



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: May 1, 2018

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: HVAC bid for Cornerstone Charter Academy (CCA)

Background: According to the lease that the City has with Cornerstone Charter Academy (CCA), the City, as landlord, is responsible for all exterior and structural repairs, including repairs of the roof, windows, sidewalks, parking and driveway areas, as well as repairs as may be required because of water entering the Premises from the roof or other parts of the building from causes not under the control of Tenant. We are also responsible to replace the HVAC system if necessary, provided Tenant has performed normal maintenance of said system. The school, as Tenant, has performed maintenance as required.

Two different engineering firms evaluated the HVAC systems and stated the systems need to be replaced for the Elementary and Middle Schools. The High School will need to be replaced in 2-3 years. TRANE, under contract with OCPS, also evaluated the systems and concurs with the Engineers' findings. Piggybacking off the OCPS contract, TRANE provided an estimate for the Elementary School and Middle School. The total Estimate is \$687,888.00. This estimate is in line with the Engineer's estimates for this work. Time is of the essence on this proposal because it takes about 10 weeks to manufacture the equipment. This puts the installation in late July.

Funding this project will be challenging. There are several options:

Option 1: Fund the project in phases by doing the Elementary School first, followed by the Middle school. The pro to this option is, of course, reduced cost in the short run; the cons are that the Middle School won't get new HVAC this budget year and the cost for the equipment will increase next year. I will have to ask TRANE for a new cost estimate but it should be about \$530,000. Funding would be a combination of Repair and Replacement Fund (\$250,000); and Debt Service Fund (\$300,000).

Option 2: Fund the entire project with a combination of Repair and Replacement Fund (\$250,000), the Debt Service Fund (\$300,000), and GF Reserve (\$140,000). With reimbursements for FEMA still not received, this would put our reserve at a critically low level. We anticipate that by June, most if not all, FEMA funds will be received.

Option 3: Fund the entire project with a combination of Repair and Replacement Fund (\$250,000), the Debt Service Fund (\$300,000), and Short Term Borrow (\$140,000). The short term borrow would be probably using the City's line of credit with the Bank and we would pay off the loan next budget year or when the remaining FEMA funds are received.

Staff Recommendation: Consider Option 3 as this will give us the most flexibility with the remaining funds and the cost over the long run will be less than if we phased the project.

Suggested Motion: I move that we accept the bid of TRANE in the amount of \$687,888 and authorize the City Manager and Finance Director to use the City's line of credit for the project.

Alternatives: Consider other options or not do the project until such time funds are available from the Debt Service Fund.

Fiscal Impact: \$687,888

Attachments: TRANE Bid



Trane Installation Proposal

Cornerstone Charter Academy



Installation Proposal For:

Bob Francis
City of Belle Isle
1600 Nela Avenue
Belle Isle, FL 32809 U.S.A.

Local Trane Office:

Trane U.S. Inc.
2301 Lucien Way, Suite 430
MAITLAND, FL 32751

Local Trane Representative:

Chris St. John
Cell: 407-325-7123

Date: April 23, 2018



TRANE TURNKEY PROPOSAL

Executive Summary

Trane is pleased to present a solution to help City of Belle Isle provide energy efficient HVAC upgrades for the Cornerstone Charter Academy. This proposed project will enhance your operation by helping you to optimize your resources, improve the comfort in the facility, and reduce energy costs.

We appreciate the effort from City of Belle Isle to assist in the HVAC system analysis and business discussions. Because of your efforts, we were able to develop a proposal that offers installation service solutions. The City of Belle Isle can work with Trane under the Orange County Public Schools / Trane HVAC Service Agreement as a means to procure the enhancements.

As your partner, Trane is committed to providing retrofit services to help achieve a comfortable building environment for the students and faculty who occupy the building. For the people who own, manage and maintain the building, Trane is committed to providing reliable HVAC systems and products that improve performance.

Some key features and benefits City of Belle Isle should expect from this project are highlighted below.

- Newer / reliable HVAC rooftop units
- Energy Savings through improved equipment efficiencies
- Energy management control features to alert staff of system issues and alarms
- Remote access for Trane service teams to help with trouble shooting alarm management and diagnostics.

Trane appreciates the opportunity to earn your business. We look forward to partnering with City of Belle Isle and Cornerstone Charter Academy for your retrofits service needs. I will be contacting you soon to discuss the proposal and to schedule the next steps.

WE VALUE THE CONFIDENCE YOU HAVE PLACED IN TRANE AND LOOK FORWARD TO PARTNERING WITH YOU.

Very truly yours,

A handwritten signature in black ink that reads "Chris St. John".

Chris St. John
Team Leader, Strategic Relationships



Prepared For:
Bob Francis
City of Belle Isle
City Manager

Date:
April 23, 2018

Job Name:
Cornerstone Charter Academy (CCA) – RTU INSTALLATION PROPOSAL

Delivery Terms:
Freight Allowed and Prepaid – F.O.B Factory

Payment Terms:
Upon credit approval - Net 30

State Contractor License Number:
CMC1249848

Proposal Expiration Date:
30 Days

We are pleased to offer you this proposal for performance of the following replacement services for the Equipment listed. Services will be performed using Trane's Exclusive Service Procedure to ensure you get full benefit of our extensive service / retrofit experience, coupled with the distinct technical experience of an HVAC Equipment manufacturing leader. Our innovative procedure is environmentally and safety conscious, and aligns expectation of work scope while providing efficient and productive delivery of services.

