, or so-called Luhansk People's Republic regions of Ukraine/Russia) ("Sanctioned Jurisdictions"); and/or (iii) owned or controlled, directly or indirectly, 50% or more in the aggregate by one or more of any of the foregoing.
  - Customer is in compliance with and will continue to comply with all economic Sanctions Laws administered by OFAC, other U.S. regulatory agencies, the European Union and its Member States, the United Kingdom, and the United Nations ("Sanctions Laws"). Customer will not involve any Sanctioned Persons in any capacity, directly or indirectly, in any part of this transaction and performance under this transaction. Customer will not take any action that would cause Honeywell to be in violation of Sanctions Laws.
  - Customer will not sell, export, re-export, divert, use, or otherwise transfer any Honeywell products, technology, software, or proprietary information: (i) to or for any Sanctioned Persons or to or involving Sanctioned Jurisdictions; or (ii) for purposes prohibited by any Sanctions Laws. Customer will not source any components, technology, software, or data for utilization in Honeywell Equipment: (i) from any Sanctioned Persons or Sanctioned Jurisdictions or (ii) in contravention of any Sanctions Laws.
  - Customer's failure to comply with this provision will be deemed a material breach of this Agreement, and Customer will notify Honeywell immediately if it violates, or reasonably believes that it will violate, any terms of this Section. Customer agrees that Honeywell may take any and all actions required to ensure full compliance with all Sanctions Laws without Honeywell incurring any liability.
- c. Export and Import Compliance. Customer will not distribute, resell, export or re-export any Equipment, technical data, Software, plans, or specifications dealing with an Equipment ("Restricted Items"), or take any actions in relation to or in furtherance of this Agreement which are contrary to U.S. Department of State International Traffic in Arms Regulations ("ITAR") or the U.S. Department of Commerce Export Administration Regulations ("EAR") or any other applicable export control, import control, and economic sanction laws and regulations of any country or countries (collectively, "Export/Import Control Laws"). Customer acknowledges that Export/Import Control Laws may control not only the sale, resale, export and re-export of Equipment but also the transfer of other Restricted Items. Customer agrees that it will not sell, re-sell, export, re-export or otherwise transfer any of the Restricted Items in any form, either directly or indirectly, in violation of any Export/Import Control Laws. Further, Customer shall take no action that would cause Honeywell to be in violation of any Export/Import Control Laws. Customer further acknowledges that U.S. Export/Import Control Laws (ITAR and EAR) include prohibitions against selling any product to U.S. embargoed countries (currently, Cuba, Iran, North Korea, Syria, and Sudan); prohibitions against sales of ITAR product to any country with which the U.S. maintains an arms embargo; prohibitions against sale of certain EAR-controlled product for China military end-use; and other restrictions. Customer will immediately notify Honeywell and cease activities with regard to the transaction in question if it knows or has a reasonable suspicion that any Restricted Items may be redirected to other countries in violation of Export/Import Control Laws. Honeywell will apply for United States Government export authorizations required for delivery of any goods, services or technical data under this Agreement. Customer will promptly provide all information required by Honeywell to complete the authorization application. Customer will apply for all other necessary import, export or re-export approvals.
- d. Honeywell will not be liable to Customer for any failure to provide any Equipment or other Restricted Item as a result of government actions that impact Honeywell's ability to perform, including:
- The failure to provide or the cancellation of export or re-export licenses;
  - 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 Honeywell's performance; or
  - Delays due to Customer's failure to follow applicable import, export, transfer, or re-export laws and regulations.
- If Customer designates the freight forwarder for export shipments from the United States, then Customer's freight forwarder will export on Customer's behalf and Customer will be responsible for any failure of Customer's freight forwarder to comply with all applicable export requirements. Honeywell will provide Customer's designated freight forwarder with required commodity information.
