

**RESOLUTION 18-121**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH INSOURCE SOLUTIONS, RELATING TO THE PURCHASE OF THE ANNUAL RENEWAL OF WONDERWARE SOFTWARE LICENSE SUPPORT AND SERVICES IN THE AMOUNT OF \$24,698.38; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED** that the appropriate officers of the City are authorized but not required to execute and deliver on behalf of the City that certain Agreement between the City and InSource Solutions, relating to the purchase of the annual renewal of Wonderware software license support and services, for the operation of the City's utility system, in the basic amount of Twenty Four Thousand Six Hundred Ninety Eight Dollars and Thirty Eight Cents (\$24,698.38), in substantially the form attached and presented to the Council today, draft dated April 17, 2018, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

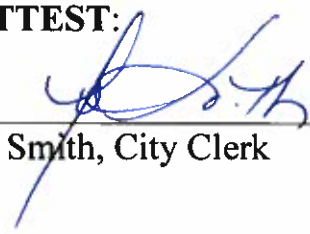
**PASSED** in regular session this 26<sup>th</sup> day of July, 2018.

**CITY OF PANAMA CITY BEACH**

By: 

Mike Thomas, Mayor

**ATTEST:**

  
Jo Smith, City Clerk



## CITY OF PANAMA CITY BEACH AGENDA ITEM SUMMARY

**1. DEPARTMENT MAKING REQUEST/NAME:**

Utilities Department - Al Shortt, Utilities Director

**2. MEETING DATE:**

July 26, 2018

**3. REQUESTED MOTION/ACTION:**

Approve the annual Wonderware software support renewal in the amount of \$24,698.38 from InSource Solutions.

**4. AGENDA**

PRESENTATION  
PUBLIC HEARING  
CONSENT  
REGULAR

<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>

**5. IS THIS ITEM BUDGETED (IF APPLICABLE)?** YES  NO

N/A

BUDGET AMENDMENT OR N/A

DETAILED BUDGET AMENDMENT ATTACHED YES  NO

N/A

**6. BACKGROUND: (WHY IS THE ACTION NECESSARY, WHAT GOAL WILL BE ACHIEVED)**

The City utility system uses a Supervisory Control and Data Acquisition (SCADA) software package titled Wonderware, provided by Schneider Electric Software. The exclusive distributor for the software in Florida, InSource Solutions, has provided a proposal in the amount of \$24,698.38 to provide an annual software license support and services through July 2019. This is a sole source purchase, and choosing to switch to another application would cost approximately \$100,000 for the initial purchase of similar software, plus several hundred thousand dollars to reprogram the SCADA code in all of the City's utility system installations. Staff recommends Council approval of the annual software support purchase by the City Manager. This is a budgeted expenditure within the current Fiscal Year 2018 budget.

We have prepared a quote for you



45298 - Customer FIRST Renewal

---

QUOTE #012348 V1

PREPARED FOR

City of Panama City Beach



804.357.9016    [tpalette@insourcess.com](mailto:tpalette@insourcess.com)    [www.insource.solutions](http://www.insource.solutions)

Tuesday, April 17, 2018

City of Panama City Beach  
Patrick Quezada  
206 N Gulf Blvd  
Panama City, FL 32413-2802  
[pquezada@pcb.gov](mailto:pquezada@pcb.gov)

Dear Patrick,

Thank you for being a Customer First client. InSource Solutions values your loyalty and the opportunity to serve you and your organization. Our mission is to be the destination for expertise, assistance and industry perspective; our goal is to revitalize manufacturing in America.

Sometimes we take for granted that you know and appreciate all the reasons to keep your software maintenance agreement current. The top four we hear from our clients are:

- Wonderware invests heavily in engineering new and enhanced products so clients receive timely and important revisions to their software plus options for added services. Approximately 70% of Customer First revenue is reinvested in Research & Development.
- Cyber-security threats are addressed in real time thru patches and fixes, keeping your data and operations safe and preventing expensive and frustrating downtime or loss of data
- Changes to the underlying Microsoft operating systems are rapidly addressed so your systems are *compatible and stay up and running with no hiccups*
- When problems arise, we are here to help. This last point merits elaboration:
  - Our InSource Solutions Technical Support Engineers answer calls within 90 seconds, and resolve more than 2/3 of client issues the same day... most in the same call. Plus, the team gets 95% satisfied client scores. Good folks to have on your team.

Lastly, based on history, we realize many of our clients need advance notice to budget and get approval for Customer First renewals. InSource has implemented a process so your first notice is received at least 90 days before renewal, with a reminder every 30 day(s) to ensure nothing slips through the cracks and manufacturer late fee(s) are avoided.

Below is your maintenance renewal notice. To purchase your maintenance agreement:

Return the attached quote and a Purchase Order to [orderentry@insourcess.com](mailto:orderentry@insourcess.com) or fax to 804.378.8970

- If you are tax exempt, include your tax exemption certificate please.
- If you are not tax exempt, please add state and county tax amounts to your purchase order.

Thank you again for your business; we hope to continue serving you for many years. If you have any questions about this quote or any matter, contact your Account Executive, Patrick Hunter, or me; we're always delighted to hear from you.

PS: Concerned about license inventory tracking, management and reporting capabilities to be audit ready and stay compliant? Interested in reducing ownership cost, enhancing planning capabilities and confidently knowing what the latest version of Wonderware software is running?

Ask us about the Software Application Manager (SAM)



804.357.9016    [tpaulette@insourcess.com](mailto:tpaulette@insourcess.com)    [www.insource.solutions](http://www.insource.solutions)

Tammy Paulette  
CustomerFIRST Specialist  
Richmond, VA



804.357.9016    [tpaulette@insourcess.com](mailto:tpaulette@insourcess.com)    [www.insource.solutions](http://www.insource.solutions)

## Customer First Agreement

---

Agreement ID: 48298  
Current Expiration Date: July 28, 2018  
Current Support Level: Standard

Agreement for:

City of Panama City Beach  
Waste Water Treatment Plant  
206 N. Gulf Blvd  
Panama City Beach, Florida 32413

The full Wonderware Customer First Client brochure with all of the program features, benefits and details is available here ([Click Here](#))

Covers Wonderware licenses listed in the attached copy of your Customer First Agreement.

If you would like to make any changes to the licenses which are currently supported by your agreement, please make notes to the agreement and return to [customerfirst@insourcess.com](mailto:customerfirst@insourcess.com).

**\*\*\*Important note regarding expiration\*\*\***

*Customer First Support Agreements carry no "grace period" beyond the support agreement expiration date. If an agreement is allowed to lapse, the customer has the following 30 days to renewal with a mandatory 10% penalty fee. Beyond 30 days, renewal still requires a 10% penalty AND the agreement loses its license volume-based discount.*



804.357.9016    tpalette@insourcess.com    www.insource.solutions

### Annual Support Renewal

Item	Description	Price	Qty	Ext. Price
1 ISS-W000	<b>Wonderware Customer First Standard Software Maintenance</b>  City of Panama City Beach Waste Water Treatment Plant 206 N. Gulf Blvd Panama City Beach, Florida 32413  To cover period 7/28/2018 to 7/28/2019	\$24,698.38	1	\$24,698.38

Subtotal: **\$24,698.38**

### Annual Support Renewal Options

Item	Description	Price	Qty	Ext. Price
2 ISS-P000	<b>Wonderware Customer First Premium Software Maintenance</b>	\$27,512.48	1*	\$27,512.48
3 ISS-E000	<b>Wonderware Customer First Elite Software Maintenance</b>	\$30,326.58	1*	\$30,326.58



804.357.9016 tpaulette@insourcess.com www.insource.solutions

## 45298 - Customer FIRST Renewal

### Quote Information:

Quote #: 012348  
Version: 1  
Delivery Date: 04/17/2018  
Expiration Date: 07/28/2018

### Prepared for:

City of Panama City Beach  
Patrick Quezada  
206 N Gulf Blvd  
Panama City, FL 32413-2802  
pquezada@pcb.gov.com  
(850) 625-7977

### Account Executive:

Richmond, VA  
Tammy Paulette  
866.204.6184  
tpaulette@insourcess.com

### Prepared by:

Richmond, VA  
Tammy Paulette  
866.204.6184  
tpaulette@insourcess.com

### Quote Summary

Description	Amount
Annual Support Renewal	\$24,698.38
<b>Total</b>	<b>\$24,698.38</b>

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

**Payment Terms:** Net 30

Signature \_\_\_\_\_

Date \_\_\_\_\_





804.357.9016    tpalette@insourcess.com    www.insource.solutions

## Delivery and Payment Terms

### **General Delivery Terms**

- Software/Maintenance:    1-2 weeks
- Hardware:                    2-3 weeks for pre-built/off-the-shelf hardware  
                                      3-8 weeks for custom/build-to-order hardware  
                                      4-8 weeks after drawing approval Strongarm build to order enclosures
- Services:                     Per Contract Agreement
- Onsite Training:            Date to be negotiated after receipt of order.  
                                      Generally, no sooner than 30 days from date of order receipt
- FOB:                            Shipping Point – Freight is prepaid and added to invoice

### **Standard Payment Terms**

- Products/Maintenance:    Net 30 Days from date of invoice with approved credit/credit limit
- Training:                     Pre-pay or payment of invoice prior to class attendance
- Services:                     Net 30 Days from date of invoice with approved credit/credit limit
- Time & Expense Services invoiced weekly as consumed.  
                                      Fixed Cost Services (including Ready To Go Services) invoiced 50% at time  
                                      of order and 50% upon project completion.
- Travel and Living Expenses billed separately and at cost.

### **Remit to Address**

InSource Solutions  
PO Box 72804  
Richmond, VA 23235

**AGREEMENT ID: 45298**

Agreement Effective Date Range: 07/29/2017 - 07/28/2018

Agreement Type: Percentage Support

Support Level: Standard

**Customer FIRST**  
for Wonderware**City of Panama City Beach - Customer Site ID: 29276**

Waste Water Treatment Plant 206 N. Gulf Blvd

Panama City Beach, Florida 32413

UNITED STATES

**Technical Support Telephone Contact Information**

Wonderware Southeast - Richm L1: 888-691-3858

Software License Number	Key Serial Number	Part #	Part Description	# Users	License Exp Date
1597220-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597221-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597222-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597223-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597224-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597225-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597226-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597227-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597228-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
1597229-0		17-1368	Wonderware Historian Client Per Device, 1 of 10 Pk		
488391-8		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
488392-8		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
603961-7		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
603962-7		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
680810-6		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
834478-4		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
982848-3		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
1168867-2		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
1597219-1		InTch-06-C-17	UpgC, InTouch 2017 Runtime 60000 Tag with I/O		
834480-5		WWCAL-01-C-16	UpgC, WW CAL without MS CAL Runtime Single, SQL 2016 Std		

Support Agreement: Software Support Services are provided subject to the terms and conditions contained in the Customer FIRST User Guide.

**AGREEMENT ID: 45298**

Agreement Effective Date Range: 07/29/2017 - 07/28/2018

Agreement Type: Percentage Support

Support Level: Standard

**Customer FIRST**  
for Wonderware**City of Panama City Beach - Customer Site ID: 29276**

Waste Water Treatment Plant 206 N. Gulf Blvd

Panama City Beach, Florida 32413

UNITED STATES

**Technical Support Telephone Contact Information**

Wonderware Southeast - Richm L1: 888-691-3858

Software License Number	Key Serial Number	Part #	Part Description	# Users	License Exp Date
834481-5		WWCAL-01-C-16	UpgC, WW CAL without MS CAL Runtime Single, SQL 2016 Std		
834482-5		WWCAL-01-C-16	UpgC, WW CAL without MS CAL Runtime Single, SQL 2016 Std		
834483-5		WWCAL-01-C-16	UpgC, WW CAL without MS CAL Runtime Single, SQL 2016 Std		
834484-5		WWCAL-01-C-16	UpgC, WW CAL without MS CAL Runtime Single, SQL 2016 Std		
834485-5		WWCAL-01-C-16	UpgC, WW CAL without MS CAL Runtime Single, SQL 2016 Std		
1597230-2		WWCAL-02-C-16	UpgC, WW CAL without MS CAL Runtime 5 Pack, SQL 2016 Std		
1597231-2		WWCAL-02-C-16	UpgC, WW CAL without MS CAL Runtime 5 Pack, SQL 2016 Std		
1597232-2		WWCAL-02-C-16	UpgC, WW CAL without MS CAL Runtime 5 Pack, SQL 2016 Std		
1597233-2		WWCAL-02-C-16	UpgC, WW CAL without MS CAL Runtime 5 Pack, SQL 2016 Std		
1597234-2		WWCAL-02-C-16	UpgC, WW CAL without MS CAL Runtime 5 Pack, SQL 2016 Std		
<b>488390-8</b>		DevStd-04-C-17	UpgC, Dev Studio 2017 Unlim Unlim / 60000 / 500		
1597235-0 (part of 488390)		12-12771	WW Skelta BPM Developer Edition 1 user		
<b>603963-7</b>		DevStd-04-C-17	UpgC, Dev Studio 2017 Unlim Unlim / 60000 / 500		
1597236-0 (part of 603963)		12-12771	WW Skelta BPM Developer Edition 1 user		
<b>834477-4</b>		DevStd-04-C-17	UpgC, Dev Studio 2017 Unlim Unlim / 60000 / 500		
1597237-0 (part of 834477)		12-12771	WW Skelta BPM Developer Edition 1 user		

Support Agreement: Software Support Services are provided subject to the terms and conditions contained in the Customer FIRST User Guide.

**AGREEMENT ID: 45298**  
 Agreement Effective Date Range: 07/29/2017 - 07/28/2018  
 Agreement Type: Percentage Support  
 Support Level: Standard

**Customer FIRST**  
 for Wonderware

**City of Panama City Beach - Customer Site ID: 29276**  
 Waste Water Treatment Plant 206 N. Gulf Blvd  
 Panama City Beach, Florida 32413  
 UNITED STATES

**Technical Support Telephone Contact Information**  
 Wonderware Southeast - Richm L1: 888-691-3858

Software License Number	Key Serial Number	Part #	Part Description	# Users	License Exp Date
834479-4		HstStd-03-C-17	UpgC, Historian 2017 Standard, 5000 Tag		
982850-3 (part of 834479)		InfSvr-51-C-17	UpgC, Information Server Portal		
1168865-2		DevStd-04-C-17	UpgC, Dev Studio 2017 Unlim Unlim / 60000 / 500		
1597238-0 (part of 1168865)		12-12771	WW Skelta BPM Developer Edition 1 user		

Support Agreement: Software Support Services are provided subject to the terms and conditions contained in the Customer FIRST User Guide.

## InSource Software Solutions, Inc. - Standard Terms and Conditions

**Priority** These Terms and Conditions govern the sale and purchase of the Products, Software and/or Services that are provided by InSource Software Solutions, Inc. ("ISS") as set forth in the applicable Quotation or Purchase Order (collectively, the "Order") to Customer (as identified in the Order). These Terms and Conditions constitute an integral part of the contract between ISS and Customer for the purchase of the Products, Software and/or Services set forth in the applicable Order. By signing the Order or any similar ordering document, Customer shall be deemed to enter into a purchase order for the subject Products, Software and/or Services and to agree and acknowledge specifically that (a) Customer has read and understands and agrees to these Terms and Conditions; (b) that the Order (or similar ordering document), including these Terms and Conditions, constitutes a "writing signed by Customer" under any applicable law or regulation; and (c) Customer consents to the electronic delivery of the disclosures contained in these Terms and Conditions. Any changes in these Terms and Conditions must be specifically agreed to in writing signed by an authorized officer of ISS. In the event of a conflict between these Terms and Conditions and different terms and conditions set forth in an Order, these Terms and Conditions shall prevail unless the inconsistent term in the Order expressly states otherwise.

### Definitions.

- "Product" means the computer hardware that Customer purchases from ISS. The Product may be sold directly by ISS, or through ISS by a third party.
- "Services" means the relevant combination of the Software Services, Technical Services, and Technical Support & Maintenance.
- "Software" means the software offered as an FTP download or other direct provision that is loaded on Customer's hardware or into an environment owned or controlled by Customer.
- "Software Services" means the software provided by ISS either as a hosted, cloud-based or remote solution. ISS controls the hardware upon which the Software Services are loaded and from which the Software Services are provisioned to Customer.
- "Technical Services" means the professional services provided to Customer on a time & materials, or other agreed upon basis.
- "Technical Support & Maintenance" means the services through which ISS supports Customer's use of the Software & Software Services.

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

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

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

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

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

**Cancellation.** In the event of an alleged default by ISS, no cancellation by Customer shall be effective unless ISS shall have failed to correct such alleged default within forty-five (45) days after receipt by ISS of written notice of default from Customer. Once accepted by Customer in writing, any order for Product, Software or Services pursuant to the applicable Order is firm and non-cancellable.

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

**Software.** Any and all Software provided hereunder is provided pursuant to a non-exclusive, terminable, license. Nothing herein shall constitute the sale or purchase of any Software or grant Customer any right, title or interest in or to any Software unless otherwise expressly provided in an Order. In all cases (e.g., whether the Software is an ISS-developed product or whether the Software is third-party software that is sublicensed or distributed by ISS), Customer shall be subject to and hereby agrees to comply with the terms and conditions of these Terms and Conditions and the applicable End User License Agreement ("EULA") or analogous document for that specific Software product. Except with respect to payment terms, the terms and conditions of such software license or EULA shall control to the extent that any such terms and conditions conflict with these Terms and Conditions. The Software Services are governed by these Terms and Conditions and any online agreement presented to Customer (including, without limitation, Customer's employees, contractors, and agents) prior to initial use of the Software Services.

**Services.** To the extent that ISS provides Technical Services or Technical Support & Maintenance under the applicable Order, the following terms shall apply. Unless otherwise agreed in the Order, Technical Services shall be performed between the hours of 8:30 a.m. and 5:00 p.m. Eastern Time (provided that Services provided on site at Customer's facility shall be performed during the above-listed hours in the time zone in which Customer's facility is located). Services shall be provided on an eight (8) hour "person day" basis. When employees or contractors of ISS are required to travel outside the metropolitan areas of their primary work locations, Customer shall reimburse ISS for reasonable travel and meal expenses actually incurred by ISS that have been authorized by Customer in advance (provided, however, that any travel expenses listed or estimated in an Order shall be deemed approved in advance). ISS shall itemize and include such travel expenses in its invoices to Customer for Services, as set forth in the applicable Order. Upon Customer's written request, ISS shall provide receipts or other appropriate documentation. For clarity, unless otherwise provided in an Order, these terms shall not apply to custom work performed under a master services agreement (including customization of Software provided in an Order), even if these Terms and Conditions are executed in addition to such agreement.

**Ownership.** ISS will retain all right, title and interest in and to all methodologies, processes, improvements, designs, tools, algorithms and information used by ISS to deliver the any of the Services (including, without limitation, the Software Services) hereunder ("Know-how"). Customer agrees that ISS's Know-how constitutes Confidential Information (as set forth below), has tangible value and includes trade secret information of ISS. ISS shall retain all rights to the Know-how, including all copyrights therein, and no license to Customer under any patent, copyright, trademark or other intellectual property right of ISS is either granted or implied by Customer's receipt of any Know-how or ISS's use of any Know-how during the course of its provision of the Services hereunder.

Customer agrees that all work performed by ISS pursuant to an Order shall be owned by ISS unless otherwise specified in an Order. ISS shall accordingly have the sole and exclusive right to seek registration of any work resulting from ISS's services under the terms of the Order with the United States Copyright Office as the sole author thereof.

### Limited Warranty.

- Products. ISS warrants only that Products sold and supplied by ISS or delivered shall conform to the standard physical characteristics for the applicable Products as defined within the applicable Product specifications supplied by ISS in connection with the Order. ISS warrants that the Products shall conform to the Product specifications for a period of one (1) year after the date of delivery to Customer (the "Warranty Period"). If, during the Warranty Period, any Product is found to be defective in material or workmanship, ISS, at its option, shall replace or repair the defective Product; provided, however, that such repair or replacement is Customer's sole and exclusive remedy for receipt of a defective Product. This warranty is non-transferable and applies only to the original purchaser of the Product(s); any resale of the Product(s) without the express, prior, written permission of ISS shall render this warranty void. This warranty does not extend to damage or wear caused by misuse, negligence, accident, corrosion, modification by the customer, faulty installation, loss of product, or tampering in a manner to impair normal operation of the equipment or software.
- Software. The warranty applicable to Software licensed by ISS to Customer is set forth in the applicable EULA for the specific Software product that is the subject of such license. Customer's sole and exclusive remedy for receipt of defective Software is as set forth in the EULA.
- Services. ISS warrants that the Technical Services shall be performed in a good and workmanlike manner and shall conform to the specifications, if any, set forth in the applicable Order. If Technical Services are found not to conform to the specifications within ninety (90) days from the time of completion of the Technical Services, ISS shall correct such defects, provided that written notice of a claimed defect is given promptly upon discovery and within the services warranty period. ISS's re-performance of any Technical Services found to be defective is Customer's sole and exclusive remedy for receipt of any defective Technical Services.
- Third Party Products or Software. ISS warrants Products or Software supplied by third parties only to the extent that such third parties allow ISS to pass through to Customer the warranties of such third parties. To the extent permitted, ISS shall assign to Customer any such applicable warranties. Customer's sole remedy for a breach of such warranty shall be the remedy offered by and available from the third-party supplier. Products or Software from third parties which are not accompanied by third party warranties are sold on an "AS IS" basis.

**Disclaimer of Warranties.** ISS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW, CONTRACT OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEROPERABILITY OR NON-INFRINGEMENT, ALL OF WHICH ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. ISS'S WARRANTIES AS HEREIN SET FORTH SHALL NOT BE ENLARGED, DIMINISHED, OR OTHERWISE AFFECTED BY, NOR SHALL ANY OBLIGATION OR LIABILITY OF ISS ARISE OUT OF ISS'S PROVIDING TECHNICAL SERVICES OR TECHNICAL SUPPORT & MAINTENANCE IN CONNECTION WITH THE PRODUCTS, SOFTWARE OR SOFTWARE SERVICES FURNISHED HEREUNDER.

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

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

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

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

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

This Confidentiality obligation shall remain in effect for a period of two (2) years after termination or expiration of the Order to which these Terms and Conditions are attached; provided, however, that to the extent any Confidential Information also constitutes trade secret information, the obligations set forth herein shall remain in full force and effect with respect to such Confidential Information for so long as it remains trade secret under applicable law.

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

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

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

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

**Severability of Provisions; Waiver.** In the event of any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this contract will be construed as if such invalid, illegal or unenforceable provision had never been contained hereof. The waiver or failure of either party to be exercised in any respect any right provided in this Agreement shall not be deemed a waiver of any further right under this Agreement.

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

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

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