

MEMORANDUM

TO: MAYOR AND CITY COMMISSION
FROM: CITY ATTORNEY'S OFFICE
DATE: February 15, 2016
RE: **Agreement with Schneider Electric d/b/a Invensys Systems, Inc. for Cyber Security Solutions for Lakeland Electric**

For your consideration is a proposed Agreement with Schneider Electric d/b/a as Invensys Systems, Inc. (Invensys) to fortify cyber security and comply with NERC CIPS v5 regulatory standards of the Schneider Foxboro Distribution Control System servicing Unit 3 at Lakeland Electric's McIntosh Power Plant. The enforcement date to meet compliance is April 1, 2017. The City's Purchasing Department has determined that the Foxboro Distribution Control System, which is a proprietary system solely maintained by Schneider Electric, meets the criteria for establishing Invensys as a sole source vendor.

The scope of work to be performed by Invensys will address the recommended security-enhanced infrastructure for the cyber security upgrade project based on recommendations identified by the Cyber Security Vulnerability Assessment performed by AESI, Inc. The Schneider Electric Process Automation Cyber Security Team has also reviewed the City's requirement documentation pertaining to this engagement and subsequently created a scope of work which meets or exceeds the requirements and complies with:

City of Lakeland Internal Cyber Security Policies
ISO-27001 & 2
IEC-62443
NIST 800-82 Rev 2
CFATS
AWWA G430-14
NERC CIP v5

The term of the Agreement with Invensys will be effective upon approval by the City Commission, with on-site work commencing in March 2016 and being completed by the first week of May 2016. Associated costs for the work include: hardware and software procurement cost of \$22,469; estimated labor costs of \$49,448; and estimated travel and lodging expenses of \$23,100 to be paid in accordance with the City's Consultant Expense Reimbursement Policy. The total cost for services pursuant to this project is a not to exceed amount of \$96,024. These costs have been approved and budgeted in Lakeland Electric's FY2016 budget.

It is recommended that the appropriate City officials be authorized to execute an Agreement with Invensys Systems, Inc. for cyber security enhancements for the Schneider Foxboro Distribution Control System for Lakeland Electric.

RS



Avantis.

by Schneider Electric

Foxboro.

by Schneider Electric

SimSci.

by Schneider Electric

Triconex.

by Schneider Electric

Wonderware.

by Schneider Electric

Cyber Security Solution for City of Lakeland

Lakeland, FL

Proposal Number: QLK-1508-2242232 R1

Proposal Date: November 2, 2015

Contact(s):

Name: Tiffany Gispanski

Title: Client Sales Executive

Mobile: +1 407 619 9315

E-mail: Tiffany.Gispanski@schneider-electric.com

This proposal contains technical and business information that is confidential and proprietary to Schneider Electric. It is provided solely for internal review and evaluation. The information contained herein may not be shown or disclosed in any form to third parties without the express consent of Schneider Electric.

Commercial Terms:

General Terms & Conditions of Sale of Goods and Services and License of Software – Multiple Purchase Orders

- 1.1 **“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.
- 1.2 **“Agreement”** means these terms and conditions and applicable Purchase Orders and any appendices hereto, including without limitation, the software licenses, pricing schedules, and delivery schedules.
- 1.3 **“Buyer”** shall mean the company and any of its Affiliates which has executed a Purchase Order under this Agreement.
- 1.4 **“Days”** shall be calculated as calendar days unless otherwise specified under this Agreement.
- 1.5 **“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.
- 1.6 **“Goods”** shall mean all products, equipment, materials, spare parts, hardware, supplies, and accessories to be supplied under a Purchase Order.
- 1.7 **“Intellectual Property Rights”** shall mean any patent, trademark, service marks, copyrights, trade secrets, ideas, concepts, know-how, techniques or other proprietary right.
- 1.8 **“Party and Parties”** shall mean Seller, Buyer, any of their affiliate(s) which has executed a Purchase Order 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 their Affiliate having executed a Purchase Order or the third party to whom one of them has assigned its rights under the Agreement.
- 1.9 **“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.
- 1.10 **“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 the present General Terms and Conditions by reference and shall be governed by those
- 1.11 **“Seller”** shall mean Invensys Systems Inc. and, for purposes of the Purchase Orders, any of its Affiliate which has executed a Purchase Order under this Agreement.
- 1.12 **“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. Maintenance and Support Services are rendered in accordance with separate terms and conditions. To the extent Services are of an advisory nature, no specific business result is assured or guaranteed.
- 1.13 **“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.
- 1.14 **“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.
- 1.15 **“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.

