

## AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the 21st day of November, 2016, by and between FAIRFAX WATER, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and Insource Solutions, hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

### WITNESSETH:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

The Contractor shall provide "Wonderware" software, and Annual Support based upon this Agreement for Service ("Contract" or "Agreement") and the Contractor's proposal "Quotation #006145 V1", dated September 06, 2016, and amended terms and Conditions of FW Contract C-2016-049 Exhibit I (the "EULA"). In the event Exhibit I contradicts or limits the Agreement for Service, this Agreement shall prevail.

No representations, arrangements, understandings or agreements relating to the subject matter exist amongst the parties except as expressed in this Agreement.

### 1.0 SCOPE OF SERVICES

Scope of Services shall be as contained in the Contractors proposal, and Exhibit I

### 2.0 TERMS AND CONDITIONS

This Agreement is subject to the following Terms and Conditions:

#### 2.1 Term

The Agreement term shall cover the period from November 21, 2016 through August 28, 2017.

**2.2 Authorization to do Business in Virginia:** Each contractor that is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership, or registered as a registered limited liability partnership hereby represents and warrants as follows: (a) it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law; and (b) it shall not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia, if so required under Title 13.1 or Title 50 of the Virginia Code, to be revoked or cancelled at any time during the term of this Agreement.

- 2.3 Goods and/or Services:** The goods and/or services to be furnished hereunder are described on the face of the Contract and incorporated by reference herein, together with the required date(s) for delivery and/or performance and the purchase price and/or fees payable with respect to such goods and/or services. The prices and/or fees set forth therein are firm and fixed unless otherwise agreed in writing by FW.
- 2.4 Exact Quantities:** The Contractor shall provide the exact quantities specified therein. FW will not pay for overages and if delivered, FW will, at its sole option and discretion, either return the additional quantities to the Contractor at the Contractor's risk and expense, or accept the additional quantities at no additional cost to FW.
- 2.5 Insurance:** Unless otherwise specified in writing by FW, the Contractor shall maintain, for so long as this Contract is in effect, the following types and amounts of insurance coverage: (a) with respect to any Contract covering work or services performed for FW, regardless of location: Commercial General Liability insurance with a limit of liability that is not less than \$1,000,000 combined single limit; and (b) with respect to any Contract covering work or services performed on property owned or leased by FW, or on property otherwise operated by or on behalf of FW: (i) Workers' Compensation insurance which satisfies applicable statutory requirements; (ii) Employer's Liability insurance with a limit of liability that is not less than \$100,000 per employee, per bodily injury (or such greater amount as may be required by applicable statute); and (iii) Automobile Liability insurance with a limit of liability that is not less than \$1,000,000 combined single limit. The Contractor hereby covenants and agrees as follows: (a) each such insurance policy shall be underwritten by a responsible and solvent insurance company that is acceptable to FW; (b) the insurance coverages specified above shall constitute minimum requirements; and (c) upon request by FW, the Contractor shall promptly furnish FW's Procurement Manager with copies and/or certificates of insurance evidencing the insurance coverage specified above. Nothing contained herein shall be deemed to constitute a waiver of FW's sovereign immunity under law.

## **2.3 Invoices and Payment:**

### **A. To Contractor:**

1. The Contractor shall submit a separate invoice for each separate shipment, in the case of goods, and no more frequently than monthly, in the case of services. All such invoices shall be submitted to FW's Finance Department at 8570 Executive Park Avenue, Fairfax, VA 22031.

2. Each invoice shall include the Purchase Order number, the Contractor's federal employer identification number (or social security number, if the Contractor is an individual), a reasonably detailed description of the goods and/or services covered by the invoice, and the amount due. If shipping charges are included in an invoice, the original bill of lading shall accompany the invoice.

3. If a discount for prompt payment is allowed, the discount period will commence on the last to occur of: (i) the date of receipt of proper invoice; or (ii) delivery of the goods or service for which the discount applies. FW shall receive the benefit of any general reductions or discounts with respect to the Contractor's prices and/or fees which are in effect prior to delivery or performance, as the case may be.

4. Unless otherwise expressly agreed upon in writing, approved invoices shall be paid on or before the date that is 30 days after the date on which FW either received the invoice or accepted delivery of the invoiced goods or services, whichever is later.

5. Payment of amounts due hereunder shall in no event constitute acceptance of any defective or non-conforming goods or services.

### **B. To Subcontractors:**

1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the Contractor by FW work performed by the subcontractor under the Contract: (i) pay the subcontractor for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under the Contract; or (ii) notify FW and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. The Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work

performed by the subcontractor under the Contract, except for amounts withheld as allowed in Section 8(A)(4).


3. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

4. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this Section 8(B) shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

- 2.7 Non-Conforming Goods and Services:** If any goods or services furnished hereunder do not conform in all material respects to the representations and warranties set forth in the Contract, then the Contractor shall promptly repair, replace, or re-perform all such goods and services upon written notice by FW which is delivered to the Contractor within twelve (12) months after the date of delivery, in the case of non-conforming goods, or the date of performance, in the case of non-conforming services, at no additional cost to FW. At FW's option, non-conforming goods may be repaired or replaced by the Contractor at FW's facility or wherever the goods are located, or may be returned to the Contractor's facility or to an authorized repair center, all at the Contractor's expense. In the event of the Contractor's failure to repair, replace, or re-perform any non-conforming goods or services or diligently initiate the correction, replacement or re-performance thereof within five (5) business days after the date of FW's notice to the Contractor, FW shall have the right to correct or replace such goods and services and to charge the Contractor all costs thereof. The cost of correction shall be deducted from any amounts then or thereafter due the Contractor hereunder and, if such amounts are insufficient to cover the cost of correction, the Contractor shall pay such deficiency to FW promptly following written demand therefor. Notwithstanding the foregoing, if any non-conformity with a warranty materially affects the operation or use of any of the goods or presents an imminent threat to the safety or health of any person or entity and FW knows of such non-conformity, FW may, at its option, correct or replace such goods or services without giving the Contractor notice of such non-conformity, and the Contractor shall be responsible and liable to FW for all costs incurred by FW.

- 2.8 Indemnification:** The Contractor hereby assumes all risks associated with furnishing the goods, materials and/or services specified herein and shall indemnify and hold harmless FW and FW's members, officers, authorized representatives and employees from and against any and all claims, losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) (collectively, the "Losses") arising out of or in connection with: (1) any material breach of the representations, warranties, agreements and covenants of the Contractor contained in the Contract; (2) any injuries to persons or property caused by any negligent or wrongful act or omission of the Contractor or its subcontractors, vendors, employees, or other authorized representatives; (3) any claims filed by the Contractor which are adjudicated or otherwise determined in favor of FW; (4) any claims filed against FW by a subcontractor or employee of the Contractor; or (5) any claims or suits for infringement of United States or foreign patents, copyrights, trademarks, trade secrets, or other intellectual property rights or claims of unfair competition arising out of or resulting from FW's purchase, use, and/or possession of any goods and/or services furnished under the Contract.
- 2.9 Default and Termination:** Each of the following events shall constitute a default by the Contractor for purpose of this Contract (each of which shall entitle FW to terminate for default in accordance with this Section): (a) any bankruptcy proceeding by or against the Contractor or the appointment of a trustee for the benefit of creditors; (b) a refusal or failure of the Contractor to deliver the goods, or to perform the services, in accordance with any of the agreed scheduled delivery date(s); (c) if, based upon the current progress of the goods and services and information provided by the Contractor, the Contractor is projected to deliver any portion of the goods or perform any portion of the services after the scheduled delivery date(s) for such goods and/or services; (d) assignment or subcontracting of all or any part of the Contract without FW's prior written consent; or (e) failure to perform any other material provision of the Contract. In the event the Contractor does not cure any such default within a period of three (3) business days after receipt of written notice thereof from FW, or such longer period as FW may authorize in writing, then FW may give written notice to the Contractor to terminate the Contract or any part thereof. In the event of termination for default, FW shall not be liable to the Contractor for payment of any amount beyond the value of any conforming goods and services shipped or received and accepted by FW, less damages suffered by FW. In such case, the Contractor shall be liable to FW for any and all losses, costs and damages incurred by FW arising out of or resulting from

such default, including any and all liquidated damages which shall be based on the date(s) that a reasonable substitute supplier, exercising proper due diligence, achieved such respective scheduled deliveries. Upon request by FW, the Contractor will deliver or assign to FW any goods and services in progress at the time of termination.

~~2.10 Termination for Convenience: At any time, FW may terminate for its convenience all or any severable part of the Contract by giving written notice of termination to the Contractor. On the date that notice of such termination is received by the Contractor, the Contractor shall: (a) discontinue all work relating to the goods and/or services so terminated except for work performed in compliance with the instructions set forth in the termination notice; and (b) refrain from placing any additional orders in connection with the terminated portion(s) of the Contract. The Contractor shall not be entitled to any other payment from FW with respect to any terminated portion(s) of the Contract including, but not limited to, any anticipated or future profits or damages in connection therewith.~~ 

**2.11 Waiver:** Any waiver by FW of any breach by the Contractor of any term or condition of the Contract shall not constitute a waiver of any subsequent breach of the same or any other term or condition hereof. The rights and remedies of FW set forth herein are not exclusive, but are in addition to all other rights and remedies of FW under applicable law.

**2.12 Survival of Representations and Warranties:** Each of the representations, warranties, and covenants set forth in the Contract shall survive the execution, delivery, performance and termination hereunder.

