

This Subcontract Agreement (“**Subcontract**”) is entered into between <<\_\_\_\_\_>> through its business unit, having a place of <<\_\_\_\_\_>> (“**Honeywell**”) and <<\_\_\_\_\_>> having a place of business at <<\_\_\_\_\_>> (“**Subcontractor**”). Each party is sometimes also referred to as “**Party**,” and collectively as “**Parties**.”

Capitalised terms will have the meaning ascribed to them in this Subcontract.

## OVERVIEW/RECITALS

WHEREAS, Honeywell has entered into a contract (“**Main Contract**”) with the Customer with respect to a project (“**Project**”) and is engaging the Subcontractor to perform certain work (“**Works**”) in relation to the Project pursuant to the terms and conditions of this Subcontract; and

WHEREAS, the Subcontractor has represented to Honeywell that it has the requisite skill, experience, ability and available resources to perform the Works (which form part of the works required to be carried out by Honeywell under the Main Contract) in accordance with the Subcontract; and

WHEREAS, Honeywell wishes to engage the Subcontractor to perform the Works and the Subcontractor has agreed to perform the Works under the terms and conditions of this Subcontract;

NOW THEREFORE, in consideration of the above recitals and the following covenants, the Parties hereto agree as set forth herein.

## SUBCONTRACT STRUCTURE AND PRECEDENCE

The order of precedence of the documents comprising this Subcontract will be the order in which they are listed in the Subcontract Particulars.

Any terms and conditions on any Honeywell Purchase Order issued with reference to the Works will be governed exclusively by the terms and conditions contained herein. Any additional or different terms and conditions contained in any purchase order acknowledgement or acceptance by the Subcontractor will be of no effect.

The Subcontractor warrants to Honeywell that it has examined carefully and acquired actual knowledge of the contents of all of the Subcontract Documents and any other information made available by or on behalf of Honeywell to the Subcontractor for the purpose of enabling the Subcontractor to offer to carry out the Works and will be deemed to have verified for itself the accuracy of the above information and will be deemed to have made all necessary allowances in its offer for all discrepancies, ambiguities and/or errors in the information given.

## SUBCONTRACT TERM

The Parties agree that this Subcontract does not come into effect, and is not legally binding on the Parties, until the later occurrence of the three events shown below (the “**Effective Date**”):

- A. the date that this Subcontract is executed by the Subcontractor;
- B. the date that Honeywell issues to the Subcontractor a Honeywell Purchase Order referencing this Subcontract; and
- C. where applicable, the date that this Subcontract has been approved by the Customer under the Main Contract (as such date is notified by Honeywell to the Subcontractor).

The Subcontractor agrees that it will in no circumstances be entitled to be paid any amount under this Subcontract (including for any work carried out by the Subcontractor) prior to the date that this Subcontract becomes effective in accordance with this Section (unless the Subcontractor has commenced work pursuant to Honeywell’s prior written approval, which such approval must refer to the exact work for which approval is given).

## ENTIRE AGREEMENT

The exhibits, schedules and other attachments to this Subcontract are incorporated by reference, and any reference to this Subcontract includes the aforesaid documents. This Subcontract contains the entire understanding between the Parties regarding the subject matter of this Subcontract, and supersedes and replaces any prior representations or agreements, oral or written, and all other communications between the Parties with respect thereto. Neither Party has relied on any promises, inducements or representations by the other, except those expressly stated in this

Subcontract. This Subcontract will not be varied except in writing signed by an authorized representative of each Party specifically stating it is amending this Subcontract. No course of dealing or prior dealings, usage of trade or course of performance will be used to modify, supplement or explain any terms used in this Subcontract.

For good and valuable consideration, the nature and adequacy of which is hereby acknowledged, the Parties agree this Subcontract is effective as of the Effective Date.

**IN WITNESS WHEREOF** the Parties hereto have duly executed this Subcontract:

**SIGNED by the Subcontractor by its authorised representative(s):**

**SUBCONTRACTOR**

**HONEYWELL**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:**

**Name:**

**Title:**

**Title:**

**Date:**

**Date:**

## SUBCONTRACT PARTICULARS

Item	Section Ref.	Particulars
Customer	<u>Definitions</u>	<< _____ >>
Date for Practical Completion	<u>Definitions</u>	<<dd/mm/yy>> If nothing stated, the date for Practical Completion in the Main Contract.
Defects Liability Period	<u>Quality and Performance Requirements</u>	<<from dd/mm/yy to dd/mm/yy>> If nothing stated, 12 months
Honeywell's Representative	<u>Definitions and Work Guidelines, Personnel and Obligations</u>	Name: Designation: Contact details
Main Contract Defects Liability Period	<u>Definitions</u>	<<from dd/mm/yy to dd/mm/yy>>
Second Defects Liability Period	<u>Quality and Performance Requirements</u>	<< _____ >> If nothing stated, 12 months.
Subcontract Sum	<u>Definitions</u>	<< _____ >>
Subcontractor Key Personnel	<u>Definitions and Work Guidelines, Personnel and Obligations</u>	Name: Designation: Contact details
Subcontractor's Representative	<u>Definitions and Work Guidelines, Personnel and Obligations</u>	Name: Designation: Contact details
Working Hours	<u>Definitions and Work Guidelines, Personnel and Obligations</u>	<< _____ >> If nothing stated, the hours (and the days of the week to which those hours apply) in the Main Contract.
Form of Security	<u>Bank Guarantee / Performance Surety Guarantee</u>	<< _____ >>
Amount of Security	<u>Bank Guarantee / Performance Surety Guarantee</u>	<< _____ >> If nothing stated: 1) For Cash Retentions: 10% of each progress payment to the Subcontractor. 2) For Performance Bond Guarantee: 10% of the Subcontract Sum.

Item	Section Ref.	Particulars
Percentage of Retention	<u>Bank Guarantee / Performance Surety Guarantee</u>	<< _____ >> If nothing stated, 10% of the value of the Works executed.
Date for Site Access	<u>Work Guidelines, Personnel and Obligations</u>	<<dd/mm/yy>> If nothing stated, the date that Honeywell is given access to the Site to commence work under the Main Contract.
Extension of Time Claim Period	<u>Delivery, Schedule and Acceptance</u>	<< _____ >> If nothing stated, the lesser of: a) the notice period in the Main Contract less 2 Business Days; and b) 5 days.
Liquidated Damages	<u>Liquidated Damages</u>	<< _____ >> per day
Non-compete Period	<u>General</u>	<< _____ >>
Main Contract Liquidated Damages	<u>Liquidated Damages</u>	<< _____ >> If amount is not stated, the rate of liquidated damages payable by Honeywell as stated in the Main Contract.
Variation Notice Period	<u>Variations</u>	<< _____ >> Business Days If nothing stated, the lesser of: a) the notice period for variations in the Main Contract less 1 Business Day; and b) 5 days.
Progress Claim Submission Dates	<u>Invoicing and Payment</u>	<< _____ >> If nothing stated, the submission days for progress claims is last day of each month. If the submission date falls due on a non Business day, statutory or public holiday, the Sub contractor will submit the progress claim on the next following Business Day.
Payment Period	<u>Invoicing and Payment</u>	Net 30 Days
Notice Notification Period	<u>Notification of Claims</u>	<< _____ >> If nothing stated, the lesser of: a) the period for notification of a claim in the Main Contract less 1 Business Day; and b) 5 days.
Claim Notification Period	<u>Notification of Claims</u>	<< _____ >> If nothing stated, the lesser of: a) the period for submission of a claim in the Main Contract less 1 Business Day; and b) 5 days.
<b>DOCUMENTS COMPRISING THIS SUBCONTRACT</b> <b>(in order of precedence)</b>		

Item	Section Ref.	Particulars	
Document Reference and Name		Revision	Date
Instrument of Agreement Subcontract Particulars Special Conditions of Subcontract General Conditions of Subcontract and its Attachments, Exhibits and Schedules Main Contract			
References for Scope Document			
References for Subcontractor Standard Installation Guide			
References for Works Schedule			
References for Schedule of Rates if incorporated			
Names of specification(s) that form part of this Subcontract			
Drawing number / names of drawings(s) that form part of this Subcontract			
Any other documents to be referenced by the Subcontract – delete text from any unused rows]			

# GENERAL CONDITIONS OF SUBCONTRACT

## 1. INTERPRETATION

In this Subcontract:

- A. Headings and captions are for convenience of reference only and do not alter the meaning or interpretation of any provision of this Subcontract;
- B. words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender; and words importing a person will include a firm, partnership, entity, organization, association, trust, company or corporation and vice versa;
- C. words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender; importing a person will include a firm, partnership, entity, organization, association, trust, company or corporation and vice versa;
- D. a reference to any party includes that party's executors, administrators, substitutes and permitted assigns;
- E. time for doing any act or thing under the Subcontract will, if it ends on a day that is not a Business Day, be deemed to end on the next following Business Day;
- F. a reference to a statute, ordinance, code or Legislative Requirement includes any regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of it;
- G. reference to any Subcontract Document is a reference to such Subcontract Document as it may have been amended pursuant to this Subcontract;
- H. references to "includes" and "including" are to be read as if followed by the words "without limitation";
- I. a reference to "work" includes the provision of materials;
- J. a reference to a "day" means a calendar day; and
- K. unless stated otherwise (or the context requires otherwise) a reference to a Section or a paragraph means a Section or paragraph of these General Conditions of Subcontract and a reference to an Item means an item of the Subcontract Particulars.

## 2. DEFINITIONS

Unless the context otherwise requires, the following terms when used in this Subcontract will have the following meanings:

**"Bank Guarantee"** means an unconditional, irrevocable and on-demand guarantee issued by a major bank and in a form approved by Honeywell.

**"Business Day"** means any day which is not a Saturday, Sunday or public holiday in the jurisdiction in which the Project is located.

**"Completion Certificate"** means the certificate issued under Clause 24.4, stating the Date of Practical Completion.

**"Customer"** means the party or parties stated in the Subcontract Particulars that has or have engaged Honeywell to carry out works (of which the Works form a portion) under the Main Contract.

**"Date For Practical Completion"** means the date stated in the Subcontract Particulars, as such date may be adjusted under the terms of this Subcontract.

**"Date Of Practical Completion"** means the date upon which Practical Completion is reached, as stated in a Completion Certificate issued by Honeywell under the terms of this Subcontract.

**"Defect"** means any defect, deficiency, fault or omission in the Works or any other aspect of the Works which is not in accordance with the requirements of this Subcontract (and **Defective** will be construed accordingly).

**"Defects Liability Period"** means the defects liability period stated in the Subcontract Particulars.

**"Extension of Time"** means an extension of the Date For Practical Completion.

**"Honeywell's Quality System"** means the quality system utilised by Honeywell for the Project as provided to the Subcontractor and as it may be amended (and subsequently provided to the Subcontractor) from time to time.

**"Honeywell Purchase Order"** means a document titled Honeywell Purchase Order issued from Honeywell to the Subcontractor via either fax transmission or the Honeywell Purchase Order System.

**"Honeywell's Representative"** means the person stated in the Subcontract Particulars (as such person may be changed from time to time by notice in writing from Honeywell to the Subcontractor).

**"Honeywell Works Schedule"** mean a document that describes the sequencing and timing of the Works and may include the individual tasks that make up the Works with their corresponding start date, duration, end date, dependent task(s) and allocated resources.

**"Legislative Requirement"** includes: (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Works are being carried out; and (b) certificates, licences, consents, permits, approvals and requirements of organisations governmental bodies or other having jurisdiction over the Works or the carrying out of them.

**"Main Contract"** means the agreement between Honeywell and the Customer with respect to the Project.

**"Main Contract Defects Liability Period"** means the defects liability period under the Main Contract, as stated in the Subcontract Particulars.

**"No Claim"** means no claim for any moneys or for any adjustment to the Subcontract Sum or for any Extension of Time or for costs, expenses, loss or damage on any basis whatsoever, including no claim: (a) pursuant to contract; (b) in tort (including negligence); (c) in quantum meruit; (d) pursuant to quasi-contract; (e) for unjust enrichment; or (f) pursuant to any other principle of law or equity.

**"Original Subcontract Sum"** means the Subcontract Sum prior to any adjustment under this Subcontract.

**"Payment Certificate"** means the certificate issued by Honeywell to the Subcontractor identifying the amount of progress payment which Honeywell certified as payable to the Subcontractor.

**"Performance Certificate"** means the certificate issued by Honeywell to Subcontractor stating the date on which the Subcontractor completes his obligations under this Subcontract.

**"Practical Completion"** means when:

- 1) the Works are complete except for minor Defects which do not prevent the Works (or, if applicable, the works under the Main Contract of which the Works form part) from being reasonably capable of being used for their intended purpose;
- 2) all commissioning and tests required under the Subcontract Documents to be completed before Practical Completion have been carried out and passed;
- 3) all documents and other information required under the Subcontract for the operation, use and maintenance of the Works have been supplied by the Subcontractor to Honeywell's satisfaction;
- 4) the Subcontractor has provided proof, to Honeywell's satisfaction, that each part of the Works meets the operating requirements required by the Subcontract Documents;
- 5) all guarantees and warranties required by this Subcontract (including those required under the Main Contract) have been supplied;
- 6) all temporary works, construction plant, storage and sheds supplied by the Subcontractor have been removed from the Site; and
- 7) any other matters expressly required for Practical Completion under this Subcontract have been satisfied.

**"Progress Claim"** means the claim for payment that the Subcontractor submitted or is entitled to submit for works and goods or materials carried out or supplied under this Subcontract.

**"Quality Assurance Requirements"** means the quality assurance requirements under the Main Contract.

**"Representative"** means either Honeywell's Representative or Subcontractor's Representative, as applicable.

**"Secondary Subcontractor"** means a subcontractor to Subcontractor.

**"Site"** means the working area as defined in the Main Contract or the Subcontract Documents.

**"Standards"** means all relevant codes, standards and specifications that the Works are required to comply with under any Legislative Requirement or which are stated in this Subcontract to apply to the Works.

**"Subcontract Documents"** means the documents comprising this Subcontract (as listed in the Subcontract Particulars) and any other document prepared for the purpose of the Works or this Subcontract (including any Subcontractor's Design).

**"Subcontract Sum"** means the sum stated in the Subcontract Particulars, as such sum may be adjusted pursuant to this Subcontract.

**"Subcontractor Key Personnel"** means the Subcontractor's personnel identified in the Subcontract Particulars, as such personnel may be changed in accordance with this Subcontract.

**"Subcontractor Works Schedule"** means the Subcontractor works schedule to be provided by the Subcontractor pursuant to the Delivery, Schedule and Acceptance Section (as may be updated in accordance with that Section).

**"Subcontractor's Design"** means the design to be carried out and completed by the Subcontractor under and in accordance with this Subcontract.

**"Subcontractor's Representative"** means the person stated in the Subcontract Particulars, as such person may be changed, subject to Honeywell's approval, by notice in writing from the Subcontractor to Honeywell.

**"Tax Invoice"** means an invoice for payment from the Subcontractor to Honeywell which complies with the legislation under which goods and service tax is imposed with respect to the relevant supply the subject of the invoice.

**"Variation"** means any modification, addition, omission, or other variation to, in or from the Works but does not include: (a) any work necessary to rectify a Defect in the Works; or (b) any work which is reasonably necessary or required for the Subcontractor to complete the Works.

**"Working Hours"** means the hours (and the days of the week to which those hours apply) during which the Site will be operational, as set out in the Subcontract Particulars (and as may be adjusted by notice in writing from Honeywell to the Subcontractor).

**"Works"** means the whole of the work to be carried out and completed by the Subcontractor in accordance with this Subcontract, including the Subcontractor's Design, all Variations provided for by the Subcontract and all items of work inferred for the proper execution and completion of the Works.