- 1.16 **"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. Measurement and Instrumentation ("M&I") products shall be guaranteed for a period of twenty-four (24) months following the date of shipment, with the exception of M&I I/A Series pressure products which are guaranteed for five (5) years following date of shipment. Goods and Software sold as Triconex, Foxboro, I/A, or SIS, are warranted for a period of twelve (12) months following installation or eighteen (18) months following the date of shipment, whichever occurs first. 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. Avantis Software is guaranteed for a period of six (6) months from the date of the license. SimSci-Esscor and Refinery Offsite Software is guaranteed for one (1) year from the date of the license. Services are warranted for a period of thirty (30) days following their performance. Products normally consumed in operation or which have a normal life inherently short, 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. Third Party Products are warranted as stated in Article 1.15.

Article 2: Term.

- 2.1 The term of this Agreement begins and is effective on February 15, 2016 and shall expire at the close of business on July 31, 2016, unless terminated earlier as permitted by this Agreement.

Article 3: Orders

- 3.1 Buyer may, from time to time, issue Purchase Orders to Seller under this Agreement requesting Seller to provide Goods, Software or to perform Services.
- 3.2 It is understood that neither Party is obligated to enter into a Purchase Order under this Agreement.
- 3.3 Each Purchase Order, receipt of which is confirmed by Seller, shall constitute a contract between Buyer and Seller separate and distinct from any other Purchase Order and from the Agreement. Nonetheless, each Purchase Order shall be deemed to incorporate the terms of this Agreement, whether or not stated on the face of the Purchase Order and all other referenced terms on the face of the Purchase Order are rejected in their entirety. Except as agreed in a writing signed by both parties, any provision of a Purchase Order that modifies or deletes any provision of the Agreement shall be null and void.

Article 4: Changes

- 4.1 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.
- 4.2 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 5: Price, Taxes, and Currency

- 5.1 Prices for Goods, Services and/or Software under this Agreement shall be in accordance with the prices set forth in Seller's e-commerce site: www.buyautomation.com at the time of the execution of the Purchase Order or Seller's proposal for services.
- 5.2 Seller's proposals and the Purchase Order Price exclude all sales taxes, value-added taxes, import and export duties and any other taxes, surcharges, duties or tariffs of any kind now existing or hereafter imposed upon Seller, its personnel or subcontractors or their properties in any country or territory either directly or indirectly in

respect of the production, sale, supply, delivery, license export and import, or use of the Goods, Software and Services. Buyer shall be responsible for all such taxes, duties and charges resulting from the Agreement or a Purchase Order hereunder. Validity of Seller's proposal shall extend for thirty (30) days from the proposal date.

