

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

TO: TRIHEDRAL INC.	DATE ISSUED:	<u>3/25/2020</u>
4700 MILLENIA BOULEVARD	CONTRACT NO:	<u>19-031-RFP</u>
SUITE 260	CONTRACT TITLE:	<u>SCADA SYSTEM UPGRADE</u>
ORLANDO, FLORIDA 32839		

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 19-031-RFP including any attachments or amendments thereto.

EFFECTIVE DATE: 3/25/2020
EXPIRES: 3/24/2025
RENEWALS: NONE
COMMODITY CODE(S): 93691
LIVING WAGE: N

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

<u>VENDOR CONTACT:</u> PATRICK COOKE	<u>VENDOR TEL. NO.:</u>	<u>(902) 832-6160</u>
<u>EMAIL ADDRESS:</u> PAT.COOKE@TRIHEDRAL.COM		
<u>COUNTY CONTACT:</u> AMANI EISA (DES-WSS)	<u>COUNTY TEL. NO.:</u>	<u>(703) 228-6495</u>
<u>COUNTY CONTACT EMAIL:</u> AEISA@ARLINGTONVA.US		

PURCHASING DIVISION AUTHORIZATION

Lucas Alexander Title PROCUREMENT OFFICER Date 3/25/2020

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500 ARLINGTON,
VA 22201**

AGREEMENT NO. 19-031-RFP

THIS AGREEMENT is made, on the date of execution by the County, between Trihedral Inc. (Contractor”) a *Florida Corporation* with a place of business at 4700 Millenia Blvd, Suite 260, Orlando, FL, 32839 authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The “Contract Documents” consist of:

- This Agreement
- Exhibit A – Scope of Work
- Exhibit B – Contract Pricing
- Exhibit C – VTScada Software License Agreement (Standard Conditions)
- Exhibit D – VTScada Software Standard Support Services Agreement

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail, with exception to matters of the VTScada Software License Agreement, which shall exclusively apply.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties’ agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the “Contract” or the “Agreement”.

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the “Work”). As detailed in the “Scope of Work” (Exhibit A), the primary purpose of the Work is to provide a HumanMachine Interface (HMI) software packages, product technical support and training for use on the Water Sewer Streets SCADA system. HMI product shall include visualization servers and clients, applications development packages, historian, alarm management, and other packages as detailed in the Agreement. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence. Work under this Agreement will commence on the date of the execution of the Agreement by the County. All work defined in Exhibit A, must be completed no later than five (5) calendar years following the commencement date. No work will be deemed complete until it is accepted by the County's Project Officer.

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit A unless those additional goods or services are covered by a fully executed amendment to this Contract. Additional services will be billed at the rates set forth in Exhibit B unless otherwise agreed by the parties in writing.

6. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

If the County makes a partial payment, it will retain 5% of the estimate upon which the partial payment is based until completion and final acceptance of the Work.

7. REIMBURSABLE EXPENSES

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Exhibit B includes all costs and expenses of providing the services described in this Contract.

8. REIMBURSABLE TRAVEL-RELATED EXPENSES

The County will not reimburse the Contractor for travel-related expenses for employees located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget. For employees located outside this area, the County will reimburse for preapproved travel-related expenses, documented with receipts, as follows:

Meals: The County will reimburse at the U.S. General Services Administration's ("GSA") per diem rates for the destination, current for the date of travel, with the first and last days of travel counted at 75% of the per diem rate.

Lodging: The County will reimburse for actual lodging costs at a reasonably priced commercial facility in the immediate area of where the Work is performed, up to the GSA's daily rates for the destination, current for the date of travel. Receipts for lodging must be itemized. Only room and tax charges will be

reimbursed; no reimbursement will be made for additional expenses, including but not limited to, room service, laundry, telephone and in-room movies. If the Contractor or its employee shares a room with another person who is not connected with the performance of the Work, including a spouse, the County will reimburse for only the cost of a single room.

The applicable GSA per diem rates can be obtained at <http://www.gsa.gov/portal/content/104877>.

Transportation:

General

Reservations must be made in advance whenever possible to take advantage of all available discounts.