### 3. SCOPE

#### A. Main Contract Back-to-Back Requirements. The Subcontractor

- 1) acknowledges that it has been provided with a copy of the Main Contract will and has read and understood the obligations imposed on Honeywell by the Customer under the Main Contract;
- 2) warrants that it will observe and comply with all of Honeywell's obligations under the Main Contract insofar as they relate to the Works as if those obligations were expressly stated in this Subcontract as obligations of Subcontractor;
- 3) agrees that in the performance of the Works, Subcontractor makes the same warranties to Honeywell as Honeywell has made to the Customer under the Main Contract;



- 4) agrees that, if the Main Contract requires Honeywell to impose specific terms, conditions or warranties into its subcontracts, those terms, conditions and warranties are deemed to be incorporated into this Subcontract;
  - 5) acknowledges that Honeywell may suffer loss or liability under the Main Contract if the Subcontractor does not properly perform and comply with its obligations under this Subcontract and warrants that it will perform its obligations under this Subcontract so as not to:
    - a. cause Honeywell to breach or incur any loss or liability under the Main Contract;
    - b. prejudice, or cause any diminution or loss of, any rights or entitlements of Honeywell under the Main Contract; or
    - c. otherwise interfere in Honeywell's exercise of its rights or performance of its obligations under the Main Contract; and
  - 6) indemnifies Honeywell from and against any cost, expense, loss, damages or liability incurred or suffered by Honeywell in connection with the Main Contract and arising out of or in connection with any breach by the Subcontractor of the warranties and agreements set out in this Section.
- B. Performance of Obligations. The Subcontractor warrants that:
- 1) The Subcontractor will at all times be suitably qualified and experienced and, in carrying out the Works, will exercise the standard of care, skill, competence and diligence to be expected of a prudent and competent contractor experienced in the performance of like works for a project of a size, scope and complexity similar to the project for which the Works are required;
  - 2) the Works will be carried out in accordance with, and when complete will comply with, the requirements of: (i) this Subcontract and the relevant requirements of the Main Contract; (ii) all applicable laws, rules, codes, regulations, by-laws and ordinances in performing its obligations hereunder; and (iii) the relevant Standards current as at the date of this Subcontract (as such Standards may be amended, up to the Date Of Practical Completion, by the relevant body responsible for such Standards);
  - 3) the Works, when complete, will be fit for the purposes for which they are intended;
  - 4) the goods and materials to be supplied in connection with the execution of the Works will be of merchantable quality, will be fit for the purposes for which they are intended and, unless stated otherwise in this Subcontract, will be new;
  - 5) the services rendered pursuant to this Subcontract will be rendered with due diligence and integrity, in a good and workmanlike manner and in accordance with high professional and ethical standards.
  - 6) Where any part of the Works are required by law to be carried out by persons who are registered or licensed to carry out such work, the Subcontractor must (prior to commencing any such Works) provide evidence to Honeywell that the Subcontractor (and its personnel, as applicable) hold such current registration or licence. Provision of such evidence in accordance with this Section is a condition precedent to the Subcontractor being entitled to receive any payment under this Subcontract.
- C. Setting out the Subcontract Works. The Subcontractor must set out the Works in accordance with the Subcontract Documents and Honeywell's directions (and must coordinate with the other contractors on the Site when doing so). Any error in setting out the Subcontract Works must be rectified by the Subcontractor at its own cost.
- D. Services and Facilities. Unless provided for under the Main Contract or stated otherwise in the Subcontract, the Subcontractor must provide all services and facilities necessary for the execution and completion of the Works necessary for the execution and completion of the Works. The Subcontractor is responsible for the arrangement and coordination of these and for any costs associated with the connection, commencement, supply, termination and removal of these services and facilities.
- E. Supply by Honeywell. Where the Subcontract provides that Honeywell must supply plant or materials, the supply will be limited to the material delivered to the Site or the relevant storage area. the Subcontractor will be responsible for all costs and risks of off-loading, storage, maintenance, further transportation, care of all materials supplied and any other materials or plant which may be required for the installation thereof.

The Subcontractor will be responsible for the cost of any additional material needed due to loss, damage or waste.

#### 4. DESIGN

- A. The Subcontractor will carry out and complete the Subcontractor's Design in accordance with the Subcontract Documents. The Subcontract agrees and warrants that:
- 1) it will carry out and complete the Subcontractor's Design with reasonable standards of care, skill, competence and diligence;
  - 2) the Subcontractor's Design, when completed, will:
    - 1) comply with the requirements of this Subcontract and all applicable Legislative Requirements;
    - 2) comply with the relevant Standards current as at the date of this Subcontract (as such Standards may be amended, up to the Date Of Practical Completion, by the relevant body responsible for such Standards);
    - 3) be fit for the purposes stated in (or to be reasonably inferred from) the Subcontract Documents; and
    - 4) allow the Works to be constructed in accordance with (and when completed, to comply with) the requirements of this Subcontract.
- B. Where required by Honeywell, the Subcontractor must (at its own cost) have the Subcontractor's Design reviewed by a properly qualified and experienced specialist acceptable to Honeywell. The Subcontractor will ensure that the specialist must provide a written certification of the Subcontractor's Design to a level of detail and in a format approved by Honeywell and such certification will be submitted with the Subcontractor's Design.
- C. When requested by Honeywell, the Subcontractor must provide to Honeywell, in a form acceptable to Honeywell, all calculations, certificates and other information relating to the Subcontractor's Design.
- D. The Subcontractor's Design must be progressively submitted to Honeywell:
- 1) in accordance with the Honeywell Works Schedule or, if approved by Honeywell, the Subcontractor Works Schedule;
  - 2) within sufficient time to enable Honeywell to review the Subcontractor's Design and submit it for approval under the Main Contract within the time required under the Main Contract; and
  - 3) within sufficient time to enable any comments from Honeywell to be taken into account (and for any necessary re-design to then be carried out by the Subcontractor) without causing delay to the progress of the Works or the works under the Main Contract.
- E. The Subcontractor must at its cost incorporate any comments of Honeywell with respect to the Subcontractor's Design. Subcontractor agrees that it will be fully responsible for the Subcontractor's Design. Without prejudice to or limiting the generality of the foregoing, the Subcontract will be responsible for the adequacy, integrity, suitability and practicability of the Subcontractor's Design and the Works and will ensure that Subcontractor's Design and the Works are suitable or fit for their intended purpose. The parties agree that comment, review, acknowledgment or acceptance by Honeywell in relation to any the Subcontractor's Design and/or the provision of a written certificate or approval of the Subcontractor's Design by the specialist in accordance with Clause 33(B) will not affect or relieve the Subcontractor of any liability or obligation under this Subcontract.

#### 5. CHANGES / VARIATIONS

- A. Directing Variations. The Subcontractor must not vary the Works without a prior written direction from Honeywell's Representative.

Honeywell may, at any time, direct the Subcontractor to carry out a Variation and the Subcontractor must comply with that direction within the time specified by Honeywell. Directions given by Honeywell under this Section must clearly state on their face that they are a "Variation" direction.

If the Subcontractor considers that any direction given by Honeywell, although not on its face clearly constituting a Variation direction, in fact involves a Variation, the Subcontractor must comply with that direction within the time specified by Honeywell (and if no time specified, then comply immediately) and must also issue a written notice to Honeywell within the period stated in the Subcontract Particulars stating:

- 1) the details of the direction;
  - 2) in what respect it considers the direction to involve a Variation; and
  - 3) where practicable, an estimate of the price and time impact (if any) of the Variation.
  - 4) the Subcontractor will have No Claim in respect of a direction referred to in the above paragraph of this Section unless the Subcontractor gives a notice in accordance with that paragraph.
  - 5) No Variation will invalidate this Subcontract and the Subcontractor acknowledges that a Variation may involve the omission of any part of the Works and Honeywell may engage others to perform that part of the Works which have been omitted (and the Subcontractor agrees that this will not, in any circumstances whatsoever, constitute grounds for the Subcontractor to allege that Honeywell has repudiated this Subcontract) .
- B. Cost of Changes. Within 14 days of the receipt of a written Variation direction from Honeywell, the Subcontractor must provide Honeywell with a price quotation for the Variation, supported by measurements or other evidence of costs.

Honeywell must price each Variation in accordance with any agreement reached between Honeywell and the Subcontractor or, where no agreement has been reached, in accordance with reasonable rates or prices (which will include a reasonable amount for profit and overheads).. Any deductions will include a reasonable amount for overheads and may include a reasonable amount for profit. The relevant price will be added to or deducted from the Subcontract Sum.

The Subcontractor agrees that the amount payable to the Subcontractor for a Variation will in no case exceed the amount payable to Honeywell under the Main Contract in relation to that Variation, less the sum of:

- 1) the percentage mark-up applied on the Subcontractor's price by Honeywell; and
- 2) Honeywell's direct costs, as submitted under the Main Contract in relation to that Variation.

## 6. TERMINATION

A. Subcontractor Default. If the Subcontractor:

- 1) partially or entirely suspends the Works (other than pursuant to Honeywell's direction under this Subcontract);
- 2) fails to take out or maintain insurance, or to provide evidence of insurance, as required by this Subcontract;
- 3) fails to proceed with the Works in a competent or diligent manner and with due expedition and without delay;
- 4) substantially departs from the current Honeywell Works Schedule or the current Subcontractor Works Schedule;
- 5) fails to comply with a direction of Honeywell or Honeywell's Representative;
- 6) fails to provide security as required under this Subcontract; or
- 7) otherwise commits a substantial breach of this Subcontract,
- 8) subcontracts the Works or any part thereof or any right under this Subcontract without the prior written approval of Honeywell.

Honeywell will be entitled to send a written notice to the Subcontractor specifying the default and requiring the Subcontractor to rectify the default within a time period nominated in the notice (and if no period is stated then within five (5) days following the date that the Subcontractor receives the notice).

- B. Failure to Rectify Default. If the Subcontractor fails to rectify the default within the required time, Honeywell may by written notice to the Subcontractor: terminate the Subcontract; or take over the whole or any part of the Works as may be specified by Honeywell, irrespective of the state of completion of the Works.
- C. Insolvency Event or Direction by Customer under The Main Contract. If an Insolvency Event occurs with respect to the Subcontractor, or if Honeywell is directed by the Customer under the Main Contract to remove the Subcontractor from the Site as a result of some act or omission of the Subcontractor, Honeywell may by written notice to the Subcontractor:
- 1) terminate the Subcontractor or
  - 2) take over the whole or part of the Works.

An "**Insolvency Event**" occurs when

- 1) a Party is, or informs the other Party in writing or creditors generally that the Party is, insolvent or financially unable to proceed with this Subcontract;
  - 2) execution is levied against a Party by a creditor;
  - 3) in relation to a corporation: (i) presumed by a court to be insolvent under relevant legislation; (ii) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement; (iii) a Party stops or suspends payment to creditors generally or enters into an arrangement, assignment or composition with or for the benefit of its creditors generally or any class of them or proposes to do so; (iv) an administrator, receiver, receiver and manager, controller, managing controller, trustee, provisional liquidator or liquidator is appointed to a Party or any of its assets or business or any step is taken to do so or any Party requests such appointment; (v) an application is made, a resolution is passed, or an order is made for the winding-up of the Party, including an application relating to dissolution, liquidation, provisional liquidation or bankruptcy; (vi) a charge of any property of the Party takes possession of that property; (vii) the corporation resolves by special resolution that the Party be wound up voluntarily (other than for a members' voluntary winding-up); or (viii) anything analogous or having a similar effect to an event listed in paragraphs (i) to (vii) above occurs; and
  - 4) in relation to a person other than a corporation: (i) the person commits an act of bankruptcy; (ii) a bankruptcy petition is presented against the person; (iii) the person presents his own bankruptcy petition; (iv) an official manager is appointed in respect of all any part of the property of the person concerned; (v) the person enters into a scheme of arrangement or a composition with, or assignment for the benefit of, all or any class of the person's creditors; (vi) the person is made bankrupt; (vii) or (viii) anything analogous or having a similar effect to an event listed in paragraphs d. (i) to (vii).
- D. Consequences of Termination or Takeover. Where Honeywell terminates the Subcontract or takes work out of the Subcontractor's hands for cause, Honeywell is entitled to complete the Works and in order to do so may:
- 1) without compensation to the Subcontractor: (i) take possession of and use plant and equipment on or in the vicinity of the Site as were being used by the Subcontractor; and (ii) take possession of any Subcontract Documents in the Subcontractor's possession;
  - 2) pay the hirer of any plant or equipment to the Subcontractor or any supplier or Secondary Subcontractor for any plant or equipment used or materials or goods delivered or work carried out for the purposes of the Subcontract insofar as the relevant charge or price for any such thing has not already been paid by the Subcontractor. Payments made by Honeywell under this Section may be deducted from or paid out of the proceeds of any security provided by the Subcontractor under this Subcontract or from any sum due or to become due to the Subcontractor.

Honeywell will, upon completion of the Works, return such plant and equipment as Honeywell takes possession of pursuant to this Section.

For the avoidance of doubt, Honeywell may employ other contractors to complete the design and construction of the Works and rectify any defects in the Works. The other contractors employed by Honeywell may use for the design and completion of the Works and the rectification of defects, the

Subcontract Documents or other design documents of the Subcontractor together with the construction equipment, plant, temporary works, tools, temporary buildings and unfixed materials left at the Site by the Subcontractor.

- E. Costs of Completion. If Honeywell takes over part the whole or part of the Works or terminates the Subcontract, Honeywell will, upon completing the Works, assess the costs incurred by it in completing the Works and notify the Subcontractor in writing of such costs. If such costs are greater than the amount which would otherwise have been payable to the Subcontractor if the Works had been completed by the Subcontractor, the difference will be a debt due and payable by the Subcontractor to Honeywell. If such cost is less than the amount which would otherwise have been payable to the Subcontractor if the Works had been completed by the Subcontractor, the difference will be payable by Honeywell to the Subcontractor.

Honeywell may recover from the Subcontractor liquidated damages for delay in completion arising from the termination under this Section provided that such damages will exclude any period in which the Subcontractor would have been entitled to an Extension of Time if it had completed the Works itself or the period of any delay caused by the failure of Honeywell.

Additionally, Honeywell will be entitled to recover from the Subcontractor the costs of rectification of defects (if an) and any other loss or expense incurred arising from the termination of the Subcontractor due to its failure to rectify default, insolvency, or at the direction of the Customer.

Honeywell may, at any time prior to completion of the whole of the Works, issue to the Subcontractor a written notice which sets out a provisional assessment of the amount of costs incurred, or to be incurred, by Honeywell in completing the Works. Any costs so notified will be payable by the Subcontractor within seven (7) days after the date of the notice and any amount so paid by the Subcontractor will be taken in partial satisfaction of any indebtedness of the Subcontractor for any amount it ultimately owes.

Honeywell will not be liable to make any further payments to the Subcontractor until such time when the costs incurred by Honeywell in completing the Works, rectification costs for remedying any defects liquidated damages for delay and all other costs incurred by Honeywell as a result of the termination has been ascertained.

- F. Honeywell Default. If Honeywell fails to make a payment due and payable pursuant to this Subcontract, the Subcontractor may give a written notice to Honeywell specifying the amount it claims is due and payable, and requiring Honeywell to pay within 14 days after the date that Honeywell receives such notice.

If Honeywell fails to pay the relevant due and payable amount within this time, the Subcontractor may give a further written notice to Honeywell advising that if Honeywell does not pay the relevant due and payable amount within 14 days after the date that Honeywell receives such further notice, the Subcontractor intends to terminate the Subcontract.

If Honeywell does not pay the relevant due and payable amount within 14 days after Honeywell receives the second notice from the Subcontractor, the Subcontractor may terminate this Subcontract by notice in writing to Honeywell.

If the Subcontractor terminates the Subcontract pursuant to this Section, the Subcontractor's rights will be the same as if the Subcontract was terminated due to its failure to rectify a default.

- G. Main Contract Termination. If the Main Contract is terminated (or the work under the Main Contract, or such portion of such work as the Works relate to, is taken out of Honeywell's hands), Honeywell may terminate this Subcontract by notice in writing to the Subcontractor and:

- 1) where the Main Contract is terminated (or the work under the Main Contract is taken out of Honeywell's hands) due to or in connection with a breach of this Subcontract by the Subcontractor, the Parties' rights and liabilities will be the same as they would have been under the law governing this Subcontract if the Subcontractor had repudiated the Subcontract and Honeywell elected to treat the Subcontract as at an end and recover damages; and
- 2) in any other circumstances, Honeywell must pay to the Subcontractor the value of work performed by the Subcontractor and incorporated into the Works to the date of termination, subject to any amount that Honeywell may be entitled to deduct or set off.



H. Termination without Default. Honeywell may, at any time and for any or no reason within its sole discretion terminate the Subcontract, by giving at least thirty30 days' notice in writing to the Subcontractor. In such case, Honeywell must pay the Subcontractor:

- 1) all amounts properly due for work completed up to and including the date of termination;
- 2) the direct expenses necessarily and unavoidably incurred by the Subcontractor as a result of the termination (provided that the Subcontractor provides Honeywell with evidence, to Honeywell's reasonable satisfaction, of such expenses);
- 3) the value of materials ordered for the Works which the Subcontractor is obliged to take delivery of (but only if such materials become the unencumbered property of Honeywell upon payment); and
- 4) the cost of removal of Temporary Works and Subcontractor's Equipment from the site.

The Subcontractor agrees that it will have No Claim, other than as stated above, arising out of or in connection with a termination under this Section.

The Subcontractor will deliver to Honeywell for Honeywell's retention and use until completion of the Works, a copy of all drawings, plans or design documents prepared by or for it relating to the Works.

I. Assignment of Rights. If Honeywell terminates this Subcontract, the Subcontractor must, at Honeywell's request, assign to Honeywell its rights under any agreement for the performance of work or supply of materials to which the Subcontractor is a party in relation to the Project and the Subcontractor hereby irrevocably appoints Honeywell as its lawful attorney with full power and authority to effect such assignment on behalf of the Subcontractor.

## 7. WORK GUIDELINES, PERSONNEL AND OBLIGATIONS

A. Honeywell's Representative. Honeywell's Representative is authorised to administer this Subcontract and exercise any functions of Honeywell under this Subcontract. Honeywell's Representative may at any time appoint a delegate or representative to perform any of Honeywell's Representative's functions under this Subcontract. Any delegate or representative will have such powers and functions as may be notified from time to time by Honeywell's Representative to the Subcontractor. In exercising any functions under this Subcontract, Honeywell's Representative may have regard to any determination, evaluation or direction given under the Main Contract, but is not bound to apply such determination, evaluation or direction and may exercise the relevant function in its sole and unfettered discretion, notwithstanding anything stated in the Main Contract. The Subcontractor must comply with any direction given by Honeywell or Honeywell's Representative. If the Subcontractor fails to so comply within the time stated in the direction (or, where no time is stated, within a reasonable time), or where the Subcontractor otherwise fails to comply with a requirement under this Subcontract within the required time (or, where no time is stated, within a reasonable time), Honeywell's Representative may give the Subcontractor written notice of the Subcontractor's failure and require the Subcontractor to comply with the direction (or other requirement) within a stated time. If the Subcontractor then fails to comply with the direction (or other requirement) within the stated time, Honeywell may have the direction (or other requirement) carried out by another party and the cost thereby incurred by Honeywell will be a debt due and payable by the Subcontractor to Honeywell. Directions may be given orally but must as soon as practicable be confirmed in writing. The Subcontractor may request a written copy of an oral direction at any time.

