

FIRST Software
Data Processing Services Agreement/Subscription Agreement

This Agreement is made by and between Morning Pride Manufacturing Inc., a part of the Honeywell Industrial Safety business of Honeywell International Inc. (“Honeywell Industrial Safety” or “HIS”), and “Service Subscriber,” as identified in Appendix B (HIS and Service Subscriber each a “Party” and collectively the “Parties”). The Agreement takes effect as of the date on which the Service Subscriber electronically accepts the terms herein (the “Effective Date,” which date is captured in Appendix B).

WHEREAS, Service Subscriber manages one or more fire companies, battalions, districts or other groupings of personnel; along with the equipment, gear and garments (including Personal Protective Equipment (PPE) such as firefighter coats, trousers, boots, gloves, helmets; SCBAs; other respiratory protection; hearing protection; gas detectors; communication devices; other safety devices; etc.)(collectively, “Equipment”) that such personnel wear, use or carry;

WHEREAS, Service Subscriber must regularly inspect, clean, maintain, repair and replace the Equipment and may utilize the services of one or more third parties in inspecting, cleaning, maintaining, repairing and/or replacing the equipment (the one or more third parties, “Subscriber’s Third-Party Suppliers”);

WHEREAS, HIS offers, on a subscription basis, a secure, web-based Software-as-a-Service (“FIRST Software”) that facilitates tracking of Equipment—particularly its status and condition as it is regularly inspected, cleaned, maintained, repaired and/or replaced by Service Subscriber or Subscriber’s Third-Party Suppliers. As part of this service, Honeywell may provide—either directly or through a Honeywell partner that supports Service Subscriber or Subscriber’s Third-Party Suppliers—recommendations regarding replacements or upgrades to Equipment based on its age or condition, or recommendations regarding overall inventory; and

WHEREAS, Service Subscriber desires to subscribe to FIRST Software, for the purposes outlined herein and upon the terms outlined herein.

NOW, THEREFORE, in consideration of the foregoing and mutual promises and undertakings of each of the Parties hereto unto the other, and in further consideration of other good and valuable consideration, the legal sufficiency of which is hereby acknowledged, the Parties hereto **AGREE AS FOLLOWS:**

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

Authorized Purposes – Legitimate business purposes of Service Subscriber in collecting, processing and disclosing Personal Information, including, but not limited to:

- (a) confirming compliance with applicable safety standards, regulations, procedures and policies;
- (b) tracking and managing Equipment—which may or may not be assigned to individual Employees—including the status and condition of that Equipment as it is regularly inspected, cleaned, maintained, repaired or replaced by Service Subscriber or Subscriber’s Third-Party Suppliers; and
- (c) other data processing services that are set forth in Appendix A.

Authorized Countries – United States and Canada.

Authorized User – An Employee of the Service Subscriber or of one of Subscriber’s Third-Party Suppliers who becomes a user of the FIRST Software, that has been issued a user name and password for access to the FIRST Software within one of the Authorized Countries by HIS or by Service Subscriber, and who needs to access the FIRST Software in the course of performing his or her job duties for Service Subscriber.

Employer – An entity that is responsible for fulfilling governmental laws, regulations or mandates regarding safety, tax withholding, working conditions or pay vis-à-vis a worker, regardless of the formal classification of that worker (i.e., statutory employee, independent contractor, consultant, etc.).

Employee – A worker who is paid by, contracted with, or assigned to perform services for, an Employer.

Employee Information – Identifying information about an Employee, including but not limited to the Employee’s first, middle and last name and Employee identification number; contact information for the Employee, including an email address for the Employee that the Employee uses for work purposes, if such an email address exists; information about the Employee’s current job, including job title, job function, status (i.e., “active” or “inactive”), immediate supervisor’s first and last name and Employee identification number, etc.

Asset Information – Information about Equipment assigned to or used or carried by a specific Employee, including information about usage of such Equipment.

Personal Information – One or more of Employee Information and Asset Information.

2. Data Processing Services

Through its FIRST Software, HIS offers the Service Subscriber various specific data processing services. The specific data processing services that are made available to and on behalf of the Service Subscriber through this Agreement are set forth in Appendix A, which is attached and incorporated as if set forth fully herein.

3. Data Privacy and Security

3.1. Each of the Parties agrees to comply with all applicable laws and regulations protecting Personal Information (“Privacy Laws”).

In particular, Service Subscriber acknowledges and agrees that HIS provides certain electronic data processing service(s) through the FIRST Software pursuant to this Agreement as a “data processor” and not a “data controller” (under relevant Privacy Laws), on behalf of Subscriber and Subscriber’s Third-Party Suppliers.

3.2. Service Subscriber agrees that it has the responsibility to provide or cause to be provided, any notices or notifications required by Privacy Laws, or to obtain or cause to be obtained, any consents required by Privacy Laws for any Employee whose Personal Information is to be tracked by or managed in the FIRST Software:

(a) so as to authorize and enable the Personal Information of the Employee to be entered,

collected, used, processed, stored or retained within the FIRST Software; and

- (b) so as to authorize and enable such Personal Information to be used and made available by HIS, through the FIRST Software, for Authorized Purposes to Authorized Users.

