

AGENDA ITEM 1 J
Consent Item

MEMORANDUM

DATE: April 6, 2017

TO: El Dorado County Transit Authority

FROM: Brian James, Planning and Marketing Manager

SUBJECT: Purchase Order No. 22285 issued to Init for Connect Card Spare Equipment

REQUESTED ACTION:
BY MOTION,

1. Approve Purchase Order No. 22285 with Init for \$61,133.81
2. Authorize the Executive Director to execute all documents related to Purchase Order No. 22285

BACKGROUND

The Connect Card is a regional, electronic transit fare system utilizing contactless smart cards. A contactless smart card is credit card-sized with an embedded microchip and antenna. Payment and validation of fare is performed by touching the card to a reader near the farebox. The cards have data storage capacity and processing power to electronically accommodate multiple fares across multiple transit agencies in the region.

Init submitted a proposal for Connect Card spare equipment for replacement of defective or expired equipment in response to a request from the El Dorado County Transit Authority (El Dorado Transit).

El Dorado Transit Purchasing Procedures and the Joint Powers Agreement establishing El Dorado Transit require Board approval for Purchase Orders over \$25,000 and Purchase Requisitions over \$5,000. The Executive Director certifies that these purchases are processed within approved Purchasing Procedures.

DISCUSSION

Staff is recommending approval of Purchase Order No. 22285 for \$61,133.81 to Init for Connect Card spare equipment.

FISCAL IMPACT

Expenses (Projected)

Purchase Order # 22285	\$ 61,133.81
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Contingency - Plus Taxes	<u>\$ 3,522.07</u>
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<i>Total Expenses</i>	<i>\$ 64,655.88</i>
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EL DORADO COUNTY TRANSIT AUTHORITY
6565 COMMERCE WAY
DIAMOND SPRINGS, CA 95619-9454
(530) 642-5383

PURCHASE ORDER NO. 22285

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKING LISTS, PACKAGES, AND BILLS OF LADING.

DATE: 04/06/17

ACCOUNT: 9910.16

CLASS: 125

TO: INIT / INNOVATIONS IN
TRANSPORTATION INC
1420 KRISTINA WAY STE 101
CHESAPEAKE, VA 23320

SHIP & INVOICE TO:

EL DORADO COUNTY TRANSIT AUTHORITY
6565 COMMERCE WAY
DIAMOND SPRINGS, CA 95619-9454

Contact: Mike Meringer

Vendor Phone No: (757) 413-9100

Fax No:

PROMISED DELIVERY DATE		TERMS: NET 20		
		F.O.B. DESTINATION		
QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED TOTAL
		SPARE INIT EQUIPMENT FOR CONNECT CARD		\$61,133.81
I hereby certify that this purchase order is in accordance with procedures in the purchase manual governing of such items for El Dorado County Transit Authority.			SUBTOTAL	\$61,133.81
			SHIPPING	
			SALES TAX	
			TOTAL	\$61,133.81
PURCHASING AGENT				

PLEASE NOTE CONDITIONS ON REVERSE SIDE

"This Purchase Order expressly limits acceptance to the terms and conditions stated herein, set forth on the reverse side and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by seller are objected to and hereby rejected."

Circle Distributing: Vendor - Accounting - Requestor - Purchasing

SACOG: Spare Parts Order per Agency

Customer: SACOG - Sacramento, California
Prepared by: Carl Commons
Proposal: 2015-360-01
Date: 11-Jan-16
Validity: 1 Year after final acceptance.

Warranty: 1 year from delivery
Delivery: 16 weeks after INIT's receipt of signed change order
Payment
Milestones: 100% upon delivery of hardware

Introduction:

Proposal 2015-360-01 was created at SACOG's request. This order shall not have any bearing on PRT, RMAT, or Final Acceptance. Please note that this would have a severe impact to the current schedule otherwise. Within SACOG's Change Order Execution Form, INIT requires the following:

- Delivery timeframe
- Payment Milestones
- Proposal Number
- Description
- Cost

Payment Milestone – 100% upon delivery of the hardware.

Description:

SACOG requested proposal 2015-360-01 for spare parts for Sac-RT, etran, El Dorado, Folsom, PCT, Roseville, SCT LINK, Yolobus, and Yuba-Sutter agencies.

