

9944

AGREEMENT
(USING U.S. GENERAL SERVICES ADMINISTRATION CONTRACT # GS-07F-0248K)
BETWEEN
THE CITY OF JACKSONVILLE
AND
TRANE U.S. INC. d/b/a TRANE COMMERCIAL SYSTEMS NORTH FLORIDA
FOR FACILITIES MAINTENANCE AND MANAGEMENT FOR
ALL MULTI-STORY BUILDINGS IN THE DOWNTOWN CORE

THIS AGREEMENT is made and entered into in duplicate this 29 day of January, ²⁰¹⁴~~2013~~, retroactive to November 21, 2013, by and between the CITY OF JACKSONVILLE (hereinafter the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and TRANE US, INC., D/B/A TRANE COMMERCIAL SYSTEMS NORTH FLORIDA (hereinafter the "Contractor"), a for profit corporation authorized to do business in Florida with principal office at 8929 Western Way, Suite #1, Jacksonville, Florida 32256, for facilities maintenance and management for all multi-story buildings in the downtown core (hereinafter the "Project").

RECITALS:

WHEREAS, effective April 4, 2000, the U.S. General Services Administration ("GSA") entered into GSA Contract Number GS-07F-0248K (hereinafter the "GSA Contract") with various vendors of alarm and signal systems facility management systems, including Contractor; and

WHEREAS, said GSA Contract is in full force and effect until April 3, 2015, and has been competitively procured and awarded by the GSA as contracting authority according to law; and

WHEREAS, the Jacksonville Procurement Code, more particularly Section 126.211, *Ordinance Code*, authorizes and allows the CITY to use *inter alia* contracts of other governmental entities, including GSA, which have been competitively procured and awarded; and

WHEREAS, the GSA Contract is broad enough to include the Project and Contractor has agreed to allow the CITY to use its GSA Contract; and

WHEREAS, it is in the best interests of the parties to use the GSA Contract for the Project and to add those contractual provisions the CITY is required to use by ordinance or policy; now therefore

IN CONSIDERATION of the premises and of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1: Incorporation of Recitals:

The above-stated recitals are accurate, true, and correct and are made a part hereof and are incorporated herein by this reference.

ARTICLE 2: Engagement of Contractor:

CITY hereby engages Contractor and Contractor hereby accepts said engagement for the purpose of providing to CITY services and equipment for the Project, as described in and according to the provisions of the GSA Contract and its exhibits, attachments, and addenda made thereunder (hereinafter the "Services"), identified and listed on **Composite Exhibit 1** and by this reference made a part hereof and incorporated herein, and in accordance with the other provisions required by law, ordinance, or policy for the CITY contained in this Agreement. Said **Composite Exhibit 1** is on file in the CITY's Office of General Counsel, 117 West Duval Street, Suite 480, Jacksonville, FL 32202. With respect to the Project, the provisions, terms, and conditions of the GSA Contract shall apply unless specifically preempted herein. Therefore, any conflict between the provisions of this Agreement and those in the GSA Contract shall be resolved in favor of this Agreement but only to the extent of any conflict.

ARTICLE 3: Coordination and Services Provided by CITY:

CITY shall designate for the Services received a Project Coordinator who will, on behalf of the CITY, coordinate with Contractor and administer this Agreement according to the terms and conditions contained herein and in the exhibits attached hereto and made a part

hereof. It shall be the responsibility of Contractor to coordinate all Project related activities with the designated Project Coordinator. The CITY's Project Coordinator shall be: Robbie Tiedeman, Public Buildings Division (Telephone: 630-5406; FAX: 630-5415; Email: Tiedeman@coj.net).

ARTICLE 4: Duration of Agreement/Pricing Available to Other Entities:

The term of this Agreement shall commence on November 21, 2013, and shall continue and remain in full force and effect as to all its terms, conditions, and provisions as set forth herein through September 30, 2014, unless sooner terminated as provided in **Composite Exhibit 1**. During said period of time, the Services provided hereunder shall be available to all using agencies and other political subdivisions, boards, agencies, or authorities existing in Duval County that may desire to purchase the same at the contract price provided herein.

ARTICLE 5: Payments for Services of Contractor:

5.1. Except as provided in Section 5.2 hereof, the CITY will compensate Contractor for the Services purchased hereunder in accordance with purchase orders issued on a project by project basis and used by the City of Jacksonville Procurement Division; *provided however*, payment invoices shall be sent to the authorized CITY representative as specified in said purchase order or other subsequent written instrument signed by CITY's Project Coordinator.

