Dynamic Systems, Inc. (DSI) Service Terms and Conditions

Service Provider. Customer and DSI (Parties) understand and agree that DSI is a provider of Services (defined below) and not a merchant or vendor of goods and also that DSI is an independent contractor and not an agent or employee of Customer.

Acceptance: Customer warrants that: (a) anyone requesting Services as an employee, agent, or in any other capacity on behalf of the Customer has authority to do so; whether verbally, in writing, or otherwise; and (b) DSI's performance of Services is expressly conditioned upon Customer's acceptance of all DSI terms and conditions, unless Parties have executed a superseding separate agreement.

Payment. Customer shall pay DSI for all services and materials (Services) furnished hereunder according to the agreed price and/or Payment Schedule, subject to additions and deductions for changes, as may be agreed upon by both parties in writing, and to make payment when due on account thereof upon request for payment by DSI. Customer shall pay DSI for all permit and engineering fees incurred by DSI for the performance of the Services. Any amount not paid when due by Customer, absent any good faith dispute regarding the unpaid portion, will be subject to a late charge in the amount of 1.5% per month and such interest shall accrue from the day after the date on which payment is due and up to and including the date on which the payment is received by DSI. DSI may amend the Payment Schedule upon no less than 5 days written notice in the event that: (a) additions, alterations, repairs or adjustments are made to the HVAC and/or Plumbing system(s) by others; or (b) Scheduled Equipment is replaced or removed from the HVAC and/or Plumbing system(s) by others; or (c) Preventative Maintenance Services are amended or terminated early prior to the Term's Expiration Date.

Schedule. All Services will be performed during regular working hours, unless otherwise mutually agreed. All additional services, including overtime or after-hours, shall be performed only as mutually agreed. For Services or additional services performed outside of regular hours, Customer shall compensate DSI pursuant to DSI's current overtime, holiday and/or after-hours rates.

Term: This Agreement shall commence on the Effective Date and continue in full force through the Expiration Date. Either Party may terminate this Agreement without cause by giving the other Party 30 days' prior written notice of its election to terminate. In the event Customer terminates without cause, Customer shall pay DSI for all Services performed prior to DSI's receipt of such notice. Either Party may terminate this Agreement in the event of a material default by the other Party, provided that the terminating Party has given the defaulting party at least 15 days' prior written notice of its intent to terminate this Agreement and the defaulting Party has failed to cure the default within such 15 day period. If a petition in bankruptcy is filed by or against DSI, Customer, or Owner, either Party may terminate this Agreement upon 48 hours' written notice to the other Party.

Renewal. Unless a new Agreement is signed or a termination notice is given by either Party, this Agreement shall automatically renew at end of each Agreement year (Agreement Renewal). DSI may give notice of any Pricing or rate changes prior to the expiration of Agreement Renewal and Customer shall have the option to terminate Agreement or continue Services.

Taxes & Tariffs. DSI's invoices, Payment Schedule, and/or Pricing shall be adjusted to compensate for any sales, use or other similar tax for which Contractor may be liable. In the event a tariff, duty, or similar charge (Tariff) related to materials, equipment, or goods needed for performance of our services is imposed or increased after the date of our Proposal, our Pricing shall be equitably adjusted based on the actual change in the cost resulting from the Tariff.

Operation. It is understood that DSI's responsibility does not include: the operation of the equipment; repairs, replacements or service necessitated by improper operation by others, negligence of others, misuse of equipment by others; or damage from corrosion, vibration, electrolytic action or from any other cause beyond DSI's control. Services do not include the furnishing of any equipment, inspections or alterations as recommended or required by insurance companies, governmental entities, or other municipal authorities, unless agreed by both Parties in writing.

Delays, Damages & Liability. Neither Party will be liable to the other for default, damage, loss, injury or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence, of that Party, except to the extent insured by a covered loss. DSI shall not be liable for any consequential or incidental damages arising in any manner from equipment or material furnished or Services performed by DSI.

Hazardous Materials. Customer shall supply DSI with all information in its possession relating to the presence of hazardous material, including asbestos, in any area on Customer's premises where DSI undertakes any Services (Property) that may result in disturbance of such hazardous materials. Customer shall be solely responsible, at its expense, for addressing the potential for or presence of hazardous materials in conformance with applicable law, including abatement, remediation, transport and disposal of any pre-existing hazardous material or substance at the Property. DSI shall only be responsible for conforming with laws applicable to the hazardous materials it brings onto the Property, if any, in providing Services.