Scope of Work – RTU Installation

“Scope of Work” and notations within are based on the following negotiated scope of work with City of Belle Isle, CCA and based on the site surveys performed in August & September of 2016 and April of 2018.

Scope of Work overview

Installation of Rooftop units and Zone Dampers (Equipment provided under a separate proposal)

- Rooftop HVAC unit installation
 - Remove existing units and properly dispose
 - Install new curb adapters and new RTUs
 - 8 RTUs and 1 split system on the ES roof
 - 7 RTUs and 1 split system on the MS roof
- Mechanical installation of zone dampers (36) on the first and second floor class rooms
- Trane factory start-up and commissioning of new units
- Trane Project Management will oversee all mechanical, electrical, crane, etc. aspects of this upgrade.

Permitting

- Permit Mechanical and Electrical - Permits for a “like for like” maintenance replacement
- Coordination of Road Closures with Belle Isle Police Department
 - Proposed lift plan is below

Electrical

- Disconnect Electrical service at each unit
- Disconnect and reconnect controls and fire alarm connections
- Remove and replace the lightning protection system (where applicable)
- Install new equipment disconnects
- Extend existing conduits and conductors to the new equipment



System Commissioning / Test and Balance

- Elementary School
 - Air flow measurements and set up for all supply air grills, outside air dampers and supply air fans
 - Confirm positive building pressure
- Middle School
 - Air flow measurement of main supply duct, outside air duct and return
 - Confirm positive building pressure

Crane and Rigging

- Multiple set up and lifts
- 40 ton crane
- 90 ton crane

Crane
Grove TMS500E
95' Main Boom at 42.3°
Base: 100% Outriggers
Counterweight: Heavy Pkg
65.0' Lift Radius (360°)
Crane Capacity at 65.0' = 4,700 lbs
There are no sling tensions to display.

Crane
Liebherr LTM1100-4.2
102.5' Telescopic Boom (T) at 47.4°
Base: 100% Outriggers (27.9' x 23.0')
Counterweight: 37,900 lbs
117' Lift Radius (360°)
Crane Capacity at 117' = 3,200 lbs
There are no sling tensions to display.

Crane
Grove TMS500E
95' Main Boom at 42.4°
Base: 100% Outriggers
Counterweight: Heavy Pkg
66.3' Lift Radius (360°)
Crane Capacity at 66.3' = 4,700 lbs
There are no sling tensions to display.

Crane
Liebherr LTM1100-4.2
102.5' Telescopic Boom (T) at 49.6°
Base: 100% Outriggers (27.9' x 23.0')
Counterweight: 37,900 lbs
111.8' Lift Radius (360°)
Crane Capacity at 111.8' = 3,800 lbs
There are no sling tensions to display.

Not Issued For Construction. For pre-planning only. Any copy, transfer or use of this lift plan constitutes the recipient's agreement to the terms and conditions of use published at www.allcrane.com/ALLliftplanDisclaimer.

Equipment disposal

- Recover refrigerant and properly dispose of the existing equipment

Middle School Equipment to be installed – provided under a separate proposal

Tag Data - 3-10 Ton R-410A PKGD Unitary Cooling Rooftop (Qty: 7)

Item	Tag(s)	Qty	Description	Model Number
B1	RTU-1, RTU-3, RTU-4, RTU-5, RTU-6, RTU-7	6	10 Ton High Eff	THC120
B2	RTU-2	1	4 Ton High Eff	THC048



Middle School Equipment to be installed – provided under a separate proposal

Tag Data - Split System Air Conditioning Units (Small) (Qty: 1)

Item	Tag(s)	Qty	Description	Model Number
D1	No Tag	1	2 Ton Unitary Split Systems	4TTR4024L

Elementary School Equipment to be installed – provided under a separate proposal

Tag Data - Packaged Cooling Rooftop Units (Qty: 8)

Item	Tag(s)	Qty	Description	Model Number
A1	OAU-1, OAU-2	2	17.5 Ton Morganizer	THD210
A2	RTU-2, RTU-3, RTU-4, RTU-6	4	17.5 Eflex	TZD210
A3	RTU-1, RTU-5	2	15 Ton Eflex	TZD180

Tag Data - Ductless Mini-Splits Systems (Qty: 1)

Item	Tag(s)	Qty	Description	Model Number
D1	No Tag	1	Ductless Mini-Splits Systems	4TXK--18A

Tag Data - VAV Round (Retrofit) Terminal Units (Qty: 36)

Item	Tag(s)	Qty	Description	Model Number
E1	No Tag	24	16" RIRO VAVs	VRRF16
E2	No Tag	3	14" RIRO VAVs	VRRF14
E3	No Tag	4	12" RIRO VAVs	VRRF12
E4	No Tag	5	10" RIRO VAVs	VRRF10

Installation services not included

- New breakers or upgrade of existing circuits
- Full engineered drawings or as-built drawings – this is a “like for like” equipment replacement
- ASHRAE 62 calculations or fresh air upgrades.
- Roofing repair work of any kind, if required (there are lots of existing areas on the roof that are suspect)
- Re-certification of the lightning protection system
- Fire alarm work other than disconnect / reconnect
- Proposal does not include "Premium Time" or Price Contingency therefor
- Road closure cost (no charge per Lisa @ Belle Isle Police Department).
- Any items or services not specifically listed are not included.