5.2. Notwithstanding any contrary provision in **Composite Exhibit 1**, the maximum indebtedness of the CITY for all fees, reimbursable items or other costs for the Services provided by Contractor pursuant to this Agreement shall not exceed the sum of THREE HUNDRED AND FIFTY THOUSAND and 00/100 USD (\$350,000.00).

ARTICLE 6: Indemnification:

6.1. Contractor shall hold harmless, indemnify, and defend the CITY and its current and past officers, representatives, affiliates, agents, employees, successors, and assigns (collectively the "Indemnified Parties") against any and all claims, suits, demands,

judgments, losses, costs, fines, penalties, damages, liabilities, costs, and expenses of whatsoever kind or nature (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees, and attorney's fees) which may be incurred by, charged to, or recovered from any of the foregoing Indemnified Parties, arising directly or indirectly out of:

6.1.1. any of Contractor's operations, work, or services performed in connection with this Agreement, including but not limited to any and all claims for damages as a result of the injury to or death of any person or persons, or damage to or destruction of any property which arises as a result of any negligent act, error, omission, recklessness, or intentionally wrongful conduct on the part of Contractor, its employees, representatives, agents, affiliates, or assigns, regardless of where the damage, injury, or death occurred.

6.1.2. any allegation that the Services, any product generated by the Services, or any part of the Services constitutes an infringement of any copyright, patent, trade secret, or any other intellectual property right, regardless of whether such injury or damage is caused by negligence, errors and omissions, recklessness, or intentionally wrongful conduct. If in any suit or proceeding the Services or any product generated by the Services is held to constitute an infringement and its use is permanently enjoined, Contractor shall immediately make every reasonable effort to secure for the CITY a license authorizing the continued use of the Service or product. If Contractor fails to secure such a license for the CITY, then Contractor shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the CITY at no additional cost to the CITY so that the Service or product is non-infringing.

6.1.3. any violation of any federal, state, or municipal laws, statutes, resolutions, or regulations by Contractor or those under its control; or.

6.1.4. any breach of any covenant, obligation, representation or warranty made by Contractor in this Agreement or in any certificate, document, writing, or other instrument delivered by Contractor pursuant to this Agreement.

6.2. The indemnifications in this Article 6 are separate and apart from, and are in no way limited by, any insurance provided pursuant to the Agreement or otherwise. This Article 6 shall survive the expiration or termination of the Agreement.

6.3. To the extent an Indemnified Party exercises its rights under this Article 6, the Indemnified Party will provide reasonable notice to Contractor of the applicable claim or liability and allow Contractor to participate in the litigation of such claim or liability (at Contractor's expense) to protect its interests. Each Party will cooperate in the investigation, defense, and settlement of claims and liabilities that are subject to indemnification hereunder, and each Party will obtain the prior written approval of the other Party before entering into any settlement of such claim or liability, which consent shall not be unreasonably withheld, delayed, or conditioned.

ARTICLE 7: Insurance:

7.1. Without limiting its liability under this Agreement, Contractor shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Contractor shall require its contractors, subcontractors, laborers, materialmen, and suppliers to provide, as applicable), insurance of the types and in the minimum amounts stated below, and prior to work commencement provide a certificate with applicable endorsements on a form that is acceptable to the CITY's Division of Risk Management evidencing the following required coverages to the CITY:

Schedule

Limits

Workers' Compensation/Employers Liability

Worker's Compensation

Florida Statutory Coverage

Employer's Liability

\$3,000,000 Each Accident

\$3,000,000 Disease Policy Limit

\$3,000,000 Each Employee/Disease

This insurance shall cover the Contractor (and to the extent its subcontractors and sub-subcontractors are not otherwise insured, its subcontractors and sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, coverage is to be included for the Federal Employers' Liability Act, USL&H, Jones, and any other applicable federal or state law where appropriate.

Commercial General Liability - (Form CG0001)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those approved by CITY's Office of Risk Management.

