

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** May 6, 2024

**SUBJECT:** Purchase and Installation of the HCPS MRTS Atkinson Elementary HVAC Replacement Project (phase 1)

**PRESENTER:** Bryan Rhodes, HC Capital Project Construction Manager

**ATTACHMENTS:** Yes

1. Vendor Proposal
2. Bid Tabulation

#### SUMMARY OF REQUEST:

The Board is requested to approve the attached Johnson Controls proposal and authorize staff to proceed with the procurement and installation of the HCPS MRTS Atkinson Elementary HVAC Replacement Project (phase 1), per the approved HCPS MRTS FY 23-24 Projects.

The proposal received from Johnson Controls is for a total price of \$1,211,444.00 (inclusive of the base bid and alternate #1), versus the budget of \$1,250,000.00 for HCPS MRTS FY 23-24 Atkinson Elementary HVAC Replacement Project (phase 1).

#### BOARD ACTION REQUESTED:

The Board is requested to accept the proposal from Johnson Controls and authorize Henderson County staff to proceed with the purchase and installation of the HCPS MRTS Atkinson Elementary HVAC Replacement Project (phase 1).

#### Suggested Motion:

*I move the Henderson County Board of Commissioners award the contract, for the purchase and installation of the HCPS MRTS Atkinson Elementary HVAC Replacement Project (phase 1), to Johnson Controls, for \$1,211,444.00.*



## Proposal

**TO:** Henderson County Government Offices  
100 North King St. Suite 204  
Hendersonville NC 28792

**Date:** April 10, 2024  
**Project:** Atkinson Elementary HVAC  
Change Out Phase 1

**Proposal Ref:** CDTAES3272024

**For the above price this proposal includes:**

**Base Bid: \$768,421.00**

- Replacement of Current P-Tac style HVAC units with new VRF units and materials per engineered drawings attached.
- Existing HVAC equipment is to stay in service until the new units are fully functional.
- New HVAC units to be installed in the corridor section per engineered drawings attached.
- Factory commission and Start-up of the units is included.
- Provide factory inspection and handover with written documentation from the factory and all start up documentation.
- All existing HVAC units hot water lines will be capped.
- The wiring to each unit needs to be terminated in the nearest junction box and all existing conduit and wiring to be removed.
- Outdoor and Indoor branch selector tubing will be insulated with armaflex
- The recovered units will be removed and stored on site for Henderson County Public Schools.
- All recovered R-22 refrigerant will be returned to Henderson County Public Schools. HCPS Maintenance Department will provide the needed recovery tanks for the recovered refrigerant.
- Upon removal of the existing HVAC units, wall openings will be secured immediately. Temporary covers will be watertight and rodent proof. Temporary covers will be secured from inside the of the building.
- The base bid for permanent wall enclosures will be: 8-inch block laid in opening, waterproofed, finished, and painted to match the existing finish.
- Interior finish of block will be flush with existing wall and painted to match the existing.

**The alternate scopes and commercial pricing listed below are not included in the above base proposal, but may be added upon written receipt and confirmation from our customer:**

**Alternate #1: \$443,023.00**

- Removal and Replacement of Current P-Tac style HVAC units in all classroom areas shown on the plans.
- Existing classroom HVAC equipment is to stay in service until the new units are fully functional.
- New wall hung HVAC units to be installed in the corridor section, no units currently exist there.
- Factory commission and Start-up of the units is included.
- Provide factory inspection and handover with written documentation from the factory and all start up documentation
- All existing HVAC units hot water lines will be capped.
- The recovered units will be removed and stored on site for Henderson County Public Schools.
- All recovered R-22 refrigerant will be returned to Henderson County Public Schools. HCPS Maintenance Department will provide the needed recovery tanks for the recovered refrigerant.
- Upon removal of the existing HVAC units, wall openings will be secured immediately. Temporary covers will be watertight and rodent proof. Temporary covers will be secured from inside the of the building.
- The base bid for permanent wall enclosures will be: 8-inch block laid in opening, waterproofed, finished, and painted to match the existing finish.
- Interior finish of block will be flush with existing wall and painted to match the existing.

**Alternate #2: \$474,188.00**

- Removal and Replacement of Current P-Tac style HVAC units in all classroom areas shown on the plans.
- Existing classroom HVAC equipment is to stay in service until the new units are fully functional.
- New wall hung HVAC units to be installed in the corridor section, no units currently exist there.
- Factory commission and Start-up of the units is included.
- Provide factory inspection and handover with written documentation from the factory and all start up documentation
- All existing HVAC units hot water lines will be capped.
- The recovered units will be removed and stored on site for Henderson County Public Schools.
- All recovered R-22 refrigerant will be returned to Henderson County Public Schools.