- 3.3.** The Parties recognize that HIS may—in the course of provisioning, configuring, maintaining, or updating FIRST Software—have access to, process or transfer to Service Subscriber, and to Subscriber’s Third-PartySuppliers, Personal Information that has been stored in the FIRST Software.

Service Subscriber authorizes and instructs HIS to act on its behalf concerning the terms of this Agreement. HIS shall process Personal Information in accordance with Service Subscriber’s instructions as set forth in this Agreement.

With respect to this Personal Information, HIS shall not:

- (a) use or permit access to any Personal Information for any purpose other than providing and operating for Authorized Purposes, maintaining, modifying or updating the FIRST Software, or otherwise performing its obligations under this Agreement, except as required by law; or
- (b) transfer or disclose any such Personal Information to any third party, except HIS subcontractors who have a legitimate business need for such Personal Information under this Agreement for purposes of design, maintenance, support or provision of the FIRST Software, which subcontractors HIS shall cause to agree to the substance of the conditions of this Section 3 or as otherwise contemplated by the Authorized Purposes.

- 3.4.** HIS shall secure data, including Personal Information, against loss or theft, as well as unauthorized, unlawful or unintended access, processing, disclosure, transfer, copying, use or modification using industry standard guidelines and protocols. HIS shall promptly notify Service Subscriber in writing if it becomes aware of:

- (a) any breach of its information security procedures that compromises the confidentiality of Personal Information entered by Service Subscriber or Subscriber’s Third-Party Suppliers in the FIRST Software;
- (b) any loss or theft of Personal Information; or
- (c) any unauthorized, unlawful or unintended access, processing, disclosure, transfer, copying, use or modification of Personal Information entered into or residing in the FIRST Software.

- 3.5.** HIS shall retain Personal Information entered by Service Subscriber or Subscriber’s Third-Party Suppliers for the term of the Agreement and for a period of one (1) year following the expiration or termination of the Agreement, to enable HIS to:

- (a) at Service Subscriber’s request and for an additional fee, help Service Subscriber export and/or port the Personal Information to other systems;
- (b) provide product recommendations following expiration or termination; and

(c) to simplify the process of re-subscribing to FIRST Software.

At the end of this one (1) year period, HIS shall destroy the Personal Information then in its possession or custody, and retain a certificate of destruction on its files, to be provided to Service Subscriber on written request within six (6) months of the expiry or termination of the Agreement.

- 3.6. Service Subscriber acknowledges and agrees that Personal Information collected through the FIRST Software may be processed in the United States or any other country in which HIS or its affiliates, subsidiaries, agents or subcontractors maintain facilities. Service Subscriber represents and warrants that all required Employee notices provided and/or consents received disclose this potential data transfer.
- 3.7. Service Subscriber hereby authorizes HIS to de-identify Personal Information and to use and disclose that de-identified data for HIS purposes, including, but not limited to, research, marketing and product development purposes. The Parties acknowledge and agree that any data de-identified under this Section 3.7 shall no longer be considered subject to the provisions of this Agreement, including, but not limited to, the provisions of Section 3.5 regarding the destruction of Personal Information upon the expiration or termination of this Agreement.
- 3.8. Service Subscriber understands and warrants that it has an obligation to implement and maintain reasonable and appropriate security measures relating to its use of the FIRST Software, the information used therein, and the network environment.

If a cyber breach, attack or other system or data compromise or loss occurs (“Cybersecurity Event”), Service Subscriber shall promptly notify HIS. Service Subscriber shall also promptly use its best efforts to detect, respond and recover from such an event. Service Subscriber shall take reasonable steps to immediately remedy any Cybersecurity Event and prevent any further Cybersecurity Event at Service Subscriber’s (except to the extent such Cybersecurity Event is within the sole control of HIS) expense in accordance with applicable laws, regulations, and standards. Service Subscriber further agrees that it will use its best efforts to preserve forensic data and evidence in its response to a Cybersecurity Event hold such information as Confidential Information hereunder and will provide and make available this forensic evidence and data to HIS.

4. License: Scope of Use

- 4.1 **License to the FIRST Software.** Subject to Service Subscriber’s timely payment of any and all applicable fees for the FIRST Software licensed hereunder by Service Subscriber to HIS, as well as compliance with the other terms and conditions set forth in this Agreement, HIS grants to Service Subscriber a limited, non-exclusive, non-transferable, non-assignable license to permit access by Authorized Users to the functionalities of the FIRST Software during the term and at the Tier selected by Service Subscriber on the Subscription Management screen within the FIRST Software, for Service Subscriber’s Authorized Purposes. During the Term, Service Subscriber may upgrade to a higher Tier of service on the Subscription Management screen within the FIRST Software. Additional fees will be immediately due for the pro-rata difference between the previous Tier of Service and the new Tier of Service. Upgrades to the Tier of service will have no effect on the current Term.

