

**(TO) TASK ORDER AMENDMENT TO CSC AGREEMENT  
(PROFESSIONAL CCNA SERVICES)**

**THIS TASK ORDER AMENDMENT** (the "Amendment") to the (CSC) Continuing Services Contract for Professional CCNA Services is made and entered into effective the 16<sup>th</sup> day of March 2016, by and between the **CITY OF NAPLES**, a Florida Municipal Corporation (the "City"), and **TETRA TECH, INCORPORATED**, a Delaware Corporation (the Consultant").

**WHEREAS**, the City and the Consultant entered into that certain Agreement to furnish CCNA Services, on **May 19, 2015** (the "Original Agreement") (Reference Original **RFQ 14-054** and Original **Clerk Tracking No.15-00090**. This Task Order Amendment is associated with the **(WTP) Water Treatment Plant Wonderware Software Upgrades: Task Order No. 16-03-20-30-531040**; the ("Project"); and

**WHEREAS**, the parties desire to amend the Original Agreement by this Task Order Amendment so that the Consultant will provide said services pursuant to the terms and conditions contained in the Original Agreement and Amendment herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions herein set forth, it is hereby acknowledged and agreed as follows:

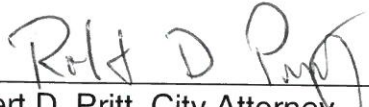
1. The above recitals are true and correct and are incorporated herein by this Reference.
2. "Article Three, Time" is amended to state that this Project Task Order Amendment will be performed and completed by **September 30, 2016** with a 60-day Project close-out time frame. Project: (WTP) Water Treatment Plant Wonderware Software Upgrades.
3. "Article Four, Compensation" is amended to reflect an increase to the Consultant for this Task Order Amendment in the amount of **\$39,048.00** for the Project as indicated in **Attachment A-1 Scope of Services and Basis of Compensation**, attached and made a part of this Amendment.
4. All other terms, provisions and conditions of the Original Agreement, except as expressly amended and modified by this Amendment, shall remain in full force and effect.
5. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any part whose signature appears thereon and all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the City and the Consultant have caused this Task Order Amendment to be duly executed by their duly authorized officers, all as of the day and year first above written.

**ATTEST:**

By:   
Patricia L. Rambosk, City Clerk

Approved as to form and legal sufficiency:


By:   
Robert D. Pritt, City Attorney

  
Witness (Signature)

Printed  
Name: GERMAIN MARQUEZ

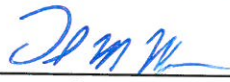
**CITY:**

**CITY OF NAPLES, FLORIDA**

By:   
A. William Moss, City Manager

**CONSULTANT:**

**Tetra Tech, Incorporated**  
10600 Chevrolet Way, Suite 300  
Estero, Florida 33928  
Att: **Daniel M. Nelson**, Vice President

By:   
(Signature)

Printed  
Name: DANIEL M NELSON

Title: VICE PRESIDENT

FEI/EIN Number: On File  
A Delaware Corporation (DE)

**TETRA TECH**

March 9, 2016

*Transmitted Electronically*

Mr. Bobb Reeder, Water Plant Supervisor  
City of Naples  
1001 Fleischmann Blvd.  
Naples, FL 34102

**Re: Naples WTP Wonderware Software Upgrades  
Proposal for Professional Services**

Dear Mr. Reeder:

Thank you for the opportunity to submit our professional services proposal to assist the City of Naples with upgrading the Wonderware control software at the City of Naples Water Treatment Plant (WTP).

This proposal contains our understanding of the project requirements, proposed scope of services, and fee estimate.

#### **STATEMENT OF UNDERSTANDING**

It is our understanding the City would like programming assistance to install upgraded Wonderware software on new City provided computers consisting of two desktop computers and one server class computer.

Our work would consist of installing upgraded Wonderware Intouch software on two desktop computers along with installing Wonderware Historian software on one server class computer.

Also included would be setup of the upgraded Wonderware communication drivers along with migration of the configuration and historical data from the existing Wonderware Historian computer.

It's assumed that the City will direct purchase new desktop computers and a single server class computer for the historian.

It's assumed the three remote stations that currently have Wonderware LCD panel computers would be retained and the application pared down to only station graphics and tags, Wonderware software would not be upgraded at these sites.