Ground Transportation

Use of public transportation is encouraged. The County will reimburse for the business use of personal or company vehicles, if allowed, at the GSA's mileage rates current at the time of travel. The Contractor's request for reimbursement may not include any personal use of the vehicle.

The County may approve reimbursement for rental of vehicles or use of taxicabs if the Contractor can demonstrate that to be the most economical option. Any reimbursement will cover only those rental charges, insurance and/or fuel fees allocable to work on the Contract and will not cover the purchase of liability insurance and/or collision/comprehensive insurance if the Contractor's or the employee's existing insurance coverage provides such protection.

Air Travel

The County will reimburse for air travel at the lowest available fare, typically economy. Tickets must be purchased at least seven days in advance, unless otherwise approved by the County.

Time limit: The County will not honor requests for travel reimbursement that are submitted more than 60 days after completion of the travel.

Non-reimbursable Expenses: The County will never reimburse for the following expenses:

1. Alcoholic beverages
2. Personal phone calls
3. Entertainment (e.g. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (e.g. laundry, valet, haircuts)
5. Personal travel insurance (e.g. life, medical, or property insurance) for airfare or rental cars
6. Auto repairs, maintenance and insurance costs for personal vehicles

9. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County 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.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, 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.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

10. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

11. NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

12. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the regular published unit prices and/or rates .

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

13. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

14. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

15. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

16. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

17. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its 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 violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

18. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

19. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County reasonably determines that the Contractor has failed to perform satisfactorily with regards to the commercial terms of this Contract, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of

the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date. For greater certainty, this provision shall not apply with regards to the specific provisions of the VTScada Software License Agreement, which shall exclusively apply.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

20. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and

expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

The Contractor agrees to defend, indemnify, and hold harmless County from any and all damages, costs, claims, expenses, suits, losses, liabilities, or obligations of any kind including without limitation, environmental assessments, evaluations, remediations, fines, penalties, and clean-up costs which may be asserted against or imposed upon, or incurred by County arising from Contractor's discharge or disposal of any hazardous or toxic materials, trash, debris, refuse, waste or other materials ("Materials") related in any way to contractor's operations herein.

21. COPYRIGHT

Refer to Exhibit C VTScada Software License Agreement (Standard Conditions) and Exhibit D "VTScada Software Standard Support Services Agreement".

22. LIMITATION OF LIABILITY

Notwithstanding any other provision of this Contract, the aggregate liability of the Contractor under this Contract, except in cases of personal injury, death, or intellectual property infringement, shall be limited to the amount actually recovered by Arlington County, its officers, agents and employees from the policies of insurance to be provided by Trihedral pursuant to this Contract.

23. OWNERSHIP OF WORK PRODUCT

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All work product, in any form, that results from this Contract is the property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

24. CONFIDENTIAL INFORMATION

Each party shall treat all technical, business or other information and data furnished to it by the other party in connection with any Contract Document with the same degree of confidentiality and diligence as it would apply in its own affairs and that can be reasonably be anticipated when handling confidential information in business transactions. Each party shall protect such technical, business or other information against unauthorized access by third parties, shall not disclose such information and data unnecessarily within its own organization, shall only use the information only for the purposes

contemplated in any Contract Document and shall on no account commercially exploit the information. These confidentiality requirements shall not apply to the extent that the recipient of such information is able to demonstrate that the information: (a) was already generally known, or became generally known through no fault of the recipient; or (b) was previously known to the recipient without the recipient being subject to a duty to maintain secrecy or was independently developed by the recipient at a later time; or (c) has been communicated to the recipient by a third party not subject to an obligation to maintain secrecy; or (d) was disclosed on the basis of written authorization provided by the disclosing party; or (e) was disclosed pursuant to a judicial order.

The County is subject to the terms and provisions of Code of Virginia §§ 2.2-3700 et. seq., the Virginia Freedom of Information Act ("VFOIA"), which provides that all public records in the County's custody, possession or control shall be open to the public for inspection and copying to the extent that such disclosure is required by law. If a public disclosure request is made to view or provide copies of any Contractor-provided records or information, the County will promptly notify the Contractor of the request and the date on which any records or information will be released to the requester.

25. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

26. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

27. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

28. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

29. RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment

taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

30. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

31. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, reports must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

32. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

33. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

34. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

35. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution in effect as of the time of execution of this contract, which is incorporated herein by reference, or any applicable County policy.

36. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

37. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court. However, the jurisdiction of the VTScada License Agreement shall prevail with regards to matters covered by the license agreement.

38. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

39. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

40. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

41. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

42. ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

43. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT;

DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND DATA SECURITY AND PROTECTION.

44. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

45. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

46. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

Attn: Barry Baker Trihedral
Inc.
4700 Millenia Blvd., Suite 260
Orlando, FL, 32839-6014

TO THE COUNTY:

Attn: Amani Eisa, Project Officer
Arlington County Department of Enviromental
Services Water, Sewer, and Streets Division 4200 28th
Street S.
Arlington, VA 22206

AND

Sharon T. Lewis, Purchasing Division Chief
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500 Arlington,
Virginia 22201

47. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

48. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

49. LIMITED ENGLISH PROFICIENCY

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

50. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit

must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.

- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Network Security and Privacy Breach: \$2M CDN (Approximately \$1.5M) USD)
- e. Errors and Omissions: \$2M CDN (Approximately \$1.5M USD)
- f. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- g. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- h. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.

- i. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

51. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

TRIHEDRAL INC.

AUTHORIZED
SIGNATURE: Lucas Alexander

AUTHORIZED
SIGNATURE: Barry Baker

NAME: LUCAS ALEXANDER
TITLE: PROCUREMENT OFFICER

NAME: BARRY A. BAKER
TITLE: PRESIDENT

DATE: 3/25/2020

DATE: March 24 2020

AGREEMENT NO. 19-031-RFP EXHIBIT A: SCOPE OF WORK

1. HMI SYSTEM OVERVIEW

The Contractor shall provide all the necessary software, licensing, training and support services to develop and support a complete HMI system as following:

- a) The HMI system must be configurable to support the network architecture as shown in the 19-031-RFP Appendix B.
- b) Support for at least 2000 tags and subsequent I/O.
- c) Application software for two redundant servers.
- d) Development Software.
- e) Graphics library.
- f) Alarming software.
- g) Trending and Reporting software.
- h) Remote alarm annunciation software.
- i) Historian software.
- j) EtherNet IP/CIP Drivers for communication with Allen Bradley Micro820 and Compactlogix processors.

2. SYSTEM SPECIFICATIONS

a. SYSTEM COMPONENTS DETAIL

i. Run and Operate

- Application server (primary or redundant)
- Runtime client
- Widgets and graphics library
- Historian
- Security
- Network and computer resource monitoring with SNMP Agent
- Alarms and events database
- Trending and reporting
- Slippy Maps integration
- Electronic operator logbooks

b. SYSTEM PERFORMANCE SPECIFICATIONS

i. Input/Output (I/O) Drivers

- Common (e.g., Modbus, DF1, CIP/ENIP, Siemens S7, Omron Host Link, OPC)
- Advanced (e.g., DNP3, SNMP, Motorola ACE, CalAmp and MDS radio diagnostics)
- Proprietary (e.g., DataFlow Systems and others)
- DataLogger (e.g., DF1, SCADAPack)

ii. Develop

- Automatic version control (system-wide disaster recovery, audit tools)
 - Idea Studio efficient development environment (online, offline, multideveloper)
 - Change deployment
 - Scripting and debugging tools
- iii. VTScada Connectivity Package
- ODBC Server, OPC Server, Web Services
- iv. VTScada Alarm Notification System
- Voice
 - Email
 - Small Email
 - SMS

3. IMPLEMENTATION

- I. The Contractor shall provide application software licenses and support for 10 clients.
- II. The Contractor will be responsible for migrating 5 years of existing data to new software as described below.

The project scope is to develop an Excel Macro capable of reading the historical data files currently being collected by the existing Arlington County SCADA system, and convert them to CSV format that can be imported into a standard VTScada application.

