



ECT Services, Inc.

ECT TEMPERATURE CONTROL SYSTEM

CARTMELL ELEMENTARY

TECHNOLOGY UPDATE AND ENERGY MANAGEMENT CONTROLS DIAGNOSTICS I Support Agreement

MARCH 1, 2012 through MARCH 1, 2017

Prepared By:

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January 27, 2012

ECT Customer Support Agreement



Introduction:

ECT Services can monitor and manage the critical controls equipment that is sensitive to temperature and other environmental influences. YOUR facility staff can benefit from a high level of support from ECT, and can use a support plan to augment their current knowledge and protect their equipment investment over the long term.

Support Agreement Goals:

The goals with this proposal are:

1. Develop a regular maintenance relationship with CARTMELL ELEMENTARY to promote automated operation of controls and maximum facility.
2. Increase the life cycles of ECT automated controls that were installed over the years.
3. REDUCE DOWNTIME AND INCREASE ENERGY EFFICIENCY.
4. INSTALL LATEST TECHNOLOGY UPDATES AND REVISIONS AS RELEASED

Proposal Contents:

1. ECT Custom Service Plan Features (on customer request/input)
2. Tentative Schedule of Services
3. Support Plan Pricing Summary/Signature Page.
4. Terms and Conditions

ECT Customer Support Agreement



Following is a comprehensive list of the Support Services we can perform to maximize the value of your investment in your ECT Building Control System. Following the list of Support Services is a detailed description of each service.

Building Automation Control System Services:

1. Technology Updates

- *Software Updates*

2. System Performance Services; On-Line/ On-site Services

- *Troubleshooting and Diagnostics*
- *Building Control System Database Protection*
- *ECT Building Control System Analysis*
- *DDC Data Communication Performance Optimization*
- *24/7 REMOTE MONITORING SERVICE*
- *FULL SERVICE-EXTENDED LIFETIME WARRANTY SUPPORT*
- *Critical Spare Control Components Inventory*
- *Annual Control Components Allotment*

3. Central Equipment Performance Testing

- *Air Handler Performance Testing*
- *Chiller/Chilled Water System Performance Testing*
- *Boiler/Hot Water System Performance Testing*

4. Energy Services

- *Energy Benchmarking, Monitoring and Reporting*

5. Customer Training

- *On-Site Informal Operator Training/Software Consultation*
- *Formal Classroom ECT Factory Certified Training*

6. Emergency Response Services (Standard or Premium)

- *On-Line Response (Direct Connect or via Telephone)*
- *On-Site Response*

7. General Services; Included in All Support Agreements

- *Account Management*
- *Documentation of All Services Provided*
- *Quality Assurance Program*
- *Discounted Material & Labor Rates*



Key Program Value Features

1. Technology Updates



ECT periodically releases software updates that provide added features, increase communications and processing speed for your ECT Control System. ECT will provide these updates as they become available, always keeping your system software state-of-the-art. Please note: This service includes updates to the ECT Control System software only. No hardware, operating system or other 3rd-party software updates or upgrades are included with this service.

Included with this Support Agreement – ANNUALLY

Not included with this Support Agreement

2. System Performance Services



DIAGNOSTIC PREVENTIVE MAINTENANCE (normal working hours). We will also provide *limited* troubleshooting and diagnostics assistance via telephone, modem and/or Internet during normal working hours. You simply need to supply the necessary modem equipment to enable our local office to remotely log-on to your system via regular voice grade dial up phone line or Internet (voice grade phone line and/or internet access to be provided and maintained by the customer). This service does not include after-hours support. For after hours support please see the *Emergency Response Services* section below.