Price sheet attached.

Delivery:

Expected delivery is sixteen weeks after INIT's receipt of a complete and accurate Change Order.

This proposal is only valid in its entirety.

Signature:



Carl Commons
Executive Director of Sales



Roland Staib
President and CEO

Terms of Delivery and Payment

All sales, delivery and other services rendered by INIT Inc. are performed exclusively according to the following terms and conditions unless otherwise agreed in writing by both parties.



I. Terms of Payment

INIT's offer is based upon the following terms of payment:
100% upon delivery of hardware

Part deliveries are permissible and require corresponding part acceptances and part payments by customer. Payment is due within 20 days after an invoice is issued, payable without discount or set-off. All prices are net without tax.

In the event of a payment default by customer or an extension of time for payment, INIT will charge interest at a rate equal to the highest interest rate permitted by law.

Payment terms remain binding regardless of any delay in shipment, delivery or acceptance of services for reasons beyond INIT's control.

If failure to pay according to the terms of this Agreement causes this account to be assigned or referred to an attorney for collection, customer agrees to pay INIT's reasonable collection and/or attorney fees and all court costs.

II. Delivery Period

The delivery deadlines begin once the parties have agreed upon all of the technical requirements and specifications in writing. The delivery period will be reasonably extended in the following circumstances:

- if INIT has not timely received from customer the information and specifications required for performance of INIT's obligations, or customer requests modifications that cause the provision of services to be delayed.
- to the extent and during any event (a "Force Majeure Event") which is beyond the control of INIT and reasonably prevents INIT from fulfilling its obligations hereunder, including without limitation, fire, explosion, storm damage, flood, labor troubles including strikes, lockouts or slowdowns, government intervention, shortages of raw materials, labor or transportation, war, sabotage, riot or civil disturbances, or governmental regulation or statute; or
- if customer defaults in the performance of any of its obligations hereunder, including payment defaults.

The customer is not entitled to claim damages or cancel its purchase order upon delay in delivery where the delivery has been reasonably extended due to the foregoing reasons. Furthermore, INIT shall not be held liable for delay or failure in performance due to the occurrence of a contingency, including, without limitation, failure to deliver because of a Force Majeure Event.

III. Acceptances

Services or part services shall be deemed accepted upon delivery, unless customer contests acceptance specifying its reasons therefor in writing to INIT. If acceptance tests are agreed, minor deficiencies will not affect acceptance. Minor discrepancies or a lack of cooperation by the customer (i.e. missing or delayed delivery of required material, data provision, etc.) do not justify refusal of acceptance. Use of the delivered system, or sub-system, or components of it, constitutes customer acceptance.

IV. Risk of Loss

Title and risk of loss pass to customer upon dispatch of the services "ex works from INIT's facility" (or, at INIT's sole option, from its contractor's facility); it being understood that INIT's only responsibility is to make the goods and/or services available at the applicable facility, and customer shall have all other responsibilities, including without limitation, loading the goods. To the extent of any delay because of a Force Majeure Event, any goods and necessary equipment will be stored and insured at the risk and at the expense of customer.

V. Prices

Prices exclude packing, freight and insurance. Payment will be made in United States dollars without any deductions whatsoever. The customer shall be liable for all taxes, dues, fees and customs duties.

INIT reserves the right to adjust prices in the event of any changes in wage rates or costs of raw materials (to the extent applicable) subsequent to quotations and prior to performance of orders.

VI. Installation Costs

Costs for installation are not included when not otherwise stated in the offer. Likewise, the matching of INIT's equipment to non-standard interfaces and mounting conditions is not included in the offer.

The costs for installation are included in a price quote to the extent the installation of devices is offered and a location or vehicle inspection has been conducted. Because all mounting conditions cannot be completely clarified in an inspection, changes and alterations in the scope of delivery may occur after the detailed planning phase of the installation has been carried out. The costs for these alterations shall be verified, substantiated and charged in an additional invoice.

As a prerequisite to the installation of software systems, customer shall supply a cost-free modem before the initial installation and make available to INIT the computer systems required for matching works at INIT's offices free of charge. All installation as well as connection costs shall be borne by the customer. In case ISDN or Datex P connection is not available in time the additional costs incurred will be charged to the customer's account.

VII. Customer Cooperation

The customer is responsible for supplying qualified personnel for project supervision.