- e. Anti-Bribery, Anti-corruption Laws.
- Honeywell International Inc. is subject to national and international laws prohibiting bribery and corruption. Because Honeywell International Inc. is a US company, its employees and Affiliates, as well as all consortium bidding partners and any third party acting on its behalf must comply with the US Foreign Corrupt Practices Act ("FCPA") and similar anticorruption laws applicable in the countries where Honeywell operates.
  - Customer certifies that has read, understands, and agrees to abide by the provisions of, the Honeywell Code of Business Conduct, which is available at <https://www.honeywell.com/who-we-are/integrity-and-compliance>, and the Honeywell Anticorruption Policy, which is available at <https://www.honeywell.com/content/dam/honeywellbt/en/documents/downloads/Anticorruption%20Policy%202066%20pdf.pdf>.
  - Customer agrees that in connection with its activities under this Agreement, neither Customer nor any agent, affiliate, employee, or other person acting on its behalf will offer, promise, give or authorize the giving of anything of value, or offer, promise, make or authorize the making of any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, [FOR NON-GOVERNMENT CUSTOMERS: to any government official or political party] in order to obtain or retain business, gain any unfair advantage or influence any [FOR NON-GOVERNMENT CUSTOMERS: government official] decision.
  - [FOR NON-GOVERNMENT CUSTOMERS: If Honeywell has reason to believe that the provisions of this agreement may have been violated, Honeywell and its authorized representatives will have the right to audit, examine and make copies of all records that relate to this Agreement including financial, legal, tax, accounting, operational, labor, and regulatory information. Customer will retain and preserve all records and materials including invoice records, pertaining to the Equipment provided under this Agreement for a period of 3 (three) years after the termination of this Agreement or for the period prescribed by applicable law, whichever period is longer.]
  - In the event that Honeywell determines, in its sole discretion, that the Customer has engaged in conduct that violates the Honeywell Anticorruption Policy or applicable anti-corruption laws and regulations, Honeywell immediately shall have the right to terminate this Agreement.
  - If Customer learns of any violations of the above anticorruption provisions in connection with the performance of this Agreement, it will immediately advise (a) Honeywell's Chief Compliance Officer, (b) any member of Honeywell's Integrity and Compliance Department or (c) the Honeywell Access Integrity Helpline (AccessIntegrityHelpline@honeywell.com). Customer agrees to cooperate fully with any Honeywell investigation, [FOR NON-GOVERNMENT CUSTOMERS: audit] or request for information under this Section.
- f. EU WEEE Directive. To the extent applicable, Customer agrees to comply with the European WEEE Directive 2012/19/EU or any other applicable law or regulation concerning the financing and organization of the disposal of waste electrical and electronic equipment, including responsibility for (i) all costs and liabilities associates with recycling Equipment, (ii) the collection of Equipment and their return, in accordance with all country specific applicable laws and regulations. Customer shall indemnify Honeywell for all such costs and upon reasonable evidence of Honeywell having to incur any such costs. Customer shall reimburse Honeywell within thirty (30) days of receipt of an invoice regarding the same.
- g. Audit. Customer agrees to maintain accurate books and records to demonstrate compliance with the compliance requirements of this Section. Honeywell, at its expense, may audit Customer to determine compliance with such provisions upon no less than thirty (30) days' advance written notice, and Customer will provide reasonable assistance to Honeywell to complete such audit.
- h. Non-Compliance. Customer's failure to comply with this Section will be deemed a material breach of this Agreement, and Customer will notify Honeywell immediately if it violates, or reasonably believes that it will violate, any terms of this Section. Customer agrees that Honeywell may take any and all actions required to ensure full compliance with all applicable laws, including Sanctions Laws, Export/Import Control Laws and anti-corruption laws, without Honeywell incurring any liability.