The current historical data is stored in pairs of files – a “tagname” file and “wide” file, for each day and for each of 14 sites listed below. The wide file contains the actual historical data for one or more tags, and the tagname file lists the names of the corresponding tags. There is a total of 103 tags.

Arlington County Sites:

- Arlington Hospital – 1 tag
- Chain Bridge – 1 tag
- Communication Monitor – 16 tags
- Dalecarlia – 10 tags
- DonaldsonRun – 1 tag
- Fire House #2 – 1 tag • Fire House #4 – 1 tag • Fire House #5 – 1 tag
- Fire House #8 – 1 tag
- Fire House #10 – 1 tag
- Fort Barnard – 6 tags
- Fort Ethan Allen – 11 tags
- Glenn Carlyn School – 1 tag
- KeyBridge – 1 tag
- Lee – 18 tags

- Little Falls – 3 tags
- Minor Hill – 25 tags
- Nelson – 2 tags
- Wilston – 2 tags

These files are in DBF format and can be opened using Excel. In order to import this data into VTScada, the data must be read from the DBF files and written out to CSV files using separate files for each tag. Additionally, another file (TagMapping.CSV) must be created that maps the historical data CSV files to actual VTScada tags.

The Excel Macro developed for this project will read in the DBF files and create CSV files for each tag, The Macro will also create the tag mapping CSV file, but without the names of the VTScada tags. This file will need to be updated with the VTScada tag names before importing the historical data into a VTScada application.

Trihedral will perform the following services:

1. Design, coding, and testing of the Historical Data Conversion utility (Excel Macro)
2. Provision of all deliverables as detailed in section [5 Deliverables](#)

The following items are not included in the scope of the project or the price provided by Trihedral:

1. VTScada application development and/or modifications – the Arlington County VA VTScada application that the historical data will be imported into is beyond the scope of this project

4. TRAINING

The Contractor shall provide 4 day VTScada Operations & Configuration Course. Course will take place at County Facility. The County will provide training facility, audio visual equipment, networking hardware and student laptops will be provided by the utility.

5. DELIVERABLES

The major deliverables included in the price as set forth in Exhibit B include the following:

1. Development of an Excel Macro as described in *Section 2 Scope Definition*
2. Assistance to Whitman, Requardt & Associates for running the Excel Macro
3. VTScada Software: 5K Dual Server Premium per Q15250
4. Printed copies of the existing Operation & Configuration VTScada training manuals for each student.

**AGREEMENT NO. 19-031-RFP
EXHIBIT B: PRICING SCHEDULE**

The following table details the pricing breakdown for the major project deliverables.

Item #	Description	Qty.	Rate	Price
1	Deliverables 1 and 2 Above	1	\$6,300.00	\$6,300.00
2	VTScada Software – 5K Dual Server Premium*		\$23,595.00	\$23,595.00
3	Training Time (Four Days)	1	\$6,300.00	\$6,300.00
4	Training Materials	1	\$2,250.00	\$2,250.00
5	Additional Training Time (One Day if Needed)	1	\$1,400.00	\$1,400.00
	Total			\$39,845.00

5K Dual Server Premium Bundle:

- 2 x VTScada 5K – Development/Runtime Licenses
- 2 x VTScada 5K - Alarm Notification Enable
- Unlimited VTScada 5K - Thin Clients
- 1 year SupportPlus
- 1 year 24/7 Emergency Support
- \$ 1,000 credit to VTScada Operation and Configuration Training Course

Annual Software SupportPlus

The first year of Software Upgrades and Technical Support is included in the price of the VTScada Software – 5K Dual Server Premium bundle. Optional Annual SupportPlus package after the first year is **calculated at 15% of the original software price providing that SupportPlus is maintained continuously. Future years will be \$3,539.25** per year.

Additional Services

In addition to the scope of work outlined above, County may purchase Trihedral’s services to complete additional work at an hourly rate of **\$140.00 (USD)** within the first year of contracting. Additional engineering
ARLINGTON COUNTY AGREEMENT 19-031-RFP

services in future years will be charged at Trihedrals published engineering rates in effect at the time. For greater certainty, no services will be provided that would incur reimbursable expenses . Scope of each additional assignment and the estimated number of hours shall be approved by Project Officer.