- 5.3 If Seller is required to impose, levy, collect, withhold or assess any such taxes, duties and charges on this Agreement or any Purchase Order under this Agreement, Seller shall invoice Buyer for such taxes, duties and charges unless Buyer furnishes Seller with an exemption certificate or other equivalent documentation demonstrating its exemption from such taxes, duties and/or charges.
- 5.4 If Buyer is required by law to make any tax withholding from amounts paid or payable to Seller under this Agreement, (i) the amount paid or payable shall be increased to the extent necessary to ensure that Seller receives a net amount equal to the amount that it would have received had no taxes been withheld; (ii) Buyer shall forward proof of such legally required withholding to Seller.
- 5.5 Buyer shall remit the amount due on the invoice in the currency indicated on the invoice

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, full payments of all invoiced Goods, Software, Services, and Expenses are due within thirty (30) calendar days from the invoice date. Buyer acknowledges that Seller has the right to reassess Buyer's creditworthiness from time to time. To the extent such is in accordance with law, in the event there is a decline in Buyer's creditworthiness, Seller may, upon thirty (30) days written notice, revise the payment terms between the parties. 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 thirty (30) days past receipt of invoice, 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 1.0% per month on the past due amount in accordance with Florida Statute §218.74 et. seq., the Local Government Prompt Payment Act, 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, 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.
- 8.2 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.

- 8.3 Delivery, unless otherwise agreed upon in a Purchase Order, shall be FOB, Seller's dock (Incoterms 2010).
- 8.4 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 Seller warrants to Buyer that the Goods, Software and Services Seller provided hereunder shall, at time of delivery, materially conform to the Specifications agreed between the Parties, including drawings or descriptions, specification sheets, drawings, notes and technical data for such Goods and Software and the description of the Services. In the absence of agreed upon Specifications for Goods and Software, Seller warrants the Goods and Software shall meet the applicable standard Specifications available from Seller for such Goods and Software at the time of the issuance of the Purchase Order. Seller warrants that Services shall be performed with reasonable skill and care and that Seller is properly licensed and qualified to perform the Services hereunder, and shall provide experienced personnel to perform Services that are materially in conformity with the Specifications of the Purchase Order.
- 10.2 Seller further warrants that Goods, at the time of their delivery, and the media on which the licensed Software is provided will be free from defects in material and workmanship for the Warranty Period. If a material defect in workmanship with regard to the media carrying licensed Software occurs during the Warranty Period, Seller's sole obligation and Buyer's sole remedy shall be the replacement of the media and the licensed Software residing on the media.
- 10.3 If, any time prior to the end of the applicable Warranty Period, the Goods, Software or Services, or any part thereof, do not conform to applicable warranties or Specifications, Buyer shall notify Seller within a reasonable time after its discovery and shall provide written particulars of the non-conformity and all information and assistance necessary to enable Seller to verify the nature and cause of the non-conformity and carry out its warranty obligations hereunder.
- 10.4
 - a. Non-conforming Goods and Software subject to a warranty claim shall be returned to the nearest Seller's repair facility, transportation charges prepaid for the account of the Buyer, after a return authorization number is received from Seller. The costs to diagnose any non-conformity on Buyer's site, if required, shall be for the account of the Buyer. Goods returned by Buyer to the Seller and found upon Seller's inspection to be non-conforming and Software found non-conforming upon Seller's inspection shall be repaired, replaced or corrected, at Seller's sole option and return-shipped by Seller to Buyer with transportation prepaid by Buyer.
 - b. Services subject to a warranty claims shall be re-performed, corrected, or the portion of the Services that cannot be re-performed or corrected, shall be refunded to Buyer.
 - c. 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.