B. Subcontractor's Representative. The Subcontractor must appoint a Subcontractor Representative to represent and act for the Subcontractor at all times during the term of the Subcontract and matters within the knowledge of the Subcontractor's Representative are deemed to be within the knowledge of the Subcontractor. will Subcontractor Key Personnel are to be engaged throughout the performance of the Works and the Subcontractor must not (other than in circumstances of resignation, illness or death) remove or replace any Subcontractor Key Personnel without the prior approval of Honeywell. The Subcontractor will ensure that the Subcontractor's Representative and Subcontractor Key Personnel must be contactable at all times during Working Hours by mobile telephone. A response time of 30 minutes is considered acceptable for an urgent call. Time spent locating the Subcontractor beyond this without good reason may be back-charged to the Subcontractor at the discretion of Honeywell. If Honeywell at any time objects to any person working for the Subcontractor (including any Secondary Subcontractors), the Subcontractor must immediately remove them from the Works. It is the responsibility of Subcontractor's Representative

to maintain all site documentation required by Honeywell and to ensure that all documentation being used by the Subcontractor is current. Any superseded documentation is to be disposed of thoughtfully or clearly marked "superseded".

- C. Working Hours. The Subcontractor is required to work during Working Hours. If the Subcontractor requires access to the Site other than during the Working Hours, the Subcontractor must obtain Honeywell's prior approval of such access and must pay all additional costs, including costs of extra supervision, first aid or other personnel. The Subcontractor must ensure that any work carried out outside the Working Hours is properly supervised.
- D. Protection of People and Property. The Subcontractor must take all measures necessary to protect people and property, avoid unnecessary interference with the passage of people and vehicles, and prevent nuisance and unreasonable noise and disturbance. The Subcontractor must promptly rectify any damage to property that it causes or contributes to. If, after notice from Honeywell, the Subcontractor fails to comply with its obligations under this Section, Honeywell may engage others to perform the Subcontractor's obligations and the cost thereby incurred by Honeywell will be a debt due and payable by the Subcontractor to Honeywell and deductible from any amount payable by Honeywell to the Subcontractor under this Subcontract.
- E. Care of Work and Reinstatement of Damage. The Subcontractor will, from commencement of the Works until Practical Completion, be responsible for and protect from damage or loss (including from work by others):
- 1) the Works; and
  - 2) any plant and equipment or other thing or material brought onto the Site by the Subcontractor.

If loss or damage occurs to the above stated, including as a result of any actions performed by the Subcontractor following Practical Completion, the Subcontractor must, promptly and at its own cost, rectify such loss or damage to Honeywell's satisfaction.

The liability of the Subcontractor under this Section will be reduced to the extent that Honeywell's negligence caused or contributed to the loss or damage.

- F. Damage to Persons and Property Other than the Works. Insofar as this Section applies to property, it applies to property other than the Works. The Subcontractor indemnifies Honeywell against:
- 1) any loss or damage to Honeywell's property; and
  - 2) any damage, expense, liability, loss, claims or proceedings, whatsoever, in respect of personal injury to or death of any person whomsoever; and
  - 3) any damage, expense, liability, loss, claims or proceedings, whatsoever, in respect of injury or damage to any other property, real or personal, including any property of the Customer (other than the Works)

arising out of or as a consequence of the carrying out of the Works. The liability of the Subcontractor under this Section will be reduced to the extent Honeywell's negligence caused or contributed to the loss, damage, injury or death.

- G. Access to Site. Provided the Subcontractor has complied with the Insurances Section, and subject to Honeywell being provided with access to the Site under the Main Contract, the Subcontractor will be granted access to the Site on or before the date stated in the Subcontract Particulars. Such access is for the sole purpose of carrying out the Works. Honeywell, the Customer and their respective nominees will be permitted to access the Works on the Site at all times. Where such work is to be so prepared in workshops or other places of a Secondary Subcontractor or supplier, the Subcontractor will by a term in the relevant contract secure a similar right of access to those workshops or places for Honeywell and will take all reasonable steps required of him by the Honeywell to enforce or assist in enforcing such right.

The Subcontractor acknowledges that it will not have exclusive possession of the Site and will be performing the Works while other contractors are working on the Site. The Subcontractor must coordinate the Works with the other contractors working on the Site, including in order to ensure that scheduling and interfacing of the Works is performed to the satisfaction of Honeywell's Representative.

- H. Items Discovered. Any items discovered on the Site that have anthropological, archaeological, historic or financial interest will be and remain the property of Honeywell. Upon discovery of any such items, the Subcontractor must immediately give notice to Honeywell and take precautions to prevent their loss, removal or damage.
- I. Knowledge of Site Conditions. The Subcontractor warrants to Honeywell that it has fully informed itself in relation to the Site and all the conditions that are relevant to the performance of the Works. The Subcontractor agrees that:
- 1) it has No Claim in respect of any failure by the Subcontractor to properly and reasonably inspect the Site and to make all reasonable enquiries with respect to and in connection with the Site;
  - 2) assumes and bears the risk of all adverse Site Conditions which occur or may be discovered during the course of carrying out the Works;
  - 3) Honeywell gives no warranty whatsoever regarding the accuracy or completeness of any of the information in respect of the Site which Honeywell has provided to the Subcontractor; and
  - 4) It has No Claim arising out of or in connection with the supply or non-supply by Honeywell of any information or documentation relating to: (i) the Site; (ii) the areas adjacent to the Site or below the surface of the Site; or (iii) any other matter or thing of whatsoever nature relating to the Site.
- J. Cleaning Up. The Subcontractor must keep the Site and Works clean and tidy and must regularly remove rubbish and surplus material (at least on a daily basis). If the Subcontractor fails to undertake the tasks required by this Section, Honeywell may, without notice to the Subcontractor, either itself or through a third party, perform or have performed such tasks and the cost incurred by Honeywell in so doing will be a debt due and payable by the Subcontractor to Honeywell.
- K. Materials, Labour and Construction Plant. Except where the Subcontract otherwise provides, the Subcontractor must supply everything necessary for the proper performance of the Subcontractor's obligations and discharge of the Subcontractor's liabilities under this Subcontract. In respect of any materials, machinery or equipment to be supplied by the Subcontractor in connection with the Subcontract, Honeywell may direct the Subcontractor to:
- 1) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
  - 2) arrange reasonable inspection at such place or sources by the Subcontractor, Honeywell and/or the Customer (or their respective nominees).
- L. Protection of Property. The Subcontractor will perform the Subcontract Work in a safe and reasonable manner. The Subcontractor will seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:
- 1) employees and other persons at the Site;
  - 2) materials and equipment stored at the site or at off-Site locations for use in performance of the Subcontract Work; and
  - 3) all property and structures located at the Site and adjacent to work areas, whether or not the property or structures are part of the project or involved in the Subcontract Work.
- M. Site Safety/Notification of Injury/Potential Accident
- 1) The Subcontractor will submit a site-specific safety plan that addresses the hazards/risks associated with the scope of work and control measures to manage the hazards/risks.
  - 2) The Subcontractor will give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.
  - 3) The Subcontractor will implement appropriate safety measures pertaining to the Subcontract Work and the project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the Site and adjacent to the Site from injury, loss or damage.



- 4) The Subcontractor will exercise extreme care in carrying out any Subcontract Work which involve explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. At all times the Subcontractor will use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of personal injury or property damage.
  - 5) The Subcontractor will promptly remedy any loss or damage caused to the Subcontract Work, materials, equipment and property if the loss or damage is not covered by insurance required under the Subcontract, but only to the extent caused in whole or in part by the Subcontractor and persons or entities performing work for or on behalf of the Subcontractor, regardless of tier, who have furnished labor, materials or services relating to the Subcontract and for whose acts the Subcontractor may be liable.
  - 6) The Subcontractor will be required to designate an individual at the project site in the employ of the Subcontractor who will act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to Honeywell, the designated safety representative will be the Subcontractor's project superintendent.
  - 7) The Subcontractor will have an affirmative duty not to overload the structures or conditions at the Site and will take reasonable steps not to load any part of the structures, or Site so as to give rise to an unsafe condition or create an unreasonable risk of personal injury or property damage. The Subcontractor will have the right to request, in writing, from Honeywell loading information concerning the structures at the site.
  - 8) The Subcontractor will give prompt written notice to Honeywell of any accident involving personal injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value, or any failure that could have resulted in serious personal injury, whether or not an injury was sustained.
- N. Safety Programs. The Subcontractor will establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by Honeywell and Customer, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor will comply with the reasonable recommendations of insurance companies having an interest in the Project and will stop any part of the Subcontract Works which Honeywell deems unsafe until corrective measures satisfactory to Honeywell will have been taken. Honeywell's failure to stop the Subcontractor's unsafe practices will not relieve the Subcontractor of the responsibility. A detailed written report of any accident will be furnished if requested by Honeywell. The Subcontractor will indemnify Honeywell for fines, or penalties imposed on Honeywell as a result of any safety violation by Subcontractor.
- O. Hazardous Material and Materials Safety Programs. If Subcontractor or its suppliers encounter asbestos, materials containing asbestos, polychlorinated biphenyl, or any other potentially hazardous substances or any soil or other materials contaminated by such substances ("**Hazardous Material**") in performing the Works, Subcontractor will immediately:
- 1) stop work in the affected area;
  - 2) take all steps to protect persons and property from injury or damage; and
  - 3) contact Honeywell's Representative in writing for further instructions.
- Subcontractor will not disrupt, remove or in any way alter or dislodge any Hazardous Material. Subcontractor will not resume its Work in the affected area until:
- 1) the Hazardous Materials have been removed or made harmless;
  - 2) Honeywell and Subcontractor agree in writing to commence Work in all or a portion of the affected area; and/or
  - 3) the matter is otherwise resolved to the satisfaction of the Parties.
- P. Environmental Health and Safety Plan. If Honeywell provides the Subcontractor with an Environmental Health and Safety Plan ("**Honeywell's EH&S Plan**") setting out how Honeywell intends to manage the health and safety of persons engaged on the Site, the Subcontractor will comply with the requirements of

Honeywell's EH&S Plan to the extent that it relates to the Works. If requested by Honeywell, the Subcontractor will, within the time required by Honeywell (acting reasonably), prepare and submit for Honeywell's approval:

- 1) an Environmental Health and Safety Plan (a "**Subcontractor EH&S Plan**") setting out how the Subcontractor intends to manage the health and safety of persons engaged to work on the Works on Site;
- 2) procedures as to how the Subcontractor intends to comply with the requirements of Honeywell's EH&S Plan in relation to the Works and the particular activities involved in the Works;
- 3) work method statements detailing the work method(s) that the Subcontractor intends to employ to execute the Works or particular parts of the Works.

Once approved by Honeywell, the Subcontractor will comply with the Subcontractor EH&S Plan, procedures and work method statements. Honeywell's approval of any such things will in no way relieve the Subcontractor from any of its obligations under the Subcontract or at law.

The Subcontractor will indemnify Honeywell in respect of any loss, costs, damage, liability or expenses which Honeywell may incur or suffer as a result of the Subcontractor's failure to comply with the requirements of this Section.

## 8. INTELLECTUAL PROPERTY RIGHTS

- A. Definition. "**Intellectual Property Right**" means any patent, registered design, trademark or name, copyright or other protected right.
- B. Ownership of Work Product. Property and copyright in all Subcontract Documents vest, upon their creation, as between Honeywell and the Subcontractor, in Honeywell. For the avoidance of doubt, this includes Subcontract Documents comprising or in relation to design, operation and maintenance manuals, as built drawings and engineering works.

The Subcontractor may not use, copy or reproduce any Subcontract Document for any purpose other than the execution and maintenance of the Works.

The Subcontractor warrants that Subcontract Documents prepared or provided by it will not infringe any Intellectual Property Right. The Subcontractor indemnifies Honeywell against any loss, damage, cost or expense that Honeywell suffers or incurs arising out of or in connection with a breach of this warranty by the Subcontractor.

All tangible work product relating to the Works and the Subcontract or for the purposes of the Works and the Subcontract submitted or provided to Honeywell or which is required to be submitted or provided to Honeywell (whether prepared by or on behalf of the Subcontractor or its agents or employees) including but not limited to, the Subcontractor's Design, drawings, computer programs, calculations, samples, models, sketches, data and specifications (whether in documentary form or stored on any computer disk, tape or other media) and models (collectively the "Work Product") will belong to Honeywell exclusively upon the same coming into existence without further charge to Honeywell and may be used for any purpose and in any form or manner as Honeywell sees fit.

Further, the Subcontractor represents and warrants to Honeywell that no such Work Product, information or data is the subject of any confidentiality or proprietary rights (save for such rights as may be vested in Honeywell, whether by virtue of the Subcontractor or otherwise) and the reproduction, use and communication of the same by Honeywell (or any third party authorised by Honeywell) will not infringe any rights of any third party.

The Subcontractor agrees that any and all copyrights, designs, patents and other intellectual and industrial property rights embodied in or relating to or used in connection with the Work Product and all discoveries or inventions and all improvements to existing inventions or processes, made, originated or developed by or on behalf of the Subcontractor or its agents or employees during the course of performing the Works or the Subcontract or otherwise related to the Project along with all other intellectual property (including copyrights and design rights) made, originated or developed during the course of performing the Works or the Subcontract or otherwise related to the Project (collectively, the "**Intellectual Property**") will belong to

Honeywell exclusively, and the Subcontractor will promptly disclose to Honeywell any such Intellectual Property. The Subcontractor will hold the Intellectual Property in trust for Honeywell until all rights, title and interest in such Intellectual Property are fully and absolutely vested in Honeywell.

The Subcontractor hereby absolutely assigns to Honeywell all copyrights, design rights and other intellectual and industrial property rights (if any) throughout the world in respect of all Intellectual Property, including all vested, future and contingent rights and all rights of action and all other rights of whatever nature to which the Subcontractor is now or may hereafter be entitled under the law in force in any part of the world.

Honeywell will, in its sole discretion, be entitled to apply for registration of any design, patent or any other intellectual or industrial property rights in respect of any of the Intellectual Property.

The Subcontractor undertakes to do, at the request of Honeywell, everything necessary or desirable to vest in Honeywell or any nominee of Honeywell all rights, title and interests in the Intellectual Property (including, without limitation, assisting Honeywell in any application for patent, design or any other intellectual or industrial property rights) and to protect the interest of Honeywell in the Intellectual Property. The Subcontractor irrevocably appoints Honeywell to be its attorney or agent in its name and on its behalf to do all such acts and things and to sign all such deeds and documents as may be necessary in order to give Honeywell the full benefit of the provisions of this Section.

As between the parties, Honeywell will retain the copyright and other intellectual property rights in the documents made by (or on behalf of) Honeywell. The Subcontractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Subcontract. They will not, without Honeywell's prior consent, be copied, used or communicated to a third party by the Subcontractor, except as necessary for the purposes of the Subcontract.

- C. For the avoidance of doubt, in the event of termination of the appointment of the Subcontract under this Subcontract, Honeywell will have the right on its own or through any other consultant(s) or contractor(s) which Honeywell may employ or appoint, to use, reproduce, adapt, amend and/or modify such Intellectual Property and/or Work Product and/or any part thereof for the construction and completion of the Works and/or for any publicity, promotion, sale, leasing or other dealings of or concerning the Project or any part thereof.
- D. Moral Rights. "**Moral Rights**" means any of the rights so described in the *Copyright Act 1968* (Cth). The Subcontractor must procure the express written agreement (in a form approved by Honeywell) from any person who was the author of any Subcontract Document (or relevant related document) in which the Intellectual Property Rights vest (the "**Author**") that the Author will not enforce any Moral Rights in any Intellectual Property Right.

## 9. INVOICING AND PAYMENT

- A. Progress Claims. The Subcontractor will be entitled to progress payments made by Honeywell for works and goods or materials carried out or supplied under this Subcontract. The Subcontractor will submit its Progress Claim for progress payments to Honeywell's Representative on the days stated in the Subcontract Particulars. Each Progress Claim will:
  - 1) Be in a format agreed by both Parties;
  - 2) Show in detail the amounts to which the Subcontractor considers itself to be entitled;
  - 3) Include sufficient details to allow Honeywell to assess the Progress Claim;
  - 4) A breakdown of the total amount claimed into detailed work areas (as nominated or accepted by Honeywell) showing percent completion, total value and value claimed for each work area;
  - 5) Be accompanied by supporting evidence or documentation;
  - 6) Include such other information and documentation as Honeywell's Representative may reasonably require.

Notwithstanding anything to the contrary in this Subcontract, it is a condition precedent to the Subcontractor being entitled to receive any payment with respect to a Progress Claim that the Subcontractor:

- 1) has complied with the requirements set out above in this Section with respect to the Progress Claim;
- 2) is in compliance with its obligations under the last paragraph of the Performance of Obligations Section;
- 3) is in compliance with its obligations, under the Security Deposit or Performance Bond Section, in relation to security; and
- 4) is in compliance with its obligations with the requirements under the Insurances Section.

A Progress Claim made on any date other than the above stipulated date for the making of the Progress Claim will be deemed for all purposes not to be a Progress Claim for the purposes of this Subcontract.