VIII. Travel Expenses/ Hourly Wages

Travel expenses shall be charged additionally as far as not otherwise stated. Travel expenses consist of travel costs, accommodation costs, daily expenses and any other such costs that may arise hereunder. Travel time is valid as working time and shall be charged according to the valid hourly wage at the time period in question. The calculation of additional services is at present:

• Senior Project Manager / Senior Engineer	US-\$/hr	230.00
• Project manager / Software and Hardware Engineer	US-\$/hr	190.00
• Service technician / Repair/Production	US-\$/hr	135.00

Working hours during 07:00 p.m. and 07:00 a.m. and extra work shall be deemed overtime and shall be charged at 150% of the applicable rate. Work on Saturdays, Sundays and Public Holidays shall be charged at twice the applicable rate.

IX. Terms of Delivery

The Virginia Uniform Commercial Code and the "General Delivery Terms and Conditions for Products and Services of the Electric Industry," are hereby incorporated herein and are also applicable to the extent not inconsistent with the terms and conditions set forth herein. Deliveries are made "ex works from INIT's facility" (or, at INIT's sole option, from its contractor's facility), excluding packing, freight and insurance. Re-usable package material can be returned to INIT.

X. Shipment and Insurance

INIT shall be notified promptly of any special requirements regarding shipment and insurance. The customer will arrange for shipment at customer's sole cost and risk. The customer shall notify the carrier making delivery of any complaint arising out of shipment immediately upon receipt of the services or any shipping documents. Until the purchase price has been paid in full, customer shall procure, at its sole cost and expense, insurance meeting INIT's reasonable approval covering any goods or necessary equipment against all risk, naming INIT as a beneficiary and loss payee.

XI. Limited Warranty

All services, software and hardware sold or delivered to customer are expressly subject to the terms and conditions of INIT's limited warranty set forth herein. No contrary terms in any customer letter, purchase order or accompanying payment shall have any effect.

THE WARRANTIES SET FORTH HEREIN ARE MADE IN LIEU OF ALL OTHER WARRANTIES NOW OR HEREINAFTER MADE OR IMPLIED. INIT DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT

All sales, delivery and other services rendered by INIT Inc. are performed exclusively according to the following terms and conditions unless otherwise agreed in writing by both parties.

LIMITATION, WARRANTIES OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN NO EVENT AND UNDER NO THEORY WHATSOEVER SHALL INIT BE LIABLE FOR ANY HARM OR DAMAGE, WHETHER INDIRECT, CONSEQUENTIAL OR SPECIAL, SUFFERED BY CUSTOMER. CUSTOMER'S SOLE REMEDY SHALL BE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT OR PART, AT INIT'S OPTION.

In the event that customer makes a claim under this warranty, such claim must be submitted in writing, and customer will follow all warranty reimbursement procedures, will promptly and diligently execute all recall, recall and other similar programs instituted by INIT with respect to the services sold hereunder. Any software or hardware claimed to be defective shall, at INIT's option, be returned to INIT or held by customer for inspection. The customer's right to repair or replacement is subject to the express condition that such parts were correctly installed and maintained.

The limited warranty period for the delivered software is one year after delivery of services or part services. Elimination of possible faults during the warranty period is guaranteed under the following terms:

- The customer has correctly filled out and sent back to INIT the software performance report (SPR) which is included in the delivery.
- The fault is reproducible or can be understood and re-enacted.
- The customer has a modem connection (ISDN or Datax P – Connection costs are carried by customer) and makes it possible for INIT to carry out remote diagnosis during operation.

The warranty conditions of the third party apply for third party hardware deliveries.

The limited warranty set forth herein shall also apply for one year from delivery with respect to hardware.

XII. Technical Documentation

In connection with providing customer with sales quotations, INIT may communicate to customer certain proprietary and confidential information to enable customer to decide whether to purchase services from INIT. Customer will hold and will cause its employees, representatives, consultants, and advisors to hold such information in strict confidence, and will not release or disclose such information to any other person. Proprietary information shall include all documents belonging to INIT to which customer may have access in the course of preparing and negotiating, signing, and implementing a purchase order, including without limitation, pictures, diagrams, color samples and swatches, capacities, dimensions, and weights data. INIT's technical know-how is embodied in such proprietary information, which remains INIT's exclusive intellectual property and shall not be copied or reproduced or communicated to third parties. The proprietary information shall be returned to INIT immediately if quotations do not result in an order, or at any time upon INIT's request. INIT reserves the right to make a charge for any preparatory project work which exceeds projected costs customary in the industry and does not result in an order.