**SCOPE OF SERVICES**

Tetra Tech will execute these tasks:

- Produce recommended hardware bill of material for City purchase.
- Install the latest version of Wonderware Intouch on two new desktop computers.
- Install the latest version of Wonderware Historian on a new server computer.
- Configure and migrate the current Historian configuration to the new Historian.
- Migrate the existing Historian data to the new Historian computer.
- Setup the communication drivers on the new Historian and on one of the new desktop computers.
- Configure the Wonderware Historian client tools to connect to the new Historian.
- Verify operation and test trending.

**Optional Services:**

- Configure the Historian to be offsite and setup the Wonderware RDAS communication driver to store and forward data to the Historian.
  - Note that Wonderware RDAS is not redundant.

**ASSUMPTIONS**

- It's assumed that onsite startup and commissioning of the new software will occur over a 1 week period.
- All required hardware shall be provided by the City of Naples.
- Electronic connection access to new Historian computer.
- Computers will have operating systems installed before project commencement.
- If Historian is located offsite the network connection between the new Historian and the existing control system at the WTP will support constant data connection and will allow data access to the existing Wonderware Intouch HMI computers and the Allen-Bradley programmable logic controllers.

**SCHEDULE**

We are prepared to begin work within 14-days of your authorization to proceed and estimated project completion on or before Friday July 31 2016. Work can be coordinated with Mr. Mick Jones.

**COMPENSATION**

Compensation for the professional services for this project will be based on time and materials at a not to exceed fee of:

- Base WTP Programming \$32,738
- Optional Services (RDAS/Remote Server) \$6,310



Page 3 of 4

*Note: Fees include Tetra Tech purchase of required software from Insource Solutions. \$50 shipping fee and 6% sales tax have been added.*

The City will be invoiced monthly based on services performed. With this compensation method you pay only for the hours actually used. The proposed budget is for programming, startup and owner training engineering & programming services.

Services will be provided using the terms & conditions of the FY- 2015 City of Naples Continuing Services Agreement contract 15-00090 signed May 19, 2015.

We appreciate this opportunity to be of service to the City of Naples and look forward to working with you on this important project.

Sincerely,



Mick S. Jones, P.E.  
Senior Project Manager

Encl.: Standard Terms and Conditions  
Copy: Accounting (w/encl.)

PROPOSAL ACCEPTED BY \_\_\_\_\_

TITLE \_\_\_\_\_ DATE \_\_\_\_\_

*Naples WTP Wonderware Upgrades*

## Naples WTP Wonderware Upgrades

**Upgrade WTP desktops and historian Wonderware**  
Submitted to: City of Naples (Attn: Bobb Reeder)

Price Proposal

Revision Date:

Mar 08, 2016

Naples WTP Wonderware Upgrades

Upgrade WTP desktops and historian Wonderware  
Submitted to: City of Naples (Attn: Bobb Reeder)

Task Pricing Totals

Specify Add'l Fees on Setup

Technology Use Fee (89 hrs) = \$320

Total Price

39,048

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Unit Rate >

Technology Usage\*

\$3.59

Unit Rate >

Hour

Charged to >

ODC

Quantities >

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Unit Rate >

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Unit Rate Qty's

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Unit Rate >

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Charged to >

ODC

Quantities >

89

Unit Rate Qty's

Items >

Unit Rate >

Technology Usage\*

\$3.59



We have prepared a quote for you



## Wonderware upgrades at City of Naples

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QUOTE #004352 V3

PREPARED FOR

**Tetrattech**





804.378.8981 rhinkle@insourcess.com www.insource.solutions

Friday, March 04, 2016

Tetrattech  
Mick Jones  
710 Avis Drive  
Ann Arbor, MI 48108  
Mick.Jones@tetrattech.com

Dear Mick,

Thank you for your business.

Please send your purchase order to [orderentry@insourcess.com](mailto:orderentry@insourcess.com) or by fax to 804.378.8970.

Note: when sending purchase orders, please include a copy of your company's tax exempt certificate, if applicable. This omission could delay your order.

At InSource, our goal is to be your resource for expertise, assistance, and perspective enabling you to achieve success this year and beyond. Often achieving success requires an integrated approach within your organizations' **People, Process, Technologies and Disciplined Execution**. We recognize this and have the expertise to help your organization leverage the investment being made.

Ask me how we can help.