Included with this Support Agreement –

Not included with this Support Agreement

3. Building Control System Database Protection- *ECT Workstation Database and Graphics backups* safeguard your HVAC Control System's vital databases of business information from unforeseen and costly catastrophic events (lightning strike, electrical power surge, flood, physical damage, ECT.). We will back-up your HVAC Control System database, software and graphics ONCE per year, and provide safe storage of this critical business information. Should a catastrophic event occur, we will respond onsite (or online if such service is included in this Agreement) to reload the databases and system files from our stored backup copy and to ensure proper operation and performance. *Repair costs and the costs to reload the databases and system file will be at the preferred material and labor rate stated below.*

Included with this Support Agreement – ONCE PER YEAR

Not included with this Support Agreement

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4. ECT Building Control System Analysis - Your DDC control system is a very dynamic and interactive system. As such its operations, graphics and programming intentionally and unintentionally change over time. With Control System Analysis we will analyze the current status of your system's operations, graphics, & programming and compare them to the prior status report. We will then meet with you to discuss the changes and the effects of the changes on the operation of your ECT building control system.

Included with this Support Agreement – (2) times per year FALL/SPRING

Not included with this Support Agreement

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5. Energy Services

Energy Benchmarking, Monitoring and Reporting



To optimize the energy performance of your facility and increase your green profile (environmental sustainability) in your community we will implement the ECT Energy Benchmarking, Monitoring and Reporting service. To gain a basic understanding of your facility and its energy consumption we will analyze your facility and utility data. We will use this data to benchmark your facility in the EPA and Department of Energy's Energy Star program.

After the initial evaluation we will establish a continuous energy monitoring and energy alarming system. Energy alarms will be configured to notify us when energy wasting conditions occur in the operation of your facility, such as simultaneous heating & cooling, poorly operating economizer damper control, and after hours equipment operation. When an energy alarm occurs we will contact you, advise you about the energy alarm and make system improvements after consulting with you. Note: Costs to implement system improvements and/or repairs are not included in the scope of this agreement.

- Included with this Support Agreement
- Not included with this Support Agreement

6. Customer Training



MANUFACTURER CERTIFIED Training- We can provide classroom-format, factory certified training courses. The training classes are conducted at the Corporate training facility in Redmond, Washington or various other locations throughout the U.S. You can select from any of the training classes listed in the local training directory or on the ECT Support Network.

Onsite Training:

- Included with this Support Agreement – One class per year-ON SITE.
- Not included with this Support Agreement



7. Emergency Response Services

On-line Emergency Response - To quickly respond to emergency service requests and to reduce the costs and disruptions of downtime we will use our Direct Connect technology and/or the telephone as our first

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action to a request for emergency response. You simply need to supply the necessary modem equipment to enable our local office to remotely log-on to your system via regular voice grade dial up phone line or Internet (voice grade phone line and/or internet access to be provided and maintained by the customer).

We will sign-on to your system as a first step to your request or inquiry. Our operations personnel will try to fix the problem or at a minimum scope the problem down to a specific item or group of items. The operations group contacts you when the sign-on is completed and conclusions have been reached. Emergencies will be determined by your staff and ECT.

Standard Emergency On-line Response Time (Included with all Customer Support Agreements) - - - within 2 business hours; Monday through Friday; 7:30 AM to 4:30PM, excluding holidays

Premium Emergency On-line Response Time – within 1 business hour; 24 hours/day, 7 days/week, including holidays

Note: Our first action to a request for emergency response will be to attempt to resolve the situation on-line via direct-connect modem. There may be a one (1) hour minimum charged for each on-line service. If on-line diagnosis determines a site visit is required to complete troubleshooting and problem resolution procedures, we will be on-site based on the level of Emergency Onsite Response selected (described below).

On-site Emergency Response. - If during our On-line Emergency response we are unable to resolve the situation we will dispatch a Service Engineer to your facility. Non-emergency calls, as determined by your staff and ECT will be incorporated into the next scheduled service call.

Standard Emergency On-site Response Time (Included with all Customer Support Agreements)

We will be on site by the end of the next business day; Monday through Friday; 7:30 AM to 4:30PM, excluding holidays

Premium Emergency On-site Response Time – We will be on site within four (4) hours, 24 hours/day, 7 days/week, including holidays (after the completion of the telephone and dial-up response).

Emergency Response Services listed above guarantee ECT' response time to an emergency situation **only**. The use of on-line and/or on-site emergency service is not included in the scope of this contract and will be billed at the applicable time & material rates. The labor and material rates for 2011 are listed below. Prices are subject to change.