- B. Unfixed Plant and Materials. The value of off-site or unfixed materials may be included in a claim for payment provided that:
- 1) Honeywell has given prior written permission;
  - 2) those materials are insured for their full replacement value;
  - 3) those materials are not subject to any charge or lien and will, upon payment by Honeywell, become the unencumbered property of Honeywell; and
  - 4) a Bank Guarantee is provided with a value equal to the amount claimed by the Subcontractor for those materials (such Bank Guarantee to be returned upon proper and satisfactory installation of the materials).
- C. Payment Certificate. Within 10 Business Days after receipt of a Progress Claim, Honeywell will assess the claim and may issue a Payment Certificate identifying the amount of the progress payment which Honeywell has certified to pay to the Subcontractor and if the amount is less than the amount claimed in the Progress Claim, the reasons why. The amount to be paid in respect of the Progress Claim may be reduced by:
- 1) amounts which Honeywell is entitled to deduct under this Subcontract;
  - 2) amounts already paid under this Subcontract;
  - 3) the estimated cost of rectifying any Defective work;
  - 4) any cash retentions that Honeywell is entitled to withhold as security under the Subcontract.

In assessing the amount to be included in a Payment Certificate, Honeywell may ensure that the amount certified for payment is an amount which, after payment, would allow sufficient monies in the balance of the Subcontract Sum to pay for the completion of the Works.

If the Subcontractor submits a Progress Claim before the time stipulated in Progress Claims Paragraph for the submission of that Progress Claim, such early submission will not require Honeywell to make payment under the Invoice and Payment Section or issue its Payment Certificate in respect of that Progress Claim under this earlier than would have been the case had the Subcontractor submitted its Progress Claim in accordance with the Progress Claims Paragraph.

- D. Invoice And Payment. The Subcontractor must, within 10 Business Days after receipt of Honeywell's Payment Certificate, provide to Honeywell a Tax Invoice in the amount of the Payment Certificate. Subject to the requirements of this Subcontract (including any conditions precedent to payment set out in this Subcontract), payment will be made by Honeywell to the Subcontractor of the period stated in the Subcontract Particulars..
- E. Setoff. Notwithstanding anything to the contrary in this Subcontract, Honeywell will be entitled to deduct, from any money due or claimed to be due to the Subcontractor, any money due or claimed to be due from the Subcontractor to Honeywell. For the avoidance of doubt, Honeywell may have recourse to the whole of or any part of the retention monies and/or the security deposit or performance bond amount under this Subcontract in recovering any money due or claimed to be due from the Subcontractor to Honeywell. The foregoing is without prejudice to any rights or remedies which may have accrued to the Honeywell under Subcontract or at law. If those monies are insufficient, Honeywell may at its election have recourse to security under this Subcontract.

- F. For the avoidance of doubt, the Progress Claim, Unfixed Plant and Materials, Payment Certificate, Invoice and Payment, and Setoff Sections will apply in relation to the Subcontractor's claim for release of the retention monies.
- G. Payment of Workers and Secondary Subcontractors. Contributions made by the Subcontractor in respect of industry superannuation and redundancy schemes or the like will not be subject to separate adjustment or reimbursement and are deemed to be allowed for and included in the Subcontract Sum. Evidence of correct contribution payments must be provided by the Subcontractor on request by Honeywell and, if required under the Main Contract, provision of such evidence will constitute a condition precedent to the Subcontractor being entitled to receive payment under this Subcontract. The Subcontractor is deemed to have allowed for and included in the Subcontract Sum all labour-related costs and fees (including changes in such costs and fees).
- H. Most Favored Customer and Meet or Release. To the extent that Honeywell has provided Subcontractor with permission, or Subcontractor is otherwise entitled to perform work for a third-party, Subcontractor warrants that the prices charged for the work performed are the lowest prices charged by Subcontractor to any of its external customers or Honeywell, its affiliates or subsidiaries for similar work. If Subcontractor charges a lower price for similar work, Subcontractor must notify Honeywell in writing and apply that lower price to all the Works ordered under this Subcontract. If at any time before full performance of this Subcontract or Purchase Order, Honeywell notifies Subcontractor in writing that Honeywell has received a written offer from another supplier for similar service at a price lower than the price set forth in this Subcontract or Purchase Order, Subcontractor must immediately meet the lower price for any unperformed Works. If Subcontractor fails to meet the lower price, Honeywell, at its option, may terminate this Subcontract or any applicable Purchase Order, in part or in whole, without liability. Subcontractor will promptly respond to Honeywell's request to amend this Subcontract to reflect the reduced pricing, including any applicable retroactive price adjustments.

#### 10. BANK GUARANTEE / PERFORMANCE SURETY GUARANTEE

- A. Provision. The Subcontractor is required to provide a security in the form and amount as set out in the Subcontract Particulars.

Where the security required to be provided under this Section is one or more Bank Guarantee(s):

- 1) such security must be provided no later than 14 days after the Effective Date of this Subcontract;
  - 2) subject to paragraph (3) below, the provision of such security is a condition precedent to the Subcontractor being entitled to receive any payment under this Subcontract;
  - 3) if such security is not provided within the time required in this Section, Honeywell may, in lieu of receiving the Bank Guarantee(s), elect by notice in writing to the Subcontractor to deduct cash retentions (at no more than 10% per progress payment) to the value of the Bank Guarantee(s) that the Subcontractor has failed to provide;
  - 4) if the Subcontract Sum increases by an amount equal to 10% or more of the Original Subcontract Sum, the Subcontractor must promptly provide an additional Bank Guarantee (or such other security as Honeywell approves) so that, immediately after such provision, the security is satisfied with respect to the current Subcontract Sum. Thereafter, for each further 10% increase in the Subcontract Sum (being the Subcontract Sum amount in relation to which additional security was most recently required pursuant to this Section), the Subcontractor must promptly provide an additional Bank Guarantee (or such other security as Honeywell approves) so that, immediately after such provision, the Subcontractor has with respect to the then current Subcontract Sum provided the security required; and
  - 5) such security will be in the form as set out in the Form attached to this Subcontract.
- B. Recourse. Honeywell may at any time have recourse to any security provided under this Subcontract in any circumstance contemplated by this Subcontract or to otherwise pay for any costs, expenses, losses or damages that Honeywell claims that it has incurred or considers that it might in the future incur as a consequence of any act or omission of the Subcontractor. The Subcontractor agrees that it will not take



any steps to restrain Honeywell from having recourse to any security or to restrain the issuer of any security from complying with a call by Honeywell on such security.

- C. Reduction And Release of Security. Promptly following the Date Of Practical Completion, Honeywell will provide the Subcontractor with a completed Deed of Release. Within 10 Business Days after receiving such Deed of Release, the Subcontractor must execute the Deed of Release and return it to Honeywell.

Return of such executed Deed of Release is a condition precedent to the Subcontractor being entitled to receive its final payment (as shown on the Deed of Release) under this Subcontract.

## 11. DELIVERY, SCHEDULE AND ACCEPTANCE

- A. Programming. The Subcontractor will provide and maintain sufficient labour, plant and other resources to the Works at all times until the date of Practical Completion. Honeywell may provide the Subcontractor with a copy of the Honeywell Works Schedule and may require the Subcontractor to prepare, at Subcontractor's own cost, a detailed "Subcontractor Works Schedule for the Works. The Subcontractor Works Schedule must be consistent with the current Honeywell Works Schedule and must contain any additional information that Honeywell reasonably requires. Honeywell may update the Honeywell Works Schedule from time to time and may direct the Subcontractor to update the Subcontractor Works Schedule from time to time. If not objected to by Honeywell within 14 days after receipt of the updated Subcontractor Works Schedule, the updated Subcontractor Works Schedule will become the current Subcontractor Works Schedule. If Honeywell objects to an updated Subcontractor Works Schedule, the Subcontractor must, within seven (7) days after receipt of Honeywell's objections, submit a further updated Subcontractor Works Schedule to Honeywell (which must take into account Honeywell's objections). The Subcontractor must not, without reasonable cause, depart from the current Honeywell Works Schedule or Subcontractor Works Schedule. Any update, review, approval or comment of or in relation to Subcontractor Works Schedule by Honeywell (or any failure to do so) will not affect Subcontractor's obligation to ensure that the Works reach Practical Completion by the Date For Practical Completion. If Subcontractor is not maintaining the rate of progress required under this Subcontract, Honeywell may, by notice in writing, require Subcontractor to accelerate the carrying out of the Works to remedy the issue. Subcontractor must comply with any such direction at its own cost. Subcontractor will be liable to pay to Honeywell, as a debt due and payable, any costs incurred by Honeywell arising out of or in connection with such acceleration.

- B. Progress. The Subcontractor must ensure that the Works achieve Practical Completion by the Date For Practical Completion.

The Subcontractor must use its best endeavours to avoid delay in the progress of the Works (including, if appropriate, the reallocation of resources or rescheduling of the Works in order to avoid any such delay) and must, promptly following a request by Honeywell, demonstrate to Honeywell's satisfaction that it is complying (or has complied) with the requirements of this paragraph.

- C. Notice of Delay. When anything (except a Force Majeure event) delays, threatens to delay, or permanently delays the timely performance of this Subcontract, Subcontractor must immediately provide notice to Honeywell in writing of all relevant information with respect to such delay, including but not limited to the reasons for the potential delay and Subcontractor's short-term and long-term mitigation actions to avoid any supply disruption.

If Subcontractor wishes to claim an Extension of Time, the Subcontractor must, within the period stated in the Subcontract Particulars after the occurrence of the relevant event, provide Honeywell with a written notice entitled "Extension of Time Claim" which must:

- 1) specify the number of days claimed;
- 2) set out the facts on which the claim is based;
- 3) identify the exact section(s) of this Subcontract pursuant to which the Subcontractor's claims the Extension of Time; and
- 4) demonstrate how the delay involves an activity which is, or by virtue of the delay becomes, critical to the completion of the Works so as to delay the achievement of Practical Completion.

*For the avoidance of doubt a "Notice of Possible Delay" and / or "Updated Notice of Possible Delay" as may be issued by the Subcontractor will not negate the requirement for the Subcontractor to issue compliant notices entitled "Extension of Time Claim".*

If further delay results from an event in respect of which the Subcontractor has already submitted an "Extension of Time Claim" under this Section (or a "Further Extension of Time Claim" under this paragraph), and the Subcontractor wishes to claim a further Extension of Time in respect of such event, the Subcontractor must provide Honeywell with a further written notice entitled "Further Extension of Time Claim" which must include those matters required in relation to an "Extension of Time Claim".

- D. Extension of Time. The Subcontractor is entitled to an Extension of Time to the Date For Practical Completion only if:
- 1) the Subcontractor is or will be delayed in achieving Practical Completion by the Date For Practical Completion due to:
    - a. any act or omission of the Subcontract by Honeywell;
    - b. any Stop Work Order of the Works under the Stop Work Section that does not arise from a cause beyond Honeywell's control and is not necessarily due to any act, default or omission of the Subcontractor;
    - c. a failure by Honeywell to give the Subcontractor access to the Site within the time required by the Site Access Section;
    - d. a Variation directed by Honeywell (if, and to the extent, that Honeywell is entitled to receive an Extension of Time under the Main Contract with respect to such Variation (as applicable));
  - 2) the Subcontractor has, with respect to the relevant event, given Honeywell the notices required by this Section;
  - 3) the delay is not in any way caused or contributed to by an act or omission of the Subcontractor; and
  - 4) the Subcontractor has implemented, or is implementing, all reasonable steps to mitigate the effect of delay.

Other than in respect of delays caused by a breach by Honeywell of this Subcontract or the Main Contract, the Subcontractor agrees that it will not be entitled to any greater Extension of Time in respect of a delay than is granted to Honeywell under the Main Contract (including, for clarity, that where Honeywell is not entitled to any Extension of Time under the Main Contract with respect to a delay, the Subcontractor will similarly not be any entitled to any Extension of Time under this Subcontract with respect to such delay).

The Subcontractor has No Claim for costs, expenses, loss or damage whatsoever resulting from associated with or in relation to any delay or disruption to the Works or Extensions of Time as may be granted by Honeywell.

Regardless of whether the Subcontractor has claimed an Extension of Time or is not entitled to one, Honeywell may at any time and in its sole discretion direct an Extension of Time of such duration as Honeywell considers appropriate.

A delay by Honeywell to grant a reasonable Extension of Time will not cause the Date For Practical Completion to be set at large.

- E. Concurrent Delays. Where more than one delay is occurring at the same time and the cause of at least one of those delays is not a cause entitling the Subcontractor to an Extension of Time, the Subcontractor is not entitled to an Extension of Time.
- F. Practical Completion. The Subcontractor will provide Honeywell with written advance notice on each of the days being 21, 14 and 7 days in advance of the date on which the Subcontractor considers that the date for Practical Completion will be achieved.

When the Subcontractor is of the opinion that Practical Completion has been reached, the Subcontractor must in writing request Honeywell to confirm the date that Practical Completion has been reached. Within 14 days after receiving the request from the Subcontractor, Honeywell must give the Subcontractor:

- 1) Issue to the Subcontractor the Completion Certificate stating the date that the Works have achieved Practical Completion; or
- 2) Give instruction in writing to the Subcontractor stating reasons for why the Works have not yet reached Practical Completion.

Where Honeywell considers the Works incomplete, the Subcontractor will undertake such further work as is required to bring the Works to the state of Practical Completion and must then submit a further request in writing to Honeywell to confirm the date that Practical Completion has been achieved. If the Subcontractor refuses or fails to complete such further works as aforesaid, Honeywell may appoint other subcontractors to complete these works and deduct the amount of such works and any additional fees or damages related to the execution of these works from any monies due or to become due to the Subcontractor or to claim against the Subcontractor such amount as damages. The payment or deduction of such damages will not relieve the Subcontractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Subcontract.

If Honeywell is of the opinion that Practical Completion has been achieved, Honeywell may issue the notice in paragraph (a) above even though no request from the Subcontractor was made.

## 12. LIQUIDATED DAMAGES

If the Subcontractor fails to reach Practical Completion by the Date For Practical Completion the Subcontractor will be liable to pay to Honeywell, as a debt due and payable, liquidated damages (at the rate stated in the Subcontract Particulars) for every day after the Date For Practical Completion up to and including the Date Of Practical Completion.

The payment or deduction of such liquidated damages will not relieve the Subcontractor from his obligation to complete the Works or from any other of its obligations and liabilities under the Subcontract.

If an Extension of Time is granted after the Subcontractor has paid liquidated damages, Honeywell must promptly repay to the Subcontractor such of those liquidated damages that represent the days the subject of the Extension of Time.

Honeywell and the Subcontractor acknowledge and agree that the rate of liquidated damages stated in the Subcontract Particulars is a fair and reasonable pre-estimate of the damage likely to be sustained by Honeywell as a result of the Subcontractor failing to bring the Works to Practical Completion by the Date For Practical Completion.

In the event that Honeywell for whatever reason will not be entitled in law to recover liquidated damages, Honeywell will remain entitled to recover such loss, expense, costs or damages as it would have been entitled under common law as if the provisions in this Section relating to the payment of liquidated damages had not formed part of the Subcontract. The Subcontractor's liability to pay Honeywell such loss, expense, costs or damages will not be limited in any way whatsoever by the amount of liquidated damages for which it might otherwise have been liable.

## 13. QUALITY AND PERFORMANCE REQUIREMENTS

- A. Performance Assurance Plan. If Honeywell, in its sole discretion, determines there is a significant risk that Subcontractor will fail, or that Subcontractor has failed, to meet, its performance or delivery obligations under this Subcontract, then Honeywell may require Subcontractor to perform under a Honeywell or Honeywell-approved Performance Assurance Plan. The Performance Assurance Plan may include specific reporting and performance requirements reasonably tailored to ensure or measure Subcontractor's adequate performance under identified provisions of this Subcontract. Any failure by Subcontractor to satisfy the terms of the Performance Assurance Plan is a material breach. Additionally, Honeywell has the right to intervene in the management of this Subcontract. Such intervention will be in the form of management assistance, and loan or lease of manpower and/or equipment to Subcontractor or sub-tier suppliers, as deemed appropriate by Honeywell. Subcontractor must provide Honeywell with access to the facilities, engineers, employees, and sub-tier suppliers. This intervention may continue until Subcontractor's performance or delivery is at a level acceptable to Honeywell and, in Honeywell's reasonable judgment, Subcontractor is able to maintain a satisfactory level of performance or delivery. The Performance Assurance Plan or intervention will not relieve Subcontractor of its obligations under this Subcontract.



Subcontractor is liable for all work, costs and expenses Honeywell incurs or sustains by providing resources to assist Subcontractor in meeting its performance obligations under this Subcontract. Honeywell will have the right to seek recovery of all costs on a monthly basis. Subcontractor will pay Honeywell's costs within 30 days after receipt of invoice or Honeywell may setoff the costs from payments owing from Honeywell to Subcontractor.

- B. Quality of Material and Work. The Subcontractor acknowledges and warrants to Honeywell that the Subcontract Sum includes the full cost to the Subcontractor of all risks and responsibilities assumed by the Subcontractor under this Subcontract, including all freight, customs duty, delivery, unloading and storage costs and all taxes (other than goods and services tax), and that it makes sufficient allowances for:
- 1) all necessary materials, labour, plant and equipment to execute and complete the Works by the Date For Practical Completion; and
  - 2) integrating the Works with existing features of the Site and other works being performed by separate contractors on the Site.
  - 3) If Honeywell requires the Subcontractor to provide prototypes or samples:
  - 4) the provision of the prototypes or samples will be at the Subcontractor's expense;
  - 5) approval of any prototype or sample will not relieve the Subcontractor from its obligations under the Subcontract; and
  - 6) Honeywell may require the Subcontractor to provide evidence to Honeywell's satisfaction that any prototype or sample satisfies the requirements of the Subcontract. This may include a statutory declaration to that effect by a responsible officer of the Subcontractor.
- C. Quality Assurance. The Subcontractor must provide all documentation that may be required in order to comply with, and must otherwise comply with:
- 1) Honeywell's Quality System; and
  - 2) the Quality Assurance Requirements.

