

Firm Bid Proposal for:

City of Sparks

Reno, Nevada, USA

Project:
Virtualization Advantage Upgrade

System:
Server to Virtualization Platform and Workstations Upgrade

ISSUED BY : Schneider Electric Systems USA, Inc.

ISSUED DATE : 7/20/2020

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Proprietary Disclaimer:

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Revision History:

Rev.	Date	Subject	Prepared by
0	10/15/2019	Initial proposal	JG, LM
1	10/23/2019	Updates as per customer comments	LM
2	7/20/2020	Proposal refresh	JG, LM

Basis of Proposal:

This proposal and quotation is based on information provided by the customer.

- Verbal and written communications between the City of Sparks and Schneider Electric.

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1. EXECUTIVE SUMMARY

Thank you for considering Schneider Electric Systems USA Inc. (“Schneider Electric”) to assist you with Virtualization of the Foxboro DCS System located in the Truckee Meadows Water Reclamation Facility. This proposal outlines Advantage Program Upgrades and the solution and services we will provide.

Schneider Electric offers a proven process to modernize your control system. We have the experience necessary to provide a solution that minimizes risk, downtime and cost, and allows you to quickly take advantage of new levels of productivity. Schneider Electric shall provide engineering, installation, commissioning, project management, supervision, new equipment and associated materials for the control system.

Key benefits of choosing Schneider Electric:

- Schneider Electric is a global leader in energy management and automation, with a focus on connected technologies and solutions to manage energy and process in ways that are safe, reliable, efficient and sustainable.
- The breadth of our offer provides customers with a single point of contact and responsibility.
- We can leverage our large installed base of automation equipment to provide seamless and cost-effective migrations and modernizations.

As the global specialist in energy management and automation, Schneider Electric develops connected technologies and solutions to manage energy and process in ways that are safe, reliable, efficient and sustainable. The Group invests in R&D in order to sustain innovation and differentiation, with a strong commitment to sustainable development. With over **180 years** of history and innovation, our story is written by generations of people who have transformed our company, and the world, for almost two centuries. Today, more than **144,000 employees** in over **100 countries** empower us to innovate at every level – and to ensure that Life Is On.

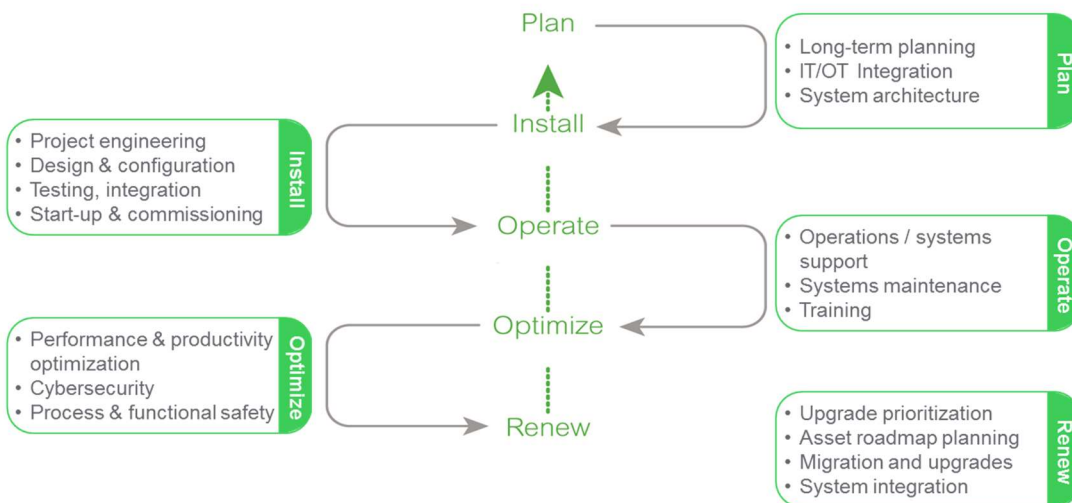
Please refer to www.schneider-electric.com for information on company officers, structure, history and financial details.

INDUSTRIAL AUTOMATION SERVICES

Schneider Electric Industrial Automation Services are specialized offers that support customers across the automation lifecycle. Whether it's prioritizing a starting point to modernize your operation, support to keep it running, or specialized skills to improve performance and protect the Safety and Security of the plant, we can help.

With focused skills and experience, applied in specific practice areas, the team works in conjunction with global delivery and field services resources to identify new opportunities and deliver solutions ranging from high-level modernization consulting to long term support agreements.

Lifecycle Services



2. SCOPE OF SUPPLY

2.1 PROJECT SUMMARY

Upgrade scope:

- Advantage upgrade of 3 H92 (Z420) Workstation to 3 new H92 (Z440), one H90 workstation server to one V91 Virtualization Server in addition to second V91 to be provided as new Hardware.
- Deploying Enterprise Edition of CCS 9.5 using the standard “TAC compliant” Active Directory GPOs.
- System Definition Build / Update (Create Commit Files)
- The new pair of V91s to be mounted in customer supplied cabinets.
- The V91s will be provisioned with a dedicated VM for four new Thin Clients (customer supplied) across the Auxiliary Communications Network – ACN (customer supplied).
- Thin-client Configuration, Startup and Communication Verification
- QuickFix Installation and Testing
- Optional System staging at Schneider electric Facility (location will be determined later as agreed with City of Sparks).
- Redeploy System Advisor data gathering scripts (onsite).
- Install Message Logger and assist with communications verification (limited to 8-hours).

2.2 HARDWARE SCOPE

The following table summarizes the main hardware scope of supply for this project. Detailed bill of materials can be found in a later section.

Hardware Category	Hardware to Be Supplied
Cabinets	N/A
Control Network	The V91 Virtualization Servers will be provisioned with a dedicated VM for four new customer supplied Thin Clients

Hardware Category	Hardware to Be Supplied
	across the customer supplied Auxiliary Communications Network – ACN.
Servers	QTY 1 V91 Virtualization Server will replace existing H90 Servers at site. QTY 1 V91 New Virtualization Server.
Monitors and Displays	None included. Re-use existing or use Customer supplied Monitors
Workstations	QTY 3 H92 Workstations will be used as Operator Interface to replace existing physical workstations.

2.3 SOFTWARE SCOPE

The following table summarizes the main software scope of supply for this project. Detailed bill of materials and quantities can be found in a later section.

Software Category	Software Licenses to Be Supplied
K0204AT	CVM MS Server 2016 Software Media Kit
K0204AR	Foxboro Evo Control Core Services v9.5
FX-ADD-EXCEED-V152	Foxboro DCS Lic. Compatibility Kit for Exceed
K0177BS	FoxView/FoxDraw V10.6+ For Win10/S2016 Media
J0202AW	MS Remote Desktop Services 2016 Device CAL 5 pack
J0202AT	MS Windows Server 2016 Device CAL 5 pack
J0202AS	McAfee Security Product License
Q0301JL	I/A Series Tools Suite Software

2.4 PROJECT SERVICES

The proposed services for the project management and engineering efforts are described within this section.

2.4.1 Summary of Project Services

The following table summarizes the project service deliverables for this project. Detailed descriptions are following.

Project Services	Summary of Services
Project Management	
Kickoff Meeting	Yes, teleconference
Configuration	
HMI	Not included
Historian / Reporting	The existing Historian will be loaded onto one of the VM's
Site Services	
Installation Supervision	Yes
Foxboro System Startup	Yes
Foxboro System Commissioning	Yes
Site Acceptance Testing (SAT)	Not included
On-site Work Schedule	Normal working hours between the hours of 8:00 am and 6:00 pm local time, Monday – Friday, excluding holidays
Travel and Living Expenses	Estimated travel and living expenses are included. Customer will be invoiced for expenses incurred plus 10%.

2.4.2 Order Management

Schneider Electric will assign a Project Lead to provide the customer with a single point of contact for the project.

Schedule

At the start of the project, the Project Lead will work with the customer to define the project schedule.

Meetings

The Project Lead will participate in kick-off meetings to discuss project schedule, deliverables, open issues and other project information. Meetings will be via teleconference.

Administration

Schneider Electric will provide administrative services to ensure project material and transactions are executed properly and in a timely fashion to meet project deadlines.

Change Management

Schneider Electric will identify and document any changes to the project scope, duration, assumptions, deliverables, pricing, or approach. Schneider Electric will determine the impact of

the change on the project's budget and schedule. Changes shall be mutually agreed upon and approved by both Schneider Electric and the customer before being implemented.

2.4.3 Virtualization Hardware

The existing Servers will be replaced with QTY 2 Virtualization Servers configured as a redundant pair. These Virtualization Servers will contain virtual images of the existing host stations. These virtual images will be in a redundant configuration such that a running image will exist on one server and a backup warm spare will be on standby on the other server. Replication will be enabled such that a backup image is created and monitored from one server to the other server to support catastrophic failure. Due to plant network constrains, the operator workstations will be upgraded to our current H92 Workstations and will continue to have redundant Foxboro MESH communications.

2.4.4 System Cabinets

City of Sparks will be responsible to provide suitable mounting space in an existing Foxboro enclosure for proper mounting of the V91 servers.

2.4.5 Installation

City of Sparks will provide staffing to retrofit the existing enclosures with the new V91 Virtual Servers and installation of the new H92 Workstations (with Schneider Electric installation supervision). Schneider Electric will validate system operation and performance before returning over to operations for on-line production.

- Schneider Electric shall supervise the following installation tasks:
 - Install new servers into existing enclosures.
 - Connect power sources and network cables as required.

- Customer is responsible for the following:
 - Return of the Advantage Upgraded hardware.
 - Providing existing enclosure mounting space for the V91 Servers
 - Provide an adequate staging area for the new equipment.

2.4.6 Commissioning

In advance of the on-site commissioning effort, Schneider Electric will complete the basic V91 sever software load, configuration and start-up at an identified Schneider Electric facility.

Schneider Electric will commence commissioning with the powering on of equipment and initial testing of communication links between devices. Following the initial start-up Schneider Electric will verify proper operation of the new application programs.

If a problem is identified during testing, Schneider Electric will identify the cause, correct the problem, and document the issue. If no errors are noted, Schneider Electric will verify with the customer that the system is operating properly.

- Customer shall be responsible for system process control and field devices. If errors are noted with the field devices, the customer shall be responsible for troubleshooting the field devices and correcting the problem.
- If additional time is required due to delays not caused by Schneider Electric, it will be provided on a Time and Material basis according to the attached Time and Material Pricing Guidelines.