All licenses terminate in the event this Agreement terminates or expires. For the sake of clarity:

- (a) access to the FIRST Software is provided as a license, and not a sale or transfer of any ownership rights or interest of any kind; and
- (b) HIS provides access to certain functionalities of the FIRST Software only, and does not provide any access, license, or right of any kind to any computer software code (object or source code) relating to the FIRST Software.

42 Scope of Permitted Use. Service Subscriber agrees that it will allow access to the FIRST Software only to Authorized Users and will cooperate with HIS to ensure that anyone who uses the FIRST Software does so only for Service Subscriber's Authorized Purposes and in compliance with the terms of this Agreement. Service Subscriber agrees that it will not, and will not permit others to, and will not attempt to, do any of the following:

- (a) copy the FIRST Software or any ideas, features, functions or graphics of the FIRST Software;
- (b) allow access to the FIRST Software by any third party other than third-parties who are Subscriber's Third-Party Suppliers;
- (c) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third-party (other than Authorized Users) the FIRST Software or any portion or content thereof in any way;
- (d) interfere with, disable, modify, decompile, reverse assemble, reverse compile or otherwise translate the FIRST Software;
- (e) use the FIRST Software data processing services to provide those same data processing services to third-parties;
- (f) import or export the FIRST Software or any portion thereof in violation of any United States or other applicable import or export law or utilize the FIRST Software outside of Authorized Countries;
- (g) use the FIRST Software to send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
- (h) interfere with or disrupt the integrity or performance of the FIRST Software or the data contained therein;
- (i) attempt to gain unauthorized access to the FIRST Software or related systems or networks;
- (j) modify or create any derivative work of the FIRST Software; or
- (k) remove any copyright, trademark, patent, ownership, confidentiality or other notices or legends in the FIRST Software.

Service Subscriber is fully liable to the extent allowed by law and to the extent it has authority over or the ability to stop or curtail any unauthorized use of the FIRST Software by third-parties (i.e., unauthorized use caused by any acts or omissions of Service Subscriber that are within Service

Subscriber's ability to prevent/cause to be prevented or perform/cause to be performed, respectively).

- 43 Access to the FIRST Software by Service Subscriber.** Service Subscriber is responsible for maintaining the security of all of Service Subscriber's login information including all user names and passwords for accessing the FIRST Software that Service Subscriber creates or maintains and for any damage caused by unauthorized access to the FIRST Software or to data within the FIRST Software through Service Subscriber's user accounts over which Service Subscriber has control to create, delete or restrict, provided that the FIRST Software provides industry standard password security (e.g., periodic password expiration, password complexity requirements, etc.). Service Subscriber is authorized to access and use the FIRST Software via compatible web browsers operating on compatible computer systems all in an appropriate, careful and proper manner and in compliance with all user manuals, laws and regulations.
- 44 Third Party Items and Fees.** Service Subscriber understands and agrees that Authorized Users' use of any and all third-party hardware, software, services, telecommunication services (including Internet connectivity), or other items used by Service Subscriber in conjunction with use of the FIRST Software, is the sole and exclusive responsibility of the Authorized Users, and that HIS has no responsibility for such third party items, services, or Service Subscriber's or Authorized Users' relationships with such third-parties.
- 45 Minimum Operating Environment.** HIS does not represent or warrant that the FIRST Software is compatible with any specific third-party hardware or software.

5. Proprietary Rights

HIS has all rights, title, interest, ownership and proprietary rights in and to the FIRST Software and all associated technology, processes, know-how, instructions, training materials, documentation, and all improvements and enhancements thereto. HIS'S rights include, but are not limited to, the FIRST Software's software, firmware, code, protocols, or interfaces necessary for operation of the platform and any patent rights (including but not limited to patent applications and disclosures), copyrights, trademark rights, trade secret rights, and any other intellectual property right recognized in any country or jurisdiction in the world, as well as the content and related services and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Service Subscriber or by Authorized Users or any other party relating to the FIRST Software. The FIRST Software is protected by United States law, Canadian law, European law and international treaty provisions.

6. Fees

Service Subscriber agrees to pay the periodic subscription fees, and any applicable taxes, as set forth on the Subscription Management screen within the FIRST Software (unless otherwise agreed by the Parties in writing in another contract between said Parties).

7. Payment Terms

Service Subscriber will not receive a refund for any prepaid fees for any reason or purpose except as expressly set forth herein. HIS may revise the fees upon 60-days' notice prior to the then-current term, to be effective at the beginning of the next renewal term.

Unless Service Subscriber terminates this Agreement prior to its automatic renewal, in the manner specified in Sections 11.2 and 19, Service Subscriber shall be obligated to pay the applicable subscription fee for the following term. If Service Subscriber fails to pay any fees by the due date set forth in the invoice issued by HIS, HIS may suspend access to the Service Subscriber.