Proposal Notes/ Clarifications

- All work to be performed during normal business hours (8am to 5pm, M-F, non-holidays)
- Release and Services rendered are dependent on receipt of Signed Agreement and credit approval
- Trane will not perform any work if working conditions could endanger or put at risk the safety of our employees or subcontractors
- Asbestos or hazardous material abatement removal shall be performed by customer
- We have included a structural engineering evaluation of the Elementary school roof and an allowance of \$10,000 for any additional structural modifications, if needed



Pricing and Acceptance

Bob Francis
City Manager
City of Belle Isle
1600 Nela Avenue
Belle Isle, FL 32809.

Cornerstone Charter Academy
Elementary & Middle School Buildings

Financial items not included

- Bid Bond
- Payment and Performance Bond
- Guarantee of any energy, operational, or other savings

Price

Total Net Price (Including appropriate Sales and/or Use Tax, if required by law).....\$210,293.00

We value the confidence you have placed in Trane and look forward to working with you.

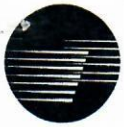
Very truly yours,

Chris St. John
Team Leader, Strategic Relationships

ACCEPTANCE

This proposal is subject to Customer's acceptance of the attached Trane Terms and Conditions (Installation).

Submitted By: Chris St. John	Cell: (407) 325-7123 Office: (407) 660-1111 Proposal Date: April 23, 2018
CUSTOMER ACCEPTANCE One Orange Development, LLC	TRANE ACCEPTANCE Trane U.S. Inc.
Authorized Representative	Authorized Representative
Printed Name	Printed Name
Title	Title
Purchase Order	Signature Date
Acceptance Date:	License Number: CMC1249848



TRANE

Equipment Proposal

(Valid for 30 days from Proposal date)

*PROPRIETARY AND CONFIDENTIAL PROPERTY OF Trane U.S. Inc.
DISTRIBUTION TO OTHER THAN THE NAMED RECIPIENT IS PROHIBITED*

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Prepared For:

Bob Francis
City Manager
City of Belle Isle

Date: April 16, 2018

Proposal Number: H3-139919-3

Job Name:

Cornerstone Charter Academy
Elementary and Middle School

Delivery Terms:

Freight Allowed and Prepaid - F.O.B. Factory

Payment Terms:

Upon Credit Approval - Net 30 Days

Trane U.S. Inc. is pleased to provide the following EQUIPMENT proposal for your review and approval.

Tag Data - Packaged Cooling Rooftop Units (Qty: 2)

Item	Tag(s)	Qty	Description	Model Number
A1	OAU-1, OAU-2	2	17.5 Ton Morganizer	THD210

Product Data - Packaged Cooling Rooftop Units

All Units

- DX cooling
- Downflow
- 208-230/60/3
- Reliatel
- 17.5 Ton
- High Efficiency
- Motorized outside damper 0-50% (Fld)
- Hinged panels/2" Pleated Filters Merv 8
- Air-Fi wireless communication interface
- Condensate overflow switch
- Wireless zone sensor (Fld)
- 10 year compressor warranty
- 5th year labor warranty
- 5th year parts warranty

Tag Data - Packaged Cooling Rooftop Units (Qty: 6)

Item	Tag(s)	Qty	Description	Model Number
A2	RTU-2, RTU-3, RTU-4, RTU-6	4	17.5 Ton Eflex	TZD210
A3	RTU-1, RTU-5	2	15 Ton Eflex	TZD180

Product Data - Packaged Cooling Rooftop Units

All Units

- DX cooling
- Downflow
- 208-230/60/3
- Reliatel
- 36kW Electric heat
- Economizer Dry Bulb 0-100% with barometric relief
- VAV w std motor w shaft ground ring
- Through the base access
- Hinged panels/2" Pleated Filters Merv 8
- Air-Fi wireless communication interface
- Condensate overflow switch
- Wireless zone sensor (Fld)
- Curb Adapter with wind load ratings (Fld)
- 10 year compressor warranty
- 5th year labor warranty
- 5th year parts warranty

Tag Data - 3-10 Ton R-410A PKGD Unitary Cooling Rooftop (Qty: 7)

Item	Tag(s)	Qty	Description	Model Number
B1	RTU-1, RTU-3, RTU-4, RTU-5, RTU-6, RTU-7	6	10 Ton High Eff	THC120F
B2	RTU-2	1	4 Ton High Eff	THC048