2.4.7 Preliminary Project Schedule

Project schedule will be determined upon PO receipt and kickoff meeting.

3. BILL OF MATERIALS

3.1 EQUIPMENT LIST

Summary Listing

Item	Qty	Model	Description
1.	1	V914T4220G60	V91 Server Virtualization Host
2.	1	V914T4220G64	V91 Server Virtualization Host
3.	4	P0971XK	10 Ft (3 m) CAT 5, 10/100BaseT Shielded Cable
4.	2	P0972VR	5 Ft DVI-D Digital Video Cable
5.	1	K0204AT	CVM MS Server 2016 Software Media Kit
6.	2	P0928MR	H90/V90 DL380 Gen9 CMA Kit - HP 2U Cable Mgmt Arm
7.	3	H92A06CF050T	Model H92 Workstation For Windows
8.	1	P0928GY	External USB 2.0 DVD Drive
9.	2	P0971XK	10 Ft (3 m) CAT 5, 10/100BaseT Shielded Cable
10.	1	K0204AR	Foxboro Evo Control Core Services V9.5
11.	6	FX-ADD-EXCEED-V152	Foxboro DCS Lic. Compatibility Kit for Exceed
12.	1	K0177BS	FoxView/FoxDraw V10.5+ For Win10/S2016 Media
13.	8	J0202AS	McAfee Security Product License
14.	2	J0202AW	MS Remote Desktop Services 2016 Device CAL 5 pack
15.	2	J0202AU	MS Windows Server 2016 User CAL 5 pack
16.	2	J0202AV	MS Remote Desktop Services 2016 User CAL 5 pack
17.	1	Q0301JL	I/A Series Tools Suite Software
18.	2	S10D00200000	Foxboro Evo & I/A Series W'kstation SW Lic
19.	1	S10D4621001F	Foxboro Evo & I/A Series W'kstation SW Lic

3.2 SOFTWARE CFA BOM

The following items are covered by the customer first agreement and will be purchased at no cost:

Item	Qty	Model	Description
1.	2	S10B0023001Y	Foxboro Evo & I/A Series W'kstation SW Lic
2.	3	S10B0021001Y	Foxboro Evo & I/A Series W'kstation SW Lic

3.3 RETURN MATERIAL LIST

During the execution of an upgrade project the system in question may require certain modules to be replaced with newer types or versions of the same module. This table below lists the decommissioned equipment that is to be returned within 3 months of shipment of the new equipment to the address listed in the Commercial Notes section of this proposal.

Failure to return the material listed below will result in a change in the project's overall price found on the Pricing Summary Page.

Qty	Model	Description
1	P0928MC	H90 Workstation Server
3	P0928GS	H92 Workstation

Long Description Listing

Item	Qty	Description
10.00	1	V91 Server Virtualization Host
		Base Model: V914T4220G60
		PSS Reference: 41H-4V91
V91		FUNCTION: Virtualization Server for I/A Series Virtual Machines Model V91 Server The Model V91 Foxboro DCS virtualization server host is a 2U rack-mount server running the Microsoft Windows Server® 2016 operating system. A single or dual processor (each with eight cores), up to 384 GB of memory, up to eight internal hard drives, redundant hot-swappable power supplies, and optional Redundant Array of Independent Disks (RAID) configurations. The ability to host up to 14 virtual machines running Microsoft Windows Server 2016. One of the virtual machines can be configured to run Microsoft Windows Server 2016 operating system as a Domain Controller for V91 host servers. Quad head digital display via MiniDP interface. 4 Mini-DisplayPort to DisplayPort adapters included. Three MiniDP adapters are also available (MiniDP to VGA P/N RH103ER, MiniDP to DisplayPort P/N RH103DV, and MiniDP to DVI P/N RH103ET). The latest version of Veritas System Recovery 18 software is included with each new server. McAfee® Endpoint Security helps provide security on the server. Security by Local Group Policies to provide additional layer of protection. The server end of the locally procured power cord must have an IEC C13 plug. Length and connector on the other end as needed for your installation
4		HOST VIRTUALIZATION OS TECHNOLOGY: Microsoft Server 2016 Standard Edition with McAfee
T		TOTAL NUMBER OF VIRTUAL MACHINES: Ten Server 2016 Virtual Machines + McAfee Security Total
4		POPULATED PROCESSOR SOCKETS: 2x8 core CPU with Hyperthreading
2		FOXBORO CONTROL NETWORK ETHERNET INTERFACES: Two single port RJ-45 Cu PCIe MESH NICs + Four RJ-45 Integrated NICs
2		ADDITIONAL ETHERNET INTERFACES WITH SECOND RISER: Two single port RJ-45 PCIe NIC
0		FUTURE OPTION: Not Used
G		INTERNAL HARD DRIVE STORAGE: RAID 1 (2x600) 600 GB for C drive, RAID 5 with Hot Spare (3x1.2) = 2.4 TB for D drive (14 VM)
6		RAM: 6x16 GB Registered DDR4 [96 GB total] (max 12 VM)
0		HARDWARE TRADE-IN UPGRADE CREDIT: No trade-in

Item	Qty	Description
20.00	1	V91 Server Virtualization Host
		Base Model: V914T4220G6
		PSS Reference: 41H-4V91
V91		FUNCTION: Virtualization Server for I/A Series Virtual Machines Model V91 Server The Model V91 Foxboro DCS virtualization server host is a 2U rack-mount server running the Microsoft Windows Server® 2016 operating system. A single or dual processor (each with eight cores), up to 384 GB of memory, up to eight internal hard drives, redundant hot-swappable power supplies, and optional Redundant Array of Independent Disks (RAID) configurations. The ability to host up to 14 virtual machines running Microsoft Windows Server 2016. One of the virtual machines can be configured to run Microsoft Windows Server 2016 operating system as a Domain Controller for V91 host servers. Quad head digital display via MiniDP interface. 4 Mini-DisplayPort to DisplayPort adapters included. Three MiniDP adapters are also available (MiniDP to VGA P/N RH103ER, MiniDP to DisplayPort P/N RH103DV, and MiniDP to DVI P/N RH103ET). The latest version of Veritas System Recovery 18 software is included with each new server. McAfee® Endpoint Security helps provide security on the server. Security by Local Group Policies to provide additional layer of protection. The server end of the locally procured power cord must have an IEC C13 plug. Length and connector on the other end as needed for your installation
4		HOST VIRTUALIZATION OS TECHNOLOGY: Microsoft Server 2016 Standard Edition with McAfee
T		TOTAL NUMBER OF VIRTUAL MACHINES: Ten Server 2016 Virtual Machines + McAfee Security Total
4		POPULATED PROCESSOR SOCKETS: 2x8 core CPU with Hyperthreading
2		FOXBORO CONTROL NETWORK ETHERNET INTERFACES: Two single port RJ-45 Cu PCIe MESH NICs + Four RJ-45 Integrated NICs
2		ADDITIONAL ETHERNET INTERFACES WITH SECOND RISER: Two single port RJ-45 PCIe NIC
0		FUTURE OPTION: Not Used
G		INTERNAL HARD DRIVE STORAGE: RAID 1 (2x600) 600 GB for C drive, RAID 5 with Hot Spare (3x1.2) = 2.4 TB for D drive (14 VM)
6		RAM: 6x16 GB Registered DDR4 [96 GB total] (max 12 VM)
4		HARDWARE TRADE-IN UPGRADE CREDIT: CF Advantage Discount for return of one H90

Item	Qty	Description
30.00	4	10 Ft (3 m) CAT 5, 10/100BaseT Shielded Cable
		Base Model: P0971XK

FUNCTION: Used With Copper Ethernet Networks And DNBT. Riser Grade Cable.
Note: Has PVC Content.

Item	Qty	Description
40.00	2	5 Ft DVI-D Digital Video Cable

Base Model: P0972VR

FUNCTION: 5 Foot DVI-D (Male/Male) Video Cable for connecting a DVI-D Digital Video Source to a Digital-Capable Monitor

Item	Qty	Description
50.00	1	CVM MS Server 2016 Software Media Kit

Base Model: K0204AT

FUNCTION: Media kit required to use (Centralized Virtualization Management) CVM with MS Server 2016 OS. One kit required per V91

Item	Qty	Description
60.00	2	H90/V90 DL380 Gen9 CMA Kit - HP 2U Cable Mgmt Arm

Base Model: P0928MR

FUNCTION: H90/V90 DL380 Gen9 CMA Kit - HP 2U Cable Mgmt Arm For Easy Install Rail Kit

Item	Qty	Description
70.00	3	Model H92 Workstation For Windows

Base Model: H92A06CF050T

PSS Reference: 31H-4H92

- H92 **FUNCTION:** Model H92 Workstation for Windows® Workstation Class Xeon processor, with pre-configured and installed Microsoft® Windows®10 64 bit operating system, in a Mini-Tower package. The base unit consists of an Internal SATA Hard Drive, 8 Gb of ECC RAM, Internal DVD/CDRW Drive, Mouse, Keyboard and PCIe Dual Head Digital Video Interface. The Workstation Model H92 for Windows can be connected to the Control Network via required fiber optic or copper ethernet adapter cards for Control Network connectivity
- A **SYSTEM VERSION/O.S. LICENSES:** Foxboro Evo® Control Core Services v9.4 (and later) with Windows 10 and McAfee ENS + ePO
- 0 **FUTURE OPTION:** Not used
- 6 **POINTING DEVICE & VIDEO CARD:** Top button Trackball + Dual Head digital DisplayPort /DVI-D interface (Nvidia NVS 310 (RH103AB))
- C **RAM:** 16GB of DDR3 ECC RAM
- F **INTERNAL SYSTEM DISK:** Three 500 GB hard drives in RAID 1 + Hot Spare con
- 0 **BACKUP DEVICE:** None
- 5 **ETHERNET CARD:** Two Single Port RJ-45 PCIe card NICs + One Integrated RJ-45 NIC
- 0 **I/O CARDS:** None
- T **HARDWARE TRADE-IN UPGRADE CREDIT:** Advantage Discount for return of P92 , H92

Item	Qty	Description
80.00	1	External USB 2.0 DVD Drive

Base Model: P0928GY
PSS Reference: 21H-4U13 B4
FUNCTION: External USB 2.0 DVD+/-RW Drive for Thin Client OS image installation. Powered via USB. For use with dual monitor thin client P0928FY and quad monitor thin client P0928FZ.