Rich Hinkle  
Account Executive  
InSource Solutions





804.378.8981 rhinkle@insourcess.com www.insource.solutions

### Option 1: Discounted Version Upgrades Plus 1 Year Maintenance

Item	Description	Price	Qty	Ext. Price
<b>Version Upgrade Discount</b> Prices for any version upgrades (Wonderware license part numbers beginning with "12-" prefix) in this section include a one-time 25% discount when purchased in conjunction with Wonderware Customer First Software Maintenance.				
1 12-12391	<b>Upgrade, Dev Studio 2014R2 Unlimited</b> <i>Upgrading SN: 1107389</i>	\$4,691.25	1	\$4,691.25
2 12-12404	<b>Upgrade, InTouch 2014R2 Runtime 60K Tag with I/O</b> <i>Upgrading SN: 1107386</i>	\$2,220.00	1	\$2,220.00
3 12-12505	<b>Upgrade, Wonderware Historian 2014R2 Standard, 5,000 Tag</b> <i>Upgrading SN: 1107387</i>	\$5,516.25	1	\$5,516.25
4 12-12300	<b>Upgrade, Wonderware Historian Client 2014R2 Per Device</b> <i>Upgrading SN: 1107390</i>	\$318.75	1	\$318.75
5 12-0531	<b>Upgrade, Wonderware CAL with Microsoft CAL Runtime, Single, SQL 2012 Standard</b> <i>Upgrading SN: 1107391</i>	\$202.50	1	\$202.50
6 ISS-W000-NEW	<b>Wonderware Customer First Standard Software Maintenance</b>	\$6,273.00	1	\$6,273.00

Subtotal: **\$19,221.75**

### Optional: RDAS

**\*Optional**

Item	Description	Price	Qty	Ext. Price
7 17-1397	<b>Remote Indus Data Acquisition Service 2014R2</b>	\$1,475.00	1	\$1,475.00
8 ISS-W000-NEW	<b>Wonderware Customer First Standard Software Maintenance</b>	\$280.00	1	\$280.00

\*Optional Amount: **\$1,755.00**



804.378.8981 rhinkle@insourcess.com www.insource.solutions

## Wonderware upgrades at City of Naples

### Quote Information:

Quote #: 004352  
Version: 3  
Delivery Date: 03/04/2016  
Expiration Date: 04/02/2016

### Prepared for:

Tetrattech  
Mick Jones  
710 Avis Drive  
Ann Arbor, MI 48108  
Mick.Jones@tetrattech.com  
(734) 213-5075

### Account Executive:



InSource Solutions  
Rich Hinkle  
804.419.9141  
rhinkle@insourcess.com

### Prepared by:

InSource Solutions  
Melisa January  
804.419.1353  
mjanuary@insourcess.com

### Quote Summary

Description	Amount
Option 1: Discounted Version Upgrades Plus 1 Year Maintenance	\$19,221.75
<b>Total</b>	<b>\$19,221.75</b>

### \*Optional Expenses

Description	Amount
Optional: RDAS	\$1,755.00
<b>Optional Subtotal</b>	<b>\$1,755.00</b>

Taxes, Shipping, handling and other fees may apply. Your order will be pre-processed awaiting final processing after we receive your purchase order at [orderentry@insourcess.com](mailto:orderentry@insourcess.com) or by fax at 804.378.8970. We reserve the right to cancel orders arising from pricing or other errors.

**Payment Terms:** Credit card

Signature \_\_\_\_\_

Date \_\_\_\_\_



**Standard Terms and Conditions**  
**InSource Software Solutions, Inc.**

**Priority.** These Terms and Conditions govern the sale and purchase of the Products, Software and/or Services that are provided by InSource Software Solutions, Inc. ("ISS") as set forth in the applicable Quotation or Purchase Order (collectively, the "Order") to Customer (as identified in the Order). These Terms and Conditions constitute an integral part of the contract between ISS and Customer for the purchase of the Products, Software and/or Services set forth in the applicable Order. By signing the Order or any similar ordering document, Customer shall be deemed to enter into a purchase order for the subject Products, Software and/or Services and to agree and acknowledge specifically that (a) Customer has read and understands and agrees to these Terms and Conditions; (b) that the Order (or similar ordering document), including these Terms and Conditions, constitutes a "writing signed by Customer" under any applicable law or regulation; and (c) Customer consents to the electronic delivery of the disclosures contained in these Terms and Conditions. ISS's failure to object to provisions contained in any communication from Customer (including any order set forth on a Customer form) shall not be deemed a waiver of these Terms and Conditions. Any changes in these Terms and Conditions must be specifically agreed to in writing signed by an authorized officer of ISS. In the event of a conflict between these Terms and Conditions and different terms and conditions set forth in an Order, these Terms and Conditions shall prevail unless the inconsistent term in the Order expressly states otherwise.