7. Emergency Response Services (cont.)

After-Hours Support: Emergencies can and usually happen when you least expect it and many times on the weekends or after 4:30 PM. It is very important to ECT to provide support in all emergency situations for all of our customers. We have available a 24-7 emergency answering service. You can utilize this service in an after-hours emergency situation by calling **502-636-2402**. After receiving the call we will first attempt to solve the issue on-line as described in the *On-line Emergency Response* section of this proposal. If the problem persists we will discuss it with you and upon your approval dispatch a service technician to your site.

As a Standard Emergency Response customer we do not guarantee the after-hours response time in an emergency situation. Any/all after-hours labor will be billed as listed in the *General ECT Customer Support Agreement Features* section of this proposal.

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8. General ECT Customer Support Agreement Features

(Included with all service plans)

- **Service Project Manager** - A dedicated Service Project Manager will be responsible for your total service satisfaction. Your Service Project Manager will provide the designated services, monitor equipment performance, track equipment service history, and consult with you to meet your objectives.
- **Dedicated Service Team** - Our Service Team knows ECT systems. All of our service technicians are factory trained on ECT equipment, and are specialists in maintaining and troubleshooting your system.
- **Documentation** - All service visits will be documented by a work order detailing the service performed, materials used, and hours spent.
- **System and Service Log** - ECT will provide you with a log for documentation of concerns, system problems, and other related items requiring our attention. Each scheduled service visit shall begin with a review of the log.
- **Price Advantage- Discounted Labor and Material** - As Support Agreement customer; you will receive a discount off the normal labor and material prices. You will receive approximately a 17% discount on labor and an additional 50% discount on material. Following are the prices for 2011. Please note that prices are subject to change.

Labor Rates:

	Standard Time & Material Rate (M-F 7:30 AM to 4:30 PM) excl. Holidays	Preferred Time & Material Rate (M-F 7:30 AM to 4:30 PM) excl. Holidays	Standard Overtime Rate (M-F 4:30 PM to 7:30 AM, Sat, Sun & Holidays)	Preferred Overtime Rate (M-F 4:30 PM to 7:30 AM, Sat, Sun & Holidays)
Service Engineer	\$ 145.00	\$ 122.00	\$ 217.00	\$ 183.00
Service Project Manager	\$145.00	\$ 122.00	\$ 217.00	\$ 183.00

Material Discount:

You will receive a discount on all ECT controls. For any components listed in the ECT Controls Price List you receive 50% off List Price.

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				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<input type="checkbox"/>	Technology Updates														
<input type="checkbox"/>	Database Protection														
<input type="checkbox"/>	Control System Analysis														
<input type="checkbox"/>	Communications Network Analysis														
<input type="checkbox"/>	Central Equipment Performance Testing														
<input type="checkbox"/>	AHU														
<input type="checkbox"/>	Chillers/Chilled Water systems														
<input type="checkbox"/>	Boiler/Hot Water systems														
<input type="checkbox"/>															
Other Services:															
<input checked="" type="checkbox"/>	Limited Troubleshooting and Diagnostics							As required							
<input checked="" type="checkbox"/>	Service Project Management							Included							
<input checked="" type="checkbox"/>	Emergency Response Services							Included (Standard or Premium)							
<input checked="" type="checkbox"/>	Material & Labor Discounts							Included							

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Support Plan Pricing Summary:

We have included the following Custom Service Plan Features in this agreement as detailed in the previous section:

TECHNOLOGY UPDATES-ANNUALLY

DATA BASE BACK-UP/ASSET PROTECTION-ANNUALLY

LIMITED TROUBLESHOOTING

SPRING/FALL SYSTEM DIAGNOSTICS VIA WORKSTATION-ON SITE

ONE TRAINING MODULE PER YEAR

Pricing for these features is based on a 5-year program, billed annually at the beginning of the contract year AND every year THEREAFTER. Cancellation conditions: **EITHER PARTY MAY CANCEL WITH 60 DAY NOTICE** (detailed in the "Terms and Conditions" section).