Item	Qty	Description
90.00	2	10 Ft (3 m) CAT 5, 10/100BaseT Shielded Cable

Base Model: P0971XK
FUNCTION: Used With Copper Ethernet Networks And DNBT. Riser Grade Cable.
 Note: Has PVC Content.

Item	Qty	Description
100.00	1	Foxboro DCS Control Core Services v9.5

Base Model: K0204AR

FUNCTION: Control Core Services v9.5 Software media for Windows 10 and Server 2016 platforms. Includes System Manager, AIM* AT, System Definition, and CCS release notes and installation guide. Need one per system. Requires separate software license (S10 or newer). Does not include support for classic software. See the separate media kit labeled FX-ADD-EXCEED-V152 to support ICC, PLB Monitor, PLB Editor, and Operator Action Journal Configurator.

Item	Qty	Description
110.00	1	Foxboro DCS Lic. Compatibility Kit for Exceed

Base Model: FX-ADD-EXCEED-V152

FUNCTION: Foxboro DCS Lic. Compatibility Kit for Exceed Foxboro DCS SW License to enable Exceed Version V15 SP3. One instance of this license is needed per workstation, server or VM instance running any of the following software's: ICC, PLB Monitor, PLB Editor and OAJ configurator. Required for all CCS 9.5 (or later) installs or for all upgrades from CCS 9.3 or prior. CCS 9.4 includes this version of Exceed. Each new version of Exceed will require this license to be renewed (repurchased) in the future for all workstations, servers and VMs it is installed on.

Item	Qty	Description
120.00	1	FoxView/FoxDraw v10.6 For Win10/S2016 Media

Base Model: K0177BS

FUNCTION: FoxView/FoxDraw v10.6 for Windows 7/10 and Windows Server 2008 R2/2016. Includes user's guide and release notes. Need one item per system. Requires S-Code license for use.

Item	Qty	Description
130.00	8	McAfee Security Product License

Base Model: J0202AS

FUNCTION: McAfee Security Product license provides entitlement to VirusScan Enterprise (VSE), MOVE, ePolicy Orchestrator (ePO), McAfee Agent (MA), Host Intrusion Prevention (HIP), Data Loss Prevention (DLP), Rouge System Detection (RSD), and Integrity Control (IC). One license required for every endpoint that will use any of these products.

Item	Qty	Description
140.00	2	MS Remote Desktop Services 2016 Device CAL 5 pack

Base Model: J0202AW

FUNCTION: MS Windows Remote Desktop Services 2016 Device CAL 5 pack. This is a Microsoft Windows Server 2016 Remote Desktop Services (RDS CAL) per Device Client Access License for embedded systems, 5 pack. A Windows Server 2016 RDS CAL is required for licensing server (H90, V91, or VM) RDS clients to allow remote desktop access to user sessions on the server (H90, V91, or VM) via a plant network, Internet, or intranet. This part provides RDS access for 5 users from an unlimited number of client computers or devices. These licenses can also be used with Server 2008 OS.

Item	Qty	Description
150.00	2	MS Windows Server 2016 User CAL 5 pack

Base Model: J0202AU

FUNCTION: MS Windows Server 2016 User CAL 5 pack. Required for Server when clients exceed 5 standard client license with the base OS. This is a Microsoft Windows Server 2016 Client Access License (CAL) for 5 Client Users. A Windows Server Client Access License is required for licensing each user connecting to or accessing data on a Server (H90, V91, or VM) via a plant network, Internet, or intranet. The Windows Server 2016 OS license comes with 5 Server CALs already included. Therefore the H90 server comes with 5 of these licenses and the V91 server comes with 5 or more depending how many VMs the V91 is configured to support. In addition to Server CAL licenses, a server (H90, V91, or VM) running Remote Desktop Services requires an RDS CAL (J0201AW or J0201AV) for each device or user that is accessing via Remote Desktop Services. These licenses can also be used with Server 2008 OS.

Item	Qty	Description
160.00	2	MS Remote Desktop Services 2016 User CAL 5 pack

Base Model: J0202AV

FUNCTION: MS Windows Remote Desktop Services 2016 User CAL 5 pack. This is a Microsoft Windows Server 2016 Remote Desktop Services (RDS CAL) per User Client Access License for embedded systems, 5 pack. A Windows Server 2016 RDS CAL is required for licensing server (H90, V91, or VM) RDS clients to allow remote desktop access to user sessions on the server (H90, V91, or VM) via a plant network, Internet, or intranet. This part provides RDS access for 5 users from an unlimited number of client computers or devices. These licenses can also be used with Server 2008 OS.

Item	Qty	Description
170.00	1	I/A Series Tools Suite Software

Base Model: Q0301JL

PSS Reference: 31S-7SW_TOOL

FUNCTION: Collection of Support Tools for I/A Series Systems. The available tools are: TagSearch, FBMTrack, Baseline, cpShell, Message Logger and SSCSupport. Solaris and IEE are not supported.

Item	Qty	Description
180.00	2	Software Suite License for Foxboro DCS +I/A Series
		Base Model: S10D00200000
S10		FUNCTION: Software Suite License for Foxboro Evo +I/A Series Software Suite License for Foxboro Evo & I/A Series Workstations, Servers, and Virtual Machines with optional selections for Size, Networking, Operator Displays, Hosting Services, Engineering Tools, and Field Device Managers. Paper license certificate.
D		VERSION: For Foxboro Evo & I/A Series with H90 Server or VM For Foxboro Evo & I/A Series with H90 Server or Virtual Machine
0		ANALOG I/O QTY: None
0		DIGITAL I/O QTY: None
2		NETWORKING: Redundant Ethernet
0		OPERATOR DISPLAY MANAGERS: None
0		VIEW ONLY DISPLAY MANAGERS: None
0		HOSTING SUPPORT: None
0		ENGINEERING TOOLS: None
0		UPGRADES: None

Item	Qty	Description
180.00	1	Software Suite License for Foxboro DCS +I/A Series
		Base Model: S10D4621001F
S10		FUNCTION: Software Suite License for Foxboro Evo +I/A Series Software Suite License for Foxboro Evo & I/A Series Workstations, Servers, and Virtual Machines with optional selections for Size, Networking, Operator Displays, Hosting Services, Engineering Tools, and Field Device Managers. Paper license certificate.
D		VERSION: For Foxboro Evo & I/A Series with H90 Server or VM For Foxboro Evo & I/A Series with H90 Server or Virtual Machine
4		ANALOG I/O QTY: Up to 1,000 Analog I/O Points
6		DIGITAL I/O QTY: Up to 5,000 Digital I/O Points
2		NETWORKING: Redundant Ethernet
1		OPERATOR DISPLAY MANAGERS: One
0		VIEW ONLY DISPLAY MANAGERS: None
0		HOSTING SUPPORT: None
1		ENGINEERING TOOLS: FoxDraw
F		UPGRADES: SvcAgmt Adv Discount for return of V8.x SW Advantage Discount for customer sites covered by a Customer First Service Agreement

Item	Qty	Description
190.00	2	Software Suite License for Foxboro DCS +I/A Series
		Base Model: S10B0023001Y
S10		FUNCTION: Software Suite License for Foxboro Evo +I/A Series Software Suite License for Foxboro Evo & I/A Series Workstations, Servers, and Virtual Machines with optional selections for Size, Networking, Operator Displays, Hosting Services, Engineering Tools, and Field Device Managers. Paper license certificate.
B		VERSION: For Foxboro Evo & I/A Series with H92 Workstation
0		ANALOG I/O QTY: None
0		DIGITAL I/O QTY: None
2		NETWORKING: Redundant Ethernet
3		OPERATOR DISPLAY MANAGERS: Three
0		VIEW ONLY DISPLAY MANAGERS: None
0		HOSTING SUPPORT: None
1		ENGINEERING TOOLS: FoxDraw
Y		UPGRADES: Software version upgrade discount for customer sites covered by a Standard, Premium or Elite level Customer First Service Agreement SvcAgmt disc for sites at Preferred Version Upgrcovered by a Standard, Premium or Elite level Customer First Service Agreement
200.00	3	Software Suite License for Foxboro DCS +I/A Series
		Base Model: S10B0021001Y
S10		FUNCTION: Software Suite License for Foxboro Evo +I/A Series Software Suite License for Foxboro Evo & I/A Series Workstations, Servers, and Virtual Machines with optional selections for Size, Networking, Operator Displays, Hosting Services, Engineering Tools, and Field Device Managers. Paper license certificate.
B		VERSION: For Foxboro Evo & I/A Series with H92 Worksation
0		ANALOG I/O QTY: None
0		DIGITAL I/O QTY: None
2		NETWORKING: Redundant Ethernet
1		OPERATOR DISPLAY MANAGERS: One
0		VIEW ONLY DISPLAY MANAGERS: None
0		HOSTING SUPPORT: None
1		ENGINEERING TOOLS: FoxDraw
Y		UPGRADES: Software version upgrade discount for customer sites covered by a Standard, Premium or Elite level Customer First Service Agreement SvcAgmt disc for sites at Preferred Version Upgrcovered by a Standard, Premium or Elite level Customer First Service Agreement

3.4 SOFTWARE

Control Core Services v9.5 for Windows 10 and Server 2016
FoxView/FoxDraw V10.6 for Windows 10 and Server 2016

3.5 SPARE PARTS

This proposal does not include spare parts.

4. ASSUMPTIONS AND CLARIFICATIONS

4.1 ASSUMPTIONS AND CLARIFICATIONS

- This Proposal is based on information provided to Schneider Electric by City of Sparks and its representatives, all of which is assumed to be accurate and complete.
- It will be City of Sparks's responsibility to provide unimpeded system access, system resources, and adequate workspace during all onsite programming and startup activities.
- Delays due to scheduling, coordination and field support, which results in on-site standby time or rescheduled on-site support for Schneider Electric System personnel may result in additional support cost at Schneider Electric System current hourly rates above those quoted.
- Thin-Clients and ACN switches are not included in this proposal.
- Schneider Electric is not responsible for programming, configuration, or modification of existing site equipment or software that is not included in the scope of supply.
- Schneider Electric is not responsible for interfacing with any equipment on site that is not included in the scope of supply, unless stated otherwise in the proposal.
- Schneider Electric is not responsible for the demolition, decommissioning or disposal of existing equipment.
- Any variation to the scope of supply as stated in this proposal will require approval by Schneider Electric and may impact price and/or schedule.
- Any unforeseen delays that is not due to Schneider Electric shall be Customer's responsibility and may impact price and/or schedule.
- In case the contractual duration is extended/delayed more than the agreed to project schedule due to reasons not directly attributable to Schneider Electric, Schneider Electric's offered man-days/man-months shall lapse and a new offer must be provided, if required.
- It is assumed there is sufficient space in the control panels to accommodate the new hardware.
- It is assumed that the existing communication networks are installed properly and functioning without error.
- This proposal does not include time and expense for the customer safety and security requirements or any federal, state or local approvals, unless specifically stated in the Scope of Supply.