8. Confidentiality

Information that Service Subscriber accesses or receives pursuant to this Agreement about the FIRST Software itself or about the terms of this Agreement (but expressly excluding the information that is loaded into the FIRST Software by Service Subscriber or Subscriber's Third-Party Suppliers) is considered HIS'S "Confidential Information." Service Subscriber agrees to take reasonable steps to protect HIS'S Confidential Information, including not disclosing it to third-parties except as otherwise permitted by this Agreement or required by law. Confidential Information does not include any information that Service Subscriber can demonstrate by its written records: (i) was known by Service Subscriber prior to its disclosure hereunder; (ii) was independently developed by Service Subscriber; (iii) is or becomes publicly known through no wrongful act of Service Subscriber; (iv) has been rightfully received from a third-party whom Service Subscriber has reasonable grounds to believe is authorized to make such disclosure without restriction; or (v) has been approved for public release by HIS'S prior written authorization. Confidential Information may be disclosed pursuant to applicable law, regulations or court order, provided that Service Subscriber provides prompt advance notice thereof to enable HIS to seek protective order or otherwise prevent such disclosure.

9. Representations and Warranties

9.1 Representations and Warranties of HIS. HIS represents and warrants: (i) that it owns or has licensed all rights necessary to the FIRST Software for the purpose of providing access to the FIRST Software; (ii) that the FIRST Software does not infringe any registered or otherwise formally protected intellectual property rights of any third party; (iii) that it is authorized and has all authority necessary to enter into and perform its obligations under this Agreement; and (iv) that this Agreement constitutes a binding and enforceable agreement between the Parties. In the event that use of the FIRST Software is enjoined or is held to be an infringement of a U.S. intellectual property right, HIS shall, at its option and expense and as Service Subscriber's sole and exclusive remedy, either (a) procure for Service Subscriber the right to continue to use the FIRST Software pursuant to the terms of this Agreement; (b) modify the FIRST Software so that it becomes non-infringing, or (c) terminate this Agreement and return any pre-paid fees to Service Subscriber.

9.2 Representations and Warranties of Service Subscriber. Service Subscriber represents and warrants: (i) that it will provide or cause to be provided any notices or notifications required by Privacy Laws or obtain or cause to be obtained any consents required by Privacy Laws for any Employee whose Personal Information is to be included in the FIRST Software; (ii) that it is authorized and has all authority necessary to enter into and perform under this Agreement; and (iii) that this Agreement constitutes a binding and enforceable agreement between the Parties.

9.3 NO OTHER WARRANTIES; DISCLAIMER. HIS'S REPRESENTATIONS AND WARRANTIES THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT ARE THE ONLY REPRESENTATIONS AND WARRANTIES PROVIDED BY HIS OR ANY OTHER PERSON WITH RESPECT TO THE FIRST SOFTWARE AND ANY OTHER ITEM PROVIDED BY HIS. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, TO THE

MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUBJECT ONLY TO THE EXPRESS WARRANTIES PROVIDED UNDER THIS AGREEMENT, THE FIRST SOFTWARE AND OTHER MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND HIS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (A) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; (B) ANY WARRANTY REGARDING RESULTS OBTAINABLE OR TO BE OBTAINED BY SERVICE SUBSCRIBER AS A RESULT OF PROVISION OR USE OF THE FIRST SOFTWARE, OR OTHER MATERIALS PROVIDED HEREUNDER; AND (C) ANY WARRANTY OF UNINTERRUPTED OR ERROR-FREE OPERATION OF THE FIRST SOFTWARE. NO ORAL OR WRITTEN INFORMATION BY HIS OR ANY OTHER ENTITY OR PERSON SHALL CREATE ANY ADDITIONAL REPRESENTATION OR WARRANTY BY HIS. HIS SHALL NOT BE LIABLE FOR ANY DAMAGES THAT SERVICE SUBSCRIBER OR SERVICE SUBSCRIBER'S EMPLOYEES, OR OTHER THIRD PARTIES MAY SUFFER ARISING OUT OF THE USE, ERROR, DELAY IN PROVIDING, OR INABILITY TO USE, THE FIRST SOFTWARE. HIS SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF ANY SERVICE SUBSCRIBER DATA, INCLUDING BUT NOT LIMITED TO DATA, FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, CYBER SECURITY EVENT OR ANY OTHER METHOD. IN ADDITION TO THE ABOVE DISCLAIMERS, HIS EXPLICITLY DISCLAIMS ANY AND ALL DAMAGES RELATING TO PERSONAL OR PROPERTY DAMAGE OR DEATH THAT SERVICE SUBSCRIBER OR SERVICE SUBSCRIBER'S EMPLOYEES OR ANY OTHER THIRD PARTY MAY SUFFER ARISING OUT OF OR RELATING TO THE USE OR MISUSE OF THE FIRST SOFTWARE, ANY ERROR OR BUG IN THE FIRST SOFTWARE, DELAY IN THE FIRST SOFTWARE, INABILITY TO USE THE FIRST SOFTWARE OR ANY CYBER SECURITY EVENT.