Year 1: \$ 7743 ; beginning March 1, 2012

Year 2: \$ 7743

Year 3: \$ 7743

Year 4: \$ 7743

Year 5: \$ 7743

ECT Services believes that this proposal includes the best interests of CARTMELL ELEMENTARY and is based on your input over the years. Please feel free to contact me if you have any changes. If accepted, sign and date below and return to ECT with purchase order information. The other copy is for your records.

Sincerely,

Steve S. Hall

Integration Account Manager

Proposal Accepted

Signature,

Date

Please Print Name

Title

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ECT Services, Inc. Terms and Conditions

(Effective September, 2011)

- 1.0 Controlling Terms & Conditions:** This Agreement, upon Customer's acceptance, is made solely on the terms and conditions stated herein, despite any additional or conflicting terms and conditions which may be contained in any purchase order or other form of Customer, all of which additional or conflicting terms are hereby rejected by ECT Services, Inc. ("ECT"). No waiver of or modification to these terms and conditions shall be valid unless made in writing and signed by representatives of each party.
- 2.0 Scope of Services:** ECT has expertise and experience with designing, developing, installing, programming, training, and commissioning commercial building automation systems (BAS), commercial building security systems, and integrating various building systems through the use of appropriate technologies. In addition, ECT has experience in application development, computer programming, software development, building systems analysis, consulting, technical support and other specialized technical services related to building technology systems ("Services"). ECT shall provide Services to each customer ("Customer") that (i) accepts ECT's quote or proposal in writing or via e-mail, (ii) executes a separate agreement with ECT, or (iii) makes any payment to ECT on account of Services (any such Customer, having done any of the foregoing, being deemed to have signed an agreement ("Agreement"), which shall be deemed, in all cases, to include the terms and conditions set forth herein). Each Agreement shall stipulate the exact details of Services to be provided, all of which shall be governed by and subject to the terms and conditions set forth below. These terms and conditions shall be deemed to be incorporated by reference into each Agreement.
- 2.1 Additional Services/Materials:** Additional ECT Services. Upon request by Customer, ECT agrees to negotiate in good faith with Customer with respect to providing additional maintenance, support, hosting, integration or other services with respect to the Services for Customer that will be outside of the scope of the Agreement. These additional services may, in certain instances, be subject to additional terms and conditions. As work progresses, there may be a need for additional repairs or material which could not be anticipated at the time this Agreement was entered into. ECT shall notify Customer, in writing, of the description and price for such additional work or material, and if Customer authorizes ECT to proceed with the additional work or materials, the contract price shall be accordingly adjusted. If Customer does not authorize additional work or materials, the Customer shall pay ECT for the services performed and the material furnished.
- 2.2 Out-of-area Services:** If Services are to be provided at Customer's facilities that are outside of Greater Louisville, KY area, the Customer shall, in advance of Services performed, pay reasonable expenses for accommodations, travel, and such other reasonable costs as are incurred by ECT in connection with the provision of such Services per the Professional Services Standard Rate Schedule. ECT shall use its best efforts to estimate the amount of such reasonable expenses in advance of providing such Services, and Customer shall pay to ECT within thirty (30) days of receipt of the amount of such estimate. Within thirty (30) days after such Services have been provided, Customer shall pay to ECT such additional reasonable amount as shall be due for such expenses, or ECT shall reimburse Customer for any overpayment.
- 3.0 Proposal Price Term:** The proposal contract price herein for periodic maintenance service, parts, labor, materials, products, time and material services, project pricing, or any other proposal content provided by ECT is valid for thirty (30) days from the date of this proposal. A purchase order or letter of intent must be provided prior to thirty (30) days from the date of this proposal. If a letter of intent or purchase order is provided beyond thirty (30) days from the date of this proposal, there is no guarantee the pricing provided will be honored and this proposal will be considered null and void.