Product Data - 3-10 Ton R-410A PKGD Unitary Cooling Rooftop

All Units

- DX cooling
- High efficiency
- Convertible configuration
- 208-230/60/3
- Microprocessor controls 3ph
- Motorized OA damper 0-50% 3ph
- Hinged panels/2" Pleated Filters
- Through the base 3 ph
- Non-fused disconnect 3 ph
- Powered convenience outlet
- Air-Fi wireless communication interface
- Condensate Drain Pan Overflow Switch
- Wireless zone sensor (Fld)
- Curb Adapter with wind load ratings (Fld)
- 10 year compressor warranty
- 5th year labor warranty
- 5th year parts warranty

Item: B1 Qty: 6 Tag(s): RTU-1, RTU-3, RTU-4, RTU-5, RTU-6, RTU-7

- 10 Ton
- 18 kW @240,480,600 derate to unit voltage

Item: B2 Qty: 1 Tag(s): RTU-2

- 4 Ton
- 12 kW @240,480,600 derate to unit voltage

Tag Data - Split System Air Conditioning Units (Small) (Qty: 1)

Item	Tag(s)	Qty	Description	Model Number
C1	No Tag	1	2 Ton Unitary Split Systems	4TTR4024L1-----0-TAM4A0A24S21E

Product Data - Split System Air Conditioning Units (Small)

Item: C1 Qty: 1

Split System Cooling Outdoor Unit
 2 Ton Nominal Cooling Capacity
 200 - 230 Volt 1 Phase 60 Hertz
 5 year parts and labor warranty
 10 year compressor parts warranty

2 Ton air handler
 2.0 ton to 2.5 ton airflow
 208-230/1/60
 5 year parts and labor warranty

Tag Data - Ductless Mini-Splits Systems (Qty: 1)

Item	Tag(s)	Qty	Description	Model Number
D1	No Tag	1	Ductless Mini-Splits Systems	4TXK--18A10N0C-4MXW--18A10N0C

Product Data - Ductless Mini-Splits Systems

Item: D1 Qty: 1

High Wall Outdoor Unit - (R-410A)
 Outdoor Unit
 Heat Pump Inverter
 Single Refrigerant Port
 18000 Btu/h
 208-230/60/1
 - High Wall Indoor Unit - (R-410A) -
 Indoor Unit
 Heat Pump Inverter
 High Wall Unit
 18000 Btu/h
 208-230/60/1
 Wired Controller (Fld)

Tag Data - VAV Round (Retrofit) Terminal Units (Qty: 36)

Item	Tag(s)	Qty	Description	Model Number
E1	No Tag	24	16" RIRO VAVs	VRRF16
E2	No Tag	3	14" RIRO VAVs	VRRF14
E3	No Tag	4	12" RIRO VAVs	VRRF12
E4	No Tag	5	10" RIRO VAVs	VRRF10

Product Data - VAV Round (Retrofit) Terminal Units

All Units

Round single duct terminal
 UC210 DDC-Basic - cooling only
 120/24 volt transformer
 Disconnect switch
 Horizontal airflow
 Air - Fi Wireless Communication Module
 Trane Air-Fi - WCS-SD (display)
 Duct temperature sensor (Fld)
 Standard actuator
 5th year labor warranty
 5th year parts warranty

- **Item: E1 Qty: 24** - 16" inlet size, 4000 cfm (406mm inlet, 1888 l/s)
- **Item: E2 Qty: 3** - 14" inlet size, 3000 cfm (356mm inlet, 1416 l/s)
- **Item: E3 Qty: 4** - 12" inlet size, 2000 cfm (305mm inlet, 944 l/s)
- **Item: E4 Qty: 5** - 10" inlet size, 1400 cfm (254mm inlet, 661 l/s)

Notes / Clarifications:

- 1) This is an Equipment only proposal.
- 2) If not specifically listed in the above, extra filters, extra belts, extra sheaves, external isolation, refrigerant line sets, expansion valves, refrigerant specialists, installation, start-up or any other items or services that is not specifically listed are not included.
- 3) Some of the above equipment is specialized and designed for 100% outside air applications. Production lead time for that equipment are 8-10 weeks plus shipping from the approved submittal. Other equipment will have a 3-5 week production lead time plus shipping.

Total Net Price (Excluding Sales Tax).....\$358,085.00

Optional ADP – Prepay discount for payment in full by May 1, 2018..... - (\$4,700.00)

Very truly yours,



Chris St. John
 Team Leader, Strategic Relationships
 2301 Lucien Way, Suite 430
 Maitland, FL 32751
 Phone: (407)325-7123

This proposal is subject to the attached Trane Terms and Conditions.

Submitted By: Chris St. John	Proposal Date: April 16, 2018
CUSTOMER ACCEPTANCE Cornerstone Charter School	
Authorized Representative	TRANE ACCEPTANCE Trane U.S. Inc.
Printed Name	Authorized Representative
Title	Printed Name
Purchase Order	Title
Acceptance Date:	Signature Date
	License Number: CM-C125807

**Prepared For:**

Bob Francis – City Manager
City of Belle Isle

Job Name:

Cornerstone Charter Academy - Controls

Delivery Terms:

Freight Allowed and Prepaid – F.O.B Factory

Date:

April 23, 2018

Payment Terms:

Net 30

Proposal Expiration Date:

30 Days

Scope of Work – Building Automation System

“Scope of Work” and notations within are based on the site surveys performed on August & September of 2016 and April 2018.