9.4 LIMITATION OF REMEDIES.

UNLESS PROVIDED FOR OTHERWISE BY APPLICABLE LAW, IN NO EVENT WILL HIS'S LIABILITY UNDER THIS AGREEMENT OR IN CONNECTION WITH THE FIRST SOFTWARE, REGARDLESS OF THE FORM OF ACTION, INCLUDE ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LOSS OF BUSINESS, REVENUES OR PROFITS, LOST DATA, UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE AND DATA BREACH OR OTHER CYBER SECURITY EVENT), OR OTHER LEGAL THEORY, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF HIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. HIS'S AGGREGATE LIABILITY TO SERVICE SUBSCRIBER, OR ANY ENTITY WITH RIGHTS THROUGH SERVICE SUBSCRIBER, UNDER OR RELATING TO THIS AGREEMENT UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE AND DATA BREACH), OR ANY OTHER LEGAL THEORY, REGARDLESS OF THE CAUSE OF ACTION WILL NOT EXCEED AN AMOUNT, IN AGGREGATE, EQUAL TO THE FEES PAID BY SERVICE SUBSCRIBER FOR THE SERVICES SET FORTH HEREIN IN THE ONE (1) YEAR PRIOR TO WHEN THE DAMAGES FIRST AROSE (IN THE CASE OF A FREE, TRIAL PERIOD, HIS'S AGGREGATE LIABILITY TO SERVICE SUBSCRIBER SHALL NOT EXCEED FIVE US DOLLARS (\$5)).

9.5 Basis of the Bargain; Failure of Essential Purpose.

Service Subscriber acknowledges that HIS has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and limitations on damages set forth in this Agreement, and that the same form an essential basis of the bargain between the Parties. The Parties agree that the limitations and exclusions of liability and disclaimers

specified in this Agreement will survive and apply even if found to have failed their essential purpose.

10. Indemnification

- (a) Service Subscriber agrees to indemnify, defend and to hold HIS, any of its affiliates, or any of its or their owners, directors, employees, and agents, harmless for any claims, liability or expense of any kind resulting from: (a) Service Subscriber's breach of this Agreement; and (b) Service Subscriber's negligent or willful conduct.**

- (b) To the extent permitted by Florida law, HIS assumes all liability for, and releases and agrees to defend, indemnify, protect, and hold harmless the Service Subscriber, its commissioners, officers, agents, and employees, from any final judgment assessed against Service Subscriber, arising out of any acts, actions, breaches, arising from HIS' willfulness or gross neglect or omissions of HIS, or HIS' officers, employees, agents, subcontractors, and other persons employed or utilized by HIS in the performance of, or the failure to perform, this Agreement. The Agreement does not constitute a waiver of sovereign immunity or consent by the Service Subscriber or its subdivisions to suit by third parties.**

- (c) HIS will defend, hold harmless, and indemnify the Service Subscriber from and against any third party suit or claims to the extent arising from direct infringement of a valid United States patent or copyright (except to the extent such action or claim is based on any software or software component provided by HIS at any time whether contained in First Software as delivered by HIS, and indemnify for any final judgment assessed against Customer resulting from the suit. If any of the Software becomes, or in HIS' opinion is likely to become, the subject of a claim of infringement, then HIS may, at its option and expense, either (1) procure for Service Subscriber the right to continue using such Software, (2) replace or modify such Software so that it becomes non-infringing, (3) accept return of such Software, or 4) terminate Service Subscriber's license to use the infringing Software and grant Service Subscriber a credit for the purchase price or license fee paid for the Software, less a reasonable depreciation for use, damage and obsolescence. HIS may cease shipping infringing Software without being in breach of this Agreement. Service Subscriber shall not incur any costs or expenses for the account of Honeywell under or pursuant to this Section 8 without Honeywell's express prior written consent, and Honeywell shall not be liable to indemnify Service Subscriber for payment of any damages or costs in any settlement unless HIS has consented to such settlement beforehand in writing. Any liability of HIS under this provision is subject to the limitations of liability set forth in Section 10. THE FOREGOING STATES THE PARTIES' ENTIRE LIABILITY, SOLE RECOURSE AND THEIR EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT. ALL OTHER WARRANTIES AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS OR IMPLIED ARE HEREBY DISCLAIMED.**

- (d) HIS shall have no liability to Service Subscriber under this section or otherwise for any action or claim alleging infringement based upon (1) the use of the Software in a manner other than as specified by HIS, (2) the use of Software for other than its ordinary purpose, (3) the use of any Software in combination with other products, equipment, devices or software not supplied by HIS (including without limitation any application software produced by Service Subscriber for use with such Software), (4) the alteration, modification or customization of any Software by**

any person other than HIS, (5) use of other than the latest version of Software released by HIS, or (6) Software provided pursuant to designs, specifications, drawings, or requirements provided by Service Subscriber or at its direction or alteration, modification, or customization requests provided by Service Subscriber or at its direction (regardless of whether such alteration, modification or customization occurs before or after the Product is originally shipped by HIS to Service Subscriber). In the event of an infringement action or claim against HIS which is based on any conduct described in the preceding sentence, Service Subscriber shall at its own expense defend such action or claim, and Service Subscriber shall pay any and all damages and costs finally awarded against HIS in connection with such action or claim, provided that HIS follows the procedure set forth in subsection (e) below.