- This proposal does not include additions or modifications to HMI, SCADA, or similar systems.
- This proposal does not include field devices, instrumentation, conduit, fiber optic cable, or other long run cabling unless stated in the hardware deliverables.
- This proposal does not include external fusing. If required, fusing shall be provided by the customer.
- Schneider Electric is not responsible for programming mistakes in the original application programs (if applicable). Time required for debug and corrections shall be billed at time and expense.
- If a software upgrade from a legacy or previous version is purchased, it is required for the customer to have a current Automation Priority Support Contract. If no current subscription exists, a new support package will be provided at an additional cost.
- Programs will be provided in the most recent released version of the software unless other arrangements are made in advance.
- The proposed equipment is to be mounted by the City of Sparks in existing enclosures. personnel. Enclosure customizations, power wiring, termination wiring or field wire terminations will be the responsibility of the City of Sparks or their representative.
- Drawings and or drawing updates are not included in the scope of work for this project.
- Training - This proposal assumes that City of Sparks is responsible to determine if and to provide Operator and/or Technical Training as required.

4.2 CUSTOMER RESPONSIBILITIES

- The Customer will supply current project documentation including but not limited to the following:
 - Regulatory and environmental requirements
 - Safety interlocks and alarm requirements
 - Network and IT requirements
 - Existing control system programs and applications
 - Electrical and Mechanical Drawings
 - Any other documents as required by Schneider Electric as per Project needs.
- Customer shall ensure that required personnel (in number and expertise) are available at all necessary times at the site when required in order for Schneider Electric to perform the Scope of Supply.
- Customer will be responsible for safety and security arrangements to ensure the safety of Schneider Electric employees and contractors working at the Project site or other

Customer locations. Customer shall also be responsible for securing all Schneider Electric property at the Project site.

- The customer shall review submitted documentation and provide approvals in a timely manner as to not affect agreed upon delivery dates.
- The customer shall provide any and all permits that may be required.

5. COMMERCIAL PRICING

5.1 COMMERCIAL SUMMARY

Schneider Electric is pleased to provide the following firm pricing for the scope of supply defined within this proposal:

Item	Description	List Price USD	Sell Price USD
1.	Equipment Upgrade Cost	\$188,177.00	\$94,572.00
2.	Field Service Engineering Cost	\$58,981.00	\$53,247.00
3.	Estimated T&L Cost	\$2,076.00	\$2,076.00
Overall Total Upgrade Cost		\$249,234.00	\$149,895.00

Pricing reflects City of Sparks Service Level Agreement discount.

*Note: Travel and living expenses are included and will be invoiced at cost plus 10%. In the event of conflict with the Proposed Terms and Conditions the Schneider Electric Systems USA Inc. Terms and Conditions will prevail.

Schneider Electric standard warranty warrants equipment and services for 12 months from the issuance of the customer provisional acceptance letter or 18 months from the invoice date of the last component of the order whichever occurs first.

5.2 COMMERCIAL NOTES

Binding Pricing:	Prices are in US dollars and are firm and fixed. Pricing level is for a single purchase order. Multiple purchase orders may affect pricing. Purchase order must include all items which are part of the Base Bid. Optional items may be omitted. Any breakdown of prices provided in this proposal is for information purposes only unless otherwise stated herein.
Proposal Acceptance:	Please include the Schneider Electric Proposal Number on the PO. Email: processautomation.us@Schneider-Electric.com Mail: Schneider Electric Systems USA, Inc. Attn: Order Management 10900 Equity Dr. Houston, TX 77041 Fax: 949-639-1508
Proposal Validity:	This proposal is valid for 30 days.
Payment Schedule:	<ul style="list-style-type: none"> • Proposed payment schedule: • 30% Receipt of Purchase Order • 30% Release to Factory • 30% Delivery to Site • 10% Installation and Commissioning <p>All invoices are due and payable within 30 days from invoice date. Late charges may result in a late payment fee.</p>
Terms and Conditions:	This proposal is governed by the Schneider Electric Standard Terms and Conditions of Sale in Section 6.

<p>Advantage Policy:</p>	<p>Advantage upgrade discounts are provided in exchange for return of the functional/operational decommissioned equipment identified in this quotation. The Advantage Upgrade discounts are offered strictly for upgrades to Preferred lifecycle products only.</p> <p>In the cases of Workstations and Processors, both the hardware and license must be purchased on the same Sales Order to receive the discounts.</p> <p>All licensable product spares MUST also be included in the original upgrade project.</p> <p>The decommissioned equipment is to be returned to Schneider Electric within 3 months of shipment of the new equipment to:</p> <p style="padding-left: 40px;">Schneider Electric Systems USA, Inc. 15 Pond Ave. Foxboro, MA 02035 Attn: Dept. 910</p> <p style="padding-left: 40px;">RA#Axxxx, where the RA is the Sales Order number for the new equipment preceded by an "A".</p> <p>Failure to return the old equipment can result in additional billing. Returned product must be in refurbishable condition. Products that are contaminated, damaged, non-repairable or obviously broken material will not be accepted in trade.</p> <p>Note: Customer shall be responsible to arrange the logistics to return the decommissioned equipment back to Schneider Electric. Packaging, Freight and Shipping charges are the responsibility of the customer.</p>
<p>COVID-19 Disclaimer</p>	<p>The Customer acknowledges that the products or part thereof are produced in, or otherwise sourced from, or will be installed in areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics/pandemic and that the situation may trigger stoppage, hindrance or delays in Schneider Electric Systems' (or its subcontractors) capacity to produce, deliver, install or service the products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by Schneider Electric Systems (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of Schneider Electric Systems' (or its subcontractors') employees. The Customer therefore recognizes that such circumstances shall be considered as a cause for excusable delay not exposing Schneider Electric Systems to contractual sanctions including without limitation delay penalties, liquidated or other damages or termination for default.</p>

6. STANDARD TERMS AND CONDITIONS

Schneider Electric Systems USA, Inc.

General Terms and Conditions of Sale of Goods, Services and License of Software

Article 1 - AGREEMENT TERM.

These General Terms and Conditions of Sale (“Terms of Sale”) shall apply to any purchase or procurement of Goods, Software and/or Services by the legal entity procuring such Goods, Software and/or Services (“Buyer”) from Schneider Electric Systems USA, Inc. or Schneider Electric Systems Canada, Inc., as applicable (“Seller”). To the extent that there is a conflict between these Terms of Sale and a valid signed master agreement between the Buyer and Seller, the specific conflicting terms of the master agreement shall prevail. To the extent that there is a conflict between these Terms of Sale and another set of Seller terms and conditions issued to the Buyer as part of the proposal or quotation process, the specific conflicting terms of the proposal or quotation document shall prevail. To the extent that Buyer attaches any other terms and conditions to a Purchase Order or other instrument used to buy Seller’s Goods, Software or Services, such attached Buyer terms and conditions shall be null, and void and these Terms of Sale shall be the terms and conditions of sale. Any other variation from these Terms of Sale shall require the signed consent of an authorized Seller representative.

Article 2 - DEFINITIONS

- 2.1 “**Affiliates**” means any legal entity which has an ownership interest in or is under a common ownership interest with a Party and which is defined in attachments to this Agreement or subsequent Purchase Orders. Notwithstanding the definition of Affiliates, Seller Affiliates shall not include Aveva Group PLC. and all its subsidiaries.
- 2.2 “**Agreement**” means these terms and conditions, Seller’s Proposal with all the attachments, and the Purchase Order with all Change Orders “if any”. In case of any discrepancies between the documents, the order of precedence will be as following:
 1. These Terms of Sale with all the attachments.
 2. Seller Proposal with all the attachments, and
 3. The Buyer Purchase Order.
- 2.3 “**Buyer**” shall mean the company and any of its Affiliates which has executed a Purchase Order under this Agreement.
- 2.4 “**CFA**” shall mean Customer First Agreement which is the support services program Buyer provides to Seller. CFA scope of work, support exclusions and other special terms related to CFA only are described herein under Attachment A.
- 2.5 “**Days**” shall be calculated as calendar days unless otherwise specified under this Agreement.
- 2.6 “**Expenses**” shall mean all out-of-pocket expenses reasonably incurred by Seller in the provision of the Goods, Software and Services, including but not limited to, airfare, hotel, transportation, meals, supplies, data preparation, and other direct expenses incurred by Seller’s personnel or subcontractors in performing Seller’s obligations under a Purchase Order, as these expenses may be further detailed in a Purchase Order and the net tax costs of any non-deductible travel expenses for assignment of employees over one (1) year in locations not within a reasonable commuting radius of the employee’s principal place of employment.
- 2.7 “**Goods**” shall mean all products, equipment, materials, spare parts, hardware, supplies, and accessories to be supplied under a Purchase Order.
- 2.8 “**Intellectual Property Rights**” shall mean any patent, trademark, service marks, copyrights, trade secrets, ideas, concepts, know-how, techniques or other proprietary right.