- d. Goods, software and labor used, as well as any and all Expenses reasonably incurred, by Seller for the diagnosis, repair, replacement or correction of any Goods, Software or Services subject to a warranty claim that are found in whole or in part to be non-conforming for reasons listed under Article 10.5 or that were found upon investigation to comply with Specifications or other contractual requirements shall be for Buyer's account.
 - f. If applicable, Seller shall not be obliged to accept any Goods delivered hereunder for repair or replacement until the same has been decontaminated by Buyer, if required, at no expense to Seller. Seller shall not be liable for any loss or damage to Goods incurred as a result of decontamination (including any loss or damage occasioned by Seller's rejection of any Goods which have been delivered to Seller for repair, replacement, and warranty service. Buyer shall furnish to Seller, along with the returned Goods, a Certificate of Decontamination signed by the agency performing the decontamination and countersigned by the Buyer. Buyer shall indemnify and save harmless Seller against all damage howsoever incurred as a result of returning contaminated or improperly decontaminated equipment to Seller for repairs or replacement.
 - e. Seller's obligation and Buyer's sole remedy under this Article is, at Seller's option the repair or replacement, correction, for any non-conforming Goods, Software or part thereof.
- 10.5 The foregoing warranties do not apply to non-conformities caused by (i) Buyer's design or installation of the Goods and/or Software, (ii) modification or repair to the Goods and/or Software otherwise than as authorized in writing by Seller; (iii) handling, storage, use or maintenance of the Goods and/or Software in a manner or an environment inconsistent with the Specifications and/or instructions or recommendations of Seller; (iv) defect in Buyer's own products or software or use of the Goods and/or Software in combination with any Third Party Product not procured by Seller; (v) Buyer's failure to observe the payment terms under this Agreement or any other of its obligations under this Agreement; (vi) normal wear and tear; (vii) installation or wiring of the Goods and/or Software other than in accordance with Seller's instructions; (viii) transfer of the Software from the device on which it was originally installed; and/or (ix) any fault of the Buyer or its agents. Goods subject to wear or burnout through usage such as lamps, fuses, paper media, filters, trim, packing and the like shall not be deemed not in conformity by reason of such wear or burnout.
- 10.6 The foregoing warranties do not apply to Third Party Products. Third Party Product shall be warranted only in accordance with the warranties given to Seller in respect thereof by the relevant third party vendor and to the extent that Seller has the right to assign or transfer such warranties. In addition, Buyer shall look solely to third party vendor for all remedies and support with regard to such Third Party Products. Seller shall bear no responsibility for the performance, repair or warranty of any of Buyer's software or hardware product.
- 10.7 EXCEPT AS SET FORTH HEREIN AND IN THE WARRANTIES PROVISIONS CONTAINED IN SEPARATE SOFTWARE LICENSE(S) IF ANY, THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE OPERATION OF ANY SUCH SOFTWARE WILL BE UNINTERRUPTED AND/OR ERROR-FREE.
- 10.8 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 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, a parent or affiliated Buyer of Seller, or by third parties under contract to Seller or to a parent or affiliated company of Seller (all of the foregoing, collectively, "Seller's Information"). Seller shall retain at all times ownership of the Seller's Information.
- 11.2 Seller or the applicable third party owner shall retain at all times the ownership of its Software, firmware 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, firmware, 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 this Agreement 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."

- 11.3 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 in Article 12.2 shall apply to generally to Seller's Software. SimSci Licenses are issued pursuant to the license terms in Article 12.2, but may be term limited and a separate acknowledgement must be executed for all SimSci on the forms attached as Exhibit B-1 to B-2 and Wonderware Software products and Third Party Product software Licenses are separate end user license agreements ("EULA") and not issued pursuant to the license in Article 12.2.

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. 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; (iii) is independently developed without the benefit of the other’s Confidential Information; (iv) is received from a third party that is not under any confidentiality obligation towards the owner of the information; or (v) has entered the public domain through no fault of the recipient. Nothing herein shall be construed to limit disclosure required pursuant to Florida Statute Chapter 119, the Florida Public Records Act, or any other applicable law.
- 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 accordance with this article 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. Any such suspension shall take place by delivery to the Seller of a Notice of Suspension specifying the extent to which performance of work under the Agreement or Purchase Order is suspended, and the date upon which suspension 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. make every reasonable effort to stop orders for materials and equipment and reassign personnel.
- 14.2 Upon Notice of Suspension, 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 suspension (“Fees and Expenses”) and (ii) any and 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”). In the event of partial suspension of the Agreement or when suspension occurs between two invoicing milestones, a pro rated share of the fees shall be added based upon the portion of Purchase Order completed on the suspension date.
- 14.3 Notwithstanding the foregoing, with respect to M&I products, Buyer may only suspend a Purchase Order without cause before shipment.
- 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 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 pursuant to

Article 15.

