

STATE OF TEXAS                    §  
  §  
COUNTY OF FORT BEND           §

**ADDENDUM TO SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.'S AGREEMENT  
(Region 4 Education Service Center Contract # R220703)**

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Schneider Electric Buildings Americas, Inc., ("Schneider Electric"), a company authorized to conduct business in the State of Texas (hereinafter each referred to as a "party" or collectively as the "parties").

WHEREAS, subject to the changes herein, the parties have executed and accepted Schneider Electric's Proposal and Terms and Conditions of Sale (dated July 6, 2022) (collectively the "Agreement"), attached hereto as Exhibit "A" and incorporated fully by reference, for the purchase of specified software and hardware upgrades and associated services (collectively the "Services"); and

WHEREAS, County desires that Schneider Electric provide Services as will be more specifically described in this Agreement; and

WHEREAS, Schneider Electric represents that it is qualified and desires to perform such Services; and

WHEREAS, the parties wish to utilize Region 4 Education Service Contract (hereinafter "ESC") # R220703 which includes the OMNIA PARTNERS COOPERATIVE PURCHASING AGREEMENT FACILITY TECHNOLOGY INTEGRATION & SECURITY SYSTEM SERVICES ADDENDUM (the "ESC Addendum") that has been or will be signed by the parties along with this Addendum, incorporated fully by reference, for the purchase of the Services; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

**AGREEMENT**

1. **Scope of Services.** Subject to this Addendum, Schneider Electric will render Services to County as described in Exhibit A, and in accordance with the requirements and specifications of ESC Contract# R220703 subject to the ESC Addendum. The Services shall be scheduled at a time that is mutually agreeable between the parties but without reasonable delay. All performance of the Scope of Services by Schneider Electric including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

Any references to Omnia Partners Contract # R1 70602 in Exhibit A are hereby deleted and replaced with references to ESC Contract# R220703.

2. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. If County disputes charges related to the invoice submitted by Schneider Electric, County shall notify Schneider Electric no later than twenty-one (21) days after the date County receives the invoice. If County does not dispute the invoice, then County shall pay each such approved invoice within thirty (30) calendar days. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE. County reserves the right to withhold payment pending verification of satisfactory work performed.
3. **Limit of Appropriation.** Schneider Electric clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Seventy-Two Thousand, Eight Hundred and 00/100 dollars (\$72,800.00), specifically allocated to fully discharge any and all liabilities County may incur. Schneider Electric does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Schneider Electric may become entitled to and the total maximum sum that County may become liable to pay to Schneider Electric shall not under any conditions, circumstances, or interpretations thereof exceed Seventy-Two Thousand, Eight Hundred and 00/100 dollars (\$72,800.00). In no event will the amount paid by County for all Services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
4. **Public Information Act.** Schneider Electric expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Schneider Electric shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
5. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Schneider Electric for any reason are hereby deleted. Subject to Section 9 of Schneider Electric's Terms and Conditions of Sale,

Schneider Electric shall indemnify and defend County against all third party losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, to the extent arising from activities of Schneider Electric, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of Schneider Electric or any of Schneider Electric's agents, servants or employees.

**6. Applicable Law; Arbitration; Attorney Fees; Liability.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Schneider Electric in any way associated with the Agreement. In no event will the County's liability whether in contract or tort, exceed the price of the Services paid to Schneider Electric as stated in Section 3 of this Addendum.

**7. Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Schneider Electric hereby verifies that Schneider Electric and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Schneider Electric does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
- c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Schneider Electric does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
- d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Schneider Electric does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

8. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute. No other provisions to this Agreement apply except for the terms which appear and/or are incorporated in this Addendum and Exhibit A.
9. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, SCHNEIDER ELECTRIC ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
10. **Use of Customer Name.** Schneider Electric may use County's name without County's prior written consent only in any of Schneider Electric's customer lists, any other use must be approved in advance by County.
11. **Performance Warranty.** Schneider Electric warrants to County that Schneider Electric has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Schneider Electric will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.  
  