HCPS Maintenance Department will provide the needed recovery tanks for the recovered refrigerant.

- Upon removal of the existing HVAC units, wall openings will be secured immediately.

Temporary covers will be watertight and rodent proof.

Temporary covers will be secured from inside the of the building.

- The base bid for permanent wall enclosures will be: 8-inch block laid in opening, waterproofed, finished, and painted to match the existing finish.
- Interior finish of block will be flush with existing wall and painted to match the existing.

**Alternate #3: \$294,889.00**

- Removal and Replacement of Current P-Tac style HVAC units in the media center shown on the plans.
- Existing Media Center HVAC equipment is to stay in service until the new units are fully functional.
- Factory commission and Start-up of the units is included.
- Provide factory inspection and handover with written documentation from the factory and all start up documentation
- All existing HVAC units hot water lines will be capped.
- The recovered units will be removed and stored on site for Henderson County Public Schools.
- All recovered R-22 refrigerant will be returned to Henderson County Public Schools.

HCPS Maintenance Department will provide the needed recovery tanks for the recovered refrigerant.

- Upon removal of the existing HVAC units, wall openings will be secured immediately.

Temporary covers will be watertight and rodent proof.

Temporary covers will be secured from inside the of the building.

- The base bid for permanent wall enclosures will be: 8-inch block laid in opening, waterproofed, finished, and painted to match the existing finish.
- Interior finish of block will be flush with existing wall and painted to match the existing.

**Alternate #4: \$36,429.00**

- Replace existing panels and breakers serving HVAC units in the areas for Base bid, Alt #1, Alt #2, and Alt #3 on a 1:1 Basis.



**Alternate #5:**

**Deduct from Base -\$2100**

**Deduct from Atl #1 -\$1400**

**Deduct from Atl #2 -\$1400**

**Deduct from Atl #3 -\$1400**

- Infill wall cavities where existing HVAC units are removed. Framed 2x6 on 16" Centers. R-38 Insulation at least 7/16" Weatherproof plywood with a minimum of 1/2" backer board with stucco to match the existing exterior finish. Interior finish will be flush with existing block wall. Cased with 1x4 lumber, and painted to match the existing interior finish.

**This proposal DOES NOT include:**

- Any integration of new equipment into existing fire alarm system.

**Warranty**

- All work will carry a 12-month craftsmanship warranty.
- Daikin equipment will carry factory warranty.

This proposal and alternates listed below are hereby accepted and Johnson Controls is authorized to proceed with work; subject, however to credit approval by Johnson Controls, Inc., Milwaukee, Wisconsin.

This proposal is valid until: Apr. 25, 2024

Henderson County

Johnson Controls, Inc.

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PO: \_\_\_\_\_

\_\_\_\_\_

In accepting this Agreement, Customer agrees to the terms and conditions contained herein including those on the following page(s) of this Agreement and any attachments or riders attached hereto that contain additional terms and conditions. It is understood that these terms and conditions shall prevail over any variation in terms and conditions on any purchase order or other document that Customer may issue. Any changes requested by Customer after the execution of this Agreement shall be paid for by the Customer and such changes shall be authorized in writing. **ATTENTION IS DIRECTED TO THE LIMITATION OF LIABILITY, WARRANTY, INDEMNITY AND OTHER CONDITIONS CONTAINED IN THIS AGREEMENT.**

Customer agrees to pay Johnson Controls pursuant to the progress-based billing schedule of values below. If the schedule of values includes an upfront deposit, it will be paid within 30 days of contract signing and Johnson Controls will not commence work until the upfront deposit is received. Customer agrees to pay for materials, goods, and equipment (ordered, delivered, or stored) pursuant to the schedule of values, prior to installation commencement. The remaining portion of the total price will be progress billed through completion of the work. Johnson Controls progress-based billing can also include any services performed on-site or off-site. All invoices will be delivered via email, paid via ACH/EFT bank transfer and are due NET 30 days from the date of the invoice. ACH/EFT bank transfer details will be provided upon contract execution. The proposed total price is contingent on Customer agreeing to these payment and invoicing terms.

Planned Monthly Progress Billing Schedule of Values	
Description	%
Deposit/Advance Payment/Mobilization	50%
Prior to Delivering Material (Engineering/Material)	20%
Monthly Progress Billing (Installation/Commissioning)	30%

This offer shall be void if not accepted in writing within thirty (30) days from the date first set forth above.