- (e) The indemnifications set forth under this section are provided if Service Subscriber: (a) notifies Honeywell of the claim in writing by certified mail, return receipt requested, within thirty (30) days after Service Subscriber becomes aware of such claim; (b) promptly furnishes to Honeywell a copy of each communication, notice, or other action relating to the claim; (c) gives HIS the right, solely at its option, to defend or settle the claim; and (d) gives HIS, at its expense, information and assistance necessary to defend or settle the claim. HIS will not be responsible for any compromise or settlement made without HIS' consent. Because HIS has exclusive control of resolving infringement claims under this Agreement, in no event will Honeywell be responsible for Customer's attorney fees or costs.
- (f) This agreement for indemnification survives termination or completion of the Agreement. Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of the Service Subscriber as set forth in Florida Statutes Section 768.28.

11. Term and Termination.

11.1 Term.

The initial term shall be for the subscription period (i.e., 6 months, one year, or three years) selected by Service Subscriber in the Subscription Management screen of the FIRST Software (and captured in Appendix B). The Agreement will automatically renew for additional terms of the same period, at the end of each current term, unless Service Subscriber provides thirty (30) days' notice to HIS prior to the expiration of the current period in the manner specified herein.

11.2 Termination; Suspension. This Agreement may be terminated as follows:

- (a) by any Party upon giving the other Parties at least thirty (30) days' prior written notice in the event of a material breach of this Agreement by any other Party, unless the breaching Party has cured its breach within such thirty (30) day period;
- (b) by HIS immediately, with written notice to follow, in the event that HIS reasonably believes that any act by Service Subscriber may be illegal or may jeopardize HIS'S operations (for example, an attempt to introduce a computer virus into the FIRST Software);
- (c) by any Party in the event the any other Party makes an assignment for the benefit of its creditors, has voluntary or involuntary proceedings instituted by or against it under any bankruptcy or insolvency laws, suspends its payments to creditors, is declared bankrupt, or

becomes insolvent;

(d) Termination with or without Cause. The Agreement may be terminated with or without cause by the City Manager in whole or in part or whenever the City Manager determines that termination is in the Service Subscriber's best interest by the delivery to HIS of a written notice of termination at least thirty (30) days before the date of termination, specifying the date upon which such termination becomes effective. For clarification, Service Subscriber shall not receive a refund for any prepaid fees for termination pursuant to this section.

(e) by either Party prior to automatic renewal, upon thirty (30) days' notice of nonrenewal.

In addition, HIS may immediately, with written notice to follow, temporarily suspend access to the FIRST Software in the event Honeywell reasonably believes that any act by Service Subscriber may be illegal, may violate the rights of any third party, or may otherwise jeopardize the operation of the FIRST Software, or in the event Service Subscriber fails to pay HIS any fees relating to this Agreement in relation to Service Subscriber's use of the FIRST Software.

11.3 Events Upon Termination. Upon termination or expiration of this Agreement for any reason: (i) Service Subscriber shall return all copies of HIS'S Confidential Information, and shall not retain any copies thereof; (ii) all licenses and rights granted under this Agreement immediately terminate; and (iii) Service Subscriber shall, within thirty (30) days of the date of termination, pay HIS any and all fees coming due or remaining outstanding for services or access provided prior to the date of termination.

11.4 Survival. The following sections, including all subparts, shall survive expiration or termination of this Agreement: 1, 3, 4, 5, 6, 7, 9, 10, 11 and 19.

12. Disputes and Governing Law

12.1 Injunctive Relief. In the event of any breach or threatened breach by Service Subscriber of this Agreement, the Parties hereto agree that, in addition to any other right or remedy available to HIS, HIS may immediately apply for and obtain injunctive relief against Service Subscriber in any court of competent jurisdiction directing its compliance therewith, it being expressly agreed by the Parties hereto that any such breach will cause irreparable harm to HIS for which there is no adequate remedy at law.

12.2 Governing Law; Jurisdiction, Venue. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Florida, U.S.A., without giving effect to the conflicts of law principles now or hereafter in force in the State of Florida, U.S.A. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Agreement are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida and the United States District Court for the Middle District of Florida..

12.3 Remedies. Except for remedies that are described herein as sole and exclusive remedies, no remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other

available remedies.

13. Service Level Availability.

HIS is not responsible for loss of access to the Service Subscriber for reasons that constitute Excusable Delay, as that term is defined in Section 16, or for other reasons that are beyond HIS'S reasonable control. With the exception for loss of access that is Excusable Delay or beyond HIS'S reasonable control, HIS shall endeavor to maintain a level of access to the FIRST Software (excluding periods of scheduled maintenance and scheduled FIRST Software upgrades) of approximately 99% Access Availability.