EXHIBIT C

AGREEMENT NO. 19-031-RFP

EXHIBIT C

VTScada Software License Agreement (Standard Conditions)

VTScada Software License Agreement (Standard Conditions)

1. In consideration of the development and availability for use of the VTScada Software, including any updates or amendments of the Software and, where applicable, the VTScadaLIGHT and VTS software of Trihedral Engineering Limited (the Software), the Customer and any third party using, or relying upon the operation of the Software pursuant to this Agreement, agree to the following terms and conditions.
2. The Software is licensed by Trihedral, Inc. (Trihedral) to the Licensee (the Customer) named in any associated sales order, or who has downloaded the Software, for possession and use solely in accordance with this VTScada Software License Agreement (Standard Conditions) (this Agreement). The Software is not sold by Trihedral to the Customer. This Agreement contains terms which limit the liability of Trihedral. In any event, installation of the Software upon a computer hardware system by the Customer will constitute irrevocable acceptance of the provisions of this Agreement.
3. Upon acceptance of this Agreement by the Customer, Trihedral grants to the Customer a perpetual, nonexclusive, worldwide license to use the Software in accordance with the provisions of this Agreement and the associated sales order, if any. Where the computer hardware system upon which the Software is installed is configured so as to function as virtual computers or virtual servers, except to the extent expressly authorized by any associated sales order, the license granted hereunder does not include the right to install or run simultaneously the Software on more than one virtual computer or virtual server. The term "virtual computer" includes one or more computers and includes partitioned computer segments, any of which are configured to run the Software concurrently with an operating computer system as a hot backup for failover application.
4. Where the Software has been downloaded by the Customer without monetary consideration to Trihedral, the Customer agrees that the possession and use of the Software is restricted to the operating

ARLINGTON COUNTY AGREEMENT 19-031-RFP

EXHIBIT C

condition that the maximum number of tags which are concurrently communicable with the Software will not exceed fifty during any period of operation of the Software.

5. Where the Software has been downloaded by the Customer without monetary consideration to Trihedral, the Customer agrees that the possession and use of the Software is restricted to the operating condition that the maximum cumulative number licenses of Software so licensed at facilities of the Customer and facilities of entities which are affiliated with the Customer will not exceed 10, without the written consent of Trihedral.
6. **WITH THE SOLE AND LIMITED EXCEPTION OF THE WARRANTIES EXPRESSLY PROVIDED IN CLAUSES 14 AND 15, TRIHEDRAL EXPRESSLY AND UNEQUIVOCALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OR BOTH, IN ANY FORM, INCLUDING, BUT NOT LIMITED TO A WARRANTY OR CONDITION AS TO ANY STANDARD OF PERFORMANCE, A WARRANTY OR CONDITION AS TO MERCHANTABILITY AND A WARRANTY OR CONDITION AS TO FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WITH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. IN NO EVENT SHALL TRIHEDRAL HAVE ANY LIABILITY TO THE CUSTOMER OR ANY THIRD PARTY ARISING FROM THE FAILURE OF THE SOFTWARE TO MEET ANY STANDARD OF PERFORMANCE OR TO BE FIT FOR ANY PARTICULAR PURPOSE.**
7. The Customer, agrees that the possession and use of the Software is restricted to the extent that such possession or use is in accordance with the specifications of the associated sales order issued by Trihedral, if any, as to scope of use, maximum number of concurrently installed or operating copies of the Software, tag limit, maximum number of communicating channels or remote telemetry devices, features of the Software authorized for activation by the Customer and any other limitations concerning the Software.
8. The Customer and all other persons using or relying upon this Software pursuant to this Agreement agree that the Customer and such other person will not copy, decompile, list or render otherwise than in machine readable form only the Software, provided that the Customer or such other person may make such copies as are reasonably necessary as backup copies for use only on installation on hardware systems as may be expressly authorized by any associated sales order. The Customer and such other party further agree not to permit or acquiesce in conduct on the part of third parties contrary to the provisions of this clause.
9. In the event that the Software, as delivered to the Customer by Trihedral should prove defective by reason of materials or the copying process within a period of one year from the effective date of this Agreement, Trihedral will replace the Software upon return of any physical medium upon which defective Software was delivered, and in all cases, the destruction of all electronically recorded copies of defective Software in the possession, or under the control of, the Customer. Replacement of the defective Software under such circumstances shall be the sole liability of Trihedral. In no event shall replacement be made if a defect in, or non-operability of, the Software is, in the opinion of Trihedral, the result of an attempt to copy, decompile or list in other than machine readable form the Software.