**Quotation.** Any Quotation issued by ISS is firm for thirty (30) days from the Quotation Date unless otherwise set forth on the cover page of such Quotation. The pricing in the Quotation applies only to the Product, Software and/or Services type and quantity set forth therein. ISS may, at its option, change the Product, Software and/or Services pricing and other terms for any subsequent sales of the applicable Product, Software and/or Services.

**Prices.** The applicable prices are only those specified in the Order and, unless expressly specified therein, do not include applicable destination charges or taxes. Prices are subject to revision when interruptions, delays, or changes in the quality, quantity or scope of the applicable Products, Software and/or Services are caused or requested by Customer.

**Taxes.** In addition to the prices set forth in the Order, Customer agrees to pay an amount equal to any and all applicable federal, state and local taxes, duties and other levies, which amounts shall be an additional charge to Customer.

**Title and Delivery.** Any Products or Software will be shipped FOB ISS's shipping location (whether an ISS facility or the facility of the third party provider) at the cost of Customer. In the absence of specific instructions from Customer, ISS will select the carrier and, at its discretion, ship "collect" or prepaid, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be an agent of ISS. Customer must provide its own insurance for all such shipments. Title and risk of loss or damage to the applicable Products or Software shall pass from ISS to Customer upon their delivery by ISS to the carrier. Any claims for loss or damage or misdelivery shall be filed with the carrier.

**Payment.** Terms of payment shall be net thirty (30) days from date of invoice. Interest on late payments will accrue at a rate of 1.5% per month. In case of a partial return of any Product or Software by Customer owing to defects covered by warranty, the invoice shall be paid within the term stated, for the amount corresponding to the quantity of Product and/or Software accepted. Customer shall not make reductions on the invoice unit price or quantities without prior written approval of ISS.

**Cancellation/Reschedule.** No cancellation for ISS's default shall be effective unless ISS shall have failed to correct such alleged default within forty-five (45) days after receipt by ISS of written notice of default from Customer. Once accepted by Customer in writing, any order for Product, Software or Services pursuant to the applicable Order is firm and non-cancelable. ISS will not accept cancellations or reschedule of the initial or any subsequent order under the applicable Order, other than for default of ISS or upon payment of all ISS's costs incurred for and reasonably allocated to the portion of the work already terminated and/or work in process, in accordance with generally accepted accounting principles.

**Inspection and Acceptance.** All Software shall be deemed accepted by Customer upon delivery. With respect to Services, Customer must notify ISS in writing of any deficiencies in the Services within thirty (30) days of ISS's completion of the same, as set forth in the Order. All Services shall be deemed accepted by Customer after such thirty (30) day period elapses.

**Software.** Any and all Software provided hereunder is provided pursuant to a license. Nothing herein shall constitute the sale or purchase of any Software or grant Customer any right, title or interest in or to any Software unless otherwise expressly provided in an Order. In all cases (e.g., whether the Software is an ISS-developed product or whether the Software is third-party software that is sublicensed or distributed by ISS), Customer shall be subject to and hereby agrees to comply with the terms and conditions of the applicable End User License Agreement ("EULA") or analogous document for that specific Software product. The terms and conditions of such software license or EULA shall control to the extent that any such terms and conditions conflict with these Terms and Conditions.

**Services.** To the extent that ISS provides Services under the applicable Order, the following terms shall apply. Unless otherwise agreed in the Order, Services shall be performed between the hours of 8:00 a.m. and 5:00 p.m. Eastern Time (provided that Services provided on site at Customer's facility shall be performed during the above-listed hours in the time zone in which Customer's facility is located). Services shall be provided on an eight (8) hour "man day" basis. When employees or contractors of ISS are required to travel outside the metropolitan areas of their primary work locations, Customer shall reimburse ISS for reasonable travel and meal expenses actually incurred by ISS that have been authorized by Customer in advance (provided, however, that any travel expenses listed or estimated in an Order shall be deemed approved in advance). ISS shall itemize and include such travel expenses in its invoices to Customer for Services, as set forth in the applicable Order. Upon customer's written request, ISS shall provide receipts or other appropriate documentation.