## 17. TERM AND TERMINATION.

**17.1 Term.** This Agreement and Customer's right of possession and use of Equipment will expire upon the earlier of the Ending Date in section 25 on the signature page of this to this Agreement or 15 days after Customer's Equipment is declared serviceable (21 days for equipment serviced outside the continental United States).

**17.2 Termination for Default.** Honeywell may terminate this Agreement and any or all unperformed Orders immediately upon notice to Customer upon the occurrence of any of the following events: (a) Customer fails to perform or breaches any of its obligations and covenants under this Agreement, and such default continues for more than sixty



(60) days after written notice specifying the failure to perform or breach (unless such breach is determined to be incapable of cure, determined in Honeywell's sole discretion, in which case termination is effective immediately); (b) Customer fails to make any payment hereunder due within five (5) calendar days after written notice of such non-payment; (c) attempted assignment of this Agreement by Customer or any rights hereunder without Honeywell's prior written consent, which includes a sale or transfer of substantially all of Customer's assets, a majority interest in its voting stock, or a merger or consolidation with one or more entities; (d) Customer experiences one or more of the of the following insolvency-related circumstances: (i) it ceases to function as a going concern or to conduct its operations in the normal course of business (including an inability to meet obligations as they mature), (ii) a receiver is appointed for its assets, (iii) bankruptcy or insolvency proceedings are brought by or against it, or (iv) it makes an assignment for the benefit of creditors; (e) Customer violates the law or any of its owners, officers, principals, members or partners is indicted or convicted on charges of felony, conversion, embezzlement or any morally reprehensible act which could, in Honeywell's sole discretion, adversely impact Honeywell; or (f) Customer engages in any conduct or practice which, in Honeywell's sole discretion, is or could be detrimental or harmful to the good name, goodwill and reputation of Honeywell or Equipment. 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 a party may be entitled to under this Agreement or in law or equity, including, without limitation, payment for services performed and for losses sustained for materials, tools, construction equipment and machinery, reasonable overhead, profit, and applicable damages. Honeywell may suspend performance under this Agreement at Customer's expense if Honeywell determines that performance may violate the law and/or cause a safety, security, or health risk.

**17.3 Other Termination.** Honeywell may terminate this Agreement:

(A) if there is a material change in the nature of the business of Customer, or a dissolution or discontinuance of the business of Customer in which case Honeywell may terminate this Agreement immediately upon written notice to Customer; or

(B) for any reason without cause upon five calendar days written notice to Customer.

**17.4 Repossession.** In the event of termination or default of this Agreement, or Customer's insolvency, discontinuance or suspension of operations and/or liquidation of assets, Honeywell or its agents may, with 24 hours notice, gain access to Customer's facility in order to retrieve the Equipment free from any civil or criminal allegations of trespass by Customer. Customer will cooperate in all respects with Honeywell's retrieval of the Equipment and will be responsible for all of Honeywell's costs associated therewith.

**18. CUSTOMER CAUSED DELAY.** Honeywell is not liable for any delays or increased costs caused by delays in obtaining parts, materials, equipment, services or software from a Customer-designated supplier, for Customer's failure to timely provide information required for the work, or any other delay caused by, or within the control of, Customer. If Customer-caused delays occur, then the price, delivery dates, and other affected terms will be adjusted to reflect increased cost, delay, and other adverse impact suffered by Honeywell. For illustrative purposes only, and without limitation, events impacting price may include: (i) the cost of steel, copper, or aluminum, (ii) the cost of any buy-out items including additional cost based on a fluctuation in currency exchange rate, (iii) the cost of mechanical installation or electrical installation labor required for on-site work and/or installation, and (iv) the cost of pre-building and storing equipment at Honeywell's sole discretion. In the event that a delay caused by the Customer is ongoing for a period of time which is ninety (90) days or longer, Honeywell may provide notice to Customer that it is cancelling any affected outstanding Customer Orders or affected portion thereof.

**19. ASSIGNMENT.** Honeywell may assign or transfer this Agreement and assign its rights and delegate its obligations. Customer shall not assign this Agreement, whether by merger, consolidation, operation of law or otherwise, and any attempt to do so without Honeywell's prior written consent shall be null and void. This Agreement shall inure to the benefit of and be binding upon any successor or permitted assign of the Parties. Notwithstanding anything to the contrary herein, Honeywell may engage subcontractors to perform any of its obligations under this Agreement. Use of a subcontractor will not release Honeywell from liability under this Agreement for performance of the subcontracted obligations.