- 4.0 Confirmation:** ECT shall, within forty-eight (48) hours of the receipt of Buyer's purchase order, verbally or in writing, accept or reject such orders.
- 5.0 Terms of Payment:** Net thirty (30) days from the date of ECT's invoice to the Customer. Interest at the rate of 2% per month (or the highest interest rate allowed by applicable law, if lower) will be charged after the 30-day period until payment is received. Customer shall pay all costs of collection incurred by ECT including, but not limited to, reasonable attorneys' fees, collection agency fees and court costs. ECT, in its discretion, may suspend all further services hereunder if Customer's payment is more than 30 days overdue. Partial invoices may be submitted for any portion of completed work and/or delivered materials. A \$25.00 fee will be charged for any returned checks or insufficient funding from credit card payments.
- 6.0 Taxes:** Customer shall pay to ECT, in addition to the contract price, all sales, use, excise, privilege or other taxes imposed by any local, state or federal taxing authority payable by ECT in connection with the services or materials furnished hereunder.
- 7.0 Refrigerant:** Any costs, fees and expenses arising from or incurred in anticipation of any statute, rule or regulation requiring the use of refrigerant other than the type being used by Customer shall be borne solely by Customer, and ECT shall not bear any expense in connection with the modification, removal, replacement or disposal of any refrigerant pursuant to any such legal requirements.
- 8.0 Warranties and Limitation of Liability:** ECT extends to Customer the same warranty that ECT receives on parts or components furnished by others to ECT. ECT also warrants that the labor it provides hereunder will be performed in a professional and workmanlike manner in accordance with industry standards. In addition, each party represents and warrants to the other party that it has the right and authority to enter into this Agreement and to perform its obligations hereunder, that the granting of the rights and undertaking of the obligations hereunder will not infringe upon or conflict with any rights of a third party, and that its performance hereunder will not violate any applicable U.S. laws and government rules and regulations. No claim for defective workmanship may be brought unless Customer provides ECT with written notice of such defect within ninety (90) days from the date such services are performed. ECT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT FOR THE SERVICES, THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR AS TO THE RESULTS THAT CUSTOMER MAY ACHIEVE UPON COMPLETION OF THE SERVICES. . If this exclusion is held unenforceable, than to the extent of such unenforceability, all express and implied warranties shall be limited in duration to a period of ninety (90) days after the date hereof, after which time no such warranties shall remain in effect.
- 8.1 Limitation of Remedy and Liability:** ECT'S MAXIMUM LIABILITY BASED ON ANY CLAIM OR CAUSE OF ACTION SHALL NOT EXCEED THE PRICE ALLOCABLE IN THIS AGREEMENT TO ANY PRODUCT OR SERVICE FURNISHED HEREUNDER WHICH IS THE CAUSE OF ANY LOSS OR DAMAGE TO CUSTOMER. ECT SHALL HAVE NO LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS, OR LOSS OF USE OF ANY EQUIPMENT OR FACILITIES. ECT shall have no responsibility for misuse of the system by the Customer or third parties, for the negligence of Customer or third parties, the design of the system, obsolescence, or for failure of or damage to equipment caused by power interruptions, low voltage, burned out fuses, single phasing, phase reversal, low water pressure, vandalism or other deficiencies or causes beyond the control of ECT.
- 8.2 Consequential Damages:** EXCEPT WITH RESPECT TO INSTANCES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM ANY CLAIM OR ACTION HEREUNDER, BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR DAMAGES FOR ANY CAUSE WHATSOEVER IN AN AMOUNT IN EXCESS OF THE AMOUNT PAYABLE TO ECT.
- 8.3 Force Majeure:** Neither ECT nor the Customer shall be liable for failures or delays which result from an act of God or the public enemy, accident, explosion, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lock-outs, labor troubles, riots, sabotage, embargo, wars (whether or not declared and

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whether or not the United States is involved), federal, state or municipal law, ordinance, rule, regulation, order license, priority, seizure, requisition or allocation or other restrictions, failure or delay of transportation, shortage of or inability to obtain supplies, equipment, fuel or labor or any other circumstances beyond the reasonable control of that party.