The Subcontractor is responsible to ensure that the Works have been thoroughly tested and checked prior to requesting sign off by Honeywell's Representative. "Sign off" sheets will be provided by Honeywell and must be maintained by Subcontractor's Representative. Failure to demonstrate acceptable standards with respect to the Works will require the Works to be tested again using a new set of sign off sheets and any additional costs incurred by Honeywell due to such re-testing may be set-off by Honeywell against any payments to be made to the Subcontractor under this Subcontract.

- D. Defective Work. Honeywell becomes aware of any work carried out, or material provided, by the Subcontractor that does not comply with the Subcontract, Honeywell may notify and direct the Subcontractor to do any one or more of the following with respect to the work or material, within the time(s) directed by Honeywell:
- 1) remove it from Site;
  - 2) demolish it;
  - 3) reconstruct, replace or correct it; and/or
  - 4) not deliver it to the Site.

If the Subcontractor fails to comply with such a direction, Honeywell may have the noncompliant work be carried out by others and the cost incurred by Honeywell in so doing will be a debt due and payable by the Subcontractor to Honeywell.

- E. Examination and Testing. At any time prior to the expiry of the last Defects Liability Period (or the last Second Defects Liability Period, whichever is the later), Honeywell may require the Works to be tested. The Subcontractor must give such assistance and make accessible such parts of the Works as may be required by Honeywell for that purpose. On completion of any tests, the Subcontractor must make good any part of the Works affected by testing so that it fully complies with the Subcontract. Except where the Subcontract

otherwise provides, the cost of any tests and the cost of making good any part of the Works affected by tests will be borne by Honeywell unless the tests reveal a Defect in the Works in which case the costs of the testing and making good the Works must be borne by the Subcontractor.

- F. Defects Liability. The Defects Liability Period will commence on the Date Of Practical Completion and will continue until expiry of the term stated in the Subcontract Particulars or issue of the Performance Certificate, whichever is later.

Honeywell may, during the Defects Liability Period instruct the Subcontractor to make good any Defect in the Works (and may prescribe a reasonable date for commencement and period for completion of the rectification). The Subcontractor must execute all work required to remedy Defects or damage, as may be notified by Honeywell, on or before the expiry date of the Defects Liability Period for the Works or portion of Works (as the case may be).

All Works referred to above will be executed at the risk and cost of the Subcontractor, if and to the extent that the work is attributable to:

- 1) Any design for which the Subcontractor is responsible.
  - 2) Plant, Material or workmanship not being in accordance with the Subcontract.
  - 3) Failure by the Subcontractor to comply with any other obligation under this subcontract.
- G. If and to the extent that such work is attributable to any other cause, the Subcontractor will be notified by Honeywell, and the provisions of the Variations Section will apply. If the Subcontractor fails to comply with Honeywell's instruction under this Section to the satisfaction of Honeywell's Representative within the timings stated in the instruction or, where no such timings are stated, if in Honeywell's Representative's reasonable opinion the Subcontractor has not commenced or completed the rectification within a reasonable time, Honeywell may:

If the Subcontractor fails to comply with Honeywell's instruction in completing the works under this this Section to the satisfaction of Honeywell's Representative within the timings stated in Honeywell's instruction or, in the event that no such timings are stated in the instructions, the Subcontractor fails to complete the aforesaid works to the satisfaction of Honeywell's Representative within a reasonable time as may be determined by Honeywell and/or Honeywell's Representative, then, then Honeywell may:

- 1) have the Defect rectified by others and the cost thereby incurred by Honeywell will be a debt due and payable by the Subcontractor to Honeywell; or
- 2) issue a written notice to the Subcontractor that Honeywell will accept the Defective work and claim damages. In such case the amount of damages will be determined by Honeywell (acting reasonably), taking into account:
  - a. any loss or damage suffered by Honeywell as a result of the Defect (including loss or damage suffered under the Main Contract); and
  - b. any reduction in the value of the Works.

The amount of damages determined by Honeywell will be notified in writing by Honeywell to the Subcontractor and will be a debt due and payable to Honeywell by the Subcontractor. Additionally, Honeywell may deduct or set off in the Payment Response any such damages or part thereof.

When all the outstanding works, Defects and damage under this Section have been made good by the Subcontractor in compliance with Honeywell's directions or instructions, Honeywell will issue the Performance Certificate to the Subcontractor. Notwithstanding anything under this Section, Honeywell will not be obliged to issue the Performance Certificate before Honeywell is issued an equivalent performance certificate under the Main Contract. Only the Performance Certificate will be deemed to constitute acceptance of the Works.

After the Payment Certificate has been issued, Subcontractor will remain liable for the fulfillment of any obligation which remains unperformed at that time. For the purpose of determining the nature and extent of unperformed obligations, the Subcontract will be deemed to remain in force. The issue of the

Performance Certificate will not affect or prejudice any of Honeywell's rights against the Subcontractor for defective works or for breaches of contract whether previously or subsequently discovered.

For the avoidance of doubt, Honeywell's rights and remedies in this Section will be without prejudice and in addition to Honeywell's other rights and remedies under the Subcontract or at law.

#### **14. SPECIFIC PERFORMANCE**

Subcontractor hereby acknowledges and agrees that Honeywell would be irreparably damaged in the event that any of the provisions of this Subcontract were not performed in accordance with its specific terms or were otherwise breached. Accordingly, Subcontractor agrees that, in addition to any other remedy to which Honeywell is entitled at law or in equity, Honeywell will be entitled to a temporary, preliminary and/or permanent injunction(s) to prevent breach of and enforce terms in this Subcontract without the need to prove a lack of an adequate remedy at law. In either case, no bond or other security will be required of Honeywell except as required by the court. Subcontractor further acknowledges in the event it alleges a breach of the terms of this Subcontract, it will continue performance until such allegation is resolved and if Subcontractor fails to continue performance, Honeywell is entitled to a temporary, preliminary and/or permanent injunction or injunctions.

#### **15. EXCUSABLE DELAY (FORCE MAJEURE)**

In the event of a delay, Subcontractor will initiate its resilience plan in accordance with the requirements of the *Subcontractor Resilience Program Exhibit*. Neither Party will be in default for any delay or failure to perform due to causes beyond its control and without its fault or negligence and which are unforeseeable, but any delay or failure to perform caused by the default of a sub tier supplier of Supplier will be excused only if (a) it is beyond the control of both Supplier and its sub-tier supplier(s) and without the fault or negligence of any of them, and (b) the Work to be performed cannot be obtained from other sources in sufficient time to permit Supplier to meet the delivery schedule. Supplier's ability to perform the Work at a more advantageous price, Supplier's economic hardship in buying materials or processing necessary for performance of the Work, or labor disputes will not constitute an excusable delay event. The Party affected by an excusable delay will promptly provide written notice to the other, explaining in detail the full particulars and expected duration of the excusable delay, and will use its best efforts to mitigate the effects of the delay and remedy the delay if it can be remedied. If Supplier's delivery is delayed, Honeywell may, at Honeywell's sole option, cancel deliveries scheduled during the excusable delay period or elect to extend the period of performance to cover the period of delay caused by the excusable delay. If an excusable delay occurs that affects performance of the Work for Honeywell, Supplier will allocate its available resources in a manner that assures Honeywell of at least the same proportion of Supplier's total performance of services as was allocated to Honeywell before the excusable delay event. If delivery of any Work is delayed for more than 30 days, Honeywell may, without liability, cancel all or any part of this Subcontract.

#### **16. AUDIT AND RECORDS**

- A. **Records.** Subcontractor will retain and preserve all records and materials, including invoice records, pertaining to this Subcontract, for a period of seven (7) years after the final delivery, expiration or termination of this Subcontract, or for the period prescribed by applicable law, whichever period is longer. Thereafter, Subcontractor will not destroy or dispose of or allow the destruction or disposition of such records and materials without first offering, in writing, to deliver such records and materials or copies thereof to Honeywell at Honeywell's expense. If Honeywell fails to request such records and materials within 90 days after receipt of the written offer, Subcontractor may destroy or dispose of such records and materials. Subcontractor will require each of its sub-tier suppliers to do likewise with respect to their records and materials.
- B. **Audit.** At any time during the term of this Subcontract and for seven (7) years following the expiration or termination of this Subcontract, or for the period prescribed by applicable law, whichever period is longer, Honeywell (or its duly authorized agents) may, upon no less than ten (10) business days prior written notice to Subcontractor, audit Subcontractor's books and records to verify Subcontractor's compliance with its obligations under this Subcontract. With regard to any information provided by Subcontractor that is not otherwise publicly available or owned or licensed by Honeywell, Honeywell will use such information only for purposes of determining Subcontractor's compliance with this Subcontract. Subcontractor will provide, and will require each of its sub-tier suppliers to provide, Honeywell access to Subcontractor's and Subcontractor's sub-tier supplier's books, other pertinent records, and any other information as requested

by Honeywell's auditors at no cost to Honeywell during normal working hours. During the audit, if any invoice submitted by Subcontractor is found to be in error, an appropriate adjustment will be made to the invoice or the next succeeding or new invoice following the discovery of the error and the resulting payment or credit will be issued promptly. Subcontractor will promptly correct any deficiencies discovered as a result of the audit.

- C. Subcontract Documents. The Subcontractor must keep available on Site at least one complete set of current Subcontract Documents. Where portions of the Works are being performed away from the Site, the Subcontractor must keep at that location at least one set of current Subcontract Documents that relate to that portion of the Works. The Subcontractor must allow Honeywell to inspect any document at any time to verify its currency and completeness. Any deficiencies identified from these inspections may be notified by Honeywell to the Subcontractor and must be rectified by the Subcontractor within five (5) days of the receipt of such notice.

## 17. STOP WORK

At any time by written notice and at no cost, Honeywell may require Subcontractor to stop all or any part of the work under this Subcontract for up to 120 days ("**Stop Work Order**"), and for any further period as Subcontractor and Honeywell may agree. Immediately upon receipt of the Stop Work Order, the Subcontractor will comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work stoppage. During the Stop Work Order period, the Subcontractor will protect, store and secure such goods, materials, components or the works as well as any tools used for the performance of the Work against any deterioration, loss or damage. At any time during the Stop Work Order period, Honeywell may, in whole or in part, either cancel the Stop Work Order or terminate this Subcontract, upon written notice with no liability except for any Work performed and accepted by Honeywell prior to the effective date of termination. To the extent the Stop Work Order is canceled or expires, Subcontractor must immediately resume work.

## 18. WARRANTY

As a condition precedent to issue of a written notice by Honeywell confirming that the Works have reached Practical Completion, the Subcontractor must provide to Honeywell warranties in connection with the matters, and for the periods (commencing from the Date of Practical Completion), referred to in the Subcontract Particulars or as required under the Main Contract.

Each warranty must:

- A. be expressed for the benefit of Honeywell and the Customer (and such other party as Honeywell reasonably requires, which may include the ultimate principal or procurer of the Project);
- B. be capable of assignment by Honeywell or the Customer to a third party; and must be provided in a form which is to Honeywell's reasonable satisfaction.

## 19. INDEMNIFICATION

- A. General Indemnification. The Subcontractor will, at its expense, defend, hold harmless and indemnify Honeywell and its subsidiaries, affiliates, and agents, and their respective officers, directors, shareholders, employees, and customers (collectively "**Indemnitees**") from and against any and all loss, cost, damage, claim, or liability, including reasonable attorney and professional fees and costs, and the cost of settlement, compromise, judgment, or verdict ("**Loss**") incurred by or demanded of an Indemnitee arising out of, resulting from or occurring in connection with the Works (including any employment-related Loss arising out of, resulting from or occurring in connection with the performance), the acts, omissions, negligence or willful misconduct of the Subcontractor or its personnel, the Subcontractor's breach of the terms of this Subcontract, or any theft or other misappropriation of Honeywell's or its personnel's information, property or funds by Subcontractor or its personnel. Indemnitee may participate in the defense or negotiations to protect its interests. Subcontractor will not enter into any settlement or compromise without Honeywell's prior written consent, which will not be unreasonably withheld. Subcontractor's indemnification includes claims between the Parties including legal fees. If Honeywell is obligated to pay any Loss or any damages pursuant to its contract with a customer, then Subcontractor will be liable for such Loss or any damages to the extent Subcontractor causes or contributes to such Loss or any damages. Nothing in this Section limits Honeywell's right to claim all actual damages sustained by Honeywell as a result of Subcontractor-caused delays.

- B. Intellectual Property Indemnification. For anything provided by or through Subcontractor, including without limitation any item, material, good, deliverable, service or product (collectively, "**Material**"), Subcontractor will, at its expense, defend, hold harmless and indemnify the Indemnitees from and against any and all Loss arising out of, resulting from, or occurring in connection with any alleged: (a) patent, copyright or trademark infringement; (b) infringement by machines, articles of manufacture, compositions of matter or processes, or any portion thereof; (c) unlawful disclosure, use or misappropriation of trade secrets; or (d) any other violation of any intellectual property right. If an infringement claim is upheld or is reasonably believed by Honeywell to be upheld, or if any injunction or restraining order is issued, Subcontractor will, at its expense, obtain for Indemnitee, at Indemnitee's election, either the right to continue to use and commercialize the allegedly infringing Material, and any allegedly misappropriated trade secrets, or replace or modify the Material to make it non-infringing, provided that the replacement or modification is acceptable to Honeywell and does not impair the performance or functionality of the infringing Material. Any modification to, or substitute for, any allegedly infringing Material will be subject to all of the terms and conditions of this Subcontract, including, without limitation, the indemnification provisions in this Intellectual Property Indemnification clause. Subcontractor will also indemnify Honeywell's customers and agents for infringement if and to the extent that Honeywell has agreed to so indemnify them, but to no greater extent than Subcontractor has a duty to indemnify Honeywell herein and under the same conditions as set forth herein. Subcontractor's obligations to defend, indemnify, and hold harmless Indemnitees under this Section for infringement claims based on a United States patent do not apply to the extent FAR 52.227-1 "Authorization and Consent" applies to Honeywell's prime or higher tier contract, and Honeywell and its customers are not liable to the U.S. Government for any damages, losses, costs, and expenses, including reasonable attorney fees by a third party. Subcontractor will have the right to conduct the defense and settlement of any claim or action described in this Section if it acknowledges in writing its responsibility for such claim within ten (10) calendar days of receiving notice of the claim, but in no event will Subcontractor enter into any settlement without Honeywell's prior written consent, which will not be unreasonably withheld or delayed. Honeywell may participate in the defense or negotiations to protect its interests. If Subcontractor fails to defend or settle any Loss in a prompt and competent manner, or fails to timely acknowledge in writing its responsibility, then Honeywell, at its option, has the right to take over the defense and settlement of the Loss at Subcontractor's expense. Subcontractor will pay all costs, expenses (including reasonable attorney and professional fees and costs), awards, judgments and settlements promptly as they become due, and Subcontractor will give Honeywell all information, assistance and authority to enable Honeywell to defend and settle the claim or action. In no event will Honeywell be required to indemnify or defend Subcontractor as a result of any claims or allegations of infringement.
- C. Right To Defend
- 1) Subcontractor will have the right to conduct the defense and settlement of any claim or action described in the indemnification clauses of this Subcontract, if it acknowledges in writing its responsibility for such claim or action, but in no event will Subcontractor enter into any settlement without Honeywell's prior written consent which will not be unreasonably withheld. Indemnitee may participate in the defense or negotiations to protect its interests.
  - 2) If Subcontractor fails to defend or settle any Loss in a prompt and competent manner, then Honeywell, at its option, has the right to take over the defense and settlement of the Loss at Subcontractor's expense. Subcontractor will pay all costs, expenses (including reasonable attorney and professional fees and costs), awards, judgments and settlements promptly as they become due, and Subcontractor will give Honeywell all information, assistance and authority to enable Honeywell to defend and settle the claim or action.

## 20. NOTIFICATION OF CLAIMS

The Subcontractor agrees that it will have No Claim, and that Honeywell will not be liable, in respect of any matter arising out of or in connection with the Subcontract unless:

- A. The Subcontractor submits a written notice to Honeywell, within the period stated in the Subcontract Particulars after the first occurrence of the events or circumstances on which the claim is based, specifying that the Subcontractor proposes to make a claim and setting out the nature of the proposed claim and the events or circumstances on which the claim will be based; and



- B. The Subcontractor submits a written claim to Honeywell, within the period stated in the Subcontract Particulars after the date of the notice referred to in paragraph (a) above, specifying the nature and amount of the claim together with full particulars thereof.
- C. This Section does not apply to any claim for which the requirements of making such claim are expressly set out in another Section of this Subcontract.

## 21. CONFIDENTIAL INFORMATION

- A. Definition. All information, including, without limitation, specifications, samples, drawings, materials, know-how, designs, processes, and other technical, business, building approvals, operational works approvals, or financial information, that: (a) has been or will be supplied to Subcontractor by or on behalf of Honeywell; or (b) Subcontractor will design, develop, or create in connection with this Subcontract; as to individual items or a combination of components or both, and whether or not completed, and all derivatives of (a) and (b) that Subcontractor has or will design, develop or create are deemed to be **"Confidential Information"** of Honeywell.
- B. Use of Confidential Information. The Subcontractor agrees:
  - 1) to keep secret and strictly confidential any Confidential Information of Honeywell disclosed to it; and
  - 2) not to use such information for its own benefit or the benefit of any other person without the prior written consent of Honeywell.
  - 3) to only process, use or disclose personal information (as defined in any relevant Legislative Requirement) collected in the course of this Subcontract as required for the purpose of fulfilling its specific functions, activities and obligations under this Subcontract;
  - 4) comply with any relevant Legislative Requirement and any Honeywell privacy policy or reasonable instruction relating to privacy as notified to the Subcontractor from time to time;
  - 5) to not disclose without the written permission of Honeywell any personal information obtained in connection with the Subcontract except as provided in paragraph (a) above or as required by law; and
  - 6) to notify Honeywell immediately if the Subcontractor becomes aware of any breach or alleged breach of its obligations under this Section, or that a disclosure of personal information may be required by law.