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2. 9 **“Party and Parties”** shall mean Seller, Buyer hereunder and any third party to which the Parties may have assigned their rights under the Agreement. In its singular form, Party means any one of Seller, Buyer or the third party to whom one of them has assigned its rights under the Agreement.
2. 10 **“Price”** shall mean the total value of a Purchase Order after all applicable discounts have been applied. Expenses are not included in the Price unless agreed upon in the Purchase Order.
2. 11 **“Purchase Order”** shall mean any purchase order, either paper or electronic, with related attachments and changes thereto, agreed upon by the Parties pursuant to this Agreement, which shall describe the specific Goods, Software or Services to be supplied by Seller to the Buyer and the detailed Specifications for such. Purchase Orders agreed upon from time to time between Seller and Buyer and/or their respective Affiliates shall constitute separate contracts that incorporate this Agreement.
2. 12 **“Seller”** shall mean Schneider Electric Systems USA, Inc.
2. 13 **“Services”** shall mean the provision of testing, assessment, per-diem or specific time-limited engineering services, installation, start-up, configuration and any development of application programs, customization, implementation, training and any other services agreed upon between the Parties in Purchase Orders hereunder.
2. 14 **“Software”** shall mean computer software programs, in object code form including firmware and custom software, and instructions manuals, specifications and related documentation in written or electronic form, their related instructions manuals and documentation, for which Seller grants Buyer a license under the contract. The conditions of the Software license shall be set forth in the Seller end-user license agreement applicable to the particular Software at the time of delivery or, in the absence of such end-user license agreement, the software license terms contained herein. All modifications, enhancements, developments, additions or interfaces with other computer programs made by Seller, alone or jointly with Buyer, in the course of the performance of a purchase order shall be deemed owned by Seller and included in the Seller Software and shall be subject to all rights and limitations set forth in this license agreement for such Software applicable at the time of delivery.
2. 15 **“Specifications”** shall mean the Seller’s standard specifications applicable to the Goods and/or Software at the time of execution of the Agreement or a Purchase Order hereunder or the specific requirements mutually agreed upon between the Parties in Purchase Orders hereunder in relation to the Goods, Software and, with respect to Services, the agreed upon statement(s) of work containing a description of the Services to be rendered.
2. 16 **“Third Party Products”** shall mean products and software of a third-party vendor. If Third Party Products are supplied by the Seller under the Agreement, notwithstanding anything to the contrary, such supply is made on a “pass-through” basis only and is subject to the terms and conditions of the third-party vendor, including but not limited to warranties, licenses, indemnities, limitation of liability, prices and changes thereto. For time and materials orders, Third Party Products are quoted subject to price changes imposed by third party vendors between the date of Purchase Order encompassing such Third Party Products and the date of Seller’s invoice related to that Third Party Product.
2. 17 **“Warranty Period”** shall mean the applicable time period during which Goods, Software and Services are respectively guaranteed by Seller under the conditions set forth herein and in accordance with “Warranties for Goods, Software and Services” Article.

Article 3 - CHANGES

3. 1 Either Party may request changes that affect the scope, duration, delivery schedule or price of a Purchase Order, including changes in the Specifications and Goods, Software or Services to be delivered or licensed. If either Party requests any such change, the Parties shall negotiate in good faith a reasonable and equitable adjustment to the Purchase Order. Neither Party shall be bound by any change requested by the other until an amendment to the Purchase Order in the form of a change order has been accepted in writing by both Parties. Pricing of changes shall be based on the then current Seller’s prices.
3. 2 Any alteration, deletion or addition to the Work ordered in the Purchase Order or a change in any provision of the Purchase Order shall be effective only if made in a change order is executed by Buyer and Contractor. A change order, however, shall not modify any provisions of the Agreement unless the parties agree in writing to do so.

Article 4 - PRICE

4. 1 Unless otherwise stated in an applicable quotation or proposal, all prices are subject to change without notice. In the event of a net price change and unless otherwise agreed to in writing, prices for orders scheduled for immediate release shall be those in effect at time of order entry. Prices for orders placed for future shipment without an agreed price and ship date will be billed at the pricing in effect as of the shipment date. All clerical errors are subject to correction.

- 4.2 **Services Assumptions:** Seller's work estimates are based on work performed during normal work hours (8 hours) between the hours of 06:00 and 18:00 local time, Monday to Friday, holidays excepted. Unless specified in writing the following are chargeable in addition to base rates: overtime or premium hours, travel costs, specialized tools and test goods, utility shutdowns, any delays or site issues not caused by Seller, additional trips for postponement or delay. No on-site orientation, safety training, work required for site specific requirements is included in a quotation unless expressly specified by Seller. Current rates are in Seller's then current Seller Field Services Demand Labor Rates document. Field specialists bill a 4-hour minimum charge for travel where Services are performed in less than 4 hours, and an 8-hour minimum charge for Services otherwise.

Article 5 - TAXES:

- 5.1 Unless otherwise set out in Seller's proposal or quotation, the price excludes all present or future sales taxes, revenue or excise taxes, value-added taxes, import and export duties and any other taxes, surcharges or duties now existing or hereafter imposed by Government authorities upon equipment and/or services quoted by the Seller. Buyer shall be responsible for all such taxes, duties and charges resulting from this agreement. The Seller is required to impose taxes on orders and shall invoice the Buyer for such taxes and/or fees according to state and local statute, unless the Buyer furnishes the Seller at the time of order with a properly completed exemption certificate(s) acceptable to the authorities imposing the tax or fees.
- 5.2 Any duty, tariff, levy, tax or charge (including without limitation, sales, use, excise, goods and services, harmonized, value-added and withholding taxes), customs levy or inspecting, licensing or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any governmental authority or measured by any transaction between Seller and Buyer, shall be paid by the Buyer in addition to the prices quoted or invoiced, and such charges will appear as a separate line item on the invoice. Buyer agrees that current unit prices will be equitably adjusted in the event Seller is required to pay any incremental amounts for any duty, tariff, levy, or charge on any input components of the Goods.

Article 6 - INVOICING

- 6.1 Invoices shall be sent to the address specified in the Purchase Order.
- 6.2 Should Buyer dispute any invoice, Buyer shall notify Seller of the nature of the dispute in writing within fifteen (15) days of the invoice date. Buyer shall have the right to withhold payment of the portion of the payment in question until the dispute is resolved ("Disputed Invoice"). If Buyer does not notify Seller of any dispute within fifteen (15) calendar days of the invoice date, then the invoice is deemed to have been accepted and invoice payment is required to be made on the payment due date per contract terms. Notwithstanding any dispute regarding the invoice, Buyer shall pay the undisputed portion of the disputed invoice.
- 6.3 Seller shall invoice Buyer in accordance with the invoicing milestones agreed in the relevant Proposal. All Time and Materials Orders shall be billed at 100% of Labor hours expended and Goods supplied shall be billed at then current rates of the Seller on a monthly basis. All Expenses incurred shall be billed on a monthly basis with a minimum administrative fee equal to 5% of the amount of expenses.

Article 7 - PAYMENT TERMS

- 7.1 Subject to Seller's approval of Buyer's current credit rating and unless otherwise agreed upon in the relevant Purchase Order, payments of all Goods, Software, Services are due in advance, and Expenses are due Net thirty (30) calendar days from the invoice date. Buyer acknowledges that it has the right to request Seller reassess Buyer's creditworthiness from time to time, which Seller has the right to make a revision in its sole determination Upon request, Buyer shall provide financial data evidencing the Buyer's worth in order for Seller to determine the creditworthiness of Buyer. Such information shall include, but not be limited to, annual reports, balance sheets, and bank records.
- 7.2 Payments advices from Buyer shall include the following information: invoice number, amount of payment, and purchase order number.
- 7.3 If Buyer is delinquent in its payment obligations, without prejudice to any other remedies available to it by law or in equity, Seller may demand immediate payment and at Seller's option (i) suspend all further deliveries or performance to be made under the Agreement or any further performance under any other contract with Buyer or Buyer's Affiliates, in which event Buyer shall not be released in any respect from its obligations to Seller under the Agreement or the other contract; (ii) recover all costs of collection including but not limited to reasonable attorneys' fees; (iii) repossess the Goods and Software for which payment has not been made; (iv) retain any equipment supplied by Buyer to Seller in relation to Seller's provision of Services; (v) charge interest at 1.5% per month on the past due amount, not to exceed the interest percentage allowed by law; and (vi) reassess the credit worthiness of Buyer and change any current payment terms. Any discount from Seller's rates, if any, shall cease to apply to the delinquent invoice, Buyer shall be

invoiced for such differences in cost, and shall immediately pay the resulting invoice.

- 7.4 Buyer shall not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Seller and/or its Affiliates.

Article 8 - DELIVERY, TITLE AND RISK OF LOSS

- 8.1 Unless otherwise agreed upon in a Purchase Order:
- a) Title to all Goods sold hereunder, except for Software whose title remains at all times with Seller, shall pass to Buyer upon full payment of the Purchase Order.
 - b) Upon delivery, risk of loss or damage shall pass to Buyer, unless delivery has been delayed because of Buyer in which event risk of loss shall pass to Buyer upon the originally scheduled delivery date and Buyer shall be responsible for all costs and expenses including storage and insurance.
 - c) Delivery, unless otherwise agreed upon in a Purchase Order, shall be Ex-works (Incoterms 2010), Seller's facility.
 - d) If, as part of a Purchase Order, Seller is responsible for packing any Goods for shipment, Seller shall pack, mark and label such Goods in accordance with its usual packing procedures.

Article 9 - RECEIVING, INSPECTION AND ACCEPTANCE

- 9.1 Buyer shall be responsible for receiving, installing, starting up and maintaining all Goods, unless otherwise agreed in the Specifications.
- 9.2 If Buyer fails to notify Seller of any material non-conformities with the Specifications within a reasonable period following delivery, not to exceed thirty (30) calendar days, or is using those Goods, Software or Services in a production environment or for the regular conduct of its business, the Goods, Software or Services shall be deemed accepted, without prejudice to the warranty provisions hereunder.
- 9.3 Buyer shall have the right to reject Goods, Software and Services not materially in accordance with the Specifications in the Purchase Order. Seller shall have a reasonable opportunity to correct non-conformities, replace non-conforming Goods and/or Software or correct or re-perform the Services at its option, in accordance with Warranty Article. Should Seller fail to use reasonable efforts to correct non-conformities, replace the non-conforming Goods and/or Software or re-perform or correct non-conforming Services within a reasonable period of time, based on the complexity of the non-conformities, Buyer may terminate the Purchase Order or portion thereof. Seller's maximum liability under this Article shall be to refund the fees and expenses paid by Buyer for the portion of the Goods, Software or Services that is non-conforming.
- 9.4 Unless other acceptance criteria are agreed upon in the Specifications, Seller's standard testing procedures, including factory acceptance test and site acceptance test where applicable, shall apply to Goods, Software and Services provided. If Buyer's representative is unable to attend any of these tests having received reasonable notice thereof, Buyer shall be deemed to have waived its entitlement to attend such tests. To the extent that any Goods, Software or Services have been, or can be deemed approved by Buyer pursuant to the terms of this Agreement or the applicable Purchase Order at any stage of Seller's performance, Seller shall be entitled to rely on such approval for purposes of all subsequent stages of its performance hereunder.