- 8.4 Third Parties:** No Third-Party Beneficiaries; Non-Solicitation. Nothing in the Agreement, either express or implied, is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement. Customer hereby agrees that during the term of this Agreement and for a period of 1 year thereafter, it will not solicit or hire any employees of ECT Services, Inc.
- 8.5 Errors:** Any and all typographical errors or other clerical errors made by ECT herein are subject to correction by ECT.

9.0 Confidential Information: Either party may receive or have access to technical information, as well as information about product plans and strategies, promotions, customers and related non-technical business information which the disclosing party considers to be confidential ("Confidential Information"). In the event such information is disclosed, the parties shall first agree to disclose and receive such information in confidence. If then disclosed, the information shall (i) be marked as confidential at the time of disclosure, or (ii) if disclosed orally but stated to be confidential, be designated as confidential in writing by the disclosing party summarizing the Confidential Information disclosed and sent to the receiving party within a reasonable period of time after such oral disclosure. Notwithstanding any provision to the contrary, all source code provided to ECT is deemed confidential.

- 9.1 Nondisclosure:** Confidential Information may be used by the receiving party only with respect to performance of its project obligations under the Agreement, and only by those employees of the receiving party who have a need to know such information for the purposes related to this project. The receiving party shall protect the Confidential Information of the disclosing party by using the same degree of care (but no less than a reasonable degree of care) to prevent the unauthorized use, dissemination or publication of such Confidential Information, as the receiving party uses to protect its own confidential information of like nature. The receiving party's obligation shall be for a period of five (5) years after the date of disclosure.

10.0 Customer Responsibility: Customer shall provide ECT's personnel with a safe work environment in which to perform their services under this Agreement and shall provide ECT personnel with required utilities (water, electricity, compressed air, ECT.) and reasonable access to Customer's facilities (elevators, receiving dock). Customer shall provide adequate service access space and shall move any stock, fixtures, partitions, ECT. necessary to perform the service. Customer shall promptly notify ECT of any unusual operating conditions.

11.0 License: All trademarks, patents, copyrights and other intellectual property rights owned by either party on the date hereof shall continue to be owned solely by such party, and nothing herein shall be deemed to confer any rights to any such intellectual property on the other party. Customer represents and warrants that none of the content, materials or data provided by Customer to ECT with respect to the project infringes the intellectual property or other proprietary rights of any third party, and ECT shall have no liability for any claims arising out of any such Customer content, including those based on infringement. With respect to any ECT software, source code, object code or other intellectual property contained in or otherwise provided as a deliverable under the Agreement ("ECT Technology"), ECT hereby grants Customer, so long as Customer has paid all fees due and owing to ECT hereunder, a perpetual and non-exclusive right and license to use the ECT Technology solely to the extent required and described in the Agreement and accompanying documents. It is understood that neither Customer, nor any of its subsidiaries or affiliates, may use any ECT Technology for commercial resale or sublicense in any form or medium.

- 11.1 Customer Content:** Customer accepts full responsibility for the content posted at Customer's building automation systems, whether or not they are web based, residing on an intranet or accessible on or through the internet, and any grievances brought by a third party arising as result of this content, either in the United States or any other countries, will be the sole responsibility of Customer. Additionally, ECT will take no responsibility whatsoever for the content of third party websites accessible via links posted at Customer's building automation systems. If ECT deems any content Customer wishes to include on its building automation systems as pornographic, meant to cause extreme offense or illegal in any way, ECT reserves the right to refuse to continue with the project and no refunds shall be due and owing to Customer.

- 11.2 Display of Work:** Unless instructed otherwise in writing before publishing Customer's building automation system displays, whether on an intranet or on the Internet, ECT reserves the right to include a small, subtle text reference to ECT's website and contact information from Customer's system designed and developed by ECT. The text will read 'Design – ECT Services, Inc.' and will be included in the copyright line at the bottom of Customer's pages. ECT reserves the right to display or exhibit any final product(s) to other potential Customers except where doing so may violate any confidentiality agreements which may be in force.

12.0 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky.