

CCG Automation, Inc.

3868 Congress Pkwy
Richfield, OH 44286



TCP Agreement for Norton City Schools

Date	Services Performed By:	Services Performed For:
December 17, 2018	CCG Automation, Inc. 3868 Congress Pkwy Richfield, OH 44286	Norton City Schools 4128 S. Cleveland Massillon Road Norton, OH 44203

THIS AGREEMENT, made at Richfield, Ohio, on the date shown above, is by and between CCG Automation, Inc., an Ohio Corporation and authorized Automated Logic Dealer, hereinafter called "CCG" and [Norton City Schools](#), hereinafter called the "Customer".

This TCP Agreement, effective as of January 1, 2019, is entered into by and between Norton City Schools and CCG Automation, Inc., and is subject to the terms and conditions specified below.

Period of Performance

The Services shall commence on January 1, 2019, and shall continue through December 31, 2019.

Buildings Included

High School located at 1 Panther Way, Norton, OH 44203

Scope of Work

Contractor shall provide the Services and Deliverable(s) as follows:

Through the Total Care Program (TCP), CCG will provide optimal service and fine tune systems to maximize efficiency, help provide a productive work environment with a comfortable work space designed with industry standards temperatures and humidity levels, and help prolong equipment life through scheduling and control of systems. It is CCG's goal to help your staff provide facilities that will meet and/or exceed Environmental Protection Agency (EPA) standards. The coverage will include selected services as described in the following options for the facilities listed above.

Portfolio Manager & Energy Star

\$100

- EPA Portfolio Manager tracking
- EPA Certification (Optional – additional fees for engineering associated with this option)

Building Automation System Maintenance

64 Hours

- Calibration and Tuning of Sensors as needed
- DDC Hardware Checkout
- Review Control Strategies
- Maintenance of WebCTRL Host Computer

Software Upgrade

8 Hours

- One (1) Software License Upgrade per year
- Inclusive of 8 hours of labor per upgrade, additional hours will be billed at hourly contract rate.

Monitoring for Comfort & Efficiency

10 Hours

- Monitoring Before/After Onsite TCP Visits
- Monitoring during extreme temperatures and/or fluctuations
- Energy Performance Checks
- Sequence of Operations Verification
- Proactive System Check
- Trend Review and Reporting

Pre-Purchased Service

\$2,000

- Phone support and onsite labor hours to cover unplanned service issues such as but not limited to alarm management, end-user questions, and troubleshooting assistance.
- Trip charges and mileage charges are waived when onsite service is pre-purchased.
- Material purchases

Fee Schedule

Item Description	Cost
2019 Annual Contract Amount	\$13,856.76
2019 Monthly Billing Amount	\$1,154.73

Upon completion of this Performance Period, Contractor and Client will have the option to renew this agreement for an additional then-stated number of hours at the then-current hourly rate for those resources identified.

Terms and Conditions

ARTICLE 1 INITIAL EQUIPMENT INSPECTION CCG will inspect the Equipment within ten (10) business days of the date of execution of this Agreement or the installation of the equipment, or as seasonal or operational conditions permit. CCG shall instruct a designated Customer's representative in the care and operation of the Equipment as recommended by the manufacturer and CCG. CCG will advise Customer if the Equipment is not in working order or in need of repair. Upon notice from the Customer in writing, CCG will perform the work necessary to put the Equipment in proper working condition. If the Equipment is not subject to Warranty, the warranties set forth herein or other obligations of CCG as set for herein, the work shall be performed at the standard contract rates. If the Customer, at its option, does not agree to have CCG perform the work, or if the Customer does not have the work performed by others, the Equipment will then be adjusted by CCG. **EQUIPMENT** means the ALC modules, sensors, and actuators that were provided by CCG Automation, Inc.

ARTICLE 2 RESPONSE TIME Subject to the terms and conditions described herein, CCG will respond to requests for inspection, repair or service within eight (8) business hours after being contacted by an authorized Customer representative and will perform the inspection, repair service as soon as reasonably practicable thereafter, provided that such a request is received during regular business hours, CCG will respond within 4-6 hours of the commencement of the next business day.

- 1) If Customer requests inspection, repair or service outside of regular business hours, Customer shall pay for CCG's overtime labor costs (a minimum of 4 hours labor shall be billed for).
- 2) Access to premises: Customer shall allow CCG free access to its premises at all hours necessary and convenient to perform the services described above during a normal business day and otherwise.
- 3) Force Majeure: The timeliness of performance by CCG of the services or any other obligation under this Agreement shall in every case be subject to and excused in the event of any delay or delays: (a) resulting from war, riot, sabotage, civil commotion or disturbance; fire, explosion, accident or flood, inability to obtain materials, governmental or quasi-governmental law, regulation or order, actions or inaction's of the customer's; inability of any subcontractor of CCG to perform; or any other cause beyond the reasonable control of CCG; or (b) labor, picketing, trouble, strikes, lock-out or injunction, whether or not within the reasonable control of CCG. In the event of any such delay, the period of time for performance of these services affected by such delay shall be extended by the amount of the delay. Such delay shall not in any way affect the validity of this Agreement or the obligations of Customer hereunder, for shall CCG be liable for any damages, consequential, special or otherwise, arising out of or in connection with such delay.

ARTICLE 3 REMOTE SERVICES All service performed through off-site remote access outside of the monitoring and/or pre-purchased service included in the agreement will be billed at the current Customer labor rate. There will be a minimum (1/2) one-half hour labor charge plus a minimum \$10 remote access charge for all off-site service performed. Each hour after will be billed at the Contract rate. Customers will be responsible for providing access to the system at the customer's expense.

ARTICLE 4 MONITORING CCG reserves the right to monitor Customer's facilities in order to follow-up on service, assist on-site technicians, check system during seasonal changes, and/or check operation of system after service is performed. If any hours are included in the Contract for monitoring, the hours used will be deducted from the amount in the Contract. If no time is included in the Contract, those hours will be billed at the current Contract rates. The monitoring services included in this program are to be used specifically for the items outlined above. Any service issues discovered during monitoring will be brought to Customer's attention with suggested options for taking care of these issues. Some issues may be handled immediately while others may require more detailed proposals.

ARTICLE 5 TRIP CHARGE/MILEAGE is included in Contract for all work corresponding to the services outlined. Trip charge and mileage is not included for any additional work outside the proposed scope of the Contract. The trip charge is a flat rate, per visit fee. Mileage is calculated for roundtrip miles.

ARTICLE 6 LIMITATION OF LIABILITY AND WARRANTY Neither CCG nor the Customer will be responsible to the other for any special, indirect, or consequential damages. Neither party will be responsible to the other for damage, loss, injury, or delay caused by conditions that are beyond the reasonable control of that party. Such conditions include, but are not limited to: (a) acts of God; (b) acts of Governmental agencies; (c) strikes; (d) labor disputes; (e) explosions or other casualties; (f) riots or war; or (g) unavailability of parts, materials, or supplies. CCG

is also not responsible for any injury, loss, or damage caused by other equipment owned or operated by the Customer which is adjacent to or connected to the Equipment.

- 1) **EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, CCG DISCLAIMS ALL WARRANTIES INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 2) **CUSTOMER'S RIGHT TO RECOVER PROPERTY DAMAGES CAUSED BY CCG'S FAULT OR NEGLIGENCE SHALL BE LIMITED TO LIMITS OF THE INSURANCE SET FORTH HEREIN. CCG WILL NOT BE LIABLE FOR DAMAGES RESULTING FROM LOSS OF PROFITS, USE OF PRODUCTS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.** This limitation of CCG's liability will apply regardless of the form of action, whether in contract or tort including negligence. Any action against CCG must be brought within 18 months after the cause of action accrues.
- 3) CCG shall not be liable for any delay in performance due to causes beyond the reasonable control of CCG.
- 4) CCG is not responsible for network failures, power failures or any other conditions that cause alarm notification e-mails to fail to be sent or delivered.
- 5) Customer understands that CCG is providing services under this Agreement. CCG is not a merchant or a vendor of goods. **IF CCG INSTALLS OR FURNISHES A PIECE OF EQUIPMENT UNDER THIS AGREEMENT, AND THAT EQUIPMENT IS COVERED BY A WARRANTY FROM THE MANUFACTURER, CCG WILL TRANSFER THE BENEFITS OF THAT MANUFACTURER'S WARRANTY TO CUSTOMER IF THIS AGREEMENT WITH CUSTOMER TERMINATES BEFORE THE EQUIPMENT MANUFACTURER'S WARRANTY EXPIRES.**

ARTICLE 7 CUSTOMER RESPONSIBILITIES The Customer warrants that, to the best of its knowledge, all Equipment is in good working condition and the Customer has given CCG all information of which Customer is aware concerning the condition of the Equipment. The Customer agrees that, during the term of this Agreement, the Customer will:

- 1) Operate the Equipment according to the manufacturer's recommendations;
- 2) Keep accurate and current work logs and information on the Covered Equipment as recommended by the manufacturer;
- 3) Shall maintain the premises within the environmental range required for the Equipment as recommended by the manufacturer or by CCG;
- 4) Notify CCG immediately of any malfunction, breakdown, or other condition affecting the operation of the Equipment; and
- 5) The Customer acknowledges that its failure to meet these obligations will relieve CCG of any responsibility for any breakdown, or any necessary repair or replacement, of the Equipment.
- 6) Customer will be responsible for providing access to all equipment. This includes moving objects that block equipment, supplying lifts, providing keys, etc.