Article 10 - WARRANTIES FOR GOODS, SOFTWARE AND SERVICES

- 10.1 **Warranty Period:** shall mean the applicable time period during which Goods, Software and Services are respectively guaranteed by Seller under the conditions set forth herein as follows:
- a) **Field Devices:** are warranted for a period of twenty-four (24) months following the date of shipment, with the exception of Series pressure products which are guaranteed for five (5) years following date of shipment.
 - b) **Triconex and DCS Control Systems:** such as Tricon, EcoStruxure Foxboro DCS, Hybrid DCS, Modicon PLC and PAC and EcoStruxure Power SCADA Server are warranted for a period of twelve (12) months following installation or eighteen (18) months following the date of shipment, whichever occurs first.
 - c) **AIT Products:** are warranted for a period of twelve (12) months from commissioning or fifteen (15) months from shipment, whichever occurs first.
 - d) **Consumable Products:** Products normally consumed in operation or which have an inherently short normal use period, including but not limited to consumables such as flashtubes, lamps, batteries, storage

capacitors, are guaranteed for a period of ninety (90) days from date of delivery by Seller, except for disposable PH/ORP sensors, replacement PH, ORP and reference electrodes and dissolved oxygen membranes which are guaranteed for a period of one (1) year from the date of shipment or until they are installed, whichever occurs first.

- e) **Spare Parts:** for the above are guaranteed for three (3) months from shipment, unless used for repair and replacement during the Warranty Period, in which case, the spare parts shall be guaranteed for three (3) months or until the end of the initial Warranty Period, whichever comes last.
 - f) **Services:** are warranted for a period of thirty (30) days following their performance.
 - g) **Customer First Support Program (“CFA”):** are warranted for a period of Ninety (90) days from the date of Service. Seller warrants that any parts, for Goods which are supplied while performing Services under the Agreement, will be free from material defects for a period of 90 days following delivery of such parts. Additionally, Seller warrants that any Software upgrades, patches, service packs, quick fix, quick custom, or corrective fixes which are supplied while performing Services under the Agreement, will be free from material defects for a period of 90 days following delivery of such Software upgrades, patches, service packs, quick fix, quick custom or corrective fixes. For any breach of these warranties, a Buyer’s exclusive remedy, and Seller’ entire liability, shall be the reperformance of the Services or repair or replacement of such parts, Software upgrades, patches, service packs, quick fix, or quick custom.
 - h) **Repaired or replaced Goods and Software:** shall be warranted by Seller for the remainder of the original Warranty Period or for three (3) months, whichever is longer, free of charge and return-shipped to Buyer with transportation prepaid by Buyer. Seller shall not be responsible for any offshore transport. All Services corrected or re-performed shall be warranted only for the unexpired portion of the original Warranty Period applicable to Services.
- 10.2 **Exclusive Warranty Remedies:** In the event of any warranty covered defects or deficiencies in Goods in subsections above, or Services in subs. (b) above, the sole and exclusive obligation of Seller shall be to re-perform the Services, or repair or replace the defective Goods or part of the Goods, at Seller’s sole discretion. Such warranty coverage is contingent on Buyer providing prompt notification to Seller once such defect or deficiency is reasonably apparent to Buyer.
- 10.3 **Exclusions & Limitations:** This warranty shall not apply (a) to Goods not manufactured by Seller, (b) Services not provided directly by Seller, (c) to Goods or Services that has been repaired or altered by anyone other than Seller so as, in Seller’s judgment, affects the same adversely, (d) Seller’s conformance with Buyer’s design of the Goods or Software; or (e) to Goods or Services that appear to be subjected to negligence, accident, or damage by circumstances beyond Seller’s control, or improper any non-Seller operation, maintenance or storage, or to other than normal use or service. The foregoing warranties do not cover reimbursement for labor, transportation, removal, installation, temporary power, or any other expenses that may be incurred in connection with repair or replacement.
- 10.4 **Non-Seller Goods or Services:** With respect to Goods not manufactured by Seller, or Services provided by non-Seller providers, the warranty obligations of Seller shall in all respects conform and be limited to the warranty extended to Seller by such non-Seller supplier.
- 10.5 SELLER MAKES NO WARRANTY THAT THE BUYER'S USE OF SELLER'S GOODS, SOFTWARE, OR SERVICES WILL BE UNINTERRUPTED, SECURE AND/OR ERROR-FREE. SELLER DOES NOT REPRESENT OR GUARANTEE THAT ANY GOODS AND/OR SOFTWARE WILL BE FREE FROM VULNERABILITIES, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSIONS, AND SELLER DISCLAIMS ANY LIABILITY IN RELATION THERETO.
- 10.6 EXCEPT AS SET FORTH HEREIN OR IN THE WARRANTIES PROVISIONS CONTAINED IN SEPARATE SOFTWARE END USE LICENSE AGREEMENTS, THESE WARRANTIES, CONDITIONS, AND EXCLUSIONS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES (EXCEPT WARRANTIES OF TITLE), EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED, TO IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS MAY BE PROVIDED IN WRITING BY SELLER, SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER THAN AS STATED ABOVE WITH REGARD TO GOODS, SOFTWARE AND SERVICES SOLD BY SELLER TO BUYER.
- 10.7 ALL WARRANTIES PROVIDED HEREIN ARE PERSONAL TO, AND INTENDED SOLELY FOR THE BENEFIT OF, BUYER AND DO NOT EXTEND TO ANY THIRD PARTY, EXCEPT IN CASE OF TRANSFER

OF THE SOFTWARE IN ACCORDANCE WITH APPLICABLE SOFTWARE LICENSE OR THE ASSIGNMENT ARTICLE.

Article 11 - INTELLECTUAL PROPERTY OWNERSHIP

- 11.1 Seller retains ownership of all right, title and interest (including copyright and patent rights) in and to its Intellectual Property Rights relating to Goods and Services and work product relating to these. Nothing in these Terms of Sale constitutes a transfer or conveyance of any right, title or interest in such Intellectual Property, including without limitation any Software, including firmware, contained in those, except the limited right for use as it provided and stated herein.
- 11.2 Seller may utilize proprietary works of authorship, pre-existing or otherwise, including without limitation software, computer programs, methodologies, templates, flowcharts, architecture designs, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as Intellectual Property Rights and any derivatives thereof, which have been originated, developed or purchased by Seller, an Affiliate of Seller, or by third parties under contract to Seller or to an Affiliate of Seller (all of the foregoing, collectively, "Seller's Information"). Seller and any third party owner shall retain at all times their respective ownership of Seller's Information.
- 11.3 Seller or the applicable third-party owner shall retain at all times the ownership of its Software, and Third Party Products, regardless of the media upon which the original or copy may be recorded or fixed. Without prejudice to the license(s) expressly granted hereunder and under a Purchase Order, no right, title or interest in or to the Software, Seller's Information, any copies thereof and any Intellectual Property Rights residing in the Goods, Software or result of Services is transferred to Buyer. Buyer acknowledges that the prices for Services and Software charged by Seller under these Terms of Sale are predicated in part on Seller's retention of ownership over such Software and any results of the Services, none of which shall be considered "work for hire."
- 11.4 Buyer shall retain at all times the ownership of its Intellectual Property Rights, regardless of the media upon which the original or copy may be recorded or fixed.

Article 12 - SELLER SOFTWARE LICENSE

- 12.1 The Software License herein shall apply to generally to Seller's Software, which includes Triconex, Foxboro, I/A, SIS, AIT/Analyzers and Modicon Software. Third Party Product Software Licenses are separate end user license agreements ("EULA") and not issued pursuant to the license in the following sub-article.
- 12.2 **Software License**
- a) In consideration of the receipt of full payment of the Software license fee applicable as part of the price under a purchase order, and subject to Buyer's compliance with its obligations under this Agreement and/or the purchase order, Seller shall provide to Buyer a personal, non-transferable, non-exclusive limited license to use the Software described in the relevant purchase order and the Seller Information incorporated into any deliverables, if any, for purpose of Buyer's ordinary business as defined in a statement of work and in the particular location(s) and/or on the particular systems for which Buyer licensed such Software, as those locations and/or systems are identified in the purchase order.
- b) Seller's Software licensed to Buyer may contain components that are owned by third parties. The third-party owner shall retain exclusive right to its firmware and software. Use of such third-party components may be subject to restrictions contained in the third party's end-user license agreement in addition to the conditions set forth herein. Seller shall make available to Buyer upon request the third party's end-user license agreement applicable. Copyright and other proprietary rights notices of Seller and third parties are contained in the Software and Buyer shall not modify, delete or obfuscate such notices.
- c) Buyer may not without Seller's prior written express consent (i) copy, modify, sublicense, loan or transfer in any manner the Software licensed herein; (ii) create derivative works based on the Software licensed herein; (iii) translate, decompile, disassemble, reverse assemble, reverse engineer, emulate or perform any other operation on the Software, unless the operation is specifically authorized by law. In the event that Seller is providing a validation of Buyer's own programming to determine its conformance with the specific Seller supplied Software, Seller only provides advice or review of the actual programming and does not provide any opinion or advice on the use or applicability of Buyer's programming. The Logic Validator software product does not replace a formalized test program developed by experienced TÜV, or otherwise proper SIL program by safety instrumented system (SIS) certified engineers. Buyer shall hold the Software licensed herein in strict confidence and will not allow third parties, other than its employees with a need to use the Software and who have agreed to comply with the terms of this Software License article, to access or use the Software without Seller's prior written consent. Buyer agrees to defend, indemnify and hold harmless

- Seller from all damages and third-party claims arising from unauthorized use or transfer of the Software.
- d) Notwithstanding the foregoing restrictions but subject to all restrictions applicable to Third Party Products as set forth herein Buyer shall be entitled to make one (1) copy of the Software for backup or archival purposes and may make a limited reasonable number of copies of the instruction manuals and documentation related to the Software for purpose of their use by Buyer in connection with the authorized use of the Software. All titles, trademarks and copyrights and restricted rights notices shall be reproduced in such copies.
 - e) Buyer shall maintain complete and accurate records documenting the location and use of the licensed Software in Buyer's possession. No later than thirty (30) days upon receipt of Seller's written request, Buyer shall provide Seller with a signed certification of compliance with the Software licensing conditions. Seller has the right to conduct an audit of Buyer's use of the Software. Any such audit shall be conducted during regular business hours at Buyer's facilities. If an audit reveals any underpayment of license fees, Buyer shall be invoiced for additional license fees consistent with Seller's then current price list for the Software, without any discount being applicable in that instance. Buyer shall then immediately pay the underpaid amount together with interest at a rate of one and one-half percent (1.5%) per month or partial month during which such amount was due and unpaid, or the highest rate allowed by applicable law. The assessment of additional license fee is without prejudice to Seller's other remedies in the event of breach by Buyer of other licensing conditions.
 - f) Buyer may not transfer its license to use the Software and related documentation and written materials to a third party without the Seller's prior written consent. In case of Seller approval of such transfer, Buyer shall be responsible to ensure that the recipient agrees to the terms of this Software License article.
 - g) If the Software is licensed for use in the performance of a U.S. Government prime contract or subcontract, Buyer agrees that, consistent with FAR 12.211 and 12.212, commercial computer Software, computer Software documentation and technical data for commercial items are licensed under Seller's standard commercial license.