To ensure that JCI is compliant with your company's billing requirements, please provide the following information:

PO is required to facilitate billing:

No: This signed contract satisfies requirement       Yes: Please reference this PO Number \_\_\_\_\_

AR Invoices are accepted via e-mail:

Yes: E-mail address to be used: \_\_\_\_\_

No: Please submit invoices via mail

No: Please submit via \_\_\_\_\_



## STANDARD INSTALL TERMS AND CONDITIONS – U.S.A./CANADA

"JCI" shall mean Johnson Controls, Inc. for work performed in the U.S.A. and Johnson Controls Canada LP for work performed in Canada. These terms and conditions are an integral part of JCI's offer and form the basis of any agreement (the "Agreement") resulting from JCI's proposal for the goods and/or services described. By accepting this proposal, Purchaser agrees to be bound by the following terms and conditions:

**1. SCOPE OF WORK.** This proposal is based upon the use of straight time labor only. JCI and its subcontractors shall be provided access to the work site during regular business hours, or such other hours as may be requested by JCI, including sufficient areas for staging, mobilization and storage. Plastering, patching and painting are excluded. "In-line" duct and piping devices, including, but not limited to, valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by Johnson Controls, Inc. (hereinafter referred to as JCI), shall be distributed and installed by others under JCI's supervision but at no additional cost to JCI. Purchaser agrees to provide JCI with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. JCI agrees to keep the job site clean of debris arising out of its own operations. JCI's obligation is limited to the scope of work set forth in JCI's proposal 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 JCI be required to perform any work JCI reasonably believes is outside the scope of work without a written change order signed by Purchaser and JCI. In the performance of the work, if JCI encounters conditions at the work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings or (ii) unknown physical or pre-existing conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the type and character of the work, JCI shall notify Purchaser of such conditions. If such conditions differ materially and cause an increase in JCI's costs of, or time required for, performance of any part of the work, JCI shall be entitled to and Purchaser shall consent by change order to, an equitable adjustment of the contract price, contract time or both. Purchaser shall not charge any retention or back charge JCI for any costs or expenses without JCI's written consent unless specifically noted in the statement of the scope of work or services undertaken by JCI under this Agreement, JCI's obligations under this Agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, clean up, control, removal, or disposal of environmental hazards or dangerous substances, to include but not be limited to asbestos or PCSs, discovered in or on the premises. Any language or provision of the Agreement elsewhere contained which may authorize or empower the Purchaser to change, modify, or alter the scope of work or services to be performed by JCI shall not operate to compel JCI to perform any work relating to such hazards or substances without JCI's express written consent.

**2. DEPOSIT, INVOICING & PAYMENTS.** Purchaser agrees to pay JCI pursuant to the progress billing schedule of values set forth in JCI's proposal. If the schedule of values includes an upfront deposit, it will be paid within 30 days of contract signing and JCI will not commence work until the upfront deposit is received. Customer agrees to pay for materials, goods, and equipment (ordered, delivered, or stored) pursuant to the schedule of values, prior to installation commencement. JCI progress-based billing can also include services performed on-site or off-site. All invoices will be delivered via email, paid via ACH/EFT bank transfer and are due net 30 days from the date of invoice. ACH/EFT bank transfer details will be provided upon contract execution. The proposed total price is contingent on Purchaser agreeing to these payment and invoicing terms.