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. make 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") and (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"). In the event of partial execution of the Agreement or when termination occurs between two invoicing milestones, a pro rated 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 M&I products, Buyer may only terminate a Purchase Order without cause before shipment.
- 15.4 In addition to the remittance of any Termination Cost, in the event of Termination for Convenience by Buyer, Buyer shall remit to Seller a termination fee of ten percent (10%) of the remaining value of each so terminated Purchase Order.

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 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

- 17.1 If Seller must store any of Buyer's materials and/or equipment under this Agreement, Seller shall charge Buyer a fee for storing the materials and/or equipment as set forth in the Purchase Order or in a properly executed Change Order. Seller shall:
- a. store such materials and/or equipment in a clean, dry, and secure location, unless otherwise agreed in writing by Buyer; and
 - b. 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.
- 17.2 Without prejudice to its rights under Article 4.7, Seller will not permit any lien or encumbrance to attach to Buyer's Goods in the possession of Seller and will file or execute such documents of title as Buyer may request.

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 Buyer acknowledges that each product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. Buyer may not export the "Items" to another country without Seller's written permission and payment of any applicable country specific surcharges. Buyer agrees to comply fully with all relevant export laws and regulations of the United States and foreign nations in which the "Items" will be used ("Export Laws") to ensure that neither the "Items" nor any direct product thereof are (i) exported, directly or indirectly, in violation of any Export Laws; or (ii) are intended to be used for any purposes prohibited by the Export Laws. Without limiting the foregoing, Buyer will not export or re-export the "Items": (i) to any country to which the United States has embargoed or restricted the export of goods or services or to any national of any such country, wherever located; (ii) to any end user who Buyer knows or has reason to know will utilize the "Items"

in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S. export transactions by federal agency of the U.S. government.

- 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 Except for Buyer's payment obligations, neither party shall be liable for delays caused by conditions beyond their reasonable control, ("Force Majeure"), provided notice thereof is given to the other party as soon as practicable. Force Majeure shall include, without limitation, hostilities, revolution, acts of war (whether or not declared), act of terrorism, civil commotion, strike, epidemic accident, quarantines or regional medical crisis, fire, flood, wind, earthquake or other inclement weather conditions and any impending threat of the foregoing, blockade, embargoes, shortage of materials or transportation facilities, strikes and lockouts, any other Acts of God or act of any Government or governmental agency, including laws, regulation or ordinance and proclamation affecting the parties, the Goods, Software or Services without the fault or negligence of the parties hereto.
- 19.2 All such Force Majeure conditions preventing performance shall entitle the Party hindered in the performance of its obligations hereunder to an extension of the date of delivery of the Goods and Software or completion of the Services by a period of time equal to the period of delay incurred as a result of the Force Majeure or to any other period as the Parties may agree in writing.

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 insurance as per Attachment A, "INSURANCE REQUIREMENTS," and shall provide upon request to Buyer, certificates of such 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.
- e. This Article 23.2 states the Parties' entire liability and sole remedy with respect to infringement or claims thereof.