Article 13 - CONFIDENTIALITY

- 13.1 "Confidential Information" shall mean any and all information in any form that each Party provides to each other in the course of the Agreement and that either (i) has been marked as confidential; or (ii) is of such nature that a reasonable person would treat as confidential under like circumstances. Unless otherwise provided in the Specifications, Confidential Information does not include work products resulting from the Services performed hereunder and information which (i) is already known to the other Party at the time of disclosure; (ii) is independently developed without the benefit of the other's Confidential Information; (iii) is received from a third party that is not under any confidentiality obligation towards the owner of the information; or (iv) has entered the public domain through no fault of the recipient.
- 13.2 Each Party retains ownership of its Confidential Information.
- 13.3 Each party agrees to (i) protect the other's Confidential Information in the same manner as it protects the confidentiality of its own proprietary and confidential materials but in no event with less than reasonable care; (ii) use the other's Confidential Information only in relation to the Purchase Order.
- 13.4 Upon termination of this Agreement or a relevant Purchase Order or upon written request submitted by the disclosing Party, whichever comes first, the receiving Party shall return or destroy, at the disclosing Party's choice, all of the disclosing Party's Confidential Information.
- 13.5 Neither Party shall, except with respect to their employees, contractors or agents with a need to know for purposes of this Agreement, disclose to any person any Confidential Information of the other Party without the other Party's prior written consent, except where Confidential Information may be disclosed by law.
- 13.6 Unless otherwise agreed in Purchase Orders, these confidentiality obligations shall terminate five (5) years after the expiration of the relevant Purchase Order or termination of this Agreement, whichever comes first.

Article 14 - SUSPENSION

- 14.1 Seller's performance of work under this Agreement or a Purchase Order may be suspended by the Buyer in whole or in part whenever the Buyer may elect, with minimum prior written notice ("Notice of Suspension") of at least thirty (30) business days.
- 14.2 Upon Notice of Suspension, Seller shall (i) discontinue work on the date and to the extent specified in the notice; and (ii) makes every reasonable effort to stop orders for materials and equipment and reassign personnel.
- 14.3 Upon Notice of Suspension, Buyer shall Pay all fees earned and expenses incurred in connection with the performance

of this Agreement or the Purchase Order until the effective date of such suspension (“Fees and Expenses”) including all reasonable costs directly related to Buyer’s suspension pursuant to this provision, including costs associated with personnel reassignment, travel, restocking charges, storage costs and other administrative requirements (“Suspension Costs”).

- 14.4 In addition to the above, in the event of a suspension, Buyer acknowledges the following:
- a) All Milestones and/or delivery dates that have been agreed to, will be postponed, and such Milestones and/or delivery dates will be mutually agreed to upon the lifting of the Suspension.
 - b) If the Suspension continues for more than thirty (30) days that the Seller’s personnel assigned to the Agreement or Purchase Order may not be available and any cost required to attain the knowledge required to continue the performance of the Agreement or Purchase Order upon lifting the Suspension will be for the account of the Buyer.
 - c) When the performance is re-commenced, Buyer shall pay costs associated with extending performance, such as, but not limited to, increased costs for Services, Goods, or Software, or the extension of warranties.
 - d) The suspended Agreement and/or Purchase Order shall be recommenced upon the date mutually agreed to between the Parties.
- 14.5 If the Buyer breaches any of its contractual obligations, including but not limited to its payment obligations, Seller shall have the right to suspend the performance of the Purchase Order.
- 14.6 Notwithstanding the foregoing, with respect to off the shelf products, Buyer may only suspend a Purchase Order without cause before shipment.
- 14.7 In the event that the suspension continues for greater than ninety (90) days, Seller, at its sole option, may terminate the Purchase, and the suspension shall be treated as a Termination for Convenience.

Article 15 - TERMINATION FOR CONVENIENCE

- 15.1 Seller's performance of work under this Agreement or a Purchase Order may be terminated by the Buyer in accordance with this article in whole or in part whenever the Buyer may elect, with minimum prior written notice (“Notice of Termination”) of at least thirty (30) business days. Any such termination shall take place by delivery to the Seller of a Notice of Termination specifying the extent to which performance of work under the Agreement or Purchase Order is terminated, and the date upon which termination becomes effective. Upon receipt of any such notice, Seller shall, unless the notice requires otherwise:
- a) discontinue work on the date and to the extent specified in the notice; and
 - b) makes every reasonable effort to either obtain cancellation of all orders to subcontractors.
- 15.2 Upon Notice of Termination, Buyer shall (i) pay all fees earned and expenses incurred in connection with the performance of this Agreement or the Purchase Order until the effective date of such termination (“Fees and Expenses”), (ii) any and all reasonable costs directly related to Buyer’s termination pursuant to this provision, including costs associated with personnel reassignment, travel, restocking charges and other administrative requirements (“Termination Costs”), and (iii) a termination fee of ten percent (10%) of the remaining value of each terminated Purchase Order. In the event of partial execution of the Agreement or when termination occurs between two invoicing milestones, a prorated share of the fees shall be added based upon the portion of Purchase Order completed on the termination date.
- 15.3 Notwithstanding the foregoing, with respect to off the shelf Goods, Buyer may only terminate a Purchase Order without cause before shipment.

Article 16 - TERMINATION FOR DEFAULT

- 16.1 Either Party may terminate this Agreement or any outstanding Purchase Order for default if the other has materially breached any of its obligations under the relevant Purchase Order and has not cured the breach within thirty (30) days of written receipt of a notice from the other Party.
- 16.2 Termination of a Purchase Order by either Party whether for default or for convenience shall not affect continuing performance by the Parties of their respective obligations under a different Purchase Order, unless otherwise agreed upon by the Parties.

Article 17 - STORAGE AND BAILMENT OF BUYER’S MATERIALS AND/OR EQUIPMENT

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- 17.1 If Buyer is not able to receive the Goods as agreed in the Purchase Order, or If the Buyer were for any reason not able to inspect and approve the Goods that were ready to be delivered as per the agreed delivery schedule, the Seller will store those goods and will have the right to charge the Buyer for the storage fee through a Change Order.
- 17.2 If Seller must store any of Buyer's materials and/or equipment under this Agreement, Seller shall (i) stores such materials and/or equipment in a clean, dry, and secure location, unless otherwise agreed in writing by Buyer; and (ii) mark, notify, or otherwise indicate in a manner to make it evident to Seller's creditors, that such materials and/or equipment belong to Buyer.

Article 18 - COMPLIANCE

- 18.1 Neither Party shall comply with any foreign boycott laws or requirements, which are in violation of any federal or state law, rule, or regulation.
- 18.2 The deliverables provided by Seller under this Agreement contain or may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. Buyer acknowledges and agrees that the supply, assignment and/or usage of the Goods, software, services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Deliverables") under this Agreement shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations. Unless applicable export license/s has been obtained from the relevant authority and the Seller has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Buyer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons. If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit Seller from fulfilling any order, or would in Seller's judgment otherwise expose Seller to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, Seller shall be excused from all obligations under such order and/or this Agreement.
- 18.3 Either Party shall execute and deliver to the other any documents as may be required to effect or evidence compliance.
- 18.4 The Parties may correspond and convey documentation via the Internet unless Buyer expressly requests otherwise. Neither Party has control over the performance, reliability, availability or security of the Internet. Seller shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption or alteration of any communication over the Internet due to any reason beyond Seller's reasonable control.

Article 19 - FORCE MAJEURE

- 19.1 Seller will be excused from and not be liable for any non-performance of a Purchase Order if such delay or non-performance is due to any cause beyond the reasonable control of Seller, or which Seller could not reasonably foresee or reasonably provide against, and which prevents Seller from carrying out the terms of the Purchase Order. This includes but is not limited to the following: war, revolution, insurrection or hostilities (whether declared or not), riot, economic upheaval, civil commotion or uprising, flood, earthquake, tempest, hurricane, lightning or other natural disaster; fire or explosion, epidemic or pandemic, strike, lockout or other industrial disturbance whether at Seller or one of its suppliers; sabotage, accident, embargo, car shortage, wrecks or delays in transportation, non-delivery of materials or order or action of government authority.
- 19.2 The Buyer acknowledges that the products or part thereof are produced in, or otherwise sourced from, or will be installed in areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics or pandemic and that the situation may trigger stoppage, hindrance or delays in Seller (or its subcontractors) capacity to produce, deliver, install or service the products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by the Seller (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of Seller's (or its subcontractors') employees. The Buyer therefore recognizes that such circumstances shall be considered as a cause for excusable delay not exposing the Seller to contractual sanctions including without limitation delay penalties, liquidated or other damages or termination for default.
- 19.3 Any delay resulting from such cause shall extend the date of delivery accordingly. Seller reserves the right to cancel a Purchase Order, if in its opinion such circumstances threaten or cause extended delay in the performance thereof.

Article 20 - INDEPENDENT CONTRACTOR

- 20.1 Seller is performing the Services as an independent contractor and not as an employee of Buyer and none of Seller's personnel shall be entitled to receive any compensation, benefits or other incidents of employment from Buyer. Seller shall be responsible for all taxes and other expenses arising from the employment or independent contractor relationship between Seller and its personnel and the provision of services hereunder by such personnel to Buyer.
- 20.2 At all times and notwithstanding anything to the contrary herein or in a Purchase Order, Seller retains full control over the methods, details, persons employed or otherwise used to perform the Services and any other means of performance of its obligations under a Purchase Order and vary the composition of the team assigned to the performance of the Services or make different arrangements to achieve completion of its obligations.
- 20.3 Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, or fiduciary relationship between Buyer and Seller, nor shall anything in this Agreement be deemed to create an agency relationship between Buyer and Seller. Neither Buyer nor Seller shall be or become liable or bound by any representation, act or omission whatsoever of the other.

Article 21 - BUYER'S OBLIGATIONS

- 21.1 Unless otherwise specifically agreed in the Specifications, Seller's personnel shall not perform Services on equipment in operation on Buyer's work site.
- 21.2 If Seller is to perform Services on Buyer's work site, Buyer shall be responsible for obtaining all applicable permits, visas or other governmental approvals required. Buyer shall be responsible for ensuring the safety of work conditions at its site and the safety of Seller's personnel.
- 21.3 Seller ensures that its employees, subcontractors and agents adhere to and comply with Buyer's health, safety, security and environmental ("HSSE") policies while at the work site, to the extent these policies have been made available to Seller.
- 21.4 Buyer agrees to cooperate with Seller in the performance of the project described in the Specifications, including, without limitation, providing Seller with, timely access to data, information and personnel of Buyer, and while on Buyer's Site, reasonable facilities and a safe working environment.
- 21.5 Buyer acknowledges and agrees that Seller's performance is dependent upon the timely and effective satisfaction of Buyer's responsibilities hereunder and timely decisions and approvals of Buyer where required. In addition, Buyer acknowledges and agrees that Seller may, in performing its obligations pursuant to this Agreement, be dependent upon or use data, material, and other information furnished by Buyer without any independent investigation or verification thereof, and that Seller shall be entitled to rely upon the accuracy and completeness of such information in performing its obligations. In the event that Seller incurs cost or is delayed due to Buyer's failure to comply with its obligations hereunder, Buyer shall issue a change order to extend the schedule and/or to provide the additional funding for any of Seller's costs incurred.

Article 22 - INSURANCE

- 22.1 Seller maintains sufficient insurance and shall provide upon request to Buyer, certificates of such insurance policies. Seller agrees to provide a thirty (30) days advance notice of any material change or cancellation of any insurance policies.

Article 23 - INDEMNIFICATION**23.1 General Indemnity:**

Seller shall indemnify, defend and hold Buyer harmless against third party claims (including without limitation, the Parties' employees) for personal injury, death or loss or damage to property caused by and to the extent of Seller's negligence in the performance of its obligations hereunder, provided (i) Seller is entitled to exclusively control the defense against the claim; (ii) Seller is immediately notified of such claim and (iii) Buyer provides reasonable assistance in the defense of the claim and does not enter into any settlement or make any concession without the Seller's prior written approval.

23.2 Intellectual Property Infringement Indemnity:

- a) Unless otherwise set forth in the applicable Seller's License Agreement, Seller shall defend, indemnify and save harmless Buyer from and against any third party claims, suits, judgments, court costs, reasonable attorney's fees and other liabilities, demands or losses (altogether "Liabilities") to the extent such Liabilities

result from an infringement due to the Services and/or Goods, Software's design or construction, of a patent or copyright owned by a third party in the country of manufacture of such Goods and/or Software or in the country of performance of the Services at the time of execution of the relevant Purchase Order under which the alleged infringement has occurred, provided that (i) Seller shall be promptly notified of the bringing of said suits; (ii) Seller shall be given the sole control of the defense and all related settlement negotiations; (iii) Buyer agrees to fully assist Seller in the defense of the claim and (iv) Buyer complies with Seller's direction to cease any use of the Goods or Software which in Seller's reasonable opinion, is likely to constitute an infringement. Seller shall not be responsible for any settlement made without its consent.

- b) The foregoing obligations do not apply when the claim of infringement results from or is related to: (i) Goods and/or Software provided pursuant to Buyer's designs, drawings or specifications; (ii) Goods and/or Software stored, used or maintained otherwise than in accordance with Seller's instructions or recommendations or other than for the Buyer's internal business purpose; (iii) claims of infringements resulting from combining Goods or Software provided hereunder with any other item not furnished by Seller; (iv) modifications to the Goods or Software without prior written consent of Seller; (v) parts supplied or designed by Buyer or third parties; and (vi) Buyer's failure to use corrections or enhancements made available by Seller.
- c) Seller may cease to deliver any Goods, Software or Services, which it reasonably considers could infringe third party's rights, without being in breach of this Agreement.
- d) In case said results of Services, Software or Goods, or any part thereof, is in such suit held to constitute infringement and/or its use is enjoined, the Seller shall, at its own expense and option either: (i) procure for the Buyer a royalty-free license to continue using such Software, results of Services or Goods, or (ii), replace same with substantially equal but non-infringing equipment or modify it so it becomes non-infringing, provided that no such replacement or modification shall in any way amend or relieve Seller of its warranties and guarantees set forth in this Agreement. In the event Seller is unable to do either of the foregoing, the allegedly infringing item shall be returned to Seller and Seller's maximum liability shall be to refund to Buyer the amount paid for such item, less a reasonable depreciation for use and damage.

23.3 This Article states the Parties' entire liability and sole remedy with respect to infringement or claims thereof.

Article 24 - LIMITATION OF LIABILITY

- 24.1 NOTWITHSTANDING ANY PROVISION OF THESE CONDITIONS OF SALE OR ANY OTHER CONTRACT DOCUMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR: LOSS OF BUSINESS, PROFITS, REVENUES OR ANTICIPATED SAVINGS; LOSS OR DEPLETION OF GOODWILL; LOSS OF ORDERS, PRODUCTION OR USE; LOSS OR CORRUPTION (OR RECONSTRUCTION) OF DATA OR INFORMATION OR RECONSTRUCTION OF DATA OR INFORMATION; ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PURE ECONOMIC LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES; OR ANY INCIDENTAL OR PUNITIVE DAMAGES.
- 24.2 NOTWITHSTANDING ANY OTHER PROVISION OF THESE CONDITIONS OF SALE OR ANY OTHER CONTRACT DOCUMENT TO THE CONTRARY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF SELLER FOR DIRECT DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY THE BUYER TO SELLER FOR THE WORK GIVING RISE TO A CLAIM.
- 24.3 TO THE EXTENT PERMITTED BY LAW, THE PROVISIONS OF THIS ARTICLE SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE.

Article 25 - ASSIGNMENT

- 25.1 This Agreement shall extend to and be binding upon the parties hereto, their successors, and assigns, provided, however, that neither Party shall assign or transfer this Agreement or any Purchase Order hereunder without the other party's express prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Seller shall have the right to assign this Agreement or any Purchase Order hereunder to any of its parent, affiliates without prior written consent of Buyer and Buyer shall have the right to transfer the licensed Software in accordance with the applicable License.
- 25.2 Seller shall have the right at any time without prior consent of Buyer to subcontract all or part of its obligations under

a Purchase Order. Such subcontract shall not relieve Seller from its obligations under this Agreement and relevant Purchase Order.

Article 26 - LAWS AND DISPUTE RESOLUTION

All matters arising out of or relating to the execution, construction, interpretation or breach thereof, are to be governed by the laws of Massachusetts, excluding such jurisdiction's rules regarding conflicts of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Seller agrees to bring any action claims or legal proceedings in any way pertaining to this Purchase Order, or the execution, construction, interpretation or breach thereof in the courts of the jurisdiction specified above and in no other court or tribunal whatsoever.

Article 27 - SOLE AGREEMENT

27.1 This Agreement, including any Purchase Order entered into pursuant hereto, constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing with respect to this subject matter. This Agreement may be modified only by means of a duly executed written amendment signed by the authorized representatives of both Parties.

Neither the terms of any invoice or other instrument documenting a payment or transaction that is issued by Buyer in connection this Agreement, nor any other act, document, pre-printed form or statement, usage, custom, or course of dealing shall modify the terms of this Agreement. In the event of any conflict between the terms of this Agreement and any Purchase Order, the provisions of this Agreement shall govern unless expressly agreed upon by the Parties under the Purchase Order and modifications made by the Purchase Order to this Agreement are required to comply with local applicable laws.

Article 28 - MISCELLANEOUS

- 28.1 **Waiver.** Failure by either Party to insist upon strict performance of any of the terms and conditions hereof or failure or delay exercising any rights or remedies provided herein or by law or to properly notify the other in the event of breach shall not be construed as a waiver of any provision of this Agreement or Purchase Order. No waiver by a party of a right or default under this Order shall be effective unless in writing.
- 28.2 **Press Releases and Client List Reference.** Neither Party shall issue any press release concerning Seller's work without the others consent. Notwithstanding the foregoing, Seller may identify Buyer as a client of Seller; use Buyer's name and logo and release and announcement regarding the award of this Agreement. Seller may generally describe the nature of the Services in Seller's promotional materials, presentations, case studies, qualification statements and proposals to current and prospective clients.
- 28.3 **Severability.** If any provision or portion of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, that provision or portion of this Agreement shall be deemed omitted and the remaining provisions and portions shall remain in full force and effect.
- 28.4 **Amendments.** Any amendment to the terms of this Agreement shall only be effective if made in writing and signed by Buyer and Seller. Once an Agreement amendment is made, it shall be deemed incorporated as of its effective date for all future Purchase Orders, unless expressly stated to the contrary in the Agreement amendment. Such amendment shall also apply to ongoing Purchase Orders except no such amendment shall impact the pricing, pay, title, delivery, or freight terms of ongoing Purchase Orders unless expressly stated to the contrary in the Agreement amendment.
- 28.5 **Notice.** All notices hereunder shall be deemed given if delivered in writing personally, by courier, sent via US mail, electronic transmission, telephone facsimile, telex, or telegram to Buyer or to Seller at the address(es) set forth in the Purchase Order(s). Electronic transmission must be acknowledged by a process requiring human action. Any notice given by US mail shall be deemed given at the time such notice is deposited with the US mail service.
- 28.6 **Survivorship.** The provisions of this Agreement that by their nature survive final acceptance under a Purchase Order, expiration, cancellation or termination of any Purchase Order or Agreement and shall remain in full force and effect after such acceptance and payment for the period specified herein, or if not specified then for the maximum time allowed by law. These Articles are (Definitions, Price, Taxes, Warranties, Intellectual Property Ownership, Seller Software License "if any", Confidentiality, Compliance, Force Majeure, Indemnification, Limitation of Liability and Laws and Dispute Resolution)
- 28.7 **Headings.** The headings in this Agreement are for ease of reference only and shall not be used to construe or interpret the provisions of the Agreement.