Waivers of lien will be furnished upon request as the work progresses to the extent payments are received. Invoicing disputes must be identified in writing within 21 days of the date of invoice. Payments of any disputed amounts are due and payable upon resolution. All other undisputed amounts remain due within 30 days from the date of invoice. This Agreement is entered into with the understanding that the services to be provided by JCI are not subject to any local, state, or federal prevailing wage statute. If it is later determined that local, state, or federal prevailing wage rates apply to the services to be provided by JCI, JCI reserves the right to issue a modification or change order to adjust the wage rates to the required prevailing wage rate. Purchaser agrees to pay for the applicable prevailing wage rates. In the event of Purchaser's default, the balance of any outstanding amounts will be immediately due and payable. Payment is a condition precedent to JCI's obligation to perform under the Agreement. Purchaser acknowledges and agrees that timely payments of the full amounts listed on invoices is an essential term of this Agreement and that failure to make payment in full when due is a material breach of this Agreement. Purchaser further acknowledges that if there is any amount outstanding on an invoice, it is material to JCI and will give JCI, without prejudice to any other right or remedy, the right to, without notice: (i) suspend, discontinue or terminate performing any work and/or withhold further deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or suspend JCI's obligations under or terminate this Agreement; and (ii) charge Purchaser interest on the amounts unpaid at a rate equal to the lesser of one and one half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full. JCI's election to continue providing future services does not, in any way diminish JCI's right to terminate or suspend services or exercise any or all rights or remedies under this Agreement. JCI shall not be liable for any damages, claims, expenses, or liabilities arising from or relating to suspension of services for non-payment. In the event that there are exigent circumstances requiring services or JCI otherwise performs services at the premises following suspension, those services shall be governed by the terms of this Agreement unless a separate contract is executed. If Purchaser disputes any late payment notice or JCI's efforts to collect payment, Purchaser shall immediately notify JCI in writing and explain the basis of the dispute. JCI may increase prices upon notice to the Purchaser to reflect increases in material and labor costs. Prices for products covered by this proposal may be adjusted by JCI, upon notice to Purchaser at any time prior to shipment and regardless of Purchaser's acceptance of JCI's proposal or quotation, to reflect any increase in JCI's cost of raw materials (e.g., steel, aluminum) inability to secure Products, changes or increases in law, labor, taxes, duties, tariffs or quotas, acts of government, any similar charges, or to cover any extra, unforeseen and unusual cost elements

**3. MATERIALS.** If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of JCI, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, JCI shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefor.

**4. LIMITED WARRANTY.** JCI warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a period of twelve (12) months from delivery of said equipment, or if installed by JCI, for a period of twelve (12) months from installation, whichever occurs first. Alongside this limited warranty, for all new York™ air or water-cooled chillers and/or Melasys™ building automation systems installed in the US and Canada and sold through JCI owned and operated branches, JCI also provides a Year One Service Agreement for such equipment, the scope, limitations, terms and conditions of which are at <https://www.johnsoncontrols.com/yearoneservice> (collectively, "Year One Service"). JCI will not provide a credit against purchase price if offered Year One Service is declined. No warranty is provided for third-party products and equipment installed or furnished by JCI. Such products and equipment are provided with the third-party manufacturer's warranty to the extent available, and JCI will transfer the benefits, together with all limitations, of that manufacturer's warranty to Purchaser. For equipment installed by JCI, if Purchaser provides written notice to JCI of any such defect within thirty (30) days after the appearance or discovery of such defect, JCI shall, at its option, repair or replace the defective equipment. All transportation charges incurred in connection with the warranty for equipment not installed by JCI shall be borne by Purchaser. These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE. JCI makes no and specifically disclaims all representations or warranties that the services, products, software or third-party product or software will be secure from cyber threats, hacking or other similar malicious activity, or other similar malicious activity, or will detect the presence of, or eliminate, treat, or mitigate the spread transmission, or outbreak of any pathogen, disease, virus or other contagion, including but not limited to COVID 19.

**5. LIABILITY.** To the maximum extent permitted by law, in no event shall JCI and its affiliates and their respective personnel, suppliers and vendors ("JCI Parties") be liable to Purchaser or any third party under any cause of action or theory of liability even if advised of the possibility of such damages, for any: (a) special, incidental, indirect, punitive or consequential damages; (b) loss of business, use, profits, revenues, customer opportunities, anticipated savings or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyber-attacks or failures or interruptions to network systems arising in any manner from the equipment or material furnished or the work performed pursuant to this Agreement. In any case, the entire aggregate liability of the JCI Parties under this Agreement for all damages, losses, causes of action, whether in contract, tort (including negligence), or otherwise, shall be limited to the amount actually received by JCI for the performance of its obligations hereunder.

**6. TAXES/TARIFFS.** The price of this proposal does not include duties, sales, use, excise, or other similar taxes, unless required by federal, state or local law. In addition to the stated price, Purchaser shall pay all taxes not legally required to be paid by JCI or, alternatively, shall provide JCI with acceptable tax exemption certificates. JCI shall provide Purchaser with any tax payment certificate upon request and after completion and acceptance of the work. Pricing for products and parts covered by this proposal does not include any amounts for changes in tariffs or other similar charges imposed and/or enacted by a government. At any time prior to shipment, JCI shall be entitled to an increase in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in tariffs or similar charges due to such changes.

**7. DELAYS.** JCI shall not be liable for any delay in the performance of the work resulting from or attributed to acts or circumstances beyond JCI's control, including, but not limited to, acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Purchaser, Owner or other Contractors or delays caused by suppliers or subcontractors of JCI.