Article 24: LIMITATION OF LIABILITY

- 24.1 IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY UNDER THIS AGREEMENT OR ANY PURCHASE ORDER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUES, INTEREST, CAPITAL, FINANCING, GOOD WILL, USE, BUSINESS REPUTATION, OPPORTUNITY OR PRODUCTIVITY, HOWSOEVER ARISING, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 24.2 SELLER'S LIABILITY UNDER THIS AGREEMENT FOR ANY DIRECT DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT (WHETHER ARISING UNDER TORT, NEGLIGENCE, CONTRACT, WARRANTY, STRICT LIABILITY OR ANY OTHER CAUSE OR COMBINATION OF CAUSES) SHALL IN NO EVENT EXCEED THE SPECIFIC PRICE OF THE GOODS, SOFTWARE AND/OR SERVICES PROVIDED UNDER THE PURCHASE ORDER GIVING RISE TO LIABILITY. WITH RESPECT TO SITE BASED SERVICES, THE MAXIMUM AGGREGATE LIABILITY OF SELLER FOR DIRECT DAMAGES UNDER THE PURCHASE ORDER GIVING RISE TO LIABILITY SHALL NOT EXCEED THE TOTAL AGGREGATE AMOUNT OF THIS AGREEMENT.
- 24.3 EXCEPT FOR THE TRANSFER OF SOFTWARE LICENSE IN ACCORDANCE WITH APPLICABLE LICENSE, THE TERMS OF THIS AGREEMENT SHALL NOT BENEFIT OR CREATE ANY RIGHT OR CAUSE OF ACTION IN OR ON BEHALF OF ANY PERSON OR ENTITY OTHER THAN BUYER AND SELLER.
- 24.4 TO THE EXTENT PERMITTED BY LAW, THE PROVISIONS OF THIS ARTICLE 24 SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE.
- 24.5 BUYER ACKNOWLEDGES THAT SELLER'S PRICING REFLECTS THE ALLOCATION OF RISKS, OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS AND THE LIMITATION OF LIABILITY HEREUNDER.

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

- 26.1 This Agreement shall be governed by and construed in accordance with the laws of Florida, USA, without regard to the conflict of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The governing language for this Agreement shall be English, and no concurrent or subsequent translation of this Agreement into any language shall modify any term of this Agreement.
- 26.2 Upon the request of either Party, mediation shall be conducted pursuant to the mediation rules of the AAA.

Article 27: Miscellaneous

- 27.1 Waiver. Failure by either Party to insist upon strict performance of any of the terms and conditions hereof or failure or delay to exercise 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.
- 27.2 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.
- 27.3 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.

- 27.4 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.
- 27.5 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.
- 27.6 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 provisions are: (i) Definitions, Article 1; (ii) Price, Article 5; (iii) Payment Terms, Article 7; (iv) Warranties, Article 10; (v) Intellectual Property, Article 11; (vi) Software License, Article 12; (vii) Confidentiality, Article 13; (viii) Compliance, Article 18; (iv) Force Majeure, Article 19; (x) Indemnification, Article 23; (xi) Limitation of Liability, Article 24; (xii); Laws and Dispute Resolution, Article 24; (xiii) Severability, Survivorship, Waiver, and Headings, Article 27.
- 27.7 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.
- 28.8 Public Records. Seller shall comply with Florida Statute Chapter 119, the Florida Public Records Act as it relates to records kept and maintained by Seller in performance of services pursuant to this Agreement. In accordance with Florida Statute § 119.0701, Seller shall be required to provide public access to such records at a cost that does not exceed the statutory requirements or as otherwise provided by law. In the event any such records are exempt or confidential from public records disclosure Seller shall ensure that those records are not disclosed except as authorized by law. Seller shall meet all requirements for retaining public records and shall transfer at no cost to the Buyer, all public records in possession of the Seller upon termination of the Agreement and destroy duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Buyer in a format that is compatible with the information technology system of the Buyer.

Article 28: Sole Agreement

28.1 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.

IN WITNESS WHEREOF, the parties herein have executed this Agreement for cyber security services as of the effective date specified herein.

CITY OF LAKELAND, FLORIDA
(BUYER)

INVENSYS SYSTEMS, INC.
(SELLER)

R. Howard Wiggs, Mayor

President (Signature)

President (Printed Name)

[Corporate Seal]

ATTEST:

ATTEST:

By: _____
Kelly S. Koos, City Clerk

By: _____
(Attesting Witness' name/title)

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
Timothy J. McCausland, City Attorney