Controls systems and equipment provided for Elementary School

- Provide and install (1) Tracer SC building controller and enclosure
- Provide and install (4) Air-Fi wireless area coordinators
- Provide BAS connection to (6) RTUs to enable monitoring and control
- Provide BAS connection to (2) OA units to enable monitoring and control
- Provide and install (36) Trane VAV retrofit controllers

Controls systems and equipment provided for Middle School

- Provide and install (1) Tracer SC building controller and enclosure
- Provide and install (2) Air-Fi wireless area coordinators
- Provide BAS connection to (7) RTUs to enable monitoring and control
- Provide and install (18) Trane Air-Fi zone sensors

Controls systems and equipment provided for Campus

- Provide and install (1) Tracer Ensemble BAS front end server and software
- Provide and install (2) Ensemble Licenses for each SC controller

Controls systems services included

- Control Panel(s) and Low Voltage Wiring installation
- Control System Programming
- Control System Graphics
- Owner Training – 1st year service agreement

Proposal Notes/ Clarifications

- All work to be performed during normal business hours (8am to 5pm, M-F, non-holidays)
- Proposal does not include "Premium Time" or Price Contingency therefor
- Equipment Order Release and Services rendered are dependent on receipt of PO/Subcontract and credit approval
- Trane will not perform any work if working conditions could endanger or put at risk the safety of our employees or subcontractors
- Asbestos or hazardous material abatement removal shall be performed by customer
- Owner to provide requires IP addresses and coordination for VPN remote Trane network access



Pricing and Acceptance

Bob Francis
 City Manager
 City of Belle Isle
 1600 Nela Avenue
 Belle Isle, FL 32809 U.S.A.

Financial items not included

- Bid Bond
- Payment and Performance Bond
- Guarantee of any energy, operational, or other savings

Price

Total Net Price (Including appropriate Sales and/or Use Tax, if required by law).....\$ 119,510.00

Anticipation Discount

Trane is pleased to offer an opportunity to maximize the value of your purchase by offering you savings with the Trane Anticipation Discount Program (ADP) that is flexible and designed for all Trane customers. The discount depends on the percentage of quoted price that is pre-paid, estimated payment date, estimated monthly schedule of values, and the current annualized discount rate.

Total Potential ADP Discount for this project\$ 1,500.00

ACCEPTANCE

This proposal is subject to Customer's acceptance of the attached Trane Terms and Conditions (Installation).

We value the confidence you have placed in Trane and look forward to working with you.

Submitted By: Chris St. John	Cell: Office: (407) 660-1111 Proposal Date: April 23, 2018
CUSTOMER ACCEPTANCE City of Belle Isle	TRANE ACCEPTANCE Trane U.S. Inc.
Authorized Representative	Authorized Representative
Printed Name	Printed Name
Title	Title
Purchase Order	Signature Date
Acceptance Date:	License Number:



TERMS AND CONDITIONS – COMMERCIAL INSTALLATION

"Company" shall mean Trane U.S. Inc..

1. **Acceptance; Agreement.** These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the "Agreement") resulting from Company's proposal (the "Proposal") for the commercial goods and/or services described (the "Work"). COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT. The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent ("Customer") delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counter-offer to provide Work in accordance with the Proposal and the Company terms and conditions. If Customer does not reject or object in writing to Company within 10 days, Company's counter-offer will be deemed accepted. Customer's acceptance of the Work by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Work rendered by Company to the date of cancellation.
2. **Pricing and Taxes.** Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer's tax exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Following acceptance without addition of any other terms and condition of sale or any other modification by Customer, the prices stated are firm provided that notification of release for immediate production and shipment is received at the factory not later than 3 months from order receipt. If such release is received later than 3 months from order receipt date, prices will be increased a straight 1% (not compounded) for each one-month period (or part thereof) beyond the 3 month firm price period up to the date of receipt of such release. If such release is not received within 6 months after date of order receipt, the prices are subject to renegotiation, or at Company's option, the order will be cancelled. Any delay in shipment caused by Customer's actions will subject prices to increase equal to the percentage increase in list prices during that period of delay and Company may charge Customer with incurred storage fees.
3. **Exclusions from Work.** Company's obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.
4. **Performance.** Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer's expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.
5. **Payment.** Customer shall pay Company's invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.
6. **Time for Completion.** Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so.
7. **Access.** Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site' owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company's access to correct any emergency condition shall not be restricted. Customer grants to Company the right to remotely connect (via phone modem, internet or other agreed upon means) to Customer's building automation system (BAS) and or HVAC equipment to view, extract, or otherwise collect and retain data from the BAS, HVAC equipment, or other building systems, and to diagnose and remotely make repairs at Customer's request.
8. **Completion.** Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company's representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer's failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.
9. **Permits and Governmental Fees.** Company shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.
10. **Utilities During Construction.** Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.
11. **Concealed or Unknown Conditions.** In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.
12. **Pre-Existing Conditions.** Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement ("Pre-Existing Conditions"), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or



fungi. Company also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

13. Asbestos and Hazardous Materials. Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl ("PCB"), or other hazardous materials (hereinafter, collectively, "Hazardous Materials"). Customer warrants and represents that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and, to the fullest extent permitted by law, shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.

14. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

15. Customer's Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead).

16. Indemnity. To the fullest extent permitted by law, Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

17. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the entire amount paid to Company by Customer under this Agreement.

18. Patent Indemnity. Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

19. Limited Warranty. Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") commercial equipment manufactured and installed by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Limited Warranty"). Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty Period, Company will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto, labor/labour associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Company within the Warranty Period. Exclusions from this Limited Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; refrigerant not supplied by Trane; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material and/or parts that are not manufactured by Company are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED REGARDING PREVENTION BY THE WORK, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. COMPANY SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE WORK OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.**

20. Insurance. Company agrees to maintain the following insurance while the Work is being performed with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits



If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

21. Commencement of Statutory Limitation Period. Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Company or its subcontractors physically performed work on the project site.

22. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Work is performed, without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Work is performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

23. Equal Employment Opportunity/Affirmative Action Clause. Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

24. U.S. Government Work.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

The following provision applies only to indirect sales by Company to the US Government. As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Work is in connection with a U.S. Government contract, Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

25. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-26.251-10(0315)
Supersedes 1-26.251-10(0614)



TERMS AND CONDITIONS - Trane eView Subscription

1. **Terms Supplemental.** These terms and conditions are supplemental to the Terms and Conditions (Service) and an integral part of Company's offer to sell Software as a Service that provides internet-based access to the hosted eView application ("eView Subscription"). The Terms and Conditions (Service) apply to the eView Subscription, except as the context indicates otherwise.
2. **eView Subscription.** The eView Subscription includes provisions for the collection of data from meters, loggers, or devices ("Data Collection") and regular database backups. The eView Subscription does not cover support of Customer's computer hardware, data network, or communications infrastructure, or Internet browsers used to access the eView Subscription. Customer hereby accepts, and upon initial use of eView Subscription, each Customer user including its officers, employees, and agents (each an "End User") will be required to accept, the End User License Agreement of eSight Energy, Inc., the manufacturer and licensor of the software application upon which eView Subscription is based ("Manufacturer").
3. **Cancellation.** In the event of a cancellation of the eView Subscription by Customer, Customer shall not be entitled to any refund of price and Customer shall immediately pay all amounts invoiced but unpaid.
4. **Customer Breach; Termination.** The following shall also constitute a breach of the Agreement: any breach by Customer or any End User of eView Subscription of the End User License Agreement. Upon termination of this Agreement, the End User License Agreement shall also terminate. Upon termination, Customer shall not be entitled to any refund of the price paid to Company.
5. **Availability.** Company shall exercise reasonable care in providing the eView Subscription and use commercially reasonable efforts to make the service available at all times. Where possible, Company will notify End User(s) identified by the Customer during execution of Agreement to be the primary contact for, and raise support issues with Company ("Named Users") of non-availability of the eView Subscription. It is the responsibility of the Named Users to provide this information to all End Users of eView Subscription associated with Customer. Company shall be entitled, without any liability, to carry out ongoing maintenance, updating or alterations to eView Subscription Service that may result in loss of access from time to time without prior notice.
6. **Database Backup.** Short term and long term database backups are performed and are included in the price.
7. **Software Upgrades.** Software upgrades to eView Subscription will be applied by the Manufacturer as soon as a new version is available. These will always be provided during the term of the Agreement and there is no provision for maintaining any other version than the current version in the software as a service ("SaaS") environment.
8. **Data Collection.** Where Customer has placed an order for Data Collection from Company, data will be collected from the designated meters, loggers, or devices and imported into eView Subscription. It is Customer's responsibility to check eView Subscription or configure appropriate alarms to ensure that data is appearing as expected. If data is missing, Customer should raise the issue as a request for support through the local Company office. Customer is free to export its own data from eView Subscription at any time using the standard eView Subscription export functions. All Customer data collected in eView Subscription remains the property of Customer and will be available to Customer at time of eView Subscription termination if desired.
9. **Anti-Virus Prevention.** Company maintains antivirus checking software on the network and has a strict policy on checking all software loaded onto the Software as a Service Services environment. However, due to the nature of computer viruses, Company is not able to guarantee that provision of eView Subscription will be virus free. It is Customer's responsibility to ensure that adequate security and antivirus software is in place on all machines accessing the eView Subscription.
10. **Disaster Recovery.** In the event that Company experiences a significant problem with eView Subscription that results in or is expected to result in the loss of service for in excess of 5 working days, Company may transfer the service to an alternative hosting environment. In the event that Company transfers the service to an alternative hosting environment, Customer acknowledges that the following may occur: There may be a loss of data imported into eView after the last database backup was taken; eView Subscription will be provided by a different IP address; while the IP address registered against the domain names is changed, Customer may need to access eView Subscription via an IP address and not the normal domain name; and Data Collection services may not be available.
11. **Support.** Following Customer's purchase of eView, support will be provided by the local Company office in accordance with procedures outlined in the Proposal. Support requests will be addressed working diligently as soon as possible. Faults reported will be assigned by Company with a Severity Level ranging from 1-4 described herein as follows; SL1-Complete failure of eView, SL2-inability to access or execute critical software functions or conduct a time critical activity, SL3-inability to access or execute non-critical software functions or any other functional error not affecting a time critical activity, and SL4-issues relating to presentation, usability, or documentation of the system. Once a fault has been reported, Company may contact Customer for further information to assist in the assignment of Severity Level. Once a fault has been reported and a Severity Level has been assigned, Company will make commercially reasonable efforts to contact Customer within the time guidelines as follows to provide notice of a workaround and resolution accordingly; SL1-24 hours, 48 hours, SL2-48 hours, 72 hours, SL3-5 days, 10 days, SL4-N/A, next software update.
12. **No Warranties.** CUSTOMER EXPRESSLY AGREES THAT USE OF eVIEW SUBSCRIPTION IS AT THE SOLE RISK OF CUSTOMER, END USERS, AND NAMED USERS. COMPANY DOES NOT WARRANT OR GUARANTEE THAT eVIEW SUBSCRIPTION WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES COMPANY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF eVIEW SUBSCRIPTION, OR AS TO THE TIMELINESS, EFFICACY, OPERABILITY, COMPLETENESS, ACCURACY, RELIABILITY OR CONTENT OF eVIEW SUBSCRIPTION OR OF ANY DESIGN, FUNCTION, PROCESS, OR INFORMATION PROVIDED THROUGH OR BY USE OF eVIEW SUBSCRIPTION. eVIEW SUBSCRIPTION IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.
13. **Privacy or Confidentiality.** Company will take commercially reasonable efforts to ensure that metering data and other configuration parameters are not visible or accessed by other customers. Customer acknowledges that the very nature of communication via the internet restricts Company from offering any guarantee to the privacy or confidentiality of information relating to Customer passing over the internet. In gaining access via the internet, Customer also acknowledges and accepts that electronic communication may not be free from interference by unauthorized persons and may not remain confidential. Customer therefore accepts that access and storage of data is at its own risk. Any breach in privacy should be reported by customer to Company immediately.