Warranty. DSI warrants that: (a) equipment, materials and OEM parts furnished and installed by DSI will carry the applicable manufacturer's warranty; (b) non-repair related Services shall be performed by DSI in a good and workmanlike manner and shall be free from defects for period of 90 days after completion; and (c) repair-related Services shall be warranted for a period of 60 days (and Customer shall pay DSI at its current regular rates for follow-up repair Service requested outside of 60 day warranty period). DSI shall charge Customer for labor costs only regarding Services performed on equipment furnished and installed by DSI during applicable manufacturer's warranty period. DSI's warranty excludes equipment and Service which has been modified by others, abused, altered, misused, or improperly maintained. ***These warranties are exclusive and in lieu of all other warranties, express or implied, but not limited to, those of merchantability and fitness for a specific purpose.***

Insurance: DSI shall at all times maintain the following coverages: General Liability, Automobile Liability, Statutory Workers Compensation, Umbrella, and Installation Floater. Policies shall include the Customer as Additional Insured (except Workers Compensation) and include a waiver of subrogation in favor of Customer. Customer and DSI waive all rights against each other and any subcontractors of any tier, suppliers, agents, and employees of each other for damages caused by fire, water, or other causes of loss, to the extent those losses are covered by property insurance carried by the Customer or DSI. Customer or Property Owner shall at all times maintain liability and property insurance of the types and limits as will protect Customer and Property from claims for damage because of bodily injury, including death or damage because of injury to or loss, destruction, or loss of use of property which may arise from DSI's performance or lack performance of Services. Claims for property damage to an existing building shall be submitted to Customer's or Property Owner's Property Insurance or, when applicable, DSI's General Liability or Installation Floater. DSI may be responsible for its pro-rata share of any deductible, not to exceed $10,000, for any loss payable under the Property Insurance carried by the Customer or Property Owner, due to the negligence or willful misconduct of DSI.

Indemnity. EACH PARTY (INDEMNIFYING PARTY) SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY (INDEMNIFIED PARTY), ITS AFFILIATES, AND ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, JUDGMENTS, SETTLEMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES ARISING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE (OTHER THAN TO THE SERVICES) AND ARISING FROM A BREACH OF THIS AGREEMENT BY THE INDEMNIFYING PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, BUT ONLY TO THE EXTENT CAUSED BY NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES. THE INDEMNIFIED PARTY SHALL PROMPTLY NOTIFY THE INDEMNIFYING PARTY OF ANY SUCH CLAIM AND REASONABLY COOPERATE WITH THE INDEMNIFYING PARTY IN DEFENSE OF SUCH CLAIMS AT THE INDEMNIFYING PARTY'S EXPENSE.

Disputes. If a dispute arises between the Parties, the Parties shall promptly attempt in good faith to resolve such dispute by negotiation. In the event the dispute is not resolved by such negotiation, the Parties shall promptly attempt to resolve such dispute by mediation as a condition precedent to instituting legal action. If either Party is required to bring or defend any action arising out of DSI's Services or to enforce or defend any provision of DSI's Proposal and/or these Terms and Conditions, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the other Party. Any amount not paid when due by Customer, absent any good faith dispute regarding the unpaid portion, shall be subject to a late charge in the amount of 1.5% per month and such interest shall accrue from the day after the date on which payment is due and up to and including the date on which the payment is received by DSI. Customer agrees to reimburse DSI for all reasonable attorney's fees and costs incurred by DSI in the collection of amounts due and owing.

Binding Effect; Entire Agreement. DSI's Proposal and these Terms and Conditions: (a) shall be binding upon and inure to the benefit of the respective successors, permitted assigns and representatives of the Parties; and (b) contain the entire agreement between the Parties and cannot be amended except by a written agreement signed by both Parties. If Customer directs DSI to begin performance of Services, Customer agrees to DSI's Proposal and these Terms and Conditions unmodified.

Applicable Law. DSI's Proposal and these Terms and Conditions shall be governed by and construed in accordance with the laws of Texas. DSI shall comply with all laws, ordinances, and governmental regulations applicable to the performance of the Services.