



## TERMS AND CONDITIONS

**ACCEPTANCE OF THE PROPOSAL OF LOGIX SYSTEMS, INC. ("LSI") SHALL ONLY BE UPON THE TERMS, CONDITIONS AND SPECIFICATIONS SET FORTH HEREIN AND BELOW. ANY ADDITIONAL OR DIFFERENT TERMS, CONDITIONS AND SPECIFICATIONS SHALL BE DEEMED OBJECTED TO BY LSI AND SHALL BE OF NO FORCE AND EFFECT, UNLESS ACCEPTED BY LSI BY A SIGNED, WRITTEN INSTRUMENT.**

1. **Pricing.** LSI will provide software programming and consulting services to Client for the prices set forth in the Proposal submitted by LSI. If the Proposal sets forth any work to be completed on a "time and materials" basis, the following fee schedule shall apply:

- A. [ *call for pricing* ]: Any telephone conferences, conversations, either over the phone or in person, that are related to the system's design.
- B. [ *call for pricing* ]: In-shop Programming/Debugging/Technical Support. This includes all programming tasks related to the system's control software (i.e. panel design and source code) and any debugging that takes place at LSI, to include remote downloads.
- C. [ *call for pricing* ]: On-site Programming/Debugging/Technical Support. This includes all programming tasks related to the system's control software (i.e. panel design and source code) and any debugging that takes place away from LSI, to include remote downloads. On-site hourly rate does not include travel expenses or materials incurred as a result of on-site work. Any additional monies will be added as a separate line item on the invoice. On-site hourly rate shall not exceed [ *call for pricing* ] no matter the duration of additional time spent.
- D. [ *call for pricing* ]: System Add-ons. This includes any changes to the system's original design that results in a programming change (either panel design or source code). This process will be done by either a quote for the changes needed or on a time and materials basis with a one-hour minimum. To differentiate the difference between a programming oversight and a system change, all panel layouts and button-by-button descriptions will require a signature from the Client.

If travel and lodging are required by actions requested by Client, LSI will notify Client and Client shall provide approval, in advance, of such expenses. All system hardware and cabling is to be provided by Client.

2. **Payment Terms.** Unless different terms are specified in the Proposal, the following terms govern: If payment is not received within thirty (30) days of **invoice** date, interest accrues at the lesser of: (a) payment terms as set forth on the Proposal; (b) the maximum rate permitted under applicable law; or (c) one and one-half percent (1.5%) per month from the date due until paid in full. Notwithstanding any other provision contained herein, Client is deemed to have accepted the goods and/or services provided pursuant to the proposal immediately upon receipt of the same.

3. **Independent Contractor; Taxes.** LSI shall perform all services hereunder in LSI's capacity as an independent contractor and not as an employee or agent of Client. LSI and its employees shall not be entitled to any privileges or benefits that Client may provide to its employees, and LSI shall be responsible for payment of all unemployment, social security, federal income (state and local income where applicable) and other payroll taxes imposed by any governmental body on LSI in regard to its employees who are engaged in the performance of the services. All monies to be paid under this



## TERMS AND CONDITIONS

Agreement include applicable Wisconsin sales tax. Sales tax or other related taxes for states other than Wisconsin shall be paid by the Client, unless specifically stated otherwise in this Agreement.

### 4. Warranty.

- A. LSI warrants and represents that the services will be performed in a skillful and workmanlike manner according to those standards generally prevailing among consultants performing similar services under similar circumstances.
- B. **EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION, LSI DISCLAIMS ALL WARRANTIES INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

### 5. Limitations of Liability.

- A. **LSI WILL NOT BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING FOR LOSS OF DATA OR ITS USE OR LOST PROFITS OR OTHER ECONOMIC DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS LIMITATION OF LSI'S LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR NOT, INCLUDING NEGLIGENCE.**
- B. Client's right to recover Damages is limited to the amounts paid to LSI hereunder. Client acknowledges that this limitation of liability is part of the consideration and was considered by LSI in establishing the prices and rates to be charged to Client, which, but for this limitation, would have been higher.
- C. LSI shall not be responsible for any losses or damages for failure to perform or any delay in its performance where such failure or delay is due to any act or negligence of Client or Client's agents or nominees, by Change Orders requested by Client, delays associated with product malfunction or availability, by fires, casualties or other acts of God, strikes, accidents, a public authority, material or labor shortages, "Year 2000" date problems, or any other reason beyond the control of LSI.