**2.13 Reservation of Rights:** Any action by FW with respect to inspection of or payment for the goods and/or services covered by the Contract shall not prejudice FW's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by FW of the goods or services, or affect in any way the Contractor's obligations under the Contract notwithstanding FW's opportunity to inspect the goods and/or services, FW's knowledge of the nonconformity or defect, the importance or critical nature of, or the ease of discovery of the nonconformity or defect, nor FW's earlier failure to reject the goods or services. No action or failure to act by FW or its officers, agents or representatives shall be construed at any time to bar or otherwise preclude FW from: (a) showing the true and correct classification, amount, quality, or character of the goods and/or services delivered or performed hereunder, as the case may be, or that any determination, decision, acceptance, or payment is incorrect or

was improperly made in any respect, or that the goods and/or services (or any part thereof) do not in fact conform to the requirements of the Contract; and/or (b) demanding and recovering from the Contractor any overpayment made to him or such damages as FW may sustain by reason of the Contractor's failure to comply with the requirements of the Contract.

**2.14 Governing Law; Venue; Waiver of Jury Trial:** The Contract (and the transactions contemplated hereby) shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of Virginia, without reference to conflict of laws principles. Any action or proceeding arising out of or related to the Contract shall be brought only in the courts of competent jurisdiction in the Commonwealth of Virginia. The parties hereby consent to such venue and to the jurisdiction of such courts over such proceeding and themselves. The parties waive any right to a jury trial in connection with any such litigation.

**2.15 Non-Discrimination:**

A. Fairfax Water Authority does not discriminate against faith-based organizations.

B. During the performance of the Contract, Contractor agrees as follows:

(i) Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.

(iii) Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this Section 19(B).

Contractor will include the provisions of the foregoing Sections 19(B)(i), (ii) and (iii) in every subcontract, sub-consulting agreement and purchase order over \$10,000, in order that the provisions above will be binding upon each subcontractor, sub-consultant and vendor.

- 2.16 Tax Exempt:** FW is exempt from, and will not pay any, federal, state or local taxes which may be applicable to the transactions contemplated by this Contract, including without limitation any Federal Excise Tax, Transportation Tax or VA Sales and Use Tax. FW's federal tax exempt identification number is: 546025290.
- 2.17 Drug-Free Workplace:** During the performance of the Contract, the Contractor agrees to: (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For purposes hereof, a "drug-free workplace" shall mean the site for the performance of the transactions contemplated by the Contract. The Contractor acknowledges and agrees that alcoholic beverages, firearms and illegal drugs are prohibited in all FW facilities and on all FW property.
- 2.18 No Employment of Unauthorized Aliens.** The Contractor hereby covenants and agrees that it does not, and shall not during the performance of the Contract; knowingly employ an unauthorized alien (as such term is defined in the federal Immigration Reform and Control Act of 1986).
- 2.19 No Assignment, Substitutions or Modifications:** The Contractor shall not assign or subcontract any right or obligation under the Contract without FW's prior written consent. No substitution, change, modification, or deviation from the terms of the Contract shall be made without prior written authorization from FW.
- 2.20 Relationship of the Parties; No Third Party Beneficiaries:** The relationship of the Contractor and FW shall be that of an independent contractor and not that of an agent of FW. Neither the Contractor, nor any subcontractor, supplier, or employee of the Contractor, shall be deemed to be an employee or agent of FW for any purpose whatsoever.

No third party is entitled to rely for any purpose on any of the representations, warranties and agreements of FW and the Contractor set forth herein. Neither FW nor the Contractor shall be liable to any third party because of any reliance on the representations, warranties and agreements of FW and the Contractor contained in the Contract.

- 2.21 Notices:** All communications, notices, invoices, and disclosures required or permitted hereunder shall be in writing and shall be hand delivered, sent by fax (with a duplicate copy transmitted by another means of delivery authorized hereunder), sent by first class U.S. Mail, postage prepaid, or sent prepaid by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by fax with a hard copy sent by overnight express courier, five (5) days after mailing if sent by mail, and one (1) day after dispatch if sent by overnight express courier, to the following addresses and/or fax numbers: (a) if to the Contractor, to the address and/or fax number set forth on the first page of the Contract; and (b) if to FW, to: Fairfax Water, 8570 Executive Park Avenue, Fairfax, VA 22031, Attention: Donald R. Legg. Either party may change its address for notices by sending written notice of such change to the other party in the manner prescribed herein.
- 2.22 Effective Date:** The Contract shall be deemed to have been accepted by the Contractor and shall become a binding and enforceable contract in accordance with its terms as of the date which is: (a) the date of FW's receipt of written acknowledgement of the Contractor's acceptance, which may include issuance of an invoice in accordance with the Contract; (b) 7 days after the Contractor's receipt of the Purchase Order from FW, unless the Contractor notifies FW in writing within such time period of its rejection or proposed modification of any provision hereof; or (c) the date when the Contractor ships the first lot of goods or commences performance of the services ordered hereunder, whichever occurs first.
- 2.23 Entire Agreement:** The Contract, together with all exhibits and attachments hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written between the parties with respect to the subject matter hereof.
- 2.24 Notice of Required Disability Legislation Compliance:** FW is required to comply with state and federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

Specifically, FW, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination on the basis of disability by public entities. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

- 2.25 Ethics in Public Contracting:** The provisions contained in §§ 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by FW. A copy of these provisions may be obtained from the Purchasing Agent upon request.

The above-stated provisions supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

- 2.26. Contractual Disputes:** A Vendor, Contractor, or Service Provider shall give written notice to the Purchasing Agent of his/her intent to file a claim for money or other relief within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the work upon which the claim is to be based, whichever is earlier. The written claim shall be submitted to the Purchasing Agent no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce his decision to writing and mail or otherwise forward a copy thereof to the bidder within thirty (30) days of receipt of the claim. No Vendor, Contractor, or Service Provider shall institute any legal action until all statutory requirements have been met. Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.

## **2.27 Confidentiality**

#### **A. Contractor Confidentiality**

The Contractor acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to FW. Therefore, except as required by law, the Contractor agrees that its employees will not:

1. Access or attempt to access data that is unrelated to their job duties or authorizations as related to this Agreement.
2. Access or attempt to access information beyond their stated authorization.
3. Disclose to any other person or allow any other person access to any information related to FW or any of its facilities or any other user of this Agreement that is proprietary or confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes and/or another transmission or sharing of data.

The Contractor understands that FW, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that FW may seek legal remedies available to it should such disclosure occur. Further, the Contractor understands that violations of this provision may result in termination of the Agreement.

The Contractor understands that information and data obtained during the performance of this agreement shall be considered confidential, during and following the term of this Agreement, and will not be divulged without the Purchasing Agent's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by FW as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material.

#### **B. FW Confidentiality**

In addition, FW understands that certain information provided by the Contractor during the performance of this Agreement may also contain confidential or proprietary information. All information will be maintained in accordance with the Virginia Freedom of Information Act.

### **2.28 Force Majeure**

A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm,

hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the contracted for works but excluding any industrial dispute which is specific to the performance of the works or this contract, interruption or failure of electricity or telephone service.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, that party must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract.

An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

The Contractor has no entitlement and FW has no liability for: (1) any costs, losses, expenses, damages or the payment of any part of the contract price during an event of force majeure; and (2) any delay costs in any way incurred by the contractor due to an event of force majeure.

### **3.0 COMPENSATION**

Total compensation for this contract shall not exceed \$113,342.00.

**FAIRFAX WATER**

8570 Executive Park Avenue  
Fairfax, Virginia 22031  
Phone: (703) 289-6266  
Fax: (703) 289-6262

By: 

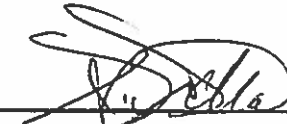
Name: Laurie Hankins

Title: Buyer I

Date: 11/21/16

**Insource Solutions**

PO Box 72804  
Richmond, VA. 23235  
Phone: (804) -378-8981

By: 

Name: ~~Jim Shannon~~ A JUNE DILLARD

Title: Account Executive EXEC. V.P.

Date: 11/22/16

# Fairfax Water Contract C-2016-049 Exhibit I (the "EULA")

## SCHNEIDER ELECTRIC END USER LICENSE AGREEMENT (the "EULA")

EULA v.4: July 15, 2015 (SZ)

BY INSTALLING OR USING THIS SOFTWARE, YOU ("YOU" OR "LICENSEE") AGREE TO THE TERMS AND CONDITIONS CONTAINED IN THIS EULA. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS CONTAINED IN THIS EULA, TERMINATE THE INSTALLATION OF THIS SOFTWARE BY SELECTING "I DO NOT ACCEPT THE LICENSE AGREEMENT" IN THIS WINDOW OR BY CLICKING ON THE "CANCEL" BUTTON. YOU MAY THEN PROMPTLY DELETE THE LICENSE FILES AND SOFTWARE FROM YOUR COMPUTER AND RETURN THE LICENSE FILE MEDIA, THE ENTIRE MEDIA PACKAGE, AND ALL OTHER ITEMS (INCLUDING DOCUMENTATION AND PACKAGING) WITHIN 30 DAYS OF PURCHASE TO THE PLACE FROM WHICH YOU OBTAINED IT FOR A FULL REFUND. THIS EULA ALSO APPLIES TO ANY UPDATES OR PRE-PRODUCTION RELEASES OF THE SOFTWARE UNLESS SUCH UPDATES OR PRE-PRODUCTION RELEASES ARE ACCOMPANIED BY A SEPARATE END USER LICENSE AGREEMENT.

IF A SYSTEM INTEGRATOR, CONTRACTOR, CONSULTANT, OR ANY OTHER PARTY INSTALLS OR USES THE SOFTWARE ON YOUR BEHALF PRIOR TO YOUR USE OF THE SOFTWARE, SUCH PARTY WILL BE DEEMED TO BE YOUR AGENT ACTING ON YOUR BEHALF, AND YOU WILL BE DEEMED TO HAVE ACCEPTED ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS EULA AS IF YOU HAD INSTALLED OR USED THE SOFTWARE YOURSELF.

ADDITIONAL FEES APPLY FOR SOFTWARE SUPPORT SERVICES AND UNLESS OTHERWISE AGREED IN WRITING BY SCHNEIDER ELECTRIC, SOFTWARE SUPPORT SERVICES ARE NOT INCLUDED.

THESE TERMS AND CONDITIONS CONSTITUTE THE COMPLETE AGREEMENT BETWEEN YOU, OR THE COMPANY ON BEHALF OF WHICH YOU ARE INSTALLING THE SOFTWARE, AND SCHNEIDER ELECTRIC SOFTWARE, LLC ("SCHNEIDER ELECTRIC").

### 1. Definitions.

**1.1 "Capacity"** means a specific licensed size criteria as described on the License Certificate and includes, among other measurements, Equipment counts, I/O Counts, Platform Counts, Session Counts, Tag Counts and Site Counts.

**1.2 "Device"** means any physical or virtual environment, node, Server, computer, or other digital workstation, electronic, cellular or smartphone, handheld computer, tablet PC, or computing equipment that runs, accesses, or utilizes the services of the Software.

**1.3 "Documentation"** means the user guides and manuals for the installation and use of the Software, whether provided in electronic, physical media, hard copy, or other form.

**1.4 "Enterprise License"** means a license model that permits use of specified Software for a number of Licensee's employees throughout Licensee's organization and sites. An Enterprise License enables a Licensee to standardize all Licensee sites on the specified Software. (The duration, scope and pricing of an Enterprise License are determined on a case by case basis. An Enterprise License is granted upon Licensee's receipt of a written authorization signed by Schneider Electric which is also countersigned by Licensee. Among other things, the signed written authorization will describe the duration, scope and license fees for the Enterprise License and Licensee's Software support commitments under the Enterprise License.)

**1.5 "Hot Fix"** means unreleased Software which has not been processed through a full QA cycle and which is designed to correct a specific defect in the Software.

**1.6 "License Certificate"** means a document included with the Software that may provide, among other things, specific information regarding Capacity, name of licensee and location where the Software is licensed for use, Device identification and Named Users.

**1.7 "License File"** means a component of the Software that enables one or more components of the Software (for example, authorization keys) and may also specify the location of the designated Device(s), the Named User(s), and the Licensee. The License File also specifies the Capacity for the Software. Certain components of the Software may be licensed hereunder without a License File.

**1.8 "Named User"** means an individual person and is unique to the individual. A Named User is not a particular logon name, a group, an organization, part of a company or organization, or any other non-person entity.

**1.9 "Order Form"** means (i) the document in hard or electronic copy by which particular Software is ordered by or for Licensee and by which Schneider Electric is advised of the location of the designated Device(s) and/or (ii) any order confirmation that may be issued by Schneider Electric or an authorized partner of Schneider Electric acknowledging receipt of, or accepting, an order by Licensee for particular Software.

**1.10 "Pre-Production Release"** means Software which has not completed Schneider Electric's formal release requirements and includes beta software, Hot Fixes and SUPs.

**1.11 "Replaced License"** means a License File and/or License Certificate that has been replaced or superseded by another

License File and/or License Certificate for the purpose of direct substitution.

**1.12 "SUP" (Single User Product)** means modifications to the Software made for a specific licensee.

**1.13 "Site License"** means a license model that permits use of specified Software for a number of Licensee's employees at a specific Licensee site/physical location. (The duration, scope and pricing of a Site License are determined on a case by case basis. A Site License is granted upon Licensee's receipt of a written authorization signed by Schneider Electric which is also countersigned by Licensee. Among other things, the signed written authorization will describe the duration, scope and license fees for the Site License and Licensee's Software support commitments under the Site License.)

**1.14 "Software"** means the computer software programs in object code (machine-readable) form only for which Licensee is granted a license hereunder, the Documentation therefor and Updates thereon.

**1.15 "Tag"** means a representation of an internal or external data value or calculation result.

**1.16 "Tag Count"** means the number of internal or external data points or calculations resulting from the Tags that are being monitored, processed, or utilized by the Software.

**1.17 "Update"** means: (i) supplemental programs, if and when developed and distributed by Schneider Electric, that may contain bug fixes or improved program functions for the Software; and (ii) a subsequent release of the Software, if and when developed by Schneider Electric, which Schneider Electric generally makes available for licensees that have an annual software support agreement (sold separately). An Update does not include any release, new version, option, or future product, which Schneider Electric licenses separately.

## **2. Software License.**

### **2.1 Grant of License and Limitations.**

In consideration of full payment of the Software license fee and subject to Licensee's compliance with its obligations under this EULA, Schneider Electric grants to Licensee a personal, non-transferable, non-exclusive, limited license to use the Software described in the attached Software Schedule and/or Order Form for the term identified therein and in accordance with the license model identified therein. The Software may only be used for purposes of Licensee's ordinary business by the particular Named Users, in the particular location(s) and/or on the particular systems for which Licensee licensed such Software, as those Named Users, locations and/or systems are identified in the Software Schedule and/or Order Form.

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#### **2.2.2 Use Restrictions.**

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(i) Version Upgrades – when an earlier or lower numbered version license is replaced by a newer or higher numbered version license. For example, a Product X license with version 6.0 is replaced with a Product X license with a version 6.5;

(ii) Functional Upgrades – when a license with certain Capacity and functionality is replaced by a license with greater Capacity or different functionality. For example, an InTouch 3000 Tag Count license is replaced by an InTouch 60000 Tag Count license; or an Historian license is replaced by a System Platform license;

(iii) Lost/Stolen/Failed Keys – when a license key is lost, stolen, or fails and a replacement license key is provided. If a lost/stolen key is found/recovered, it must be destroyed; or,

(iv) Keyed License to Keyless License – when a license file locked to a hardware key/dongle is replaced by a license file only or visa-versa.

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**5. Version Limitations.** The Software, and various components thereof, contain certain version numbers (such as version "6.5"). This EULA permits Licensee to install one copy of the Software, whereas (i) some Software may allow the same version number as the Software version number listed on the Order Form (or in an Update that is part of the Software hereunder licensed) on the number of computers authorized hereunder (for example, if the version number listed for a particular component of the Software is "6.5", then Licensee may install a copy of that component of the Software having a "6.5" version number, but not a "6.6" version number), and (ii) some Software may allow the same or lower version number as the Software version number listed on the License File or Order Form (or in an Update that is part of the Software hereunder licensed) on the number of computers authorized hereunder (for example, if the version number listed for a particular component of the Software is "6.5", then Licensee may install a copy of that component of the Software having a

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## **11. Termination.**

**11.1 Termination.** This EULA and the license granted hereunder automatically terminates if Licensee breaches any provision of this EULA including but not limited to the failure to pay in full the license fee when due. Licensee may terminate the license granted hereunder at any time upon delivery of written notice to Schneider Electric. Termination will not relieve Licensee of its obligations specified in Section 11.2 and will not entitle Licensee to a refund of any license fees previously paid.

**11.2 Effect of Termination.** Upon termination of this EULA or the license granted hereunder, Licensee will cease using the Software, will delete the Software, including the License File(s), from its computer and will either return to Schneider Electric or destroy the Software, including the License File(s), Documentation, packaging and all copies thereof. If Licensee elects to destroy the Software then Licensee will certify in writing to Schneider Electric the destruction of the Software. Termination of this EULA and return or destruction of the Software will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Licensee's obligation to pay all fees and expenses that have accrued or are otherwise owed by Licensee under this EULA, any Order Form, and/or any purchase order from Licensee which has been received and accepted by Schneider Electric.

## **12. General Terms.**

**12.1 Governing Law and Dispute Resolution.** This EULA will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding its conflict of laws principles and the U.N. Convention on Contracts for the International Sale of Goods. All disputes, claims or controversies arising out of or relating to this EULA that are not resolved by the parties' good faith attempt to negotiate a resolution will be submitted to final and binding arbitration before JAMS/Endispute, or its successor, in Orange County, California, USA, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. The arbitration will be conducted in accordance with the provisions of JAMS/Endispute's Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will cooperate with JAMS/Endispute and each other in selecting a single arbitrator who will be a former judge or justice with substantial experiences in resolving business disputes with particular experience in resolving disputes involving computer software. The costs of arbitration will be shared equally by the parties. The provisions of this Section may be enforced by any court of competent jurisdiction. THE ARBITRATOR IS NOT EMPOWERED TO AWARD DAMAGES IN EXCESS OF THE COMPENSATORY DAMAGES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPERT WITNESS FEES) OR IN EXCESS OF THE LIMITATIONS OF LIABILITY AND DAMAGES SET FORTH IN THIS AGREEMENT, AND EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO RECOVER SUCH DAMAGES (INCLUDING, WITHOUT LIMITATION, PUNITIVE DAMAGES), IN ANY FORUM. THE ARBITRATOR WILL BE REQUIRED TO FOLLOW THE APPLICABLE LAW AS SET FORTH IN THE GOVERNING LAW SECTION OF THIS AGREEMENT AND FOLLOW THE TERMS OF THIS AGREEMENT. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate, such as a party's violation of the confidential information provisions hereof. The successful or prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and other costs of arbitration, in addition to such other relief to which it may be entitled.

## **12.2 Governing Law and Dispute Resolution For Licensees Located in Canada.**

**12.2.1 Province of Ontario:** Notwithstanding Section 12.1, if the Licensee is located in the Province of Ontario, Canada then the Agreement shall be governed by and construed under the laws of the Province of Ontario, and the federal laws of Canada applicable therein, 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 the Agreement. The governing language for the Agreement shall be English, and no concurrent or subsequent translation of the Agreement into any language shall modify any term of the Agreement. All documents and communications contemplated thereby or relating thereto shall be drawn up in the English language. *Les parties confirment avoir requis que cet accord, ainsi que tous les documents et communications qui y sont relatifs soient rédigés en Anglais.*

Any claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration. The arbitral panel shall be composed of three arbitrators, appointed as follows: each party shall appoint an arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator who shall act as president of the tribunal. The place of arbitration shall be Toronto, Province of Ontario, Canada. The language of the arbitration shall be in English. The arbitration award shall be final and binding on the parties hereto. Each party shall bear its own costs relating to such arbitration, the parties shall equally share the arbitrators' fees, and the arbitration and all related proceedings and discovery shall take place pursuant to a protective

order entered by the arbitrators that adequately protects the confidential nature of the parties' proprietary and confidential information. In no event shall any arbitration award provide a remedy beyond those permitted under the Agreement, and any award providing a remedy beyond those permitted under the Agreement shall not be confirmed, no presumption of validity shall attach, and such award shall be vacated. No claim may be brought as a class action, combined or consolidated with any other proceeding, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any claim. Either party may, without waiving any remedy under the Agreement, seek from any court of competent jurisdiction any interim or provisional relief that such party deems necessary to protect its confidential information and property rights, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).

**12.2.2 Province of Quebec:** Notwithstanding Section 12.1, if the Licensee is located in the Province of Quebec, Canada then this Agreement shall be governed by and construed under the laws of the Province of Quebec, and the federal laws of Canada applicable therein, 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. All documents and communications contemplated thereby or relating thereto shall be drawn up in the English language. *Les parties confirment avoir requis que cet accord, ainsi que tous les documents et communications qui y sont relatifs soient rédigés en Anglais.*

Any claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by the provisions of Book Seven of the Code of Civil Procedure of the Province of Quebec and regulations thereunder, as amended from time to time. The arbitral panel shall be composed of three arbitrators, appointed as follows: each party shall appoint an arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator who shall act as president of the tribunal. The place of arbitration shall be Montreal, Province of Quebec, Canada. The language of the arbitration shall be in French if the arbitration is conducted in Montreal. The arbitration award shall be final and binding on the parties hereto. Each party shall bear its own costs relating to such arbitration, the parties shall equally share the arbitrators' fees, and the arbitration and all related proceedings and discovery shall take place pursuant to a protective order entered by the arbitrators that adequately protects the confidential nature of the parties' proprietary and confidential information. In no event shall any arbitration award provide a remedy beyond those permitted under this Agreement, and any award providing a remedy beyond those permitted under this Agreement shall not be confirmed, no presumption of validity shall attach, and such award shall be vacated. No claim may be brought as a class action, combined or consolidated with any other proceeding, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither party has the right to act as a class representative or participate as a member of a class of claimants with respect to any claim. Either party may, without waiving any remedy under this Agreement, seek from any court of competent jurisdiction any interim or provisional relief that such party deems necessary to protect its confidential information and property rights, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the claim).

**12.3 Restricted Rights Legend—U.S. Government Users.** The Software is a "commercial item" as that term is defined at 48 CFR 2.101 (October 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 CFR 12.212 (September 1995), and is provided to the U.S. Government only as a commercial end item. Consistent with 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein. Contractor/ manufacturer is Schneider Electric Software, LLC, 26561 Rancho Parkway South, Lake Forest, CA 92630. Telephone number (949) 727-3200.

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**12.5 Force Majeure.** Neither party will be responsible to the other for any failure or delay in its performance due to acts of God or other unforeseen circumstances beyond the reasonable control of either party, provided that such party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance.

**12.6 Severability; Waiver.** If a court of competent jurisdiction finds any provision of this EULA invalid or unenforceable, that provision of the EULA will be amended to achieve as nearly as possible the intent of the parties, and the remainder of this EULA will remain in full force and effect. The waiver by either party of a breach of any provision of this EULA in one instance shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this EULA.