**Ownership.** ISS will retain all right, title and interest in and to all methodologies, processes, improvements, designs, tools, algorithms and information used by ISS to deliver the Services hereunder ("Know-how"). Customer agrees that ISS's Know-how constitutes Confidential Information (as set forth below), has tangible value and includes trade secret information of ISS. ISS shall retain all rights to the Know-how, including all copyrights therein, and no license to Customer under any patent, copyright, trademark or other intellectual property right of ISS is either granted or implied by Customer's receipt of any Know-how or ISS's use of any Know-how during the course of its provision of the Services hereunder.

**Work for Hire.** Customer agrees that all work performed by ISS pursuant to the Order shall be considered a Work for Hire as contemplated and defined in Section 101 of the United States Copyright Act. Accordingly, Customer hereby grants to ISS, absolute and forever, all rights of every kind and nature, in and to the results of ISS's services for any and all copyright terms and all extension and renewal terms of copyright, whether now known or hereafter created, throughout the Universe, for all uses and purposes whatsoever, and free from payment of any royalty or compensation whatsoever, other than herein provided. ISS shall accordingly have the sole and exclusive right to register any work resulting from ISS's services under the terms of the Order with the United States Copyright Office as the sole author thereof. In the event that any work resulting from ISS's services under the terms of the Order is not considered a Work for Hire for any reason, Customer hereby assigns, sells, conveys and transfer all right, title and interest in the work(s) to ISS on a royalty-free basis, in perpetuity, throughout the Universe.

**Limited Warranty.**

**Products.** ISS warrants only that Products sold or delivered shall conform to the standard physical characteristics for the applicable Products as defined within the applicable Product specifications supplied by ISS in connection with the Order. ISS warrants that the Products shall conform to the Product specifications for a period of one (1) year after the date of delivery to Customer (the "Warranty Period"). If, during the Warranty Period, any Product is found to be defective in material or workmanship, ISS, at its option, shall replace or repair the defective Product, provided, however, that such repair or replacement is Customer's sole and exclusive remedy for receipt of a defective Product. This warranty is non-transferable and applies only to the original purchaser of the Product(s); any resale of the Product(s) without the express, prior, written permission of ISS shall render this warranty void. This warranty does not extend to damage or wear caused by misuse, negligence, accident, corrosion, modification by the customer, faulty installation, loss of product, or tampering in a manner to impair normal operation of the equipment or software.

**Software.** The warranty applicable to Software licensed by ISS to Customer is set forth in the applicable EULA for the specific Software product that is the subject of such license. Unless otherwise expressly provided in the applicable EULA, Customer's sole and exclusive remedy for receipt of defective Software is repair or replacement of such Software.

**Services.** ISS warrants that the Services shall be performed in a good and workmanlike manner and shall conform to the specifications, if any, set forth in the applicable Order. If Services with regard to any Product are found defective under normal intended usage or operation within ninety (90) days from the time of completion of the Services, ISS shall correct such defects, provided that written notice of a claimed defect is given promptly upon discovery and within the services warranty period. ISS's re-performance of any Services found to be defective is Customer's sole and exclusive remedy for receipt of any defective Services.

**Third Party Products or Software.** ISS warrants Products or Software supplied by third parties only to the extent that such third parties allow ISS to pass through to Customer the warranties of such third parties. To the extent permitted, ISS shall assign to Customer any such applicable warranties. Customer's sole remedy for a breach of such warranty shall be the remedy offered by and available from the third party supplier. Products or Software from third parties which are not accompanied by third party warranties are sold on an "AS IS" basis.

**Disclaimer of Warranties.** ISS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW, CONTRACT OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEROPERABILITY OR NON-INFRINGEMENT, ALL OF WHICH ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. ISS'S WARRANTIES AS HEREIN SET FORTH SHALL

NOT BE ENLARGED, DIMINISHED, OR OTHERWISE AFFECTED BY, NOR SHALL ANY OBLIGATION OR LIABILITY OF ISS ARISE OUT OF ISS'S RENDERING OF TECHNICAL ADVICE OR SERVICES IN CONNECTION WITH THE PRODUCTS OR SOFTWARE FURNISHED HEREUNDER.