### 6. Client Covenants. Client covenants that:

- A. The person executing this contract has the authority to enter into this Agreement including client's commitment to the payment terms set forth herein, and the funding necessary to pay for the requested services.
- B. It has title to or license or rights to use or modify any software or products which it has requested LSI to modify as part of such services.
- C. It will provide LSI necessary access to its personnel, appropriate documentation and records and facilities in order for LSI to timely perform such services. Client shall provide LSI with certain documents and information including, but not limited to:

System Description: A complete system description will be required before any programming can begin.

Systems Drawings: LSI will require a complete set of schematics before programming can begin. LSI must be immediately notified if there are any changes to



Logix Systems, Inc.  
W163n8553 Arthur Avenue  
Menomonee Falls, Wisconsin 53051-3008, USA  
+1 (262) 250-1956 Office +1 (262) 250-9204 Fax

Page 3 of 4

## TERMS AND CONDITIONS

the system design in order for LSI to be held liable for any programming issues after system checkout. If changes are made without written notification to LSI, Client shall assume any additional costs required by LSI to make such changes that are required. LSI is bound by a confidentiality clause that prohibits making public any documentation to any person(s) not directly related to the system.

- D. Client will not utilize the goods and/or services provided by LSI pursuant to this proposal in a manner and/or setting different from that which was originally contemplated by LSI. Client is not authorized to duplicate, copy, or adapt any programming codes, or portions thereof, without the prior written approval of LSI. Additionally, Client agrees to make no modification, of any sort, to the goods and/or services provided by LSI pursuant to this proposal without prior written consent of LSI.
7. **Requests for Changes.** No change in the services provided hereunder will be performed until LSI receives a properly issued and executed Change Order; provided, however, that nothing herein will relieve Client of the obligation to pay LSI for services rendered which were requested by Client but are not documented in such a properly issued and executed Change Order or within the applicable scope of work.
8. **Defaults; Remedies.** In the event Client fails to pay any amount required of Client hereunder when due and payable, or if Client fails to observe, keep or perform any other provision of this Agreement as required by Client, Client shall be in default. Upon Client's default, LSI shall be entitled to pursue any remedy at law or in equity against Client, and all such remedies are cumulative and may be executed concurrently or separately, and the exercise of one remedy shall not be deemed to be an election against any other remedy. Client shall be responsible to immediately reimburse LSI for any actual and reasonable attorneys fees and costs associated with the enforcement of any of LSI's rights hereunder. In the event Client is in default as provided herein, LSI reserves the right to cease any consulting and/or programming services then in progress until such time as the above described amounts due and owing to LSI are paid in full. Such cessation of consulting services by Consultant shall not in any way constitute a breach of this Agreement.
9. **Insurance.** LSI and Client shall maintain their respective standard insurance coverage throughout the term of this Agreement. At a minimum, insurance coverage will include general liability and workers' compensation coverage.
10. **Entire Agreement; Amendment.** This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and is binding upon both parties in accordance with its terms and may be amended only by an entry signed by both parties. There are no understandings, representations or agreements other than those set forth herein.
11. **Assignment.** Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party.
12. **Notices.** Any notice or communication from one party to the other concerning the terms hereof shall be in writing and shall be sent by Certified Mail, return receipt requested and postage



LogiX Systems, Inc.  
W163n8553 Arthur Avenue  
Menomonee Falls, Wisconsin 53051-3008, USA  
+1 (262) 250-1956 Office +1 (262) 250-9204 Fax

### TERMS AND CONDITIONS

prepaid or by commercial overnight mail to the most recent address that either party has specified in writing to the other.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Wisconsin.

14. **Waivers; Severability.** No failure or delay on the part of LSI in enforcing any of the provisions of its Terms under this Agreement shall operate as a waiver as to any subsequent enforcement rights. If any provision of these Terms and Conditions is prohibited by or deemed invalid by applicable laws or regulations, then such provisions shall be deemed inapplicable and deleted but shall not invalidate the remaining provisions hereof.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print: \_\_\_\_\_ Title: \_\_\_\_\_