ARTICLE 8 CHANGES TO YOUR EQUIPMENT You have the right to make changes or alterations to your equipment. If in our opinion such changes or alterations substantially affect our services or obligations, you and CCG will negotiate appropriate changes to the scope or price of the Agreement.

ARTICLE 9 EXCLUSIONS CCG's services under this Agreement shall not include:

- (a) Supplies, accessories, or any items normally consumed during the use of the Equipment;
- (b) Inspection, repair or service of CCG resulting from lack of Customer preventive maintenance, site-related problems, operator error or Customer neglect;
- (c) Inspection, repair or service necessary due to failures resulting from acts of God, abuse or misuse of the Equipment, or alterations, modifications, or repairs to the Equipment not performed or provided by or authorized by CCG;
- (d) The furnishing of materials and supplies for painting or refinishing the Equipment;
- (e) Hardware upgrades.
- (f) COST OF ANY REQUIRED CREDENTIALS FOR CCG EMPLOYEES BY THE CUSTOMER. THIS COST WILL BE BILLED SEPARATELY.**

The Customer shall pay CCG for all labor and material costs incurred by CCG in the performance of inspection, repair or service work for excluded services set forth in Article 1.

ARTICLE 10 PAYMENTS CCG shall submit invoices for payment to the Customer in accordance with the Payment Schedule. The Customer shall pay CCG within 15 days of receipt of the invoice. Together with each invoice, CCG shall submit an itemization of any costs incurred for inspection, repair or service to the Equipment not covered by this Agreement. Payments received after 30 days will be subject to the maximum interest charges allowed by law. The Customer may, at any time with a 30 day written notice, terminate the Agreement by paying the balance of the contract at the time of termination.

ARTICLE 11 INDEMNITY CCG and the Customer agree that CCG shall be responsible only for such injury, loss, or damage caused by the intentional misconduct or the negligent act or omission of CCG. CCG and the Customer agree to indemnify and to hold each other, including their officers, agents, directors, and employees, harmless from all claims, demands, or suits of any kind, including all legal costs and attorney's fees, resulting from the intentional misconduct of their employees or any negligent act or omission by their employees or agents. The obligations of CCG and of the Customer under this paragraph are further subject to Article I.

ARTICLE 12 OUR EMPLOYEES You acknowledge that our Employees are a valuable asset to us. At any time during the term of the Agreement, and for one (1) year after, you cannot hire any Employee of ours who has worked at your facility under this Agreement. Should you choose to hire one of our Employees, you agree to pay us an amount equal to the salary we paid that Employee during the twelve (12) months before the date you hired him/her. In addition, you agree to reimburse us for all costs associated with the training we provided the Employee during any relevant training period. This training period will be limited to three (3) years before the date you hire our Employee.

ARTICLE 13 INSURANCE CCG's standard insurance includes the following limits:

- 1) WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE in accordance with laws of the State in which Work is situated.
- 2) COMPREHENSIVE GENERAL LIABILITY INSURANCE INCLUDING CONTRACTUAL LIABILITY INSURANCE AGAINST THE LIABILITY ASSUMED HEREINABOVE, with Broad Form Property Damage Endorsement, deleting exclusions related to railroad property, products, completed, explosion, collapse and underground hazards and including CONTRACTORS' PROTECTIVE LIABILITY INSURANCE if CCG Automation sublets to another all or any portion of the Work, and including coverage of any stored material with the following minimum limits: Bodily Injury (including death) \$1,000,000 per occurrence; Property Damage \$1,000,000 per occurrence /\$2,000,000 aggregate which includes coverage on a per project basis.
- 3) COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE covering all owned, non-owned and hired automobiles used in connection with the Work, with the following minimum limits: Bodily Injury (including death) and Property Damage \$1,000,000 per accident. Insurance coverage in excess of CCG Automation's standard limits will be furnished when requested and required. The owner will be responsible for all additional premiums in excess of CCG Automation standard insurance. No credit will be given or premium paid by CCG Automation for insurance provided by others.