**8. COMPLIANCE WITH LAWS.** JCI shall comply with all applicable federal, state and local laws and regulations and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Purchaser.



**9. SCHEDULE.** JCI and Purchaser shall mutually agree upon a schedule for completion of the work. In the event Purchaser desires to change or accelerate the schedule or the schedule is otherwise accelerated, delayed, or impacted for reasons beyond the control of JCI, JCI shall be entitled to a change order equitably adjusting the compensation of JCI to account for the increased costs associated with such schedule changes.

**10. DISPUTES.** JCI shall have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be submitted to a court of law or arbitrated. For Purchasers located in the United States, the laws of Delaware shall govern the validity, enforceability, and interpretation of this Agreement, without regard to conflicts of law principles thereof, and the exclusive venue for any such litigation or arbitration shall be in Milwaukee, Wisconsin. For Purchasers located in Canada, the laws of Ontario shall govern the validity, enforceability, and interpretation of this Agreement, without regard to conflicts of law principles thereof, and the exclusive venue for any such litigation or arbitration shall be in Ontario, Canada. The parties waive any objection to the exclusive jurisdiction of the specified forums, including any objection based on forum non conveniens. In the event the matter is submitted to a court, JCI and Purchaser hereby agree to waive their right to trial by jury. In the event the matter is submitted to arbitration by JCI, the costs of arbitration shall be borne equally by the parties, and the arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction. If JCI prevails in any collection action, Purchaser will pay all of JCI's reasonable collection costs (including legal fees and expenses). Except as provided below, no claim or cause of action, whether known or unknown, shall be brought by either party against the other more than one year after the claim first arose. Claims not subject to the one-year limitation include JCI claims for unpaid: (1) contract amounts, (2) change order amounts (approved or requested) and (3) delays and/or work inefficiencies.

**11. INSURANCE.** Insurance coverage in excess of JCI's standard limits will be furnished when requested and required. No credit will be given or premium paid by JCI for insurance afforded by others.

**12. INDEMNITY.** To the fullest extent permitted by law, JCI and Purchaser shall indemnify 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, actions, costs, expenses or liabilities to the extent attributable to the actions or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault.

**13. PATENTS.** JCI shall defend or, at its own option settle, any action against Purchaser brought by a third party to the extent that the action is based upon a claim that the equipment provided under the Agreement infringes any U.S. patents or copyrights for Purchasers located in the United States or Canadian patents or copyrights, for Purchasers located in Canada, or misappropriates any trade secrets of a third party ("Claim"), provided that: (i) Purchaser gives JCI prompt written notice of any such Claim, (ii) Purchaser gives JCI full authority to defend or settle any such Claim, and (iii) Purchaser gives JCI proper and full information and assistance, at JCI's expense (except for Purchaser's employees' time) to defend or settle any such Claim. JCI will pay those costs and damages finally awarded against Purchaser in the action that are specifically attributable to the claim or those costs and damages agreed to in a monetary settlement of the action. THE FOREGOING IS IN LIEU OF ANY WARRANTIES OF NONINFRINGEMENT, WHICH ARE HEREBY DISCLAIMED. The foregoing obligation of JCI does not apply with respect to products or equipment or portions or components thereof (a) not supplied by JCI, (b) made in whole or in part in accordance with Purchaser or owner specifications, (c) which are modified after shipment or installation by JCI, if the alleged infringement related to such modification, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Purchaser continues allegedly infringing activity after being notified thereof and/or after being informed of modifications that would have avoided the alleged infringement without significant loss of performance or functionality, or (f) where Purchaser's use of the product or equipment is incident to an infringement not resulting primarily from the product or equipment; Purchaser will indemnify JCI and its officers, directors, agents, and employees from all damages, settlements, attorneys' fees and expenses related to a claim of infringement, misappropriation, defamation, violation of rights of publicity or privacy excluded from JCI's indemnity obligation herein.

**14. OCCUPATIONAL SAFETY AND HEALTH.** The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act relating in any way to the project or project site.

**15. PURCHASER RESPONSIBILITIES.** Purchaser is solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply JCI secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Purchaser and/or end user against unauthorized access. Purchaser is responsible to take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

**16. FORCE MAJEURE.** JCI shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, failure to render services, or any other failure by JCI to perform an obligation under this Agreement, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of JCI, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of JCI. If JCI's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, JCI shall be excused from performance under the Agreement. Without limiting the generality of the foregoing, if JCI is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, JCI will be entitled to extend the relevant completion date by the amount of time that JCI was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases JCI's cost to perform the services, Purchaser is obligated to reimburse JCI for such increased costs, including, without limitation, costs incurred by JCI for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by JCI in connection with the Force Majeure Event.