14. Intellectual Property. All intellectual property, including without limitation copyright, in all information, specifications, drawings, screen layout, functionality, technical descriptions or other document in eView Subscription shall remain with Manufacturer and/or Licensor. All intellectual property in the metering data shall remain with the Customer.

15. Limitation of Liability. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFIT, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF CONTRACTS, OR FOR ANY FINANCIAL OR ECONOMIC LOSS OR FOR ANY SPECIAL, DIRECT, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES) ARISING OUT OF CUSTOMER'S USE OR INABILITY TO USE EVIEW SUBSCRIPTION OR END USER BREACH OF THE END USER LICENSE AGREEMENT. Should Company nevertheless be found liable for any damages, such damages shall be limited to the most recent purchase price paid by Customer for eView Subscription.

16. Customer Indemnity. Customer shall indemnify and hold Company harmless from and against Customer's use of eView Services, breach of the End User License Agreement, and any loss, damage, cost (including the cost of any settlement), expense or any liability suffered or incurred by Company arising out of Company's possession or use of data, information or articles supplied by Customer to Company, including the infringement of any intellectual property rights resulting from the use or possession by Company of data, information or articles supplied by Customer to Company.

17. Change in Terms and Conditions. Company reserves the right to change the service level agreements, any part of the eView Subscription Offering, or the terms and conditions at any time. The latest version of these terms and conditions is available from within the Download area of Company website.

End of the Agreement



Data Usage - Supplemental Terms and Conditions

The use of the term "you," "your," and the like means the entity identified as the customer in the agreement to which these Supplemental Terms and Conditions pertain, including its employees, shareholders, officers, and directors. References to "us," "we," "our," and the like means the entity identified as the Company in its Terms and Conditions of sale.

1. Terms Supplemental. These Supplemental Terms and Conditions are supplemental to the Company's Terms and Conditions of sale applicable to your purchase of product and/or services from Company ("Terms and Conditions") and are an integral part of our offer and agreement to sell. The Terms and Conditions and these Supplemental Terms and Conditions are intended to be complementary and construed as a whole. However, in the event of an irreconcilable conflict, these Supplemental Terms and Conditions shall control.

2. Electronic Monitoring. Any electronic monitoring we perform is undertaken solely to enable us to collect the data and perform any analysis included in our services. You agree that we are not liable for losses that may occur in cases of malfunction or nonfunctioning of equipment, the energy management system, failure to identify equipment or system performance issues, failure to recommend corrective action, or otherwise related to the monitoring of your equipment and building systems.

3. Ownership of Data. All data relating to the performance and condition of your building systems that we collect in connection with our performance hereunder shall be owned by you, provided that you are granting to us the irrevocable, perpetual, nonexclusive, worldwide, royalty-free right and license to use, reproduce, display, distribute internally or externally and prepare derivative works based upon any such data we collect from you. We shall not use or publish such data in any way that identifies you as the source of that data without your prior written consent. The data we will collect from you will not include any personal or individual information.

4. Data Privacy and Security. We have implemented various security measures for the purpose of protecting your data against accidental or unlawful access, unauthorized disclosure, loss, destruction, and alteration. You are responsible for maintaining the confidentiality of your user name(s) and password(s). You are responsible for all uses of your password(s), whether or not authorized by you. You must inform us immediately of any unauthorized use of your user name(s) or password(s). Transmission of data over the Internet by its nature entails the use of systems under the control of third parties, and as a result we cannot ensure total control of the security of such systems. We will take commercially reasonable efforts to ensure that data and other configuration parameters are not visible or accessed by other customers. You acknowledge that the very nature of communication via the Internet restricts us from offering any guarantee of the privacy or confidentiality of information relating to you passing over the Internet. In gaining access via the Internet, you also acknowledge and accept that electronic communication may not be free from interference by unauthorized persons and may not remain confidential. You therefore accept that access and storage of data is at your own risk. We will notify you of any breach in security of which we become aware. Any breach in privacy of which you become aware should be reported by you to us immediately. We do not disclose your information to third parties for their marketing purposes, but we do use third party software and services to assist us with collecting and analyzing information. We may also disclose your information if required to do so by law, in which case, we would inform you of such disclosure.

5. Data Retention. Upon your written request, we will endeavor to provide an electronic copy of data collected from you, subject to availability. We will use commercially reasonable efforts to store your data for up to 18 months. We cannot guarantee the availability of the data.

6. Ownership of Intellectual Property. Notwithstanding any provision to the contrary, as between you and us, we own and retain all title and ownership of all intellectual property rights in the software, firmware, analytics, and service processes used to provide services, and consequently both you and us agree that these Supplemental Terms and Conditions do not constitute and may under no circumstances be construed as the granting of any license to such intellectual property rights.



7. Disclaimer of Warranty; Limitation of Liability. The services provided, including any reports we provide, are intended to provide operational assessments and recommendations only and are intended to supplement, but not replace, manual inspections of your equipment and building systems. **THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, WE ARE NOT LIABLE FOR GAPS IN DATA COLLECTED.**

TO THE MAXIMUM EXTENT ALLOWED BY LAW, WE SHALL NOT BE LIABLE FOR ANY OF THE FOLLOWING: DAMAGES OR INJURY (OTHER THAN PERSONAL INJURY CAUSED BY OUR NEGLIGENCE) REGARDLESS OF THE CAUSE OR DURATION; FOR ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN THE INTELLIGENT SERVICES; FAILURE OF PERFORMANCE; INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION; YOUR NETWORK SECURITY; COMPUTER VIRUS; COMMUNICATION FAILURE; THEFT OR DESTRUCTION OF DATA; OR UNAUTHORIZED ACCESS TO YOUR DATA OR COMMUNICATIONS NETWORK.

8. Communications – Analog Modem Facilities. You authorize us to utilize your telephone line to provide the services and acknowledge that, unless an exclusive telephone line has been provided for performance of the services, the telephone line may be unavailable for your use for extended periods of time while data is being collected from your building systems and equipment. We are not responsible for any adverse impact to your communications infrastructure. You understand that we will not be able to collect data when the telephone line or other transmission mode is not operating or has been cut, interfered with or is otherwise damaged or if we are unable to acquire, transmit or maintain a connection over your telephone service.

9. Communications – Ethernet - You authorize us to utilize your network infrastructure to provide the contracted services and acknowledge that we are not responsible for any adverse impact to your communications infrastructure. You understand that we will not be able to collect data when network issues do not allow for successfully communications between our data collection devices and the data sources. Interruption of external Internet communications of longer than 24 hours may result in loss of data and degradation of service levels. Interruption of communications can be classified as failure of transmitting or receiving packet transmissions, interfered with or is otherwise damaged or if we are unable to acquire, transmit or maintain a connection over network or the internet for any reason including network or ISP outage or other network/ISP problems such as congestion or downtime, routing problems, or instability of signal quality.

10. Logging and Data Mining. You grant us the unrestricted right, but not the obligation, to log web addresses and/or mine other information and/or data relating to services and information accessed or requested (a) to provide better support, services and/or products to users of our products and services, (b) to verify compliance with the terms of the Agreement and the Supplemental Terms and Conditions, (c) for use by us for statistical or other analysis of the collective characteristics and behavior of users, (d) to backup user and other data or information and/or provide remote support and/or restoration, (e) to provide or undertake: engineering analysis; failure analysis; warranty analysis; energy analysis; predictive analysis; service analysis; product usage analysis; and/or other desirable analysis, including histories or trending of any of the foregoing, and (f) to otherwise understand and respond to the needs of the users of our products and services.