ARTICLE 14 MISCELLANEOUS PROVISIONS

- 1) Any notice that is required to be given under this Agreement must be in writing and sent to the party at the address noted in this Agreement.
- 2) The Customer acknowledges and agrees that any purchase order issued by Customer, in accordance with this Agreement, is intended only to establish payment authority for the Customer's internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the terms of this Agreement. No term or condition included in the Customer's purchase order will have any force or effect.
- 3) Should any changes to relevant regulations, laws, or codes substantially affect CCG's services or obligations, the Customer agrees to adjust the price accordingly.
- 4) CCG makes no representations as to the tax consequences of the Agreement to the Customer.
- 5) If either party fails to perform its obligations under this or any other agreement between the parties and such failure continues for a period of 30 days after written notice, the other party shall have the right to terminate this Agreement. This Agreement is the complete and prevailing agreement between the parties with respect to the subject matter herein, and there are no other understandings, oral or written. The provisions of this Agreement are declared to be severable. Neither party may assign this Agreement unless mutually agreed. The Agreement is governed by the laws of Ohio. No provisions of this Agreement shall be deemed waived, amended or modified by either party unless such waiver,

amendment or modification shall be in writing, signed by the party against whom it is sought to be enforced.

- 6) CCG Automation will have the authority to re-adjust setpoints found outside of the recommended range of 70° and 76° as established by ASHRAE. If setpoints have been adjusted due to excessive complaints about a certain zone, Customer will notify CCG Automation of this issue for investigation and recommendations.
- 7) CCG Automation will be notified of any space usage changes such as converting a small closet into an office or excessive use of space outside of normal operating hours.
- 8) Customer agrees not to use the WebCTRL host computer for any purpose other than its intended use when installed by CCG Automation. The host computer will not be used as a workstation by anyone. The host computer will be locked with an administrator password known only by CCG Automation and Customer's technology director. No software will be installed on the host computer by anyone other than a CCG Automation technician, with the exception of anti-virus software.
- 9) The on-site technician visits included in this program are to be used specifically for planned maintenance and upgrade tasks only. Any service issues discovered by our technician during this program visit will be brought to Customer's attention with suggested options for taking care of these issues. Some issues may be handled immediately while others may require more detailed proposals. Labor to perform service calls will be deducted from the pre-purchased hours included in Module 4. If this module was not purchased or the pre-purchased time has been used, all labor will be invoiced. Parts and material are not included in this program.
- 10) CCG Automation will be notified of any scheduling needs required outside of normal operating hours.
- 11) Customer shall supply CCG information in its possession relating to the presence of asbestos-containing materials in areas where work or services will be performed. If Customer or CCG suspects that any asbestos-containing materials may be disturbed by CCG's services, it shall immediately stop performing the services in the affected area. Customer shall be responsible at its sole expense for addressing the presence of asbestos-containing materials and must provide a certificate of abatement before CCG will be obligated to perform or continue its Services, unless CCG had actual knowledge that asbestos-containing materials were present and acted with intentional disregard of that knowledge. CCG is responsible for disposing of any hazardous materials that it uses in providing the work and services. Customer shall supply CCG with any information in its possession relating to the presence of hazardous materials if their presence may affect CCG's work or services. If either Customer or CCG becomes aware of or suspects the presence of non-CCG hazardous materials that may interfere with work or services, CCG shall immediately stop the work or services in the affected area and notify the other's contacts. "Hazardous Materials" specifically includes mold. Customer shall be responsible by the release of the Non-CCG Hazardous Materials, unless CCG had actual knowledge that Non-CCG Hazardous Materials were present and acted with intentional disregard of that knowledge. Hazardous Materials remain the property and the responsibility of the Customer even when removed from equipment or replaced by CCG as provided by the terms of this Agreement. The Customer shall be responsible for the proper storage and disposal of Hazardous Materials. This includes, but is not limited to, used oil, contaminated or uncontaminated refrigerant, and PCBs.

ARTICLE 15 TERM/AUTOMATIC RENEWAL. This contract will automatically renew on a year-to-year basis after the original term unless either of us gives the other written notice that they do not want to renew. The notice must be delivered at least thirty (30) days before the end of the original term or of any renewal year. This contract is subject to a 4% escalation per renewal.

ARTICLE 16 BUSINESS HOURS & BILLING. The regular business hours of CCG are 7:30 a.m. through 4:30 p.m., Monday through Friday, excluding legal holidays. Sundays and holidays shall be billed at double time and all other times will be billed at time and a half of the current labor rate.