XIII. Integration of Systems and Equipment

If customer places an order for the integration of systems and equipment that have not been supplied exclusively by INIT, prices will be based on the information available before the order was placed. i.e.:

- general information available on these systems and equipment;
- information made available by customer; and
- an inspection of the equipment if applicable.

If this basis of information changes during the project additional expenditure may arise. INIT shall be entitled to charge for such additional services rendered.

If there is no information available on the third-party systems at the beginning of a project or if this information is incomplete, the quotation submitted by INIT shall be subject to change upon receipt of the information and of the facilities necessary to integrate this third-party system being supplied to INIT free of charge, comprehensively and on time. INIT will not bear any costs involved in procuring this information. If information is incomplete or not available on time, INIT will not bear the responsibility for any ensuing delays in meeting schedules or pay any extra costs incurred.

If INIT is not appointed as the main contractor or system supplier, INIT can only accept technical responsibility for the creation and proper functioning of the components supplied by INIT for the interfaces to the third-party systems. Technical responsibility comprises the technical specifications and the test on the interfaces on the basis of the information and facilities made available. It does not include responsibility for third-party systems' interfaces functioning on schedule and correctly.

XIV. Limitation of Liability

NEITHER INIT NOR ITS AFFILIATES, EMPLOYEES OR AGENTS SHALL BE LIABLE TO CUSTOMER, OR ITS AFFILIATES, EMPLOYEES OR AGENTS FOR ANY LOSSES OR CLAIMS ARISING OUT OF OR CONNECTED WITH ANY ACT OR OMISSION OF INIT UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF INIT, ITS AFFILIATES, EMPLOYEES OR SUBCONTRACTORS. UNDER NO CIRCUMSTANCES SHALL INIT BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, PRODUCTION FAILURE, LOSS OF UTILIZATION, LOSS OF ORDERS, LOSS OF PROFIT, AND ALL OTHER SUCH INDIRECT DAMAGES. ALL CLAIMS BY CUSTOMER, OTHER THAN AS SET FORTH HEREIN ARE EXCLUDED.

XV. Protection Rights

All intellectual property rights and commercialization rights of the software and other intellectual property remain with INIT. Upon payment, customer purchases user rights for the delivered software. The right of use allows the use of the software only by customer. The customer does not have the right to allow others to use the software. The customer purchases a number of workplace licenses and has the right to install the software on the same number of computers. Backup-copies of the software may be made only for customer's own use to secure data. Statements concerning protection rights remain on the copies. Specific manufacturer's terms of licenses apply for third party hardware and software.

XVI. Applicable Law

In the event of a conflict between customer and INIT regarding the purchase of services hereunder, customer and INIT agree that (a) any actions or claims brought shall be governed by the laws of the **Commonwealth of Virginia**, without regard to its choice of law rules, and (b) such action or claim shall be brought exclusively in the **Commonwealth of Virginia before the courts in the City of Chesapeake or the United States District Court for the Eastern District of Virginia, Norfolk Division**.

XVII. Compliance with Laws

INIT bears no responsibility or liability for the services' compliance with any laws, statutes, ordinances or regulations that may be applicable to customer or customer's use of the services. The customer is responsible for ensuring that the services and their use comply with any and all applicable regulations in the country or state concerned.

XVIII. Validity

The terms and conditions set forth herein shall be applicable to every purchase of INIT's Products made by customer, whether under INIT's or customer's purchase orders, or otherwise. In the event of any term or condition herein being or becoming invalid or non-effective, the validity and effectiveness of the remainder of these terms and conditions will remain completely intact. Any conditions contrary to the terms and conditions set forth herein imposed by customer shall be valid only if expressly acknowledged in writing by INIT.

XIX. Conclusion of Contract

All offers are subject to confirmation. The contract will be valid only by INIT's written order confirmation or by execution of the order if no other agreement is made.