- \$7,500,000 General Aggregate
- \$2,000,000 Products & Completed Ops Aggregate
- \$1,000,000 Personal/Advertising Injury
- \$7,500,000 Each Occurrence
- \$1,000,000 Fire Damage
- \$ 10,000 Medical Expenses

Automobile Liability

\$2,000,000 Each Occurrence – Bodily Injury and Property Damage Combined
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Services)

ISO Form CA0001 as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability \$7,500,000 Per Claim and Aggregate (may be included under the General Liability).

(Professional Liability coverage to the extent professional services will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement. If provided on a Claims Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis).

7.2. Waiver of Subrogation. All insurance shall be endorsed to provide for a waiver of underwriter’s rights of subrogation in favor of the CITY of Jacksonville and the CITY’s members, officials, officers, and employees.

7.3. Additional Insured: All insurance except Worker’s Compensation and Professional Liability shall be endorsed to name the CITY and CITY’s members, officials, officers, and employees. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and Automobile Liability CA2048. Endorsements will be provided to, reviewed, and approved by the CITY’s Division of Risk Management prior to commencement of work.

7.4. Contractor’s Insurance Primary. The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance

or self-insurance maintained by CITY or any CITY members, officials, officers, employees, and agents.

7.5. Deductible or Self-Insured Retention Provisions. Except as authorized in this Agreement, the insurance maintained by the Contractor shall apply on a first dollar basis without application of a self-insurance, deductible, or self-insured retention. Except as authorized specifically in this Agreement, no self-insurance, deductible, or self-insured retention for any required insurance provided by Contractor pursuant to this Agreement will be allowed. If there is any self-insurance, deductible, or self-insured retention for any required insurance, the Contractor shall be responsible for paying on behalf of the CITY (and any other person or organization Contractor has in this Agreement agreed to include as an insured for the required insurance) any self-insurance, deductible, or self-insured retention allowed under this paragraph. CITY will not be responsible for any self-insurance, deductibles, or self-insured retentions under this Agreement.

7.6. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Contractor or its subcontractors or sub-subcontractors, employees, or agents to the CITY or others. Any remedy provided to CITY or CITY's members, officials, or employees shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

7.7. No Waiver by CITY Approval/Disapproval. Neither approval by CITY of, nor failure by CITY to disapprove, the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Agreement.

7.8. Each policy shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the CITY. Such Insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better. Prior to commencing any Services, Certificates of Insurance approved by City's Division of

Risk Management demonstrating the maintenance of said insurance shall be furnished to CITY. The Contractor shall provide an endorsement issued by the insurer to provide the CITY thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. In the event the Contractor is unable to obtain such endorsement, the Contractor agrees to provide CITY the notice directly. Until such time as the insurance is no longer required to be maintained by Contractor, Contractor shall provide CITY with renewal or replacement evidence of insurance with the above minimum requirements no less than 30 days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

7.9. Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements or other evidence initially acceptable to CITY's Division of Risk Management, Contractor shall, within thirty (30) days after receipt of a written request from the CITY, provide CITY with a certified, complete copy of the policies of insurance providing the coverage required herein.

7.10. Anything to the contrary notwithstanding, the liabilities of the Contractor under this Contract shall survive and not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverage. Neither approval of, nor failure to disapprove, insurance furnished by the Contractor shall relieve the Contractor or its sub-contractors or sub-subcontractors from its responsibility to provide insurance as required by this Agreement.

7.11. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the CITY may at its sole option require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the CITY also be named as an additional insured.

ARTICLE 8: Notice:

In addition to the notice requirement in **Composite Exhibit 1**, notice to the CITY under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

Torrance Cox

Jacksonville Fl 322__

Gregory Pease
214 North Hogan Street
Jacksonville, Fl 32202

ARTICLE 9: Laws, Ordinances, Rules and Regulations:

As required by Section 126.108(b), *Ordinance Code*, in performing the Services the Contractor must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances as the same exist and may be amended from time to time. Such laws, rules, regulations, and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes (the Florida Public Records Law) and Section 286.011, Florida Statutes (the Florida Sunshine Law) as they apply to the purchase contemplated in this Agreement. If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section 9 shall be incorporated into and become a part of the subcontract.

ARTICLE 10: Conflict of Interest:

The parties will follow the provisions of Section 126.112, *Ordinance Code*, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the CITY, to the extent the parties are aware of the same.

ARTICLE 11: Prompt Payment:

As required by Chapter 126, Part 6, *Ordinance Code*, notwithstanding any contrary provisions in **Composite Exhibit 1**, the CITY's prompt payment provisions shall be as follows:

11.1 *Generally.* When Contractor receives payment from the CITY for labor, services, or materials furnished by subconsultants or subcontractors and suppliers hired by the Contractor, the Contractor shall remit payment due (less proper retainage) to those subconsultants, subcontractors, and suppliers within fifteen (15) calendar days after the Contractor's receipt of payment from the CITY. Nothing herein shall prohibit the Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subconsultants, subcontractors, and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after the Contractor has provided notice to the CITY and to the subconsultant, subcontractor, and supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to the CITY and said subconsultant, subcontractor, or supplier within ten (10) calendar days after Contractor's receipt of payment from the CITY. Contractor shall pay all undisputed amounts due within the time limits imposed by this Section.

11.2. *Jacksonville Small Emerging Business Enterprise ("JSEB") and Minority Business Enterprise ("MBE") Participation.* Notwithstanding Chapter 126, Part 6, *Ordinance Code*, Contractor shall pay all contracts awarded with certified JSEB's and MBE's, as defined therein, their pro rata share of their earned portion of the progress payments made by the CITY under this Agreement within seven (7) business days after Contractor's receipt of payment from the CITY (less proper retainage). The pro rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, the Contractor shall provide to the CITY with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's or MBE's from all prior payments Contractor has received from the CITY. Contractor shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to Contractor. If Contractor withholds payment to its certified

JSEB's or MBE's, which payment has been made by the CITY to Contractor, the Contractor shall return said payment to the CITY. Contractor shall provide notice to the CITY and to the certified JSEB's or MBE's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to the CITY and said JSEB's or MBE's within five (5) calendar days after Contractor's receipt of payment from the CITY. Contractor shall pay all undisputed amounts due within the time limits imposed in this Section 11. The failure to pay undisputed amounts to the JSEB's or MBE's within seven (7) business days shall be a breach of this Agreement, compensable by one per-cent (1%) of the outstanding invoice being withheld by the CITY, not as a penalty but as liquidated damages to compensate for the additional contract administration by the CITY.

11.3. *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between the CITY and any subconsultant, subcontractor, supplier, JSEB, MBE, or any third party or create any CITY liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of CONSULTANT's contractual obligations to the CITY. As a result of said breach, the CITY, without waiving any other available remedy it may have against Contractor, may (i) issue joint checks and (ii) charge Contractor a 0.2% daily late payment interest charge or the charges specified in Chapter 126, *Ordinance Code*, for JSEB's or MBE's, and in Chapter 218, Florida Statutes, for non-JSEB's or non-MBE's, whichever is greater.

ARTICLE 12: Non Discrimination:

As required by Section 126.404, *Ordinance Code*, the Contractor represents that it has adopted and will maintain a policy of non discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age, or handicap in all areas of employment relations throughout the term of this Agreement. The Contractor agrees that on written request, it will permit reasonable access to its records of employment,

employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or commission for the purpose of investigation to ascertain compliance with the non discrimination provisions of this Agreement; *provided however*, that the Contractor shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Contractor agrees that if any of the Services to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Article 12 shall be incorporated into and become a part of the subcontract.

ARTICLE 13: Counterparts:

The parties agree that for the execution of this Agreement, time is of the essence. Therefore, this Agreement and all amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The parties further agree that facsimile (“fax”) transmission of all signatures with originals to follow shall constitute and be evidence of an executed Agreement.

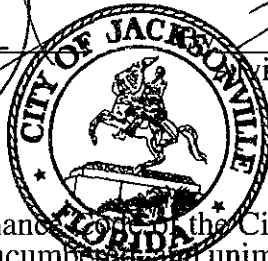
[Remainder of page is left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE:

By James R. McCain, Jr.
James R. McCain, Jr.
Corporation Secretary



Karen Bowling
in Brown, Mayor

In compliance with the Ordinance of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement, and provision has been made for the payment of the monies provided therein to be paid from the following account:

[Signature] 11/29/14
Director of Finance
9944 BT

Form Approved:

James R. McCain, Jr.
Office of General Counsel

Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04

ATTEST:

TRANE US, INC.

By _____
Signature

Type/Print Name

Title

By [Signature]
Signature

Joe Fallerweider
Type/Print Name

Sales Manager
Title



TRANE

Trane U S Inc
8929 Western Way
Jacksonville, FL, 32256
PHONE: 904-652-5174

GSA FEDERAL SUPPLY SCHEDULE PROPOSAL

CONTRACT NUMBER: GS-07F-0248K

DUNS: 126365795 / CAGE: 60532

Customer: The City of Jacksonville

Date: January 10,
2014 ~~January 6, 2014~~

Job Name: Trane Service
Contract

117 West Duval St, Suite 480
Jacksonville, FL 32202

ATTN: Luis Flores

Terms of Delivery: FOB Destination
Full Freight Allowed

Proposal #: 1-12335-2014

Terms of Payment: ½ % 10 – Net 30 Days

Trane is pleased to provide the enclosed proposal for your review and approval. This proposal is compliant with Trane's GSA Federal Supply Schedule (FSS) contract, GS-07F-0248K, (<http://www.gsaweblink.com/trane/>) and all its associated terms, conditions and negotiated pricing. In the event of a discrepancy between this proposal and the FSS contract, the FSS contract terms and conditions shall govern and take precedence. All applicable taxes will be added unless Trane is provided with the appropriate tax exemption certificates. This proposal will expire 30 days from the date of issue if an order is not placed.

Included in the Proposal

General HVAC services in relation to manufacturers specifications. This includes routine preventive maintenance and authorized repairs for Downtown City of Jacksonville locations.

- The work will be predominately in 9 buildings but could include additional City Buildings
- Routine preventative maintenance including annuals and running inspections
- Work on Chillers, Air Handlers, DX systems, Cooling Towers, Pumps and heating systems

Excluded from the Proposal

Hazardous Material identification, abatement and/or removal are excluded from this scope of work.

Open Market Items (as allowed per FAR 8.402(f) for administrative convenience)

N/A

Contractor Teaming Items

N/A

Pricing

SIN 246-1000

\$350,000.00



TRANE™

Trane U S Inc
8929 Western Way
Jacksonville, FL, 32256
PHONE: 904-652-5174

➤ **LUMP SUM PRICE FOR ENTIRE PROJECT** **\$350,000.00**

General Items

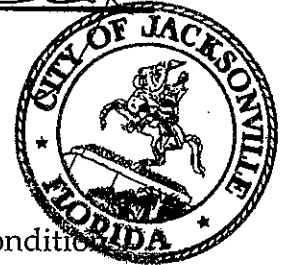
N/A

Respectfully submitted,

Gary Dais/ Walt Herndon
Existing Building Solutions, Trane

ATTEST:

James R. McCall
Corporation Secretary
City of Jacksonville



ACCEPTANCE

We hereby accept the foregoing proposal on the stated terms and conditions.

COMPANY City of Jacksonville BY *Karen Bowling*
PURCHASE ORDER # 9944 TYPE OR PRINT Alvin Brown
DATE 1/29/14 TITLE Mayor

See Attached Trane Terms & Conditions

Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04

TERMS AND CONDITIONS - INSTALLATION

"Company" shall mean Trane Canada ULC for Work performed in Canada, Trane U.S. Inc. for Work performed in the United States.

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 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





TRANE™

Trane US Inc
8929 Western Way
Jacksonville, FL, 32256
PHONE: 904-652-5174

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.

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 declaring termination, upon which event Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead): (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.

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") equipment manufactured 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 "Warranty"). 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 associated with the replacement of parts or equipment not conforming to this Warranty. Defects must be reported to Company within the Warranty period. Exclusions from this 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 or lost product. Additional terms and conditions of warranty coverage are applicable for refrigeration equipment. Some components of Company equipment may be warranted directly from the component supplier, in which event this Company Warranty shall not apply to those components but shall be pursuant to the warranty given by such component supplier. 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. Trane equipment sold on an uninstalled basis is warranted in accordance with Trane's standard warranty for supplied equipment. 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. UNLESS EXPRESSLY WARRANTED IN WRITING FOR CERTAIN HUSSMANN BRANDED EQUIPMENT, 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 Trane 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 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 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



TRANE

Trane U S Inc
8929 Western Way
Jacksonville, FL, 32256
PHONE: 904-652-5174

(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.

NOTICE: Company is restricted from receiving funds appropriated or otherwise made available under U.S Public Laws 110-161, 111-8, and 111-117.

1-26.251-10(1012)

Supersedes 1-26.251-10(0711)