**20. GOVERNING LAW AND DISPUTES.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New York and the United States of America, without regard to conflicts of law principles. Honeywell and Customer expressly agree to exclude from this Agreement the Uniform Computer Information Transactions Act and United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto. The Parties further agree that any dispute, controversy, action, cause of action, or claim between them arising out of or relating to this Agreement, or the breach, termination, or validity thereof, shall be brought in the United States District Court for the Southern District of New York or, if such court does not have subject matter jurisdiction, the courts of the State of New York sitting in the County of New York, and any appellate court from any thereof. Each Party shall submit to the jurisdiction of such courts and each party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Customer will not bring a legal or equitable action more than one year after the cause of action arose unless a shorter period is provided by applicable law. EACH PARTY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY RELATED TO THIS AGREEMENT.

Before the Parties initiate any dispute resolution process other than injunctive relief, the Parties must schedule a mandatory executive resolution conference to be held within thirty (30) days of receipt of the other Party's written request. The conference must be attended by at least one executive from each Party. At the conference, each Party will present its view of the dispute in detail and the executives will enter into good faith negotiations in an attempt to resolve the dispute. If the dispute is not resolved within fifteen (15) days of the end of the conference, then either Party may pursue resolution of the dispute consistent with the other terms of this Agreement.

**21. SETOFF.** Neither Customer nor its affiliated entities (nor any representative or agent thereof) shall attempt to set off or recoup any invoiced amounts or any portion thereof against other amounts that are due or may become due from Honeywell, its parent, affiliates, subsidiaries or other legal entities, business divisions, or units. **SEVERABILITY.** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction in accordance with article 19 "Applicable Law", then the validity and enforceability of the remaining provisions of this Agreement will not be affected and, in lieu of such illegal, invalid, or unenforceable provision there will be added as part of this Agreement one or more provisions as similar in terms as may be legal, valid and enforceable under applicable law.

**22. ENFORCEABILITY, WAIVER.** If any portion of this Agreement is held invalid or unenforceable, the remaining portions will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect the intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement, but the rest of this Agreement will remain in full force and effect. Failure to enforce or exercise any provision is not a waiver of such provision unless such waiver is specified in writing and signed by the Party against which the waiver is asserted.

**23. CONFIDENTIALITY.** Honeywell may provide Customer certain information during the performance or fulfillment of this Agreement that is not generally known, is reduced to writing (or, if orally disclosed first, is reduced to writing within 30 days after initial disclosure) and is clearly identified as being confidential, proprietary or a trade secret prior to disclosure, including, but not limited to: financial information, trade secrets, know how, product data, samples, techniques, specifications, drawings, designs, design concepts, processes and testing methodologies ("Confidential Information"). All Confidential Information provided in connection with this Agreement shall remain the property of Honeywell, shall be used only for the purpose of furthering the matters contemplated by this Agreement and not for any other purpose whatsoever, and shall be protected as confidential by Customer using the same degree of care as it uses to protect its own confidential information of a similar type, but no less than a reasonable degree of care, for a period of ten (10) years following the expiration or termination date of the Agreement. Absent explicit written consent from Honeywell, Customer is not permitted to use or disclose Honeywell's Confidential Information in whole or in part to: (a) manufacture itself or enable the manufacture by any third party of Honeywell's products, products similar thereto, or products derived therefrom; (b) decompile, disassemble, decode, reproduce, redesign, or reverse engineer any products or equipment of Honeywell or any part thereof; (c) perform any services, including services relating to Honeywell's products or equipment; or (d) deliver under a contract or make subject to a "rights in data" clause or equivalent clause. These obligations shall not apply to business contact information or other information which is: (a) publicly known at the time of disclosure or becomes publicly known through no fault of Customer, (b) already known to Customer at the time of disclosure through no wrongful act of Customer, (c) received from a third party without restrictions similar to those in this Section, or (d) independently developed by Customer. Customer may not disclose Confidential Information without the prior written consent of Honeywell, provided, however, that Customer may disclose Confidential Information to its Affiliates, employees, officers, consultants, agents, and contractors for the purposes of discharging this Agreement. Customer will promptly notify Honeywell if faced with legal action or a request under U.S. or foreign government regulations to disclose any of Honeywell's Confidential Information. If Honeywell requests, Customer will cooperate in all reasonable respects to contest the disclosure or obtain a protective order or other remedy. Customer may make a limited number of copies of Confidential Information as is necessary for the normal operation of Honeywell's Products. All copies made will reproduce the restrictive legends on the original. Within 180 days after termination or expiration of this Agreement and upon written request of Honeywell, Customer will return or destroy all Confidential Information and all copies thereof, except for any Confidential Information that exists only as part of regularly generated electronic backup data or archive data, the destruction of which is not reasonably practicable. The terms and conditions of this "Confidential Information" section will survive expiration or any termination of this Agreement.