**Intellectual Property Indemnification.** Customer shall indemnify, defend and hold ISS harmless from and against any expenses, damages, costs or losses including attorneys fees, resulting from any suit or proceeding instituted or claim asserted (including settlement of any of the foregoing collectively, "Claims"), for infringement of third party patents, copyrights, trademarks or other intellectual property rights under the laws of the United States or any other nation, arising from (a) ISS's compliance with Customer's designs or specifications; (b) the use of the Products or Software in any manufacturing or other process; or (c) the combination of the Products or Software with items not supplied by or specified by ISS.

**Limitation of Liability.** LIABILITY OF ISS TO CUSTOMER FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ANY ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING, BUT NOT LIMITED TO NEGLIGENCE SHALL BE LIMITED TO THE PRICE SPECIFIED IN THE APPLICABLE ORDER FOR THE SPECIFIC PRODUCT, THE COMPONENT OF SOFTWARE OR THE SERVICE RENDERED THAT CAUSED THE DAMAGES OR THAT IS THE SUBJECT MATTER OF, OR IS DIRECTLY OR INDIRECTLY RELATED TO THE CAUSE OF ACTION. IN NO EVENT SHALL ISS BE LIABLE TO CUSTOMER OR OTHERS FOR LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF USE OR OTHER SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION THEREOF, WHETHER IN CONTRACT OR IN TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, EVEN IF SYNCHRONY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST CUSTOMER BY ANY THIRD PARTY. CUSTOMER ASSUMES ALL LIABILITY FOR ANY AND ALL DAMAGES ARISING FROM OR IN CONNECTION WITH, THE USE OR MISUSE OF THE PRODUCTS OR SOFTWARE BY CUSTOMER, ITS EMPLOYEES, OR OTHERS.

**Force Majeure.** ISS will not be responsible or liable for any delay or failure in performance arising as a result of fire, accident, acts of God, acts of public enemy, war, labor disputes, failure or delays, transportation, inability to secure product, raw materials or machinery for the manufacturing process, requirements or acts of any government or agency thereof, judicial action or other causes beyond ISS's control. In such event, ISS may defer performance for a period equal to the time lost by reason of the delay. If such time exceeds 45 days, ISS may by written notice to Customer cancel the applicable Order as to any Products, Software or Services then undelivered without liability to Customer.

**Confidentiality.** The parties recognize that, during the course of the provision of the Products, Software and/or Services, each of ISS and Customer may have access to confidential or proprietary information belonging to the other party. If the parties have an executed non-disclosure agreement in place, then the terms and conditions of such non-disclosure agreement shall govern the treatment of such information. If the parties are not party to an executed non-disclosure agreement, then the terms set forth in this Confidentiality section apply. The parties agree that any such confidential and proprietary information shall remain confidential. Each party agrees to use the same means it uses to protect its own proprietary or confidential information, but in any event, not less than reasonable means, to prevent the disclosure and protect the confidentiality of any of the following (collectively, "Confidential Information"): (a) written information received from the other party whether or not it is marked as confidential; and (b) oral or visual information disclosed by one party to another. Nothing in this Confidentiality provision shall prevent either party from disclosing Confidential Information that (i) is already known by the receiving party (so long as the Confidential Information was not received in violation of a previous confidentiality obligation of the receiving party or a third party); (ii) is publicly known or becomes publicly known without any breach of a confidentiality obligation by the receiving party; (iii) is received from a third party who is not under an obligation of confidentiality; (iv) is independently developed by the receiving party without the use of the disclosing party's Confidential Information; or (v) is approved in writing by the disclosing party for disclosure. Nothing herein will prevent either party from disclosing the other party's Confidential Information if required by a government agency or court of law, provided, however, that the party obligated to disclose such information shall promptly notify the other party of such obligation and reasonably cooperate in obtaining a protective order or other confidentiality agreement. If the parties may not obtain a protective order or other remedy, the parties will only disclose such portion of the Confidential Information that is required, by law, to be disclosed, and the parties will use reasonable best efforts to obtain assurances that the Confidential Information will be protected from public disclosure.

