



## SOFTWARE MAINTENANCE AGREEMENT TERMS AND CONDITIONS

Hand Held Products, Inc., d/b/a Honeywell Scanning and Mobility, operating under Honeywell's Sensing and Productivity Solutions business unit (Honeywell) and the Customer agree that the following terms and conditions apply to any Customer order accepted by Honeywell to provide maintenance services ("Services") for Software. "Software" refers to Honeywell's standard software products which have been licensed to Customer by Honeywell. The particular Software covered by this Agreement is listed on the Standard Maintenance Agreement Summary Page issued to Customer. Software maintenance is not available for any software which was custom developed or otherwise customized for Customer. Customer warrants that it has a license to use the Software and that it will keep the license in effect.

**1.0 MAINTENANCE SERVICES:** Honeywell agrees to provide the following Services to support the Software:

**1.1 Product Support:** Customer shall have access to Honeywell technical support personnel for support of the Software installation or license covered by the Agreement. Customer may request support at Honeywell's online support site. Telephone support is available 5 AM to 5 PM PT, Monday through Friday (excluding Honeywell holidays, unless otherwise designated by Honeywell). Customer shall have access to obtain Maintenance Updates according to procedures established by Honeywell.

**1.2 Maintenance Updates:** A "Maintenance Update" is a patch or updated version of the Software which addresses code errors or provides minor improvements in functionality or performance of the Software. Maintenance Updates are typically developed by Honeywell in the normal course of business. A Maintenance Update may or may not repair "bugs" which have been reported by the Customer. Honeywell will determine, in its sole discretion, the content and timing of any such Maintenance Updates. Maintenance Updates do not include versions of the Software which contain material improvements in functionality or performance ("Software Version Release"). Honeywell will determine in its sole discretion whether a release constitutes a Maintenance Update or a Software Version Release. Software Version Releases may be made available to Customer at an additional charge.

**2.0 EXCLUDED SERVICES:** The Customer is responsible for the interface between the Software and the Customer's other software and equipment, and for installing, managing and operating any Maintenance Updates. Honeywell will be under no obligation to provide any modifications, assistance or support requested by Customer but not specifically included in the Services, but may, at its discretion, agree to provide the additional Services at Honeywell's then-current fee structure. Services under this Agreement do NOT include repair or service of the hardware on which the software resides, or troubleshooting of systems or networks of which the Software or the hardware upon which it resides may be a part. Software installations or licenses not covered by an Agreement are not entitled to telephone Support or to Maintenance Updates. Nothing herein shall assure uninterrupted operation of the Software.

**3.0 PAYMENT:** Honeywell will invoice Customer for the applicable maintenance fee(s) in advance. Payment is due thirty (30) days after the invoice date.

**4.0 TAXES:** In addition to the fees due under this Agreement, the Customer agrees to pay any taxes applicable by law resulting from this Agreement, or any activities hereunder except for taxes based upon Honeywell's net income.

**5.0 TERMINATION:** This Agreement may be terminated as follows:

**5.1 Unauthorized Changes:** If the Customer or any third party modifies any covered Software, Honeywell may immediately terminate support for the modified Software by giving written notice of termination under this provision.

**5.2 Termination For Cause:** Either party may withdraw from this Agreement at any time upon written notice of default if the other party fails to cure any failure to comply with any term and condition of this Agreement within thirty (30) days after receipt of such notice of default. The parties' rights and remedies herein are in addition to any other rights and remedies provided at law or in equity. Either party may terminate this Agreement upon five (5) days written notice, with no right to cure, if the other party becomes insolvent or upon the making of an assignment for the benefit of creditors.

**5.3 Termination of Underlying License:** This Agreement shall terminate automatically for any specific Software upon the termination or expiration of the Customer's license for the use of such Software.

**5.4 Effect of Termination on Fee:** No refund or credit of any fees or charges will be due to Customer if this Agreement is terminated before the end of the specified term of the Agreement.

**6.0 INTELLECTUAL PROPERTY OWNERSHIP:** Honeywell or the Software owner shall retain title and all intellectual property rights (including but not limited to all copyright, patent and trade secret rights) in any Maintenance Update or documentation provided to Customer under this Agreement. Customer agrees to strictly comply with all terms of the underlying license(s) applicable to the Software, including but not limited to use limitations, intellectual property restrictions, and the prevention of unauthorized use, copying and disclosures.

Customer agrees that the terms of the underlying license to the Software shall extend to any Maintenance Updates or documentation provided to Customer hereunder.

**7.0 LIMITS TO LIABILITY:**

**7.1 HONEYWELL MAKES NO WARRANTIES AS TO THE SOFTWARE, MAINTENANCE UPDATES, OR ANY DOCUMENTATION DELIVERED HEREUNDER, OR THE SUPPORT SERVICES RENDERED, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.**

**7.2** In no event shall Honeywell be liable for any lost profits, lost savings or any consequential or incidental damages of any kind, even if Honeywell has been advised of the possibility of such damages, or for any claim against the customer by any other party.

**7.3** IN NO EVENT WILL HONEYWELL'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SALE OF PRODUCTS AND PROVISION OF SERVICES TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT, OR OTHERWISE), EXCEED THE AGGREGATE PURCHASE PRICE FOR SERVICES AND PRODUCTS IN QUESTION PAID BY CUSTOMER TO HONEYWELL UNDER THIS AGREEMENT.

**8.0 CONFIDENTIALITY:** The Software and Maintenance Updates or documentation provided hereunder are the confidential and proprietary information of Honeywell or the owner thereof. Customer shall not (i) disclose them to any third party without Honeywell's prior written consent or (ii) use such information for its own internal purposes except as specifically authorized in the underlying licenses for the Software.

**9.0 FORCE MAJEURE:** Honeywell shall not be liable for any delay in delivery or performance of the Services due to any cause beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authority, acts of terrorism, governmental priority, strikes or other labor disturbances, floods, epidemics, war, riot, delay in transportation, or Customer's actions or inaction. In the event of any such delay, the date of delivery or of performance shall be extended for a like period of time.

**10.0 GENERAL:**

**10.1** The Customer shall not assign this Agreement or any obligations or rights hereunder without the express written consent of Honeywell, and any such attempted assignment shall be void. This Agreement contains the entire agreement between the parties, and no modification or waiver of any of the provisions, or any future representation, promise, or addition shall be binding upon the parties unless agreed to in writing. The mere acknowledgment or acceptance of any order with provisions that are ambiguous, in addition to or inconsistent with the terms of this Agreement, or the providing of maintenance service pursuant thereto shall not be deemed as acceptance or approval of such ambiguous, additional or inconsistent provisions.

**10.2** The provisions of this Agreement are severable, and if any non-material part of it is found to be unenforceable, the other terms shall remain fully valid and enforceable. If any material provision of this Agreement is found to be invalid or unenforceable, then the parties shall negotiate language to replace such invalid or unenforceable provision. Such replacement language must be designed to replicate the original intent of the invalid language as nearly as possible.

**11.0 GOVERNING LAW:** This Agreement and any question concerning its validity, construction or performance shall be governed by the laws of the State of New York, United States of America. Sole venue and exclusive jurisdiction shall rest with the courts at York County, South Carolina, USA. The parties agree that this Agreement and any transactions under it shall not be governed by the terms of the United Nations Convention on the International Sale of Goods.