Verbal information and statements, literature and advertisements, especially descriptions, drawings, pictures, samples, details on quality, nature, consistence, services, consumption and usability as well as measures and weights of the goods are for informational purposes only, unless they are expressly identified as binding. Such representations imply no warranty or guarantee.

SACOG Spare Price Sheet

Contract Pricing

green signifies price quantities from contract

OPTION No. 3 - ADDITIONAL SMP-Os: exercise within one year of Final Acceptance							
Equipment		1	2-9	10-19	20-49	25-49	50+
7	SMP-O front door Passenger Transaction Unit (PTU)	2,023.14	1,806.38	1,734.12	1,661.87	1,517.36	1,445.10
8	SMP-O Operator Control Unit (OCU)	1,031.15	920.67	883.85	847.02	773.36	736.54
9	WiFi Communications - Onboard Component	2,538.89	2,266.87	2,176.19	2,085.52	1,904.17	1,813.49

OPTION No. 4 - ADDITIONAL RAIL SYSTEM EQUIPMENT: exercise within one year of Final Acceptance							
Equipment		1	2-9	10-19	20-49	25-49	50+
11	Platform Smart Media Processors (SMP-P)	3,473.41	3,010.29	2,894.51	2,662.95	2,431.39	2,315.61
12	Add Fare Machines (AFM)	TBD	TBD	TBD	TBD	17,914.60	TBD
13	Handheld Smart Media Processors (SMP-H)	TBD	TBD	2,604.93	TBD	TBD	TBD

Newly Established Pricing

Equipment		1	2-9	10-19	20-49	25-49	50+
	Puck (Card Reader for CSW)	224.69	200.61	192.59	184.57	168.52	\$ 160.49
	Camera	455.00	406.25	390.00	373.75	341.25	\$ 325.00
	ETHswitch RJ45	670.37	598.54	574.60	550.66	502.78	\$ 478.83
	GPSgo2	358.80	320.36	307.54	294.73	269.10	\$ 256.29
	Antenna tri-band Mobile Mark	242.67	216.67	208.00	199.33	182.00	\$ 173.33



El Dorado: Misc. Vehicle Order

Customer: El Dorado Transit
Prepared by: Adam Jones
Proposal: 2017-159-01
Date: 03-15-2017
Validity: 60 days

Warranty: Hardware - 1 year from delivery
Delivery: To be mutually agreed upon between El Dorado Transit and INIT
Payment
Milestones: Hardware - 100% upon delivery,
Services - 100% upon acceptance
Proposal valid only in its entirety.

Introduction

Proposal 2017-159-01 was created at El Dorado's request. This work is excluded from the current project scope and schedule including RMAT and Final Acceptance Testing. Within the Purchase Order, INIT requires the following:

- Payment Milestones
- Proposal Number
- Description
- Cost

Description:

El Dorado Transit has requested a quote for hardware and services required for the following vehicles within the SACOG Connect Card fare collection system:

- Move INIT equipment from 6 cut-a-way buses to 6 new Gillig buses.
- Move INIT equipment from 4 Dodge minivans to 4 new Dodge minivans.
- Move INIT equipment from 7 cut-a-way buses to 7 new cut-a-way buses.

Proposed solution:

INIT has provided El Dorado Transit a quote for hardware and services found in the price sheet below.

Assumptions:

- Mobilization costs are included in the per vehicle price and based on the assumption that the work will not be combined with any other installation work related to any SACOG Connect Card project property.
- The wiring is all intact on the Dodge Minivans and not wired through walls. INIT expects this vehicle to be simple and efficiently completed. Therefore, INIT has only included the Mobile Mark Tri-Band Antenna, assuming that existing wiring/cabling can be re-used.
- No on-site presence for INIT staff is included; only on-site presence shall be provided by vehicle installer

Delivery:

Delivery will be scheduled after INIT's receipt of a complete and accurate Change Order.