ARTICLE 17 WARRANTY SERVICE. Warranty service includes labor and materials necessary to restore the Equipment to working condition in the event of a failure covered by the warranty and excludes total equipment replacement due to obsolescence or unavailability of parts. Materials used for repair may, at the option of CCG be new, used or reconditioned materials. All materials used in the repair of the Equipment shall be covered by the warranty set forth herein. Should a defect be found during a DDC Hardware Maintenance visit which CCG is not responsible for under this Agreement, Customer agrees to compensate CCG at their regular contract rates, plus the cost of materials to repair the Equipment. Should Warranty Services be performed in periods beyond the term of this Agreement Customer agrees to pay CCG's standard fee for any services and materials furnished.

ARTICLE 18 REPAIR SERVICE. Repair service includes labor required to perform repairs on the equipment. Repair service does not include labor or material to replace the entire Equipment due to obsolescence or unavailability of parts necessary for the operation of the Equipment.

ARTICLE 19 DDC HARDWARE MAINTENANCE. Hardware maintenance includes regularly scheduled visits during regular business hours to check and adjust operation of system including calibration of field devices, program adjustments, review alarm summaries, review point trending information, perform a database backup, and all other service as recommended by the manufacturer of the equipment. The Program does not include labor and materials necessary for Repair Service or to replace the entire Equipment due to obsolescence or unavailability of parts necessary for the operation of the Equipment. This program does not include any maintenance material, i.e.: filters, etc. unless noted in the Equipment and Service Performance section of this Agreement. Should any materials or repair labor be used during the regularly scheduled visits the customer agrees to pay CCG the prevailing fee for any services rendered.

ARTICLE 20 CRITICAL ALARMS. The purpose of this agreement is to notify building personnel of potential problems with major equipment in your facilities to prevent problems such as building freeze ups. This agreement is not a guarantee of equipment performance and CCG holds no liability to the performance of such equipment. Furthermore WebCTRL® provides alarm notifications only and cannot be held accountable for any emergency situations. Any assistance required by CCG technicians to resolve problems will be billed as a service call at our current hourly rates. Labor will be billed at a minimum of one-half hour during regular business hours and one hour minimum nights and weekends. It is the responsibility of the customer to ensure proper network communication between your facilities and CCG. If any Emergency Contact information changes, it is the responsibility of the customer to notify CCG immediately. This Agreement takes effect upon commencement of agreement and the customer has validated that the alarms are programmed by CCG Automation, Inc. and working properly.

ARTICLE 21 CONNECTED SERVICES. In the event Customer is receiving Connected Services on any Covered Equipment, Customer may be required to allow CCG to install hardware and/or software to enable communication with Customer's Equipment ("Gateway Device"). To deliver Connected Services on the Equipment the Customer shall provide a secure Internet connection to allow remote access to the Gateway Device to remotely access, transmit, store, and trend data for the purposes of providing Services. CCG will not use Connected Services to remotely operate or make changes to the Customer's Equipment. Customer understands that the Gateway Device shall remain CCG's property and CCG may upon reasonable notice remove it at any time. CCG will not disclose any individual customer equipment data acquired through Connected Services without customer consent. Customer hereby grants CCG a perpetual, worldwide, royalty free license to use, modify, manipulate, sublicense and create derivate works from such Data. CCG shall retain all rights to any intellectual property, data, materials and/or products created as a result of or relating to Connected Services. CCG makes no any warranty or guarantee relating to the Connected Services.

ARTICLE 22 CCG'S INTELLECTUAL PROPERTY. CCG shall retain all right, title and interest in any (a) work provided to Customer, including without limitation, all software source and object code, documentation, technical information or data, specifications and designs and any changes, improvements or modifications thereto ("Deliverables"), and (b) Know-How (defined below) employed by CCG in the creation of the Deliverables or performance of the Services, whether known to CCG prior to, or developed or discovered or acquired in connection with, the Deliverables shall be deemed "works made for hire." Without limiting the generality of the foregoing, ownership of all source files used in the course of performing the Services shall remain the exclusive property of CCG. For purposes of this Agreement, "Know-How" means any processes, techniques, concepts, methodologies, tools, analytical approaches, database models and designs, discoveries, and ideas furnished, produced by, developed, employed or used by CCG in the creation of the provision of the Deliverables or in the performance of the Services, and any changes, improvements or modifications thereto or derivatives thereof.

IN WITNESS WHEREOF, the parties hereto have caused this SOW to be effective as of the day, month and year first written above.

Norton City Schools

CCG Automation, Inc.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____