Schneider Electric warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A, and in accordance with the requirements and specifications of ESC's Contract # R220703.
12. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls. In the event there is a conflict between this Addendum and the terms and conditions of ESC's Contract# R220703, then the terms and conditions of ESC's Contract # R220703 controls to the extent of the conflict.
13. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
14. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

15. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
16. **Personnel.** Schneider Electric represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Schneider Electric shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Schneider Electric shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Schneider Electric or agent of Schneider Electric who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement. When performing Services on-site at the County, Schneider Electric shall comply with, and ensure that all Schneider Electric Personnel comply with, all rules, regulations and policies of County that are communicated to Schneider Electric in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

17. **Compliance with Laws.** Schneider Electric shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Schneider Electric shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
18. **Independent Contractor.** In the performance of work or services hereunder, Schneider Electric shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Schneider Electric or, where permitted, of its subcontractors. Schneider Electric and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
19. **Third Party Beneficiaries.** This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.
20. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms

and conditions of this Agreement for each party remain valid, binding, and enforceable.

**21. Dispute Resolution.**

21.1. The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement by negotiation between the parties. In the event the dispute cannot be settled through negotiation, the parties agree to submit the dispute to non-binding mediation.

21.2. The party requesting mediation shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within ten (10) days of the receipt of such notice, such dispute shall be submitted for mediation.

21.3. Each party shall be responsible for its own costs associated with the mediation.

21.4. The requirement to seek mediation shall be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law or equity under any applicable statute of limitations.

21.5. Schneider Electric acknowledges that County is subject to the requirements of the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, the County will comply with the provisions of the Open Meetings Act.

**22. Remote Access.** Schneider Electric acknowledges that remote access to County Systems is not needed for Schneider Electric to perform any Services pursuant to this Agreement. Should the parties later determine that Schneider Electric needs remote access to County Systems to perform any required Services, Schneider Electric will comply with the security requirements of County concerning remote access to County Systems, as provided in writing by County to Schneider Electric.

For purposes of this Section, "Systems" means any: (i.) computer programs, including, but not limited to, software, firmware, application programs, operating systems, files and utilities; (ii.) supporting documentation for such computer programs, including, without limitation, input and output formats, program listings, narrative descriptions and operating instructions; (iii.) data and/or media; (iv.) equipment, hardware, servers, and/or devices; and/or (v.) network(s).

(Execution Page Follows)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will. This Agreement is effective upon execution by both parties.

**FORT BEND COUNTY**

**SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.  
USA, INC.**

\_\_\_\_\_  
KP George, County Judge

DocuSigned by:  
*Neal Eckles*  
\_\_\_\_\_  
Authorized Agent- Signature

\_\_\_\_\_  
Date

Neal Eckles  
\_\_\_\_\_  
Authorized Agent- Printed Name

ATTEST:

District General Manager  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

26-Aug-2022  
\_\_\_\_\_  
Date

REVIEWED:

*Alana J. Russell*  
\_\_\_\_\_  
Fort Bend County Libraries

REVIEWED:

*Robyn Doughtie*  
\_\_\_\_\_  
Information Technology Office

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$\_\_\_\_\_ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

Exhibit A: Schneider Electric's Proposal and Terms and Conditions of Sale (dated July 6, 2022)

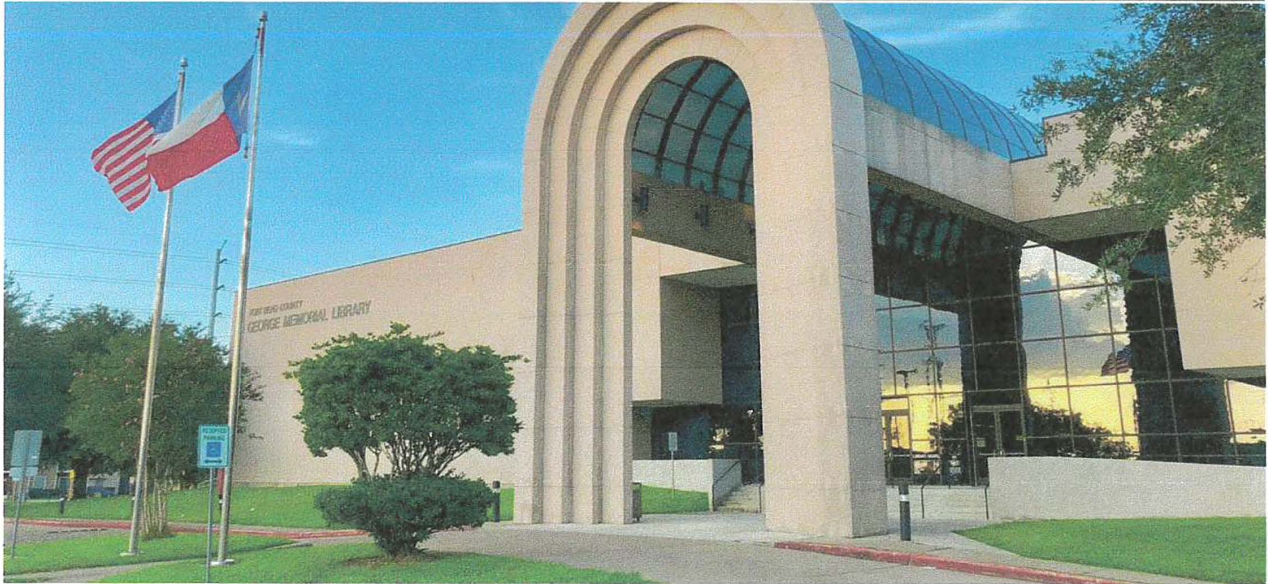
# Exhibit A

Exhibit A



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## Fort Bend County Library BAS Upgrades and Cinco Ranch controller Upgrades



Life Is On



**Proposal by:**

**Randy McNall  
Account Manager**

**7/6/2022**



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in energy management

## Schneider Electric Services Negotiation

10900 Equity Dr.  
Houston, TX 77041

<b>Company</b>	Fort Bend County Library	<b>Date</b>	7/6/2022
<b>Attention</b>	Jill Sumpter	<b>Negotiation #</b>	7622-UpGrades--RLM
<b>Project</b>	<b>FBC Library BAS Upgrades and Cinco Ranch Controller Upgrades</b> <b>Total Scope Net Pricing...\$72,800</b>		

### Omnia Partners Contract # R170602

### BAS Upgrade Scope of Work

Software upgrade of the I/Net BAS software to EcoStruxure for Sugarland, First Colony, and Cinco Ranch Libraries including EcoStruxure Enterprise Server Software, (3) AS-P EcoStruxure Network interfaces with UPS battery backup, and new EcoStruxure graphics for each library.

### BAS Scope Details

#### Software

- EcoStruxure Enterprise Server Software
  - Installed on Fort Bend County supplied Server
- Existing I/Net controllers to remain but to have software version upgrades to each controller to prepare them for EcoStruxure software transition
- User interface to the EcoStruxure Server via EcoStruxure Web Station.
  - No additional software needed using Web Station
    - Multi-user interface

#### Hardware

- EcoStruxure network interfaces with RS-485 I/Net terminal dongle to be installed at each of the (3) Fort Bend Libraries
  - EcoStruxure Network interfaces to replace the existing I/Net 527 interfaces
  - CAT6 cabling to MDF room from EcoStruxure Network interface for Cinco Ranch Library
- UPS battery backup for each EcoStruxure Network interface
- Existing I/Net communications cabling to terminate to the RS-485 Terminal dongle

### Graphics Upgrades (Sugarland, First Colony, and Cinco Ranch Libraries)

- Existing I/Net graphics to be replaced with EcoStruxure graphics
- Graphics:
  - Fort Bend County Library Map Page with links to each of the 3 libraries
    - Location Graphics pages to include:
      - Location Summer Index Page
      - Central Plant Graphic
      - Individual AHU Flow diagram graphics
      - Zone summary Temperature page

## Schneider Electric Services Negotiation

### Installation and Verification

- EcoStruxure Enterprise Server Software install on Server
- Downloads to I/Net controllers at the 3 locations
- Network interface installation
- UPS battery Backup Installation
- Binding of I/Net points to the EcoStruxure graphics
- Verification of all points to EcoStruxure Software
- Up to 4 hours Informal on-site User training
  - Schneider Electric provides monthly EcoStruxure training at no charge at the Houston Branch.

## Fort Bend County Cinco Ranch Library BAS Controller Upgrades



### **Cinco Ranch Controller Upgrades Scope of Work**

Upgrade of 3 controllers at Cinco Ranch Library to EcoStruxure BACnet IP controllers. Scope is Contingent on EcoStruxure Software upgrade running concurrently or has been completed as the EcoStruxure network interfaces need to be installed prior to controller replacement

## Schneider Electric Services Negotiation

### Cinco Ranch Controller Upgrades Scope Details

#### Plant Controller Replacement at Cinco Ranch

- Existing failed I/Net controller to be replaced with EcoStruxure BACnet controller
- EcoStruxure controller communication (CAT6) from EcoStruxure Network interface in AHU 1-1 & 1-2 mech room to plant controller enclosure
- Programming of the Chiller and pumps points and sequencing
  - Excludes chiller interface (no interface exists currently)
- Field devices replaced for EcoStruxure compatibility:
  - Zone Space Temperature Sensor
  - Chilled Water Supply & Return Immersion Temperature sensors
  - Outside Air Temperature Sensor

#### AHU 1-1 Controller Replacement at Cinco Ranch

- Existing failed I/Net controller to be replaced with EcoStruxure BACnet controller
- Programming of the AHU points and sequencing
- Binding of controller points into EcoStruxure graphics
- Field devices replaced for EcoStruxure compatibility:
  - (5) Zone Space Temperature Sensor
  - (1) Duct Temperature sensors

#### AHU 1-2 Controller Replacement at Cinco Ranch

- Existing failed I/Net controller to be replaced with EcoStruxure BACnet controller
- Programming of the AHU points and sequencing
- Binding of controller points into EcoStruxure graphics
- Field devices replaced for EcoStruxure compatibility:
  - (5) Zone Space Temperature Sensor
  - (1) Duct Temperature sensors

### Qualifications

- All site work to be performed during **normal working hours**. M-F 7am-5pm.
- Excludes sequence changes to existing I/Net controllers
- Excludes submittals
- Progress billing will be used
- Price quoted does not include any state, federal, or local taxes
- Occasionally, during the process of testing and service, parts and or components will be found to be out of tolerance. Should issues be discovered that require additional parts and labor, a separate proposal will be provided and work will not proceed until your authorization has been provided.



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## Schneider Electric Services Negotiation

### Customer Responsibilities

- Provide free and clear access to the job site and equipment.
- Provide 48 hours of notice for schedule changes.
- Provide point of contact for all specific job and site requirements as well as emergency instances information.
- Coordinate all power outages with utility as needed and absorb any related costs.

### Schedule

This work will be performed upon receipt of a purchase order and all pertinent equipment information. Once received, Schneider Electric Services will contact your provided point of contact to coordinate the schedule. A two (2) week advance notice is required for scheduling onsite work. In the event of cancellation, Schneider Electric Services requests a minimum 1-week notice prior to the scheduled start date.

### Proposal Acceptance

This proposal is valid for thirty (30) days from date of issue. Any changes to the scope of work or Bill of Material will require a revised quotation which may result in a price change. To accept this proposal, please issue a Purchase Order to:

Schneider Electric USA, Inc.  
Houston Field Services  
10900 Equity Dr  
Houston, TX 77041

Attention: Randy McNall  
Reference: 7622-UpGrades-RLM

### Delays

All work is to be performed on a continuous basis without any unnecessary delays. In the event that the on-site work is delayed due to actions beyond SE Services control, SE Services will charge for the additional personnel time and expenses in accordance with published time and material rates.

### Extra Work

During the course of the specified work, it is possible that the need for additional work will be identified. In such cases, we will offer a firm price or rates to perform the recommended scopes. We will review the details with the appropriate representative and will need authorization before we proceed.

Exhibit A



## Schneider Electric Services Negotiation

### Terms and Conditions

This work scope is subject to the existing terms and conditions between your company and SE Services. If no agreement is in place, the work described in this proposal will be performed in accordance with the Schneider Electric USA, Inc. – Services Terms and Conditions of Supply and Performance (attached). No other terms and conditions shall apply and Schneider Electric specifically rejects any preprinted terms and conditions on customer's purchase order. Please note that taxes, if applicable, are not included.

Thank you for allowing Schneider Electric the opportunity to provide this proposal.

If you have questions regarding the contents of this proposal or need additional information, contact me at 832-256-7542 or randy.mcnall@se.com. I look forward to the possibility of working with you in the near future.

Sincerely,

Randy McNall

Services Sales Engineer  
Schneider Electric

## TERMS AND CONDITIONS OF SALE

900512PITC R07/15/21

This quotation and any exhibits and attachments hereto (collectively, "Agreement") and any information contained herein, is the property of Schneider Electric Buildings Americas Inc. ("Company") and shall constitute proprietary and confidential information unless given to a public entity and required by law to be public information. The party to whom this quotation is addressed ("Customer") acknowledges the confidential nature of this Agreement and agrees to take all commercially reasonable and necessary precautions to ensure the confidential treatment of this Agreement and all information contained herein. This Agreement will not be used, copied, reproduced, disclosed or otherwise disseminated or made available, directly or indirectly, to any third party for any purpose whatsoever without the prior written consent of Company. The parties agree to be bound by the following terms and conditions.

1. **Quotations and Acceptance.** The quotation is based solely on the bid documents, which consist of the project drawings, specifications and/or instructions of the Customer only modified by written agreement or Company objection. Significant deviations between the actual conditions and circumstances of the work and those specified in the bid documents shall be cause for an adjustment in work scope, price and time allowed for performance. Written quotations shall be valid for no more than thirty (30) days from the date of issue, unless specifically stated otherwise herein. Customer may accept the quotation by signing and returning a copy to Company or by returning Customer's own written instrument or order expressly acknowledging the quotation and terms set forth herein, provided, however, Company hereby gives notice of its objection to any different or additional terms or conditions contained or referenced in Customer's order, which will be of no force or effect except as may be expressly agreed to by Company in writing. It is the intent of the parties that these Terms and Conditions of Sale shall govern the sale of goods delivered and services performed. Upon acceptance, this Agreement constitutes the entire understanding between the parties respecting the goods or services delineated herein and supersede all prior oral or written understandings or representations relating to such goods or services. This Agreement may not be discharged, extended, amended or modified in any way except by a written instrument signed by a duly authorized representative of each party. Company assumes that the Subcontract Agreement offered will contain terms that are substantively similar to the AIA provisions that are in accordance with the provisions of the prime contract, including any supplements. Upon award, Company assumes that contract provisions will be reviewed and negotiated in good faith to reach a mutual acceptance of both parties.

2. **Payment.** Absent a contrary provision herein, Customer will pay Company monthly progress payments on a net thirty (30) days basis from date of invoice for materials delivered (or stored at an off-site storage facility) and services performed, less any retained reserve which will be mutually agreed upon in writing by the parties. The aggregate amount of any such retained reserves shall be paid by Customer to Company within thirty (30) days after the date of substantial completion. If Company provides a Certificate of Substantial Completion, such certificate shall conclusively establish such date. All invoices due and payable to Company, less any applicable retained reserve, shall accrue interest at a compounded per annum rate not to exceed 1½% per month (18% per annum) or the maximum rate permitted by law. Acceptance and endorsement by Company of an instrument for less than the full amount which Company claims to be due shall not be deemed to be an

## Schneider Electric Services Negotiation

admission of payment in full and any conditions to the contrary which are noted on such an instrument shall not be binding on Company. If Customer does not pay Company, through no fault of Company, within seven (7) days from the time payment was due, Company may, without prejudice to any other remedy it may have, upon seven (7) additional days' written notice to Customer, stop its work until payment of the amount owing has been received and the contract sum shall be equitably adjusted for reasonable costs of shutdown, delay and startup or in the alternative Company may terminate this contract for material breach and all monies due Company for services performed and materials delivered shall be paid upon demand. Company shall be entitled to recover from Customer all costs for collection, including reasonable attorneys' and professionals' fees. To the extent payments are received and as required by law, and upon Customer's request, Company will furnish lien waivers as the work progresses.

Company reserves a security interest in any goods sold to the extent of the invoiced amount to secure payment of Customer's obligation. In event of payment default, Company may repossess such goods and a copy of the invoice may be filed with appropriate authorities as a financing statement to event or perfect Company's security interest in the goods. At Company's request, Customer will execute any necessary instrument to perfect Company's security interest.

**3. Price and Taxes.** The price for the goods and services hereunder are those shown on the face of this Agreement. The price of this Agreement does not include sales, use, excise, duties or other similar taxes, unless otherwise expressly provided herein. Any taxes (other than taxes due on Company's net income) that are payable hereunder shall be the responsibility of Customer. If applicable, Customer shall provide Company a copy of any appropriate tax exemption certificate for the state(s) into which the goods are to be shipped.

**4. Changes and Claims.** All materials and labor furnished hereunder shall be in accordance with shop drawings submitted by Company and approved by Customer. Any changes in the work as set forth in approved shop drawings, or from the scope of work as described herein, will require a written change order submitted to Company by Customer. An equitable adjustment will be made in the contract price or delivery dates or both, and this Agreement will be modified accordingly in writing. The cost or credit to Customer for performance of such change order shall be determined by mutual written agreement prior to the commencement of any work under such change order. Customer shall notify Company promptly in writing of any circumstances arising from the performance of the work herein described which reasonably may be anticipated to result in a claim or back charge to Company. Upon Company's receipt of such notification, Company shall have five (5) working days in which to remedy such circumstances and to avoid the imposition of such claim or back charge. Company will not be liable for any claim or back charge where Company has not been notified in the manner as set forth above.

**5. Access and Overtime.** This Agreement is based upon the use of straight time labor only during regular working hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Company's holidays). If Customer requests Company to perform any work outside of regular working hours, overtime and other additional expense occasioned thereby will be charged to and paid by Customer. If Company's work is to be performed on the project site, Customer will afford unrestricted access to Company and its employees and agents to all work areas.

**6. Damage or Loss to Equipment.** In the case of equipment not to be installed by or under supervision of Company, Company shall not be liable for damage to or loss of equipment after delivery of such equipment to the point of shipment. In the case of equipment to be installed by or under supervision of Company, Company shall not be liable for damage or loss after delivery by the carrier to the site of installation; if thereafter, pending installation or completion of installation or full performance by

Company, any such equipment is damaged or destroyed by any cause whatsoever, other than by the fault of Company, Customer agrees to promptly pay or reimburse Company an amount equal to the damage or loss which Company incurs as a result thereof, in addition to or apart from, any and all other sums due or to become due hereunder. **7. Delays.** Customer shall prepare all work areas so as to be acceptable for Company's work required hereunder. Customer acknowledges that the contract sum is based upon Company being able to perform the work in an orderly and sequential manner, as Company so determines. If Company's performance is delayed, interfered with, suspended, or otherwise interrupted, in whole or in part, by Customer, other contractors on the project site, or by any other third party or by any act within the power and/or duty of Customer to control, then Customer agrees that it will be liable to Company for all increased costs and damages which Company incurs as a result thereof. Furthermore, if Company is delayed at any time in the progress of the work by any act or neglect of Customer, or by any separate contractor employed by Customer, or by changes ordered in the work or by labor disputes, fire, delay in transportation, adverse weather conditions, casualties, or any other causes beyond Company's control, then the time for completion of the work shall be extended for a period equal to the time lost by reason of such delay.

**8. Warranty.** Company warrants to Customer that all tangible articles manufactured by Company will be free of defects in workmanship and material and that the work performed will be of good quality and will conform to the requirements of the bid documents. If the article is installed by Company, Company's sole obligation under this warranty shall be to provide, without charge, parts and labor necessary to remedy defects which appear within twelve (12) months from the date of beneficial use or occupancy, as applicable. If Company provides a Certificate of Substantial Completion, such certificate shall conclusively establish such date. If article is not installed by Company, the warranty period shall be within twelve (12) months of shipment of said article. Warranty claim must be made to Company in writing within such twelve (12) month period. All transportation charges incurred in connection with the warranty for equipment not installed by Company shall be borne by Customer. Company warrants that for equipment furnished and or installed, but not manufactured by Company, Company will extend the same warranty terms and conditions which Company receives from the manufacturer of said equipment.

This warranty is the sole and exclusive warranty given with respect to any articles delivered or services performed by Company. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED (EXCEPT WARRANTIES OF TITLE), INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty is subject to proper installation of the articles (if installation is not performed by Company or authorized subcontractors of the Company) and maintenance and storage of the articles in accordance with the specifications and directions supplied by Company. This warranty does not apply to any defect, malfunction or failure caused by repairs made by other than or without the consent of Company or the article has been subject to abuse, misuse, neglect, tampering, accident or damage by circumstances beyond Company's control, including without limitation, acts of God, war, acts of government, corrosion, power fluctuations, freeze-ups, labor disputes, differences with workmen, riots, explosions, vandalism, or malicious mischief, nor to defective associated equipment or use of the articles with equipment for which they were not sold. All of Company's obligations under this warranty will immediately terminate and be of no further force or effect if all or any part of the purchase price (including any installment payment) with respect to any article covered by this warranty is not paid to Company when due. If cause of defect is found not to be Company's responsibility, standard rates for repair or replacement and labor shall apply.

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**9. Limitation of Liability.** In no event will Company's total aggregate liability in warranty or contract exceed the contract price paid for the specific product or service that gives rise to the claim excluding third party claims for personal injury, death or as may be required by law. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY LOST PROFITS, LOSS OF USE, DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION OR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10. Laws and Permits.** Company shall comply with all applicable federal, state, and local laws and regulation and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Customer. This contract shall be interpreted and governed under and in accordance with the laws of the jurisdiction in which the goods are delivered or services are performed without regard to its choice of law provisions.

**11. Disputes.** Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by good faith consultation and negotiation. If those attempts fail, either party shall provide written notice within thirty (30) days to the other to mutually agree on an arbitration process. If a process is not agreed upon within thirty (30) days, final and binding arbitration in accordance with the then current Construction Industry Arbitration Rules of the American Arbitration Association shall commence and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in the federal, state or municipal courts serving the county in which the project is located unless the parties mutually agree otherwise. The prevailing party shall recover all reasonable legal costs and attorney's fees incurred as a result, which shall be promptly paid by the non-prevailing party. Any dispute or demand for arbitration must be commenced within one (1) year after the cause of action has accrued. Nothing herein shall limit any rights Company may have under construction mechanic or materialmen lien laws. Company shall have the right to suspend affected services pending resolution of disputes.

**12. Insurance.** The parties shall each maintain insurance coverage including without limitation, Workers' Compensation and Employer's Liability at statutory limits, Automobile Liability covering all owned, hired and other non-owned vehicles, and Commercial General Liability covering public liability and property damage with limits generally required for its respective industry with not less than \$1,000,000 minimum coverage per occurrence. Such insurance shall be with reputable and financially responsible carriers authorized to transact business in the jurisdiction in which the project and services are being performed. No credit will be given or premium paid by Company for insurance afforded by others.

**13. Clean Up.** Company agrees to keep the job site clean of debris arising out of its operations. Customer shall not back charge Company for any costs or expenses for clean up or otherwise without prior written notice and Company's written consent.

**14. Severability.** The invalidity or unenforceability of any provision herein shall in no way affect the validity or enforceability of any other provision.

**15. Disclaimer.** Company reserves the right to amend, withdraw or otherwise alter this submission without penalty or charge as a result of any event beyond its control arising from or due to the current COVID-19 epidemic or events subsequent to this epidemic / pandemic including changes in laws, regulations, by laws or direction from a competent authority. The Customer

acknowledges that the products or part thereof are produced in, or otherwise sourced from or will be installed areas already affected by, or that may be affected in the future by the prevailing COVID-19 epidemics/pandemic and that the situation may trigger stoppage, hindrance or delays in Company's (or its subcontractors) capacity to produce, deliver, install or service the products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by the Company (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of Company's (or its subcontractors') employees. The Customer therefore recognizes that such circumstances shall be considered as a cause for excusable delay not exposing the Company to contractual sanctions including without limitation delay penalties, liquidated or other damages or termination for default.

**16. Ethics and Compliance with Laws.** Each party shall comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices of that party. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party. In the event Customer has concerns related to ethics, compliance, or Company's Principles of Responsibility, and/or any potential violations of these policies, Customer is welcome to make use of Company's Green Line. The Green Line is Company's global helpline for external stakeholders. It is a confidential channel through which Customers can ask questions and raise concerns. Reports can be made using the link: <https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.

### 17. Cybersecurity.

**17.1. Customer's Obligations for Its Systems:** Customer is solely responsible for the implementation and maintenance of a comprehensive security program ("Security Program") that contains reasonable and appropriate security measures and safeguards to protect its computer network, systems, machines, and data (collectively, "Systems"), including those Systems on which it runs the Products or Services provided by Company, against Cyber Threats. "Cyber Threat" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt Customer's Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of Customer's Systems, including any data, including through malware, hacking, or similar attacks.

**17.2. Without limiting the foregoing, Customer shall at a minimum:**

- (a) have qualified and experienced personnel with appropriate expertise in cyber security maintain Customer's Security Program, and have such personnel regularly monitor cyber intelligence feeds and security advisories applicable to Customer's Systems or Customer's industry;
- (b) promptly update or patch its Systems or implement other appropriate measures based on any reported Cyber Threats and in compliance with any security notifications or bulletins, whether publicly disclosed on Company's security notification webpage at <https://www.se.com/ww/en/work/support/cybersecurity/security-notifications.jsp> or otherwise provided to Customer;
- (c) regularly monitor its Systems for possible Cyber Threats;
- (d) regularly conduct vulnerability scanning, penetration testing, intrusion scanning, and other cyber security testing on its Systems; and



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(e)meet the recommendations of Company's Recommended Cybersecurity Best Practices, available at <https://www.se.com/us/en/download/document/7EN52-0390/>, as may be updated by Company from time to time, and then-current industry standards.

17.3. Customer's Use of the Products, Software, and Services: Company may release Updates and Patches for its Products, Software, and Services from time to time. Customer shall promptly install any Updates and Patches for such Products, Software, or Services as soon as they are available in accordance with Company's installation instructions and using the latest version of the Products or Software, where applicable. An "Update" means any software that contains a correction of errors in a Product, Software, or Service and/or minor enhancements or improvements for a Product, Software, or Service, but does not contain significant new features. A "Patch" is an Update that fixes a vulnerability in a Product, Software, or Service. Customer understands that failing to promptly and properly install Updates or Patches for the Products, Software, or Services may result in the Products, Software, or Services or Customer's Systems becoming vulnerable to certain Cyber Threats or result in impaired functionality, and Company shall not be liable or responsible for any losses or damages that may result.

17.4. Identification of Cyber Threats: If Customer identifies or otherwise becomes aware of any vulnerabilities or other Cyber Threats relating to the Products, Software, or Services for which Company has not released a Patch, Customer shall promptly notify Company of such vulnerability or other Cyber Threat(s) via the Company's Report a Vulnerability page (<https://www.se.com/ww/en/work/support/cybersecurity/report-a-vulnerability.jsp#Customers>) and further provide Company with any reasonably requested information relating to such vulnerability (collectively, "Feedback"). Company shall have a non-exclusive, perpetual and irrevocable right to use, display, reproduce, modify, and distribute the Feedback (including any confidential information or intellectual property contained therein) in whole or part, including to analyze and fix the vulnerability, to create Patches or Updates for its customers, and to otherwise modify its Products, Software, or Services, in any manner without restrictions, and without any obligation of attribution or compensation to Customer; provided, however, Company shall not publicly disclose Customer's name in connection with such use or the Feedback (unless Customer consents otherwise). By submitting Feedback, Customer represents and warrants to Company that Customer has all necessary rights in and to such Feedback and all information it contains, including to grant the rights to Company described herein, and that such Feedback does not infringe any proprietary or other rights of third parties or contain any unlawful information.

### 18. Important Export.

18.1. The Products and Services provided by Company under this Contract contain or may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. Customer acknowledges and agrees that the Products, assignment and/or usage of the Products, Software, Services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Deliverables") under these Terms and Conditions of Sale shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations.

18.2. Unless applicable export license/s has been obtained from the relevant authority and Company has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Customer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons.

18.3. If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit Company from fulfilling any order, or would in Company's judgment otherwise expose Company to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, Company shall be excused from all obligations under such order and/or these Terms and Conditions of Sale.