Pricing:

Item	Description	Qty	Price per Unit USD	Price total USD
	El Dorado: Misc. Vehicle Order			
1	Project Services	1	\$5,408.00	\$5,408.00
	Project Management (Offsite)			
	Engineering/Consultation/Planning (Offsite)			
2	Installation Services	17	\$1,082.94	\$18,409.98



Item	Description	Qty	Price per Unit USD	Price total USD
	Vehicle Installation			
3	Dodge Minivan Components	4	\$140.76	\$563.04
	Mobile Mark Tri-Band Antenna			
4	Ford F550 Cut-Away	7	\$1,647.42	\$11,531.94
	Mobile Mark Tri-Band Antenna			
	COPILLOT housing			
	Ethernet & Power cabling			
	Antenna cabling			
	Single Wires			
	Fuses			
	WAGO Fuseblock			
5	Gillig 40' Low Floor Buses	6	\$870.65	\$5,223.90
	Mobile Mark Tri-Band Antenna			
	Ethernet & Power cabling			
	Antenna cabling			
	Single Wires			
	Fuses			
	WAGO Fuseblock			
6	Spare Onboard Wi-Fi Communication Components	12	\$2,176.19	\$26,114.28
	COPILLOTpc2 onboard computer			
7	Spare Passenger Transaction Units	12	\$1,734.12	\$20,809.44
	Mobile Mark Tri-Band Antenna			
8	Spare Operator Control Units	12	\$883.85	\$10,606.20
	Mobile Mark Tri-Band Antenna			
9	Hardware Warranty (1 year)	1	\$692.76	\$692.76
	GRAND TOTAL excl. Tax			\$99,359.54

Signature:

Eric Linxweiler
Western Region Director

Roland Staib
President & CEO

Terms of Delivery and Payment



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- to the extent and during any event (a "Force Majeure Event") which is beyond the control of INIT and reasonably prevents INIT from fulfilling its obligations hereunder, including without limitation, fire, explosion, storm damage, flood, labor troubles including strikes, lockouts or slowdowns, government intervention, shortages of raw materials, labor or transportation, war, sabotage, riot or civil disturbances, or governmental regulation or statute; or
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XI. Limited Warranty

All services, software and hardware sold or delivered to customer are expressly subject to the terms and conditions of INIT's limited warranty set forth herein. No contrary terms in any customer letter, purchase order or accompanying payment shall have any effect.

THE WARRANTIES SET FORTH HEREIN ARE MADE IN LIEU OF ALL OTHER WARRANTIES NOW OR HEREINAFTER MADE OR IMPLIED. INIT DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT

Terms of Delivery and Payment



All sales, delivery and other services rendered by INIT Inc. are performed exclusively according to the following terms and conditions unless otherwise agreed in writing by both parties.

LIMITATION, WARRANTIES OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT AND UNDER NO THEORY WHATSOEVER SHALL INIT BE LIABLE FOR ANY HARM OR DAMAGE, WHETHER INDIRECT, CONSEQUENTIAL OR SPECIAL, SUFFERED BY CUSTOMER. CUSTOMER'S SOLE REMEDY SHALL BE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT OR PART, AT INIT'S OPTION.

In the event that customer makes a claim under this warranty, such claim must be submitted in writing, and customer will follow all warranty reimbursement procedures, will promptly and diligently execute all refit, recall and other similar programs instituted by INIT with respect to the services sold hereunder. Any software or hardware claimed to be defective shall, at INIT's option, be returned to INIT or held by customer for inspection. The customer's right to repair or replacement is subject to the express condition that such parts were correctly installed and maintained.

The limited warranty period for the delivered software is one year after delivery of services or part services. Elimination of possible faults during the warranty period is guaranteed under the following terms:

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- The fault is reproducible or can be understood and re-enacted.
- The customer has a modem connection (ISDN or Datapac P – Connection costs are carried by customer) and makes it possible for INIT to carry out remote diagnosis during operation.

The warranty conditions of the third party apply for third party hardware deliveries.

The limited warranty set forth herein shall also apply for one year from delivery with respect to hardware.

XII. Technical Documentation

In connection with providing customer with sales quotations, INIT may communicate to customer certain proprietary and confidential information to enable customer to decide whether to purchase services from INIT. Customer will hold and will cause its employees, representatives, consultants, and advisors to hold such information in strict confidence, and will not release or disclose such information to any other person. Proprietary information shall include all documents belonging to INIT to which customer may have access in the course of preparing and negotiating, signing, and implementing a purchase order, including without limitation, pictures, diagrams, color samples and swatches, capacities, dimensions, and weights data. INIT's technical know-how is embodied in such proprietary information, which remains INIT's exclusive intellectual property and shall not be copied or reproduced or communicated to third parties. The proprietary information shall be returned to INIT immediately if quotations do not result in an order, or at any time upon INIT's request. INIT reserves the right to make a charge for any preparatory project work which exceeds projected costs customary in the industry and does not result in an order.