10. With the exception of the warranties expressly provided pursuant to clause 14 and clause 15 of this Agreement, in no event shall Trihedral have any liability to the Customer or any third party for any claims, damages or causes of action other than the replacement of the master copy of the Software in accordance with the provisions of clause 9.
11. The Customer and all other persons using or relying upon the Software pursuant to this Agreement agree that the Customer and such other person will perform such checks and verifications of the operation of the Software as may be reasonably necessary to ensure its proper functioning and that the Customer will exercise due diligence in the operation of the Software and the review of the results of the use of the Software, including the provision of such backup and fail-safe systems as may be required, to avoid loss, injury or damage to the Customer and any third party.
12. Unless otherwise agreed to in writing by Trihedral, and then only to the extent thereby provided, the Customer will ensure that the Software and all copies of the Software, including backup copies of the Software and copies of the Software delivered to sublicensees, where permitted, are labeled on medium and transmittal communication by, and display on screen at startup and during use of the Software, the complete copyright notice of Trihedral and the trademarks of Trihedral as prescribed by Trihedral at the time of delivery of the Software to the Customer, and as may be reasonably revised by Trihedral thereafter.
13. The Customer will forthwith give notice in writing to Trihedral of any claim by a third party arising alleged infringement of intellectual property right with respect to the Software or the use of the Software, and will co-operate with Trihedral in the investigation and defence of such claim.
14. Trihedral warrants that the Software does not infringe the copyright or trade secret rights of a third party. Trihedral will indemnify the Customer against any costs, expenses or damages finally awarded against the Customer in any action in which infringement by Trihedral of copyright or trade secret rights of a third party is established, provided that the Customer has performed completely its covenants in accordance with clause 12 and clause 13 of this Agreement.
15. Trihedral warrants that, to the best of information and belief, the Software does not infringe any patent right of a third party. Trihedral does not provide any other warranty with respect to patent rights in the Software, and with the sole exception of such warranty, Trihedral will have no liability to the Customer for any costs, expenses or damages incurred by the Customer arising from a claim by a third party for infringement of patent rights concerning the Software.
16. In the event that the Software is, or in the opinion of Trihedral is likely to become, subject to a claim or action with respect to an alleged infringement of intellectual property rights of a third party, Trihedral may, at its option:

- (a) at the expense of Trihedral, procure the right for the Customer to continue use of the Software in accordance with this Agreement;
 - (b) at the expense of Trihedral, replace or modify the Software so that its use by the Customer in accordance with this Agreement will be non-infringing, provided that substantially the same function is performed by the replacement or modified Software; or,
 - (c) at the expense of Trihedral, contest such claim or action to such extent as Trihedral may in its absolute discretion consider reasonable and appropriate under the circumstances.
17. With respect to any license of the Software by Trihedral hereunder which is exclusive to the Customer, the Customer shall have the right in its sole discretion to bring and prosecute and to answer and defend any claim, action or suit arising from or relating to the Software in the exclusive territory of the Customer, solely in the name of the Customer, upon provision of written notice to Trihedral. In the event that a final judgment is awarded to the Customer as a result of any claim, action or suit prosecuted by the Customer, the Customer shall retain the entire judgment and such participation by the Customer will be at the sole cost and risk of the Customer. If such Customer elects not to bring and prosecute a claim related to the Software forthwith upon written notice from Trihedral to do so, then Trihedral at its sole expense and gain may undertake such legal proceedings as may in its absolute discretion be considered advantageous.
18. In no event shall the liability of Trihedral to the Customer or any other party extend to indirect or consequential damages.
19. To enable certain features of the Software, such as VTScada Slippy Maps, the Customer may choose to download third party data, images and software which are subject to license conditions or agreements governing use by the Customer. Compliance with such licensing and use agreements is strictly the responsibility of the Customer.
20. This Agreement shall be effective from the time of first installation of the Software by the Customer upon any hardware system. This Agreement may be terminated by the Customer at any time by so notifying Trihedral in writing and destroying the Software and all copies of the Software in the possession of the Customer or under the control of the Customer, in every form whatsoever. The license of the Customer to use the Software and any copies thereof terminates forthwith and without notice if there is a failure to comply with any term or condition of this Agreement. Such license may also be summarily terminated by Trihedral upon written notice to the Customer in the event of default of payment of compensation due to Trihedral for the licensing or sublicensing of the Software pursuant to an associated sales order, if any. Upon