The Subcontractor must ensure that all of its officers, employees, agents, consultants and Secondary Subcontractors to whom any Confidential Information is disclosed are required to observe the obligations of confidentiality contained in this Section.

- C. Exclusions. This Section will not apply to any Confidential Information which at the time it is disclosed, made available or otherwise provided by Customer and/or Honeywell, is in the public domain and will cease to apply to any information which subsequently becomes publicly available otherwise than as a consequence of any breach by the Subcontractor of his obligations under the Subcontract, including but not limited to this Section.
- D. Survival. The obligations contained in this Section will endure, even after the termination of the Subcontract, without limit in point of time except and until any Confidential Information enters the public domain as set out above.
- E. Security Terms and Conditions. Subcontractor will comply with **Honeywell's Security Terms and Conditions for Supplier** attached to this Subcontract.

## 22. DATA PRIVACY

- A. **"Applicable Data Privacy Laws"** means applicable data protection, privacy, breach notification, or data security laws or regulations.  
**"Business Contact Details"** means business contact details relating to an individual in a Party's business, such as first name, last name, initials, email address, job title or place of work, that are needed by the other Party for the purposes of managing the relationship between the Parties.

“**Personal Data**” means any information relating to an identified or identifiable natural person as defined under Applicable Data Privacy Laws.

The terms “**Service Provider**” or “**Contractor**” will have the meaning defined in the California Consumer Privacy Act (CCPA) as amended or analogous definitions in Applicable Data Privacy Laws.

- B. Each Party may process the Business Contact Details or additional categories of Personal Data of the other in connection with this Agreement as an independent Data Controller (as that term or similar variants may otherwise be defined under Applicable Data Privacy Laws) to the extent necessary to perform their obligations hereunder. If the Parties transfer Personal Data from the European Economic Area (EEA), UK, Switzerland or any other jurisdiction that restricts the cross-border transfer of Personal Data or requires a data transfer mechanism for data transfers to locations outside of that jurisdiction, each Party agrees to be bound by the terms of the [Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation \(EU\) 2016/679](#) (including the provisions in Module 1) and the UK’s International Data Transfer Addendum to the EU Commission Standard Contractual Clauses made under s119A(i) of the UK’s Data Protection Act 2018 (“**Controller SCCs**”) in its capacity as “data exporter” or “data importer,” as applicable, and as those terms are defined therein. For jurisdictions outside of the EEA, all references to “GDPR” in the Controller SCCs will be deemed to refer to the Applicable Data Privacy Law. The Controller SCCs will be deemed to have been signed by each Party and are hereby incorporated by reference into the Agreement in their entirety as if set out in full as an annex to this Agreement. The Parties acknowledge that the information required to be provided in the appendices to the Controller SCCs is set out in the “Controller to Controller Transfers” document published at <https://www.honeywell.com/us/en/company/data-privacy>. If there is a conflict between this Agreement and the SCCs, the Controller SCCs will prevail. Where there is a change in the law that requires that the Controller SCCs be amended or replaced, such legally required changes will be deemed to have been made automatically without further action by the Parties.
- C. **To the extent that** the provision of the Products, Services, Goods, Works and/or Deliverables requires Subcontractor to process Personal Data as a processor, Service Provider or Contractor on behalf of Honeywell (or Honeywell’s customer) as a controller or “Business,” the [Honeywell Data Processing Exhibit for Suppliers](#) attached to this Agreement will apply to the processing..

### 23. COMPLIANCE WITH LAWS AND INTEGRITY

- A. When performing Services at Honeywell’s facility, Subcontractor personnel will observe and comply with Honeywell’s security procedures, rules, regulations, policies, working hours and holiday schedules.
- B. Subcontractor will comply with all laws, orders, rules, regulations and ordinances and Honeywell’s Supplier Code of Business Conduct (“**Code**”) in performing this Subcontract. A copy of the Code may be obtained at <http://hwll.co/CodeOfConduct>. Subcontractor agrees to abide by the Code and maintain an integrity and compliance program that encompasses at a minimum the standards of business conduct set forth in the Code and that effectively prevents and corrects ethical violations and maintains compliance with laws. Subcontractor and its employees, agents, representatives and subcontractors have not made or received, and will not make or receive, directly or indirectly, any payments, loans, gifts, favors or other special consideration or form of compensation (a) to or from Honeywell, to its employees, agents or representatives, other than payments set forth in this Subcontract or other written contractual agreement between Subcontractor and Honeywell; or (b) to or from any third party for the purpose of influencing the performance by Subcontractor or Honeywell of its respective duties hereunder. Subcontractor warrants it has and will comply with the U.S. Foreign Corrupt Practices Act, UK Bribery Act, and similar anti-bribery legislation or requirements. A breach of this provision will be deemed a material breach and grounds for termination of this Subcontract, or any part of it.
- C. Subcontractor will indemnify and hold harmless Honeywell from and against any and all loss, cost, expense (including reasonable attorney and professional fees), claims, damage, or liability arising out of or resulting from or occurring in connection with Subcontractor’s breach of this Section.
- D. Subcontractor acknowledges that in the event of Subcontractor’s breach of its obligations, warranties and representations under this Section, Honeywell may suffer damage to its reputation and loss of business which is incapable of accurate estimation.

**24. SOCIAL AND ENVIRONMENTAL GOVERNANCE**

- A. Management System. Subcontractor must have a management system dedicated to compliance with applicable environmental, health and safety laws and regulations to ensure a safe working environment for their employees and responsible care of materials to prevent a negative impact on the environment (for example: ISO14001:2015/ISO 45001:2018).
- B. REACH. Upon request, in form and substance satisfactory to enable Honeywell to meet its compliance obligations with regard to Regulation (EC) No 1907/2006 ("**REACH**"), Subcontractor will provide Honeywell with complete information regarding the chemical composition (substances, preparations, mixtures, alloys or goods) of any Work supplied under this Subcontract, including all safety information required under REACH and information regarding the registration or pre-registration status of any Work pursuant to REACH promptly but no later than 45 days of receiving such request. Subcontractor agrees that it will include any Honeywell "Identified Use" in its REACH registrations or applications for Authorization, unless Subcontractor notifies Honeywell that it rejects the Identified Use in order to protect human health or the environment and specifies the reason for the rejection. In this case Honeywell will have the right to terminate this Subcontract without incurring any damages.
- C. RoHS Directives. Absent Honeywell's prior written consent, no Work will contain any of the substances identified in Article 4.1 of the European Parliament Directive (2011/65/EU collectively, the "**RoHS Directives**") (as such RoHS Directives are updated from time to time) or similar applicable laws or regulations, restricting the use of hazardous materials in other jurisdictions.
- D. Montreal Protocol. The Work will not include any of the restricted chemicals set forth in the Montreal Protocol on ozone-depleting substances.
- E. Proposition 65. Subcontractor will comply with its obligations under the Safe Drinking Water and Toxic Enforcement Act of 1986 of the State of California ("**Proposition 65**"). If the Work contain any Proposition 65 listed chemicals, the relevant material of the Work will be delivered with the warning labeling in full compliance with Proposition 65. If such chemicals are within safe harbor levels not requiring warning labeling under Proposition 65, Honeywell may request Subcontractor to provide certification, test protocol and test results evidencing that warning labeling is not required.
- F. WEEE Directive. Subcontractor will comply with its obligations under the Safe Drinking Water and Toxic Enforcement Act of 1986 of the State of California ("**Proposition 65**"). If the Work contain any Proposition 65 listed chemicals, the relevant material of the Work will be delivered with the warning labeling in full compliance with Proposition 65. If such chemicals are within safe harbor levels not requiring warning labeling under Proposition 65, Honeywell may request Subcontractor to provide certification, test protocol and test results evidencing that warning labeling is not required.
- G. Toxic Substances. Subcontractor will avoid use of materials of concern in the Work provided to Honeywell, including but not limited to Persistent, Bioaccumulative Toxic (PBT) substances, Persistent Organic Pollutants (POPs) (e.g. PCBs, mercury, certain insecticides-DDT, Chlordane etc.), Carcinogens (known or suspected), Mutagens, Radioactive materials, Reproductive toxins (known or suspected), Beryllium, Hexavalent, Chromium, Asbestos or other respirable fibers, Ozone depleting substances, Brominated flame retardants or Nanoparticles. Subcontractor will pro-actively inform Honeywell of any above listed substances content in any Work supplied under this Subcontract. If applicable, Subcontractor will be responsible for all costs and liabilities for or relating to the disposal and/or recycling of materials, waste and products.
- H. Conflict Minerals Compliance. In accordance with applicable "Conflict Minerals" laws, Honeywell must determine whether its products contain tin, tantalum, tungsten or gold ("**3TG**") originating in the Democratic Republic of the Congo and adjoining countries ("**Conflict Minerals**"). To the extent Subcontractor supplies direct materials containing 3TG to Honeywell under this Subcontract, Subcontractor commits to have a supply chain process to ensure and document a reasonable inquiry into the country of origin of the 3TG minerals incorporated into products it supplies to Honeywell. If requested, Subcontractor will promptly provide information or representations that Honeywell reasonably believes are required to meet its conflict minerals compliance obligations.

**25. IMPORT AND EXPORT COMPLIANCE**



- A. Import. In the event government authorities declare or otherwise impose countervailing duties, antidumping duties, or retaliatory duties on the Goods imported under this Subcontract, Honeywell reserves the right to terminate this Subcontract in accordance with the Termination provisions.
- B. Export. Subcontractor will comply with all export laws and regulations of all countries involved in transactions associated with this Subcontract.

If the receiving Party receives hardware, Technical Data, manufacturing drawings, Specifications, software or similar type items from the disclosing Party, it is the responsibility of the receiving Party to ensure compliance with all U.S. export laws and regulations, as well as all applicable local export laws and regulations if the receiving Party is located outside the U.S., in the performance under this Subcontract. These laws include, but are not limited to, (a) Section 38 of the Arms Export Control Act as enumerated in 22 CFR Parts 120-130, the International Traffic in Arms Regulations (“**ITAR**”), and (b) Exports Controls Act of 2018, as amended in 15 CFR Parts 730-774 of the Export Administration Regulations (“**EAR**”), and all applicable local export laws and regulations if the receiving Party is located outside the U.S.

No hardware, Technical Data, manufacturing drawings, Specifications, software or similar type items whose export is controlled by the U.S. Department of State or the U.S. Department of Commerce will be transferred, disclosed or exported to “**Foreign Persons**,” as defined in the above stated laws and regulations, without specifically obtaining approvals from the U.S. Department of State’s Office of Defense Trade Controls or from the U.S. Department of Commerce’s Bureau of Industry and Security, as required.

If the receiving Party intends to transfer, disclose or export any the disclosing Party Technical Data, manufacturing drawings, Specifications, software or similar type items to any “**Foreign Persons**”, prior written authorization of the disclosing Party must be obtained prior to the receiving Party obtaining U.S. Government licenses or other approvals as stated above. The receiving Party agrees to abide by all limitations and provisos and/or riders and conditions listed on any licenses or other approvals issued by the U.S. Department of State or the U.S. Department of Commerce.

## 26. NON-MILITARY END USER AND END USE CERTIFICATION (MEU RULE)

In order to satisfy U.S. export control laws, the Subcontractor confirms that it is not an entity that meets the definition of a military end user in China (including, Hong Kong and Macau), Russia, Belarus, Myanmar/Burma, Venezuela, or Cambodia (“**Military End User**”) or sells items that support or contribute to a Military End Use by a Military End User. Military End User includes any entity that is part of the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support “military end uses.” “**Military End Uses**” includes use of an item to support or contribute to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of military items. In addition, the Subcontractor will not divert or in any way utilize or sell products, materials, or technology/technical data/specifications supplied by or on behalf of Honeywell to Subcontractor under or in connection with the Subcontract to/for any entity which is a Military End User or for Military End Uses by a Military End User. Subcontractor will immediately notify Honeywell and cease all activities associated with the transaction in question if it knows or has a reasonable suspicion that such products, materials, technical data, plans, or specifications may be exported, reexported, or transferred to a Military End User or in support of a Military End Use by a Military End User. Subcontractor’s failure to comply with this provision will be deemed a material breach of the Subcontract. Notwithstanding anything to the contrary in the Subcontract, Honeywell may take any and all actions required to ensure full compliance with applicable export control laws without Honeywell incurring any liability.

## 27. U.S. GOVERNMENT COMPLIANCE

To the extent this Subcontract (i) is in furtherance of a United States Government contract or subcontract that is subject to the U.S. Federal Acquisition Regulation (FAR) and/or other agency supplements, it incorporates by reference the Supplemental Provisions Under Fixed Price U.S. Government Contracts for Commercial Items, or (ii) is funded or otherwise the subject of a United States Government Grant, it incorporates by reference the Supplemental Provisions Under U.S. Government Grants, both sets of Supplemental Provisions are accessible at <https://www.honeywell.com/en-us/company/integrity-and-compliance>.

To the extent employment activities of Subcontractor occur in the United States and if otherwise applicable **this contractor and subcontractor will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a)**. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or protected veteran status.

## 28. SANCTIONS

Subcontractor represents, warrants, and agrees that:

- A. Subcontractor is not a **“Sanctioned Person,”** meaning any individual or entity: (1) named on a governmental denied party or restricted list, including but not limited to: 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; (2) 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, People’s Republic of Donetsk, and People’s Republic of Luhansk regions of Ukraine/Russia) (**“Sanctioned Jurisdictions”**); and/or (3) owned or controlled, directly or indirectly, 50% or more in the aggregate by one or more of any of the foregoing.
- B. Relating to this Subcontract, Subcontractor 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”**). Subcontractor will not involve any Sanctioned Persons in any capacity, directly or indirectly, in any part of this Subcontract and performance under this Subcontract. Subcontractor will not take any action that would cause Honeywell to be in violation of Sanctions Laws.
- C. Subcontractor 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. Subcontractor will not source any components, technology, software, or data for utilization in Honeywell products or services: (i) from any Sanctioned Persons or Sanctioned Jurisdictions or (ii) in contravention of any Sanctions Laws.

Subcontractor’s failure to comply with this provision will be deemed a material breach of this Subcontract, and Subcontractor will notify Honeywell immediately if it violates, or reasonably believes that it will violate, any terms of this provision. Subcontractor agrees that Honeywell may take any and all actions required to ensure full compliance with all Sanctions Laws without Honeywell incurring any liability.

## 29. APPLICABLE LAW AND FORUM

- A. **Governing Law.** The law governing this Subcontract, its interpretation, any agreement with respect to dispute resolution under this Subcontract, and the conduct of any proceedings, is the law of the State or Territory where the Works are being carried out.
- B. **Notice of Dispute.** If a dispute arises between the parties out of or in connection with the Subcontract or the Works, either party may give the other a written notice setting out details of the dispute. The parties must continue to perform their obligations under this Subcontract notwithstanding that a dispute exists.
- C. **Meetings.** Within 20 Business Days after the date of a dispute notice, the Parties must meet at least twice (unless the dispute is resolved at the first meeting) in order to attempt to resolve the dispute. At each such meeting the Parties must be represented by persons with authority to resolve the dispute. At the second meeting (if applicable), the Parties must be represented by different (and more senior) persons than those that represented the Parties at the first meeting.
- D. **Related Disputes.** Notwithstanding anything to the contrary in this Section, where a dispute concerns any right, obligation, relief, benefit or entitlement under the Main Contract, Honeywell may give written notice to the Subcontractor, requiring:
  - 1) the dispute to be determined in conjunction with any related dispute under the Main Contract (**“Main Contract Dispute”**) and in accordance with the dispute resolution procedures under the Main Contract;

- 2) the dispute and the Main Contract Dispute to be considered at the same time, or immediately before or after the other; or
  - 3) any proceedings in relation to the dispute to be stayed until the determination of the Main Contract Dispute.
- E. Dispute Resolution. Unless otherwise expressly provided, all disputes, controversy or claim arising in connection with this agreement will be exclusively and finally settled by arbitration according to the provisions of this Section. The arbitration proceedings will be held in Sandton, South Africa, according to the Arbitration Rules of the Republic of South Africa. This agreement will be governed by and constructed in accordance with the laws of The Republic of South Africa, excluding any choice of law rules, which would refer the matter to the laws of another jurisdiction. The arbitration proceedings will be conducted in the English language. The arbitration award will be final and binding upon the parties to the arbitration. The parties expressly agree to waive any local or international appeal and/or remedies (ordinary or extraordinary) whatsoever. The arbitration award will be immediately enforceable in The Republic of South Africa.