XIII. Integration of Systems and Equipment

If customer places an order for the integration of systems and equipment that have not been supplied exclusively by INIT, prices will be based on the information available before the order was placed. i.e.:

- general information available on these systems and equipment;
- information made available by customer; and
- an inspection of the equipment if applicable.

If this basis of information changes during the project additional expenditure may arise. INIT shall be entitled to charge for such additional services rendered.

If there is no information available on the third-party systems at the beginning of a project or if this information is incomplete, the quotation submitted by INIT shall be subject to change upon receipt of the information and of the facilities necessary to integrate this third-party system being supplied to INIT free of charge, comprehensively and on time. INIT will not bear any costs involved in procuring this information. If information is incomplete or not available on time, INIT will not bear the responsibility for any ensuing delays in meeting schedules or pay any extra costs incurred.

If INIT is not appointed as the main contractor or system supplier, INIT can only accept technical responsibility for the creation and proper functioning of the components supplied by INIT for the interfaces to the third-party systems. Technical responsibility comprises the technical specifications and the test on the interfaces on the basis of the information and facilities made available. It does not include responsibility for third-party systems' interfaces functioning on schedule and correctly.

XIV. Limitation of Liability

NEITHER INIT NOR ITS AFFILIATES, EMPLOYEES OR AGENTS SHALL BE LIABLE TO CUSTOMER, OR ITS AFFILIATES, EMPLOYEES OR AGENTS FOR ANY LOSSES OR CLAIMS ARISING OUT OF OR CONNECTED WITH ANY ACT OR OMISSION OF INIT UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF INIT, ITS AFFILIATES, EMPLOYEES OR SUBCONTRACTORS. UNDER NO CIRCUMSTANCES SHALL INIT BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, PRODUCTION FAILURE, LOSS OF UTILIZATION, LOSS OF ORDERS, LOSS OF PROFIT, AND ALL OTHER SUCH INDIRECT DAMAGES. ALL CLAIMS BY CUSTOMER, OTHER THAN AS SET FORTH HEREIN ARE EXCLUDED.

XV. Protection Rights

All intellectual property rights and commercialization rights of the software and other intellectual property remain with INIT. Upon payment, customer purchases user rights for the delivered software. The right of use allows the use of the software only by customer. The customer does not have the right to allow others to use the software. The customer purchases a number of workplace licenses and has the right to install the software on the same number of computers. Backup-copies of the software may be made only for customer's own use to secure data. Statements concerning protection rights remain on the copies. Specific manufacturer's terms of licenses apply for third party hardware and software.

XVI. Applicable Law

In the event of a conflict between customer and INIT regarding the purchase of services hereunder, customer and INIT agree that (a) any actions or claims brought shall be governed by the laws of the Commonwealth of Virginia, without regard to its choice of law rules, and (b) such action or claim shall be brought exclusively in the Commonwealth of Virginia before the courts in the City of Chesapeake or the United States District Court for the Eastern District of Virginia, Norfolk Division.

XVII. Compliance with Laws

INIT bears no responsibility or liability for the services' compliance with any laws, statutes, ordinances or regulations that may be applicable to customer or customer's use of the services. The customer is responsible for ensuring that the services and their use comply with any and all applicable regulations in the country or state concerned.

XVIII. Validity

The terms and conditions set forth herein shall be applicable to every purchase of INIT's Products made by customer, whether under INIT's or customer's purchase orders, or otherwise. In the event of any term or condition herein being or becoming invalid or non-effective, the validity and effectiveness of the remainder of these terms and conditions will remain completely intact. Any conditions contrary to the terms and conditions set forth herein imposed by customer shall be valid only if expressly acknowledged in writing by INIT.

XIX. Conclusion of Contract

All offers are subject to confirmation. The contract will be valid only by INIT's written order confirmation or by execution of the order if no other agreement is made.

Verbal information and statements, literature and advertisements, especially descriptions, drawings, pictures, samples, details on quality, nature, consistence, services, consumption and usability as well as measures and weights of the goods are for informational purposes only, unless they are expressly identified as binding. Such representations imply no warranty or guarantee.