Upon termination of the applicable Order and/or the completion of ISS's provision of any Services hereunder and/or a disclosing party's request, each party shall return or destroy all written, descriptive or tangible matter that contains or embodies the other party's Confidential Information. The parties acknowledge that any unauthorized use or disclosure of Confidential Information would result in immediate and irreparable harm to the disclosing party for which monetary damages may not be adequate. Accordingly, either party shall be entitled to seek equitable relief in order to prevent such unauthorized use or disclosure or stop an ongoing unauthorized use or disclosure without the necessity of seeking a bond or other security.

**Term and Termination.** The Term of any Order shall be as set forth in the Order. If not otherwise specified, the Term shall commence as of the date of execution of the Order and expire at the later of the date ISS receives payment in full for all Products, Software and/or Services provided and the date ISS completes its provision of the applicable Products, Software and/or Services that are the subject of the Order. Orders accepted by ISS may be canceled by Customer only with the written consent of ISS (which ISS may withhold) and upon payment of reasonable cancellation or restocking charges as specified in the applicable Order. ISS shall have the right to cancel any order or to refuse or delay the shipment thereof for failure of Customer to make payments due or for any acts or omissions that delay or impair ISS's performance. In the event of bankruptcy or insolvency of Customer, or in the event any proceeding is brought by or against Customer, voluntarily or involuntarily, under any provision of the Bankruptcy Act or any insolvency law, ISS shall be entitled to cancel any order then outstanding, at any time during the period allowed for filing claims against the estate and shall receive reimbursements for its reasonable and proper cancellation charges. The Ownership, Intellectual Property Indemnification, Governing Laws, Disclaimer of Warranty, Limitation of Liability provisions and those other provisions that by their nature are intended to remain in effect after the termination of the applicable Order shall survive such termination or expiration. Notwithstanding the foregoing, the Confidentiality provisions shall remain in effect for a period of two (2) years after such termination or expiration; provided, however, that to the extent any Confidential Information also constitutes trade secret information, the obligations set forth in the Confidentiality provision shall remain in full force and effect with respect to such Confidential Information for so long as it retains trade secret status.

**Assignment.** Customer will not assign or subcontract its order, any interest therein or any right therein without the prior written consent of ISS. Nothing herein shall prevent ISS from subcontracting its performance of any of the Services hereunder to any affiliate or subsidiary or from assigning these Terms and Conditions to any affiliate or subsidiary or to any entity that acquires all or substantially all of ISS's assets or securities.

**Governing Laws.** Any dispute regarding the order (including the Terms) will be governed by and construed in accordance with the laws of the Commonwealth of Virginia (without regard to its conflict of laws provisions). Customer agrees that it will submit to the personal jurisdiction of the competent courts of the Commonwealth of Virginia in Richmond, Virginia and the courts of the United States sitting in the Eastern District of Virginia (Richmond Division), in any controversy or claim arising out of the sale contract.

**Export Control.** Customer will comply fully with all export control laws and regulations of the United States Government and with any applicable laws and regulations of any other country and will indemnify, if requested, Company for any failure. Customer agrees not to export or re-export either directly or indirectly any technical data furnished hereunder or the direct product of such technical data to any country that, as set forth in the Export Administration Regulations of the United States Department of Commerce, is prohibited.

**Severability of Provisions.** In the event of any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this contract will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Independent Contractors.** The relationship of the parties is that of individual independent contractors or of vendor and vendee and nothing contained herein shall be deemed to (i) create a joint venture or partnership among ISS and Customer, or (ii) cause either party or any of their respective officers, agents or employees to be or become the agent or employee of the other party for any reason.

**Employee Solicitation.** Customer shall not solicit or hire for employment the employees of ISS with whom the party had contact during the course of providing services. This obligation shall continue for a period of 12 months following the completion of the most recent work performed or contacted. If Customer breaches its obligations the Customer shall, as liquidated damages and as full and complete compensation for such breach, pay ISS an amount equal to twenty-five (25%) percent of the total gross earnings of ISS generated by the affected employee for the preceding twelve (12) month period.

**Complete Agreement.** The Order, including these Terms and Conditions and all attachments and documents incorporated by reference therein, constitutes the complete and exclusive statement of the terms and conditions of the contract between ISS and Customer and supersedes all prior or contemporaneous agreements, representations and/or communications, either oral or written, between the parties hereto or any representative of such parties with respect to the subject matter hereof. No change to this contract or waiver of any provision hereof will be binding on ISS unless made in writing and signed by a duly authorized representative of ISS.