### 30. INSURANCE

- A. Insurance Requirements. Prior to commencing any work under this Subcontract, the Subcontractor must, at its own expense, take out the following insurances:
- 1) Public and Products Liability insurance in the amount of \_\_\_\_\_ per occurrence, to be maintained until the later of expiry of the last Defects Liability Period and expiry of the last Second Defects Liability Period.
  - 2) Contract Works insurance in the amount of \_\_\_\_\_% of the Subcontract Sum, to be maintained until \_\_\_\_\_.
  - 3) Compensation insurance as prescribed by any applicable law or regulation and in accordance with the laws of the state.
  - 4) Motor Vehicle Insurance (where vehicles are expected to be driven on Site) in the amount of \_\_\_\_\_, to be maintained until \_\_\_\_\_.
  - 5) Professional Indemnity insurance in the amount of \_\_\_\_\_, to be maintained \_\_\_\_\_.
  - 6) Complete Operations Liability in the amount of \_\_\_\_\_, to be maintained until \_\_\_\_\_.
- B. Such insurances must:
- 1) be for the amounts stated in the Insurance Requirements Section and comply with other requirements;
  - 2) be with an insurer with a financial credit rating of no less than A-;
  - 3) require that promptly after giving any notice of cancellation or other notice concerning the insurance policy to the Subcontractor, the insurer gives a copy of such notice to Honeywell.
- C. Further Insurance Requirements. In addition to the requirements set out in the Insurances Requirements Section:
- 1) Except for Workers' Compensation insurance, all policies of insurance that the Subcontractor is required to take out under the Insurances Requirements Section must include Honeywell as a named insured and allow Honeywell as a named insured to make claims under the policy and waive the insurer's rights of subrogation against Honeywell;
  - 2) the Public and Products Liability insurance must contain a "Principals or Other Insured" indemnity Section that indemnifies Honeywell's liability against third parties in respect of bodily injury (including death) and real or personal property damage (including loss of use of that property) arising out of or in connection with the performance of the Works.

D. Evidence of Insurance. Before commencement of any work under this Subcontract, and thereafter promptly following any request by Honeywell, the Subcontractor must provide Honeywell with evidence, to Honeywell's satisfaction, that the insurances referred to in this Section are current and are in accordance with the requirements of this Section. If the Subcontractor fails to provide such evidence, Honeywell may:

- 1) withhold payment of amounts otherwise due to the Subcontractor under this Subcontract until such evidence has been provided; or
- 2) take out the relevant insurance itself and the cost thereby incurred by Honeywell (including the cost of any deductible payable by Honeywell in the event of a claim) will be a debt due and payable by the Subcontractor to Honeywell.

The Subcontractor must ensure that Secondary Subcontractors have in place and at all times maintain the same insurances, and on the same terms (subject to such departures as Honeywell approves), as the Subcontractor is required to do under this Subcontract.

E. Compliance with the requirements of this Insurances Section is a condition precedent to the Subcontractor being entitled to receive any payment under this Subcontract.

### 31. ASSIGNMENT AND SUBCONTRACTING

This Subcontract will be binding on Subcontractor and its respective permitted successors and assigns. Subcontractor will not assign this Subcontract or any rights or obligations under this Subcontract or subcontract all or any aspect of the work called for without the prior written approval of Honeywell. Any transfer of this Subcontract by Subcontractor by merger, consolidation, dissolution, or any change in ownership or power to vote a controlling share of the voting stock in Subcontractor will constitute an assignment for the purposes of this Subcontract. Any assignment or subcontract without Honeywell's written approval will be voidable at the option of Honeywell. Honeywell may assign this Subcontract, or any of its rights or obligations under this Subcontract, to any of its subsidiaries or affiliates, or to any purchaser or successor to all or substantially all of the assets of the Honeywell product line or business to which this Subcontract relates without Subcontractor's consent and upon written notice to Subcontractor. Subcontractor will be responsible for all its subcontractors and any act or omission of any Subcontractor's subcontractor will be deemed an act or omission of Subcontractor for purposes of this Subcontract.

The Subcontractor must ensure that any agreement between it and a Secondary Subcontractor incorporates:

- A. by express reference, the terms and conditions of this Subcontract, to the extent to which they are applicable to the subject matter of the agreement with that Secondary Subcontractor; and
- B. such other provisions as Honeywell reasonably requires.

### 32. NOTICES / SERVICE OF COMMUNICATIONS

All notices, requests, demands and other communications relating to this Subcontract must be in writing and delivered: (1) personally; (2) by a recognized overnight courier; (3) by certified first class mail, postage prepaid; or (4) by electronic transmission (email), with proof of delivery (each to the respective address appearing on this Subcontract) to each Party's designated authorized representative.

A notice will be deemed given (a) on the date delivered if delivered personally, (b) one (1) business day after being placed in the custody of an overnight courier as specified, (c) five (5) business days after being placed in the mail, or (d) on the date of successful delivery when sent by email. For the purposes of this Subcontract, when a provision calls for Honeywell's written permission, consent, or signature, such permission, consent, or signature must be given by Honeywell's authorized representative.

All communications will be sent to the individuals set forth below or to such other individual as may be designated by a Party by giving written notice to the other Party.

If to Honeywell:

Name:

Title: Click or tap here to enter text.

Address: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

E-Mail: Click or tap here to enter text.

If to Subcontractor:

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Address: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

E-Mail:

### 33. GENERAL

- A. Language. This Subcontract is in English, which will be the controlling language in all respects. Any other language version is intended for reference only. In the event of any conflict or discrepancy between language versions, the English version will prevail. English will be used for all oral and written communications between the Parties, including deliverables required under this Subcontract. Pursuant to the rights available under this Subcontract, if Honeywell requires Subcontractor's internal documentation, and such internal documentation is not in English, Subcontractor will either translate such documents to English or will make professional translation services by a third party approved by Honeywell available to Honeywell, both free of charge to Honeywell and at Honeywell's option.
- B. Relationship of Parties / Independent Contractor. Nothing in this Subcontract will be construed to place Subcontractor and Honeywell in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party has the authority to obligate or bind the other in any manner. Nothing contained in this Subcontract will give rise or is intended to give rise to rights of any kind to any third parties. Neither Party will make any representation to the contrary. The Parties agree that Subcontractor will perform its obligations under this Subcontract as an independent contractor. Subcontractor will be solely responsible to exercise full control of, supervision over and responsibility for Subcontractor's personnel, its subcontractors, or its agents, and any employee of any of the foregoing, including the employment, direction, compensation and discharge of Subcontractor's personnel, its subcontractors or its agents and any employee of any of the foregoing as well as compliance with workers' compensation, unemployment, disability insurance, social security, withholding and all other laws, rules, codes, regulations and ordinances governing such matters. For any Work provided under this Subcontract in jurisdictions with statutory employer protections, Subcontractor and Honeywell stipulate that Honeywell is deemed to be the statutory employer of Subcontractor's employees and all employees of any sub-tier contractor retained in any manner by Subcontractor, who perform services or access Honeywell's property and such status is limited to the period in which the preceding actions occur. Subcontractor and Honeywell further stipulate that all services performed pursuant to this Subcontract are an integral part of or essential to Honeywell's production of its goods or delivery of its services.
- C. Media. Any media enquiries about the Project or the Works must be directed to Honeywell. The Subcontractor must not disclose any information concerning the Project or the Works without prior written approval from Honeywell. The Subcontractor will not use Honeywell's name or marks or refer to or identify Honeywell in any advertising or publicity releases or promotional or marketing materials without Honeywell's prior written approval. Furthermore, Subcontractor will not claim or suggest, implicitly or explicitly, that Honeywell's purchase of the Subcontract Work constitutes Honeywell's endorsement of its Subcontract Work. This clause survives the termination or cancellation of this Subcontract.
- D. Headings and Captions. Headings and captions are for convenience of reference only and do not alter the meaning or interpretation of any provision of this Subcontract.
- E. Waiver. The failure or delay of either Party to enforce at any time any of the provisions of this Subcontract will not be construed to be a continuing waiver of those provisions, nor will any failure or delay prejudice the right of the Party to take any action in the future to enforce any provision. No waiver from Honeywell will be effective unless set forth expressly in writing and manually signed by Honeywell.
- F. Severability. If any provision of this Subcontract (or portion thereof) is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the Parties agree that the court will construe the

provision in a manner that renders the provision valid and enforceable to the fullest extent possible under the law of the applicable jurisdiction and that the remaining provisions will remain in full force and effect.

- G. Counterparts. This Subcontract may be signed in one or more counterparts (including faxed or electronically scanned copies), 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 Subcontract.
- H. Interpretation. Each party warrants that it has the power and authority to enter into and perform its obligations under this Subcontract. This Subcontract has been negotiated at arm's length between Parties who are experienced and knowledgeable in the matters contained in this Subcontract, and the Parties hereby agree that any statute, law or common law principles or other authority that would require interpretation of any ambiguities in this Subcontract against the Party who has drafted it are not applicable and are hereby waived. In the event that either Party discovers any inconsistency, ambiguity or discrepancy in any Subcontract Document, that Party must promptly give notice to the other Party. In the event the order of precedence referred to above cannot reasonably be applied to resolve any such inconsistency, ambiguity or discrepancy, Honeywell will be the sole arbiter as to the resolution of the inconsistency, ambiguity or discrepancy and the Subcontractor will, at its cost, comply with Honeywell's direction in that regard.
- I. Remedies. Unless expressly provided otherwise, all Honeywell remedies set forth in this Subcontract are in addition to, and will in no way limit, any other rights and remedies that may be available to Honeywell at law or in equity. For clarity, Honeywell may only be made whole once for its losses regardless of the remedies sought.
- J. Buy Honeywell. Subcontractor will use commercially reasonable efforts to utilize Honeywell products and services in the fulfillment of this Subcontract. Upon Honeywell's request, the Parties will mutually agree on the establishment of reasonable metrics for the utilization of Honeywell products and services.
- K. Non-Compete. The Subcontractor agrees that for the duration of this Subcontract or for a period stated in the Subcontract Particulars from the date of this Subcontract, it will not compete with Honeywell either for maintenance of the works under the Main Contract or for further works identical or materially similar to the work performed under this Subcontract for Honeywell's Customer under the Main Contract or for any other contractor to that Customer.



# ATTACHMENT

## Honeywell's Security Terms and Conditions for Suppliers

### **HONEYWELL SECURITY TERMS AND CONDITIONS FOR SUPPLIERS WITH NO ACCESS TO HONEYWELL RESOURCES**

It is understood that Subcontractor will not have access to Honeywell physical or cyber resources, nor produce a customer-facing product that may lead to a security breach for Honeywell. Should the need arise for Subcontractor to have access to Honeywell physical or cyber resources, or produce a customer-facing product, that may lead to a security breach, then Subcontractor will confirm notification with Honeywell Security such that the appropriate security terms and conditions may be addressed.

Otherwise, Subcontractor is responsible for complying with all applicable laws and regulations, and will adhere to industry standard security practices including, but not limited to: (i) ensure that all employees with access to confidential information complete security awareness training that includes the protection of such information; (ii) conduct legally permissible background screening and verification on all employment candidates who have access to confidential information pursuant to local laws, regulations, ethics and contractual constraints; (iii) sanitize all data storage media before redeployment or disposal such that the data cannot be reconstructed; and (iv) notify the respective Honeywell account focal and send an email message to [CIRT@honeywell.com](mailto:CIRT@honeywell.com) with the relevant incident information for any incident involving Honeywell information.

This Exhibit applies where Honeywell is Controller and Subcontractor is a Processor. For the purposes of the Data Privacy Section of the **Agreement**, the following will apply to Personal Data processed on Honeywell's behalf:

## HONEYWELL'S DATA PROCESSING EXHIBIT FOR SUPPLIERS

This Honeywell Data Processing Exhibit for Suppliers ("**Data Processing Exhibit**") forms part of the Agreement between Honeywell and Subcontractor and applies to the extent Subcontractor processes Personal Data on behalf of Honeywell (or Honeywell's customer) in the course of providing the Products, Services, Goods, Works and/or Deliverables under the Agreement. All capitalized terms not defined herein will have the meaning set forth in the Agreement. In event of conflict between this Data Processing Exhibit and the Agreement, this Data Processing Exhibit will control with respect to its subject matter.

### 1. DEFINITIONS

**"Agreement"** means the written or electronic agreement between Honeywell and Subcontractor for the provision of the Services or the sale of Products, Goods, Works and/or Deliverables to Honeywell.

**"Applicable Privacy Laws"** means applicable data protection, privacy, breach notification, or data security laws or regulations.

**"Controller"** means a natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data. The Controller may be Honeywell or Honeywell's customer.

**"Honeywell Personal Data"** means Personal Data Processed by Subcontractor on behalf of Honeywell in connection with Subcontractor's performance of its obligations under the Agreement.

**"Security Incident"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration or unauthorised access, disclosure, or use of Honeywell Personal Data while Processed by Subcontractor and/or its Subprocessors under this Data Processing Exhibit.

**"Sell"** or **"sale"** means selling, renting, releasing, disclosing, disseminating, making available, transferring or otherwise communicating orally, in writing, or by electronic or other means, a consumer's Personal Data by one business to another business or a third party for monetary or non-monetary consideration. Sale does not include the sharing or transfer of Personal Data by Honeywell to Subcontractor for the provision of the Services or the sale of Products, Goods, Works and/or Deliverables on behalf of Honeywell under the Agreement.

**"Subprocessor"** means any Processor engaged by Subcontractor for the provision of the Services or the sale of Products, Goods, Works and/or Deliverables including Subcontractor's affiliates and service providers that process Honeywell Personal Data pursuant to the Agreement.

The terms **"Data Subject," "Personal Data," "Processor,"** and **"Processing"** will have the meaning defined in the GDPR or analogous definitions in Applicable Privacy Laws.

### 2. PROCESSING

A. Role of the Parties. As between Subcontractor and Honeywell, Subcontractor will Process Honeywell Personal Data under the Agreement as a Processor acting on behalf of Honeywell as the Controller (except where Honeywell acts as a Processor in which case Subcontractor is a Subprocessor).

B. Instructions. Subcontractor will Process Honeywell Personal Data in accordance with Honeywell's documented instructions unless required to so do by applicable law to which Subcontractor is subject. Subcontractor is not responsible for determining whether Honeywell's instructions are compliant with applicable law. However, if Subcontractor is of the opinion that Honeywell's instruction infringes Applicable Privacy Laws, it will inform Honeywell of that legal requirement unless applicable law prohibits such notification. Any additional or alternate instructions must be agreed between the Parties in writing, including the costs (if any) associated with complying with such instructions. Upon notice in writing, Honeywell may terminate the Agreement if Subcontractor does not comply with Honeywell's lawful instructions that are



within the scope of the Agreement to the extent such instructions are necessary to enable Honeywell to comply with Applicable Privacy Laws. Subcontractor will refund to Honeywell any unused prepaid fees or waive any termination fees or minimum commitment if Honeywell terminates the Agreement on these grounds.

- C. Purpose limitation. Subcontractor will only process Honeywell Personal Data as permitted under the Agreement and Applicable Privacy Laws. Subcontractor is prohibited from selling, sharing (as may be defined under Applicable Data Privacy Laws), combining, retaining, using or disclosing any Honeywell Personal Data to any third party for the commercial benefit of Subcontractor or any third party, or to otherwise Process the Honeywell Personal Data outside of the direct business relationship between the Parties. Subcontractor certifies that it understands and will comply with all restrictions placed on its Processing of the Honeywell Personal Data.
- D. Processing Details. The subject matter, duration of Processing, nature and purpose of Processing, the type of Honeywell Personal Data and categories of Data Subjects are specified in this Data Processing Exhibit.

### 3. SUBPROCESSORS

- A. Authorization to use Subprocessors. Honeywell authorizes Subcontractor to use Subprocessors from the agreed list in the Subprocessor Annex to Process Honeywell Personal Data provided Subcontractor contractually requires Subprocessors to abide by terms no less restrictive than this Data Processing Exhibit. Subcontractor will be liable to Honeywell for the performance of its Subprocessor's data protection obligations under the Agreement.
- B. Notification of intended changes. Subcontractor will notify Honeywell of any intended changes to its Subprocessors and will give Honeywell thirty (30) days to object after receipt of the notification. If Honeywell legitimately objects to a Subprocessor on reasonable data protection grounds and the Parties do not resolve the matter within one month following notification of the same to Honeywell, Honeywell may suspend or terminate the Agreement without penalty on written notice.

### 4. SECURITY

- A. Security Measures by Subcontractor. To ensure the security of Honeywell's Personal Data, Subcontractor will implement the technical and organizational measures specified in the Honeywell Security Terms and Conditions for Suppliers Attachment attached to the Agreement and incorporated herein by reference. Subcontractor's security controls will comply with Applicable Privacy Laws and take into account industry standards, the nature of the Honeywell Personal Data, and the risks represented by Subcontractor's Processing of the Honeywell Personal Data by virtue of the physical, logical, or natural environment in which the Honeywell Personal Data is stored or Processed. Subcontractor will apply specific restrictions and additional safeguards if it Processes sensitive personal data (as defined under Applicable Privacy Laws) on behalf of Honeywell.
- B. Confidentiality. Subcontractor will ensure that only authorized personnel who have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality may Process Honeywell Personal Data for the purposes of performing the Agreement.

### 5. SECURITY INCIDENT

- A. Notification. Subcontractor will notify Honeywell without undue delay after becoming aware of a Security Incident. Subcontractor will investigate the Security Incident and provide Honeywell with relevant information as required under Applicable Privacy Laws. Such information must at least include a description of the Security Incident including where possible, the nature of the Honeywell Personal Data concerned, the categories and approximated number of the Data Subjects and Personal Data records concerned, the likely consequences of the Security Incident and the measures taken or proposed by Subcontractor to remediate the Security Incident and mitigate its effects.
- B. Assistance. Subcontractor will cooperate with Honeywell in notifying the Security Incident to a supervisory authority, customer of Honeywell, and/or affected Data Subjects and to carry out any recovery or other action necessary to remedy the Security Incident as required under Applicable Privacy Laws. At Honeywell's option, Subcontractor will either: (a) provide, at Subcontractor's own cost and expense and

pursuant to Honeywell's direction, notice to the Data Subjects affected by the Security Incident in a manner that is consistent with Applicable Privacy Laws and, to the extent deemed appropriate by Honeywell under the circumstances, at least one (1) year of credit-monitoring and identity theft insurance services; or (b) reimburse Honeywell for all costs incurred to provide the same. Subcontractor will respond promptly and fully cooperate to all inquiries from Honeywell, any supervisory authority or government authority regarding the Security Incident. Upon request and periodically as additional information becomes available, Subcontractor will, without undue delay, provide Honeywell with updates on the status of the Security Incident until the matter has been fully addressed and remediated.

- C. Third party communications. Prior to Subcontractor's release, publication, transmission, or communication to any third party (including any supervisory authority, the media, or any affected Data Subject) relating to a Security Incident (collectively, "**Breach Communications**"), Subcontractor must first obtain prior written approval from Honeywell to the extent that (a) Honeywell or any of its Affiliates are specifically named or referenced in such Breach Communications; (b) Honeywell Personal Data or Honeywell systems are affected by the Security Incident; (c) the Breach Communications are directed at Honeywell's or its Affiliates' employees, suppliers, or customers; or (d) Honeywell may have certain independent legal, regulatory, or contractual obligations as a result of the Security Incident.

## 6. DEMONSTRATING COMPLIANCE

Upon Honeywell's written request and subject to obligations of confidentiality, Subcontractor will (and will ensure that its Subprocessors will) provide to Honeywell all information necessary to demonstrate its compliance with this Data Processing Exhibit. Honeywell (or an independent auditor mandated by Honeywell) may audit Subcontractor's compliance with such obligations at regular intervals or if there are indications of non-compliance with the terms of this Data Processing Exhibit ("**Audits**"). At Honeywell's request, upon reasonable notice, Subcontractor will also permit and contribute to onsite audits or inspections. In deciding on a review or Audit, Honeywell may consider any relevant certifications (such as SOC 2 Type II report) held by Subcontractor. Subcontractor will deal promptly and adequately with Audit inquiries from Honeywell. If Subcontractor, or any Subprocessor, is in breach of any of its obligations under the Agreement relating to Honeywell Personal Data, Honeywell may (without prejudice to any other rights or remedies it may have) suspend the transfer of Honeywell Personal Data to Subcontractor until the breach is remedied.

## 7. DATA TRANSFERS

- A. Authorisation for Data Transfers. Honeywell hereby authorizes Subcontractor and its Subprocessors to transfer Honeywell Personal Data to locations outside of its country of origin for the performance of the Agreement provided that Subcontractor ensures such data transfers comply with Applicable Privacy Laws.
- B. Data Export Restrictions. If Honeywell transfers Honeywell Personal Data from the European Economic Area, UK, Switzerland or from any other jurisdiction that restricts the cross-border transfer of Honeywell Personal Data to locations outside that jurisdiction, Honeywell will be bound by the [Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation \(EU\) 2016/679](#) including the provisions in Modules 2 and 3, as applicable, and the UK's International Data Transfer Addendum to the EU Commission Standard Contractual Clauses made under s119 A(i) of the UK's Data Protection Act 2018 ("**Processor SCCs**") in the capacity of "data exporter," and Subcontractor in the capacity of "data importer" as those terms are defined therein. The Processor SCCs will be deemed to have been signed by each Party and are hereby incorporated by reference into the Agreement in their entirety as if set out in full as an annex to this Exhibit. The Parties acknowledge that the information required to be provided in the appendices to the Processor SCCs is set out below in the Description of Processing and Transfer Annex as a "description of the transfer" and "Honeywell's Security Terms and Conditions for Suppliers Attachment" set out in the Agreement as a "description of the technical organizational measures." If there is a conflict between the provisions of this Data Processing Exhibit or the Agreement and the Processor SCCs, the Processor SCCs will prevail.

## 8. COOPERATION

Subcontractor will promptly notify Honeywell of any request or complaint that it receives from a Data Subject, supervisory authority or any third party relating to the Processing of Honeywell Personal Data under the Agreement. Subcontractor will not respond to any request or complaint itself unless authorized to do so by Honeywell or as required by applicable law. Subcontractor will cooperate with Honeywell in fulfilling its

obligations to respond to Data Subjects, conduct a privacy impact assessment or prior consultation with the supervisory authorities, provided that Honeywell reimburses Subcontractor for all reasonably incurred costs. If Subcontractor receives a Data Subject request relating to Honeywell Personal Data, Subcontractor will refer such Data Subject request to Honeywell within two (2) business days following receipt of the request.

#### **9. TERMINATION**

Upon termination of the Agreement, Subcontractor will return, delete or anonymize all Honeywell Personal Data in accordance with the Agreement except to the extent Subcontractor is required by applicable law to retain Honeywell Personal Data in which case the terms of this Data Processing Exhibit will continue to apply to the retained Honeywell Personal Data.

#### **10. SURVIVAL**

The undertakings in this Data Processing Exhibit will remain in force even after termination or expiration of the Agreement and/or the applicable Statements of Work for whatever reason.

#### **11. NOTICES**

Notwithstanding anything to the contrary in the Agreement, all notices that Subcontractor is required to provide to Honeywell pursuant to this Data Processing Exhibit must be sent by email with a read receipt to [HoneywellPrivacy@Honeywell.com](mailto:HoneywellPrivacy@Honeywell.com)

#### **12. AFFILIATES**

This Data Processing Exhibit is entered into by Honeywell for and on behalf of itself and each of its Affiliates described in the Affiliates Annex to this Data Processing Exhibit.

**SUBPROCESSOR ANNEX TO HONEYWELL’S DATA PROCESSING OBLIGATIONS FOR SUPPLIERS EXHIBIT**

To support delivery of the Services to Honeywell under the Agreement, Subcontractor may engage and use third-party contractors to provide certain services on its behalf (each a “Subprocessor”) as follows:

SUBPROCESSOR	PURPOSE	LOCATION	DATA TRANSFER MECHANISM
<i>Example: Microsoft 363</i>	<i>Email and collaboration services</i>	<i>USA (West Coast), United Kingdom</i>	<i>Standard Contractual Clauses</i>

**AFFILIATES ANNEX TO HONEYWELL’S DATA PROCESSING OBLIGATIONS FOR SUPPLIERS EXHIBIT**

This Data Processing Exhibit is entered into by Honeywell for and on behalf of itself and its Affiliates identified on the list available at <https://www.honeywell.com/us/en/honeywell-affiliates> as updated from time to time.

## DESCRIPTION OF THE PROCESSING AND TRANSFER ANNEX (MODULE 2: CONTROLLER TO PROCESSOR OR MODULE 3: PROCESSOR TO PROCESSOR)

<b>A. LIST OF THE PARTIES</b>	
<b>Controller/Data Exporter:</b>	Name: Honeywell International Inc., its Affiliates, and subsidiaries Address: 855 S. Mint St., Charlotte, NC 28202, USA Contact: Chief Privacy Officer Email: HoneywellPrivacy@honeywell.com
<b>Processor/Data Importer</b>	The full name, address and contact details for the Party is set out in the Agreement.
<b>B. DETAILS OF PROCESSING/TRANSFER</b>	
<b>CATEGORIES OF DATA SUBJECTS</b>	<p>Dependent on the Data Exporter's use of the Data Importer's Services as per the Agreement, the Data Exporter may elect to include Personal Data from any of the following types of data subjects:</p> <ul style="list-style-type: none"> <li>• Employees, contractors, temporary workers, directors, company officers, shareholders and agents (current, former, prospective) of data exporter</li> <li>• Beneficiaries, dependents, and relatives of the data subject</li> <li>• Channel Partners, distributors, sales partners, and business partners</li> <li>• Advisors, trainers, consultants, service providers and other third parties</li> <li>• Users (e.g., customers) and end users of data exporter's Product and Services</li> <li>• Any other data subject as described in the Agreement.</li> </ul>
<b>CATEGORIES OF PERSONAL DATA</b>	<p>Dependent on the Data Exporter's use of the Data Importer's Services as per the Agreement, the Data Exporter may elect to include Personal Data from any of the following categories of Personal Data:</p> <ul style="list-style-type: none"> <li>• Basic personal data (for example first name, last name, initials, email address, job title, country of residence, mobile phone number)</li> <li>• HR and recruitment data (for example basic employment data, education data, demographic data, employment status, job and position data, worked hours, holidays, assessments, performance appraisals, salary, benefits, work permit details, availability, terms of employment, tax details, payment details, insurance details, travel information and recruitment information such as curriculum vitae, employment history, education history details)</li> <li>• Authentication data (for example username, password, security question, audit trail)</li> <li>• Unique identification numbers and signatures (for example IP addresses, unique identifiers in tracking cookies or similar technology)</li> <li>• Citizenship and residency information (for example nationality, citizenship, naturalization status, immigration status, passport data, details of residency or work permit)</li> <li>• Biometric Information (for example facial recognition, fingerprints, and iris scans)</li> <li>• Commercial Information (for example history of purchases, special offers and payment history)</li> <li>• Support Services (for example personal data collected through the provision of support services online or interactive communications)</li> <li>• IT systems and operational information (for example unique identifiers, voice, video and data recordings, tracking of information regarding the patterns of hardware, software, device and internet usage, IP addresses, domains, apps installed, browsing and support logs, incidental access of the content of email communications and data relating to the sending, routing and delivery of emails whilst providing support services)</li> <li>• Location data (for example, mobile device ID, geo-location network data, location data derived from use of wi-fi access points)</li> <li>• Device identification (for example UUID, IMEI-number, SIM card number, MAC address);</li> <li>• Training and development (for example trainee data, training history, individual development plans, trainer information and training schedules)</li> <li>• Photos, video and audio (for example webcam or voice recordings)</li> </ul>

<p><b>SPECIAL CATEGORIES OF DATA (IF APPLICABLE)</b></p>	<p>Dependent on the Data Exporter's use of the Data Importer's Services, the Data Exporter may elect to include Personal Data from any of the following special categories of Personal Data which is in the scope of the Services:</p> <p>Racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, data concerning a natural person's sex life or sexual orientation, gender orientation, data relating to criminal convictions or offences or precise geolocation data or any other type of personal data provided under the Agreement that is considered sensitive under Applicable Privacy Laws.</p>
<p><b>FREQUENCY OF THE TRANSFER</b></p>	<p>The data transfers under the Agreement will take place on a continuous basis.</p>
<p><b>NATURE OF THE PROCESSING</b></p>	<p>Data Importer and its Subprocessors are providing Services or fulfilling contractual obligations to the Data Exporter as described in the Agreement. These Services may include the processing of Personal Data by Data Importer and/or its Subprocessors.</p>



<p><b>PURPOSE OF PROCESSING/TRANSFER</b></p>	<p>Dependent on the Data Exporter’s use of the Data Importer’s Services as per the Agreement, the Data Exporter’s Personal Data is processed, and transfer is made for the following purposes:</p> <ul style="list-style-type: none"> <li>• Relationship management: facilitating communication with customers, employees and users for the services performed under the Agreement.</li> <li>• HR and recruitment: the processing of applicant and employee personal data for the purposes of administering, organizing, and managing the applicant and employment relationship.</li> <li>• Service management: the provision and deployment of products and related services, consultancy, data migration, installation of systems and software, provision of support and maintenance services, training, channel and/or supplier administration and support.</li> <li>• Channel: administration and management of channel partners, distributors and/or sales partners.</li> <li>• Marketing: administration and management of marketing databases for direct marketing purposes, conduct of marketing activities/campaigns.</li> <li>• Management of electronic identity and communication: identity management, security management, confidentiality of data exporter and data exporter’s customers and employees.</li> <li>• Operating and managing the IT and communications systems, managing product and service development, improving existing and developing new products and services, research and development, managing company assets, allocating company assets and resources, strategic planning, project management, business continuity.</li> <li>• Training: administration of learning managements systems, facilitation of onsite and online learning.</li> <li>• Research in any field including scientific and technical research.</li> </ul> <p>Any other scope and purpose as described in the Agreement.</p>
<p><b>RETENTION</b></p>	<p>The Data Exporter’s Personal Data will be retained in accordance with the Agreement unless applicable law requires storage of the Personal Data for a longer period.</p>
<p><b>COMBINATION OF DATA</b></p>	<p>Personal Data received from the Data Exporter is combined with Personal Data collected by the Data Importer unless otherwise prohibited by the Agreement.</p>
<p><b>TRANSFER TO SUBPROCESSORS</b></p>	<p>The Data Importer may process and transfer Personal Data to Subprocessors in relation to the performance of the Agreement and in accordance with the following scope:</p> <ul style="list-style-type: none"> <li>• <b>Subject Matter</b> <ul style="list-style-type: none"> <li>○ The subject matter of the processing under the Agreement is the Personal Data.</li> </ul> </li> <li>• <b>Nature of the processing</b> <ul style="list-style-type: none"> <li>○ Data importer and its Subprocessors are providing Services or fulfilling contractual obligations to the data exporter as described in the Agreement. These Services may include the processing of Personal Data by data importer and/or its Subprocessors.</li> </ul> </li> <li>• <b>Duration</b> <p>The duration of the processing under the Agreement is determined by the data exporter and as set forth in the Agreement.</p> </li> </ul>
<p><b>LIST OF SUBPROCESSORS</b></p>	<p>The list of sub-processors is attached as the SUBPROCESSOR ANNEX TO HONEYWELL’S DATA PROCESSING OBLIGATIONS FOR SUPPLIERS EXHIBIT</p>
<p><b>C. COMPETENT SUPERVISORY AUTHORITY</b></p>	
<p>The competent supervisory authority will be the supervisory authority which has jurisdiction in relation to the activities of the Data Exporter as Controller under Applicable Privacy Laws or, where it is not established in applicable jurisdiction, where its representative has been established pursuant to applicable legal requirements or, if the Data Exporter does not have to appoint a representative, where the data subjects whose Personal Data are transferred are located.</p>	
<p><b>D. GOVERNING LAW AND CHOICE OF FORUM</b></p>	
<p><b>GOVERNING LAW</b></p>	<p>For the purposes of Clause 17 of the SCCs, the Parties select the law of Ireland.</p>
<p><b>CHOICE OF FORUM</b></p>	<p>For the purposes of Clause 18 of the SCCs, the Parties select the courts of Ireland.</p>
<p><b>E. OTHER</b></p>	
<p>Where the SCCs identify optional</p>	<p>For Clause 7 (Docking Clause), the optional provision will apply</p>

provisions (or provisions with multiple options) the following will apply:	For Clause 9 (a), option 2 will apply. The parties will follow the process agreed in Section 3 (Subprocessing) of the Honeywell Data Processing Exhibit.
	For Clause 11(a) (Redress) – the optional provision will not apply

# EXHIBIT

## SUBCONTRACTOR RESILIENCE PROGRAM

Subcontractor attests that it has and maintains compliance with a resilience program supporting the products or services provided to Honeywell that includes, at a minimum: Business Continuity, Technology Resilience/Disaster Recovery, Crisis Management and Third-Party Resilience.

**“Crisis Management”** is defined as Subcontractor’s overall coordination of its organization’s response to a crisis, in an effective, timely manner, with the goal of avoiding or minimizing damage to the organization’s profitability, reputation, and ability to operate.

**“Business Continuity”** is defined as Subcontractor having documented procedures that guide the organization to respond, recover, resume, and restore to a pre-defined level of operation following disruption in order to continue to produce the product and/or services to Honeywell.

**“Technology Resilience/Disaster Recovery”** is defined as Subcontractor’s ability to have resources and activities to re-establish information technology services (including components such as infrastructure, telecommunications, systems, applications and data) at an alternate site following a disruption of IT services in order to continue to produce the product and/or services to Honeywell.

**“Third Party Resilience”** is verifying that Subcontractor is evaluating its suppliers’ resilience capabilities, including Business Continuity and Disaster Recovery, so its suppliers’ failures do not impact the products/services they are providing by, to, or through Subcontractor to Honeywell.

Subcontractor will comply and have a Business Continuity Plan and a Technology Resilience/Disaster Recovery Plan that meets the following requirements:

- **Business Continuity:** The following should be accomplished/conducted annually:
  - Business Impact Analysis/Assessment reviewed and approved
  - BC Plan reviewed and approved
  - Tabletop and/or live test
- **Technology Resilience/Disaster Recovery:** The following should be accomplished/conducted annually:
  - Application Impact Analysis/Assessment reviewed and approved
  - Technology Resilience/Disaster Recovery Plan reviewed and approved
  - Tabletop and live test conducted
- **Third party Resilience:** Assessment of all the resilience capabilities of all suppliers supporting Subcontractor in providing the products/services to Honeywell

In the event of a business interruption, technology failure and/or crisis event (including any event that constitutes a force majeure event under the Force Majeure Section), Subcontractor will implement all necessary business continuity, crisis management and/or technology resilience/disaster recovery plans. In the event of such a disaster, Subcontractor will not increase any fees charged under this Subcontract. Honeywell reserves the right to audit Subcontractor’s compliance with such business continuity plan and technology resilience /disaster recovery plan once per year during the Term, or more frequently if deficiencies are noted.

If Subcontractor experiences an interruption or is aware of an impending interruption, Subcontractor will have established communication plans to promptly notify Honeywell of any potential impacts. The process must include notifying the Honeywell focal and the Honeywell Global Security Operations Center (GSOC) at [GSOC@Honeywell.com](mailto:GSOC@Honeywell.com) or 1-888-891-6138 within 24 hours.