**17. FAR.** In the United States, JCI supplies "commercial items" within the meaning of the Federal Acquisition Regulations (FAR), 48 CFR Parts 1-53. As to any customer order for a U.S. Government contract, JCI will comply only with those mandatory flow-downs for commercial item and commercial services subcontracts listed either at FAR 52.244-6, or 52.212-5(e)(1), as applicable.

**18. DIGITAL ENABLED SERVICES; DATA.** If JCI provides Digital Enabled Services under this Agreement, these Digital Enabled Services require the collection, transfer and ingestion of building, equipment, system time series, and other data to JCI's cloud-hosted software applications. Customer consents to and grants JCI the right to collect, transfer, ingest and use such data to enable JCI and its affiliates and agents to provide, maintain, protect, develop and improve the Digital Enabled Services and JCI products and services. Customer acknowledges that, while Digital Enabled Services generally improve equipment performance and services, Digital Enabled Services do not prevent all potential malfunction, insure against all loss, or guarantee a certain level of performance. Customer shall be solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network"), shall appropriately protect hardware and products connected to the Network and will supply JCI secure Network access for providing its Digital Enabled Services. As used herein, "Digital Enabled Services" mean services provided hereunder that employ JCI software and related equipment installed at Customer facilities and JCI cloud-hosted software offerings and tools to improve, develop, and enable such services. Digital Enabled Service may include, but are not limited to, (a) remote servicing and inspection, (b) advanced equipment fault detection and diagnostics, and (c) data dashboarding and health reporting. If Customer accesses and uses Software that is used to provide the Digital Enabled Services, the Software Terms (defined below) will govern such access and use.

**19. JCI DIGITAL SOLUTIONS.** Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, JCI's standard terms for such Software and Software related professional services in effect from time to time at [www.johnsoncontrols.com/techterms](http://www.johnsoncontrols.com/techterms) (collectively, the "Software Terms"). Specifically, the JCI General EULA set forth at [www.johnsoncontrols.com/buildings/legal/digital/general\\_eula](http://www.johnsoncontrols.com/buildings/legal/digital/general_eula) governs access to and use of software installed on Customer's premises or systems and the JCI Terms of Service set forth at [www.johnsoncontrols.com/buildings/legal/digital/general\\_tos](http://www.johnsoncontrols.com/buildings/legal/digital/general_tos) govern access to and use of hosted software products. The applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, JCI and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto. Notwithstanding any other provisions of this Agreement, unless otherwise agreed, the following terms apply to Software that is provided to Customer on a subscription basis (i.e., a time limited license or use right), (each a "Software Subscription"): Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the "Subscription Start Date") and will continue in effect until the expiration of the subscription term noted in the applicable statement of work, order or other applicable ordering document. At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a "Renewal Subscription Term"), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. To the extent permitted by applicable law, Software Subscriptions purchases are non-cancelable, and the sums paid nonrefundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each



subsequent anniversary thereof. Customer shall pay all invoiced amounts within thirty calendar days after the date of invoice. Payments not made within such time period shall be subject to late charges as set forth in the Software Terms. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at Johnson Controls' then-applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement and applicable SOW will be subject to additional fees based on the date such excess use began.

**20. PRIVACY.**

(a) *JCI as Processor.* Where JCI factually acts as Processor of Personal Data on behalf of Purchaser (as such terms are defined in the DPA) the terms at [www.johnsoncontrols.com/dpa](http://www.johnsoncontrols.com/dpa) shall apply.

(b) *JCI as Controller.* JCI will collect, process and transfer certain personal data of Purchaser and its personnel related to the business relationship between it and Purchaser (for example names, email addresses, telephone numbers) as controller and in accordance with JCI's Privacy Notice at <https://www.johnsoncontrols.com/privacy>. Purchaser acknowledges JCI's Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Purchaser consents to such collection, processing and transfer. To the extent consent to such collection, processing and transfer by JCI is mandatorily required from Purchaser's personnel under applicable law, Purchaser warrants and represents that it has obtained such consent.

**21. ENTIRE AGREEMENT.** This proposal, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.

**22. CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon Johnson unless accepted by Johnson in writing.