14. Maintenance and Upgrades

It is necessary for HIS to undertake maintenance and upgrades to the FIRST Software from time to time. HIS will use its best efforts to conduct these activities on a reasonable, scheduled basis as set forth in this Section of this Agreement. Emergency unscheduled maintenance may be necessary from time to time.

15. Reserved

16. Force Majeure

No Party will be liable for failure to perform its obligations hereunder (other than payment obligations) if such performance is prevented, hindered or delayed by reason of any cause or causes beyond its reasonable control, including without limitation labor disputes, fire, acts of God, power failures, war, civil commotion, acts of government or military authority or public enemy, order of a regulatory agency or court of law, insurrection, theft, corrosion, floods, adverse weather conditions, water damage, lightning, freeze-ups, riots, strike explosions, quarantine restrictions, embargoes, delays in transportation, shortage of vehicles, fuel, labor or materials or third party service provider or licensor interruption or failure to provide services (an "Excusable Delay"), then the time for performance of the obligations affected by such Excusable Delay shall be extended by the period of any delay actually incurred as a result thereof and HIS shall not be liable to Service Subscriber for any expenses, loss, or damage resulting from delays as set forth herein or prevention of performance arising from an Excusable Delay.

17. Relationship

The Parties and their respective personnel, are and shall be independent contractors and no Party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of another Party. Service Subscriber understands and agrees that it is solely responsible for the operations of its business, and that Service Subscriber is solely responsible for the accuracy, entry, use and disclosure of any and all Employee Information stored in the FIRST Software.

18. Assignment

HIS may assign this Agreement to a party that is bound by this Agreement. HIS shall provide written notice of such Assignment and evidence of such obligations to the Service Subscriber. Service Subscriber may assign this Agreement on thirty (30) days' prior written notice to HIS, but only to a successor entity in the event of a merger, sale, or similar transaction of such party and only so long as the successor is not a competitor of HIS. Any such assignment shall not expand the license or use rights set forth in this Agreement. This Agreement shall inure to the benefit of and be binding on the Parties and their respective

successors and assigns (if such assignment was properly made pursuant to this Agreement).

19. Notices

Notices permitted or requested to be given hereunder shall be deemed sufficient if sent by (a) personal delivery, or (b) registered or certified air mail, postage prepaid, addressed to the respective addresses of the Parties as first above written or at such other addresses as the respective Parties may designate by like notice from time to time. Notice so given shall be effective upon (a) receipt by the Party to which notice is given, or (b) on the tenth (10th) day following the date such notice was sent, whichever occurs first.

Notices shall be provided to the parties at the address below:

HIS

Customer Service
Honeywell Industrial Safety – First Responder Products #1 Innovation Court
Dayton, Ohio 45414
Tel: 1.800-688-6148

With a copy to the Honeywell Industrial Safety General Counsel
2 Corporate Center Drive
Suite 100
Melville, NY 11747
Joshua.Foster@Honeywell.com

Service Subscriber

At the primary address provided by Service Subscriber upon signing up for a trial or subscription, which address is captured in Appendix B

20. Audit

HIS will have access to Service Subscriber's facilities, systems and records for purposes of audit, either through its own employees or through its duly authorized representatives selected and paid for by HIS, upon prior written notice for the purpose of ensuring Service Subscriber's ongoing compliance with this Agreement, including, without limitation, payment of appropriate subscription fees by the Service Subscriber. Any such audit of Service Subscriber's facilities, systems and records will be conducted at reasonable times during normal business hours, no more than once per calendar year. Service Subscriber will also furnish such other information as may be reasonably requested by HIS in the conduct of such audit.

21. Entire Agreement; Miscellaneous

This Agreement (a) constitutes the entire agreement of the Parties with respect to the subject matter hereof, (b) cancels and terminates in all respects any and all understandings, agreements and contracts, oral or written, which are currently in force and effect between HIS and Service Subscriber relating to the subject matter of this Agreement, and (c) supersedes all previous proposals, oral or written, and all negotiations, conversations or discussions heretofore had between the Parties relating to the subject

matter of this Agreement, except that HIS may require any person viewing or accessing the FIRST Software to agree to additional on-line terms and conditions, and such on-line terms and conditions are in addition to, and not in lieu of, the terms of this Agreement.

- (a) HIS may use Service Subscriber's name, logo, and the fact that Service Subscriber is a customer of HIS in its advertising and promotional items. Service Subscriber shall not issue any press release or otherwise disclose the terms or existence of this Agreement without HIS'S express written consent, except as required by law, in which case, Service Subscriber shall provide in good faith HIS with an opportunity to edit such press release.
- (b) This Agreement shall not be deemed or construed to be modified, amended, or waived, in whole or in part, except by a written amendment signed by all Parties. In the event that any of the terms of this Agreement is in conflict with any rule of law or statutory provision or otherwise unenforceable under the laws or regulations of any government or subdivision thereof applicable to this Agreement, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement, and this Agreement shall continue in force, unless the invalidity or unenforceability of any such provision hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.
- (c) All rights granted to Service Subscriber in this Agreement are granted solely and exclusively to Service Subscriber agreeing to this Agreement, and not to any third party, affiliate, or other entity. No failure by any Party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.
- (d) Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities, or services.