**12.7 Notices.** All notices required to be sent hereunder will be in writing and will be deemed to have been given when mailed by first class mail to the address shown on the relevant Order Form (if to Licensee) or to the Schneider Electric address shown on the relevant Order Form (if to Schneider Electric).

**12.8 Assignment.** Licensee may not assign this EULA, in whole or in part, without Schneider Electric's prior written consent. Any attempt to assign this EULA without such consent will be null and void. Subject to the foregoing, this EULA will bind and inure to the benefit of each party's permitted successors and assigns.

**12.9 Injunctive Relief.** A breach of any of the terms contained in this EULA may result in irreparable and continuing damage to Schneider Electric for which there may be no adequate remedy at law. Accordingly, you acknowledge and agree

that Schneider Electric is therefore entitled to seek injunctive relief as well as such other and further relief as may be appropriate.

**12.10 Survival.** The Sections of this Agreement that by their nature survive expiration or termination of the Agreement include but are not limited to the following Sections, 3, 7, 8, 9, 11.2 and 12.

**12.11 Entire Agreement.** This EULA (together with any information from the Order Forms and License Files necessary to identify any specific restrictions applicable to Software licensed hereunder) constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, written or oral, concerning the subject matter of this EULA. This EULA may not be modified or amended except in a writing signed by an authorized representative of each party. It is expressly agreed that the terms of this EULA and any Order Form issued by Schneider Electric will supersede the terms in any purchasing document submitted by Licensee; and the terms of any purchasing document are expressly rejected to the extent inconsistent with the terms of this EULA. If a copy of this EULA in a language other than English is included with the Software or Documentation, it is included for convenience and the English language version of this EULA will control.

We have prepared a quote for you



Tier 2 Historian and WIS Clients

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QUOTE #006145 V1

PREPARED FOR

Fairfax County Water Authority

*09/30/16 Sent Req for answers on T&C Per KRL*



804.378.8981 jshannon@insourcess.com www.insource.solutions

Tuesday, September 06, 2016

Fairfax County Water Authority  
Jason Chiu  
8570 EXECUTIVE PARK AVE  
Fairfax, VA 22031-2218  
jchiu@fairfaxwater.org

Dear Jason,

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Ask me how we can help.

Jim Shannon  
Account Executive  
InSource Solutions



804.378.8981 jshannon@insourcess.com www.insource.solutions

**Software**

Item	Description	Price	Qty	Ext. Price
1 09-0341	Information Server Standard Client 2014R2, Concurrent, 10 Pk	\$11,088.00	1	\$11,088.00
2 17-0267	WW CAL with MS CAL Runtime, 10 Pack, SQL 2012 Std	\$4,430.00	1	\$4,430.00
3 09-0342	Information Server Standard Client 2014R2, Concurrent, 20 Pk	\$18,827.00	1	\$18,827.00
4 17-0268	Wonderware CAL with Microsoft CAL Runtime, 20 Pack, SQL 2012 Standard	\$8,300.00	1	\$8,300.00
5 17-1412	Wonderware Historian 2014R2 Enterprise, 25,000 Tag	\$49,907.00	1	\$49,907.00
6 04-2080	OI Servers Professional G-1	\$2,295.00	1	\$2,295.00
Subtotal:				<b>\$94,847.00</b>

**Annual Support**

Item	Description	Price	Qty	Ext. Price
7 ISS-P000-A	Wonderware CF Premium - Adding to Existing Support contract 100217, pro-rated to expire 8/28/2017. Wonderware CF Premium - Adding to Existing Support contract 100217, pro-rated to expire 8/28/2017.	\$18,495.00	1	\$18,495.00
Subtotal:				<b>\$18,495.00</b>



804.378.8981 jshannon@insourcess.com www.insource.solutions

## Tier 2 Historian and WIS Clients

### Quote Information:

Quote #: 006145  
Version: 1  
Delivery Date: 09/06/2016  
Expiration Date: 10/06/2016

### Prepared for:

Fairfax County Water Authority  
Jason Chiu  
8570 EXECUTIVE PARK AVE  
Fairfax, VA 22031-2218  
jchiu@fairfaxwater.org  
(703) 289-6532

### Account Executive:



InSource Solutions  
Jim Shannon  
804.419.9142  
jshannon@insourcess.com

### Prepared by:

InSource Solutions  
Rob Hugee  
804.419.9113  
rhugee@insourcess.com

## Quote Summary

Description	Amount
Software	\$94,847.00
Annual Support	\$18,495.00
<b>Total</b>	<b>\$113,342.00</b>

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

**Payment Terms: Net 30**

Signature \_\_\_\_\_

Date \_\_\_\_\_



804.378.8981 jshannon@insourcess.com www.insource.solutions

## Delivery and Payment Terms

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### 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