termination, the Customer and all other persons using or relying upon the Software pursuant to this Agreement shall immediately destroy the Software and all copies thereof.

21. Where the Customer obtains from Trihedral a license to an upgraded version of the Software which is intended to replace the Software licensed hereunder, this license will terminate upon installation and commissioning of such upgrade software, which will be subject to the terms and conditions of the end user license agreement then in effect, as may be designated by Trihedral, from time to time.
22. Where the Software has been downloaded by the Customer without monetary consideration to Trihedral, the Customer, this Agreement and the Software may be assigned exclusively or sublicensed exclusively to a third party. This Agreement and the Software may not be otherwise assigned, sublicensed or transferred to another party without the consent in writing of Trihedral.
23. Where the Software is installed on a computer or other device which is accessible by Internet connection, the Customer consents to Trihedral using features of the Software to obtain data concerning usage of the Software by the Customer solely for the purpose of analyzing and improving upon the quality and performance of the Software, and the Customer consents to the modification by Trihedral from time to time by such Internet connection of modules of the Software used to obtain such data. Trihedral will not disclose such data to a third party in any manner which may tend to identify the source or permit the data to be associated with any discrete source.
24. This Agreement shall be binding upon the Customer, any other party using or relying upon the Software, their heirs, administrators, successors and assigns and shall be construed with such changes of gender and number as the context may require.
25. The Customer consents to permit Trihedral at its discretion and expense to undertake from time to time audit of the use of the Software by the Customer or under or through the Customer, to confirm compliance with the terms and conditions of this Agreement, and without cost to Trihedral to co-operate to facilitate such audit. In the event that it is determined by such audit that the Customer is not, or has not been, in compliance with this Agreement, then Trihedral may, in addition to any other remedies to which Trihedral is entitled, terminate the license to possess and use the Software granted by this Agreement, and recover the actual and reasonable cost of the audit from the Customer.
26. Where the Software has been acquired by the Customer without monetary payment to Trihedral, the Customer acknowledges that the provision by Trihedral of any support service with respect to the possession, installation or use of the Software will be at the absolute discretion of Trihedral. In all other cases, the obligation of Trihedral to provide support service with respect to the possession, installation or use of the Software will be in accordance with the provisions of any associated sales order or collateral support services agreement between the Customer and Trihedral.
28. In the event that any provision of this Agreement is determined to be unenforceable, illegal or void by a tribunal of competent jurisdiction, such provisions shall be severed from this Agreement and the

remaining provisions shall remain in full force and effect notwithstanding such unenforceability, illegality or invalidity.

29. This Agreement shall be interpreted in accordance with and governed by the laws of the State of Florida and the United States, excepting that the laws of Canada shall apply to any and all claims or causes of action arising out of intellectual property rights including, but not limited to, copyright, trademark rights and patent rights. The Customer consents to jurisdiction over it in the State of Florida and consents that venue for any state action arising under this Agreement will lie solely in the courts located in Orange County, Florida, and for any federal action will lie solely in the United States District Court for the Middle District of Florida, Orlando Division.

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