Service Subscriber has executed this Agreement by electronically accepting it within the FIRST Software, the details of which acceptance are captured in Appendix B.

Appendix A
Data Processing Services

Through the secure, web-based FIRST Software, HIS provides various data processing services (described in more detail below) that facilitate tracking of equipment and gear—particularly its status and condition as it is regularly inspected, cleaned, maintained, repaired and/or replaced by Service Subscriber or Subscriber’s Third-Party Suppliers. Some of these data processing services are accessible through web-based portals; other data processing services are accessible through mobile user interfaces.

Regardless of the access mode, the various data processing services allow users of the FIRST Software different levels of secure access to data processing features based on roles stored in the system for those users and based on the “Tier” of service subscribed to and subscription period selected. Options regarding the different available Tiers and subscription periods are as follows:

<p><u>Tiers of Service</u></p> <ul style="list-style-type: none">● Common to All Tiers<ul style="list-style-type: none">○ Access in a secure, hosted environment○ Easy to Use Dashboard Interface○ Data Analysis Tools○ Real Time Reports○ System can be extended to third-party subcontractors for capture of cleaning and maintenance data at the ISP’s site○ Basic Support (i.e., built-in interactive tutorials, a Technical Support Hotline that is available M-F, 8am- 5pm ET) ● Tier 1<ul style="list-style-type: none">○ Ability to track 1-200 items● Tier 2<ul style="list-style-type: none">○ Ability to track 201-3000 items● Tier 3<ul style="list-style-type: none">○ Ability to track 3001-8000 items● Tier 4<ul style="list-style-type: none">○ Ability to track an unlimited number of items Enhanced Support○ (Basic Support, plus on-site support, one-on-one training, and telephone access to experts)

<p><u>Available Subscription Periods</u></p> <ul style="list-style-type: none">● Six Months● One Year● Three Years

Specific data processing services are now described in more detail below.

Work Order Management. Allows an Authorized User to enter information about a particular work order,

including a date, product name and serial number, fire fighter or other person to whom the product is assigned (e.g., name, identification number, fire house or other information necessary to efficiently route a repaired or cleaned product back to the firefighter to whom it is assigned), and notes on the work order.

Repair Approval/Rejection. Allows an Authorized User to enter repair or proposed repair detail, such as detailed instructions/proposals, notes, and cost information; and manage and track approvals or rejections between different Authorized Users (such as, for example, between a Subscriber’s Third-Party Supplier and the Subscriber).

Item Management. Allows Authorized Users to view information about specific items (e.g., manufacturer; manufacture date; past repairs, maintenance and cleaning), as well as to manage returns or final disposition of those items when they reach the end of their service life.

Maintenance Management. Allows Authorized Users to provide detail for alterations or repairs (e.g., in-seam alteration details; corresponding cost, discount and warranty information; repair location detail, which can include both a description and a graphical identification on an image of the item).

Dashboard. Allows Authorized Users to view summary and drill-down information in graphical and drop-down formats, including by specific Third-Party Supplier, by time, by status, by product type, by name/ID/product serial number, etc.

(Optional) Analytics Module. Allows Authorized Users access to the “Hot Spot Locator”—a suite of “heat-map”-style graphics depicting areas of frequent repairs in Equipment, and drill-down data for those repairs; and the “Inventory Assist”—a histogram showing the distribution of sizes of various active Equipment, and an interactive set of tools to facilitate intelligent ordering of spare Equipment based on that current distribution of active Equipment.

Product Recommendations. In addition to providing the above services, HIS may provide—either directly or through a Honeywell partner that directly supports Service Subscriber or Subscriber’s Third-Party Suppliers—recommendations regarding replacements or upgrades to Equipment based on its age or condition, or recommendations regarding overall inventory. For example, if multiple repairs of the same nature or type have been made on specific piece of Equipment, and/or if Equipment has been repaired more than a threshold numbers of times, the FIRST Software may provide a recommendation that the Equipment be replaced. As another example, for smaller departments who are looking to maximize Equipment inventory, such as specifically sized garments, HIS may provide recommendations for additional “spare” garments that could be used by multiple fire fighters whose primary “active” garments are tracked by the FIRST Software.

Appendix B
Parties, Term, Acceptance Details

Service Subscriber

Fire Department	North Port Fire Rescue
State	Florida
Trial/Subscription Contact Name	Amy Turner
Email	Aturner@cityofnorthport.com
Phone Number	941-240-8156
FD Chief Name	Scott Titus
Billing Contact Name	Amy Turner

Subscription Details

Tier	2
Subscription Period	Annually

Acceptance Details

This Agreement, including its Appendices, was accepted by

CITY OF NORTH PORT, FLORIDA

By: _____

Peter D. Lear, CPA, CGMA
City Manager

ATTEST

Heather Taylor, CMC
Interim City Clerk

APPROVED AS TO FORM AND CORRECTNESS

Amber L. Slayton
City Attorney