**24. PUBLICITY.** Neither Party will issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other Party, except that either Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its or its affiliates' publicly traded securities. Notwithstanding the foregoing, if either Party, or a third party, makes a public disclosure related to this Agreement that is false or

damaging to a Party, the aggrieved Party will have the right to make a public response reasonably necessary to correct any misstatement, inaccuracies or material omissions in the initial and wrongful affirmative disclosure without prior approval of the other Party. Neither Party will be required to obtain consent pursuant to this section for any proposed release or announcement that is consistent with information that has previously been made public without breach of its obligations under this clause. Notwithstanding the foregoing, Honeywell may list Customer and its logo as a customer on Honeywell's website and in marketing materials.

25. **TRADEMARKS.** Customer acknowledges that Honeywell is the owner of all right, title, and interest in, and to, its trademarks, trade names, service marks, logos and related designs associated with the Honeywell and the Products ("**Trademarks**"). Unless Customer enters into a separate written agreement with Honeywell, it may not use the Trademarks or benefit from any goodwill associated with the same. This includes, but is not limited to, Customer not (i) using any trademark, name, trade name, domain name, logo, or icon similar to or likely to cause confusion with the Trademarks; (ii) making any representation to the effect that the Trademarks are owned by Customer rather than Honeywell; (iii) attempting to register Trademarks in any country or challenge Honeywell's ownership of the same; (iv) using any domain name incorporating in whole or in part the Trademarks; or (v) using any name, trade name, domain name, keyword, social media name, account name, identification, or mark that is confusingly similar to the Trademarks.
26. **ACCEPTABLE USE.** Customer will use the Products in a commercially reasonable manner in accordance with any Documentation made available by Honeywell, as may be updated by Honeywell or the Product manufacturer from time to time. Customer will not, and will not permit any person or entity to, use the Products (including any Embedded Software) for purposes of or in connection with: (a) distributing it in any manner not authorized by Honeywell; (b) modifying or tampering with it; or (c) interfering with its proper functioning. Any unauthorized use of the Products may result in termination or suspension of this Agreement or the right to use the Products. Customer may not use the Products in any way that would reasonably be expected to cause liability or harm to Honeywell or third parties.
27. **SURVIVAL.** All rights, duties and obligations which by their nature should apply beyond the term of this Agreement including, articles 2-Rent, Payment, Security, 5-Software License, 7. Return of Equipment, Extended Usage Charges, 11-Indemnification, 12-Taxes, 13-Warranty/Remedies, 14-Disclaimer, 19-Applicable Law, and 21-Severability, 22-Waiver, 23-Non-Disclosure and Confidentiality, 24-Survival, and 26-Entire Agreement will remain in force after expiration or termination of this Agreement.
28. **COUNTERPARTS.** This Agreement may be signed in counterparts (including faxed and any electronic or digital format), each of which will be deemed one and the same original. Reproductions of this executed original (with reproduced signatures) will be deemed to be original counterparts of this Agreement.
29. **ENTIRE AGREEMENT.** The terms contained in this Agreement constitute the entire agreement between Customer and Honeywell with respect to its subject matter and supersedes any prior representations and agreements, oral or written, and all other communications between Customer and Honeywell relating to its subject matter. This Agreement will not be varied except by an instrument in writing subsequently executed by an authorized representative of each party.