

FOR BOARD ACTION

Agenda Item # 9

Meeting Date:

4/27/10

SUBJECT: Power Resources Forecasting and Reporting Upgrade
Professional services agreement with Novaspect Inc.

PREPARED BY: Jeremy Sutton, Manager of Portfolio Optimization

ITEM DESCRIPTION:

Background

Current methods of data collecting and reporting are laborious manual events. The amount of calculations and data storage are reaching the limitations of current software tools and are not readily available to required users. There are also no control measures in place for data calculation and presentation.

Project Description

The goal of the project is to centralize and standardize data gathering and reporting, along with as much process automation as possible. The majority of the aggregation will be accomplished using internal RPU resources to gather all needed data onto one central database. Novaspect will be utilized to ensure data is stored in a usable format, provide technical expertise for transferring of identified data, and for implementing a reporting function usable to all required parties.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

This is a budgeted item for the 2010 Power Resources allocation budget.

UTILITY BOARD ACTION REQUESTED:

Management recommends Board approval of a Purchase Order to: Novaspect, Inc. 7565 Corporate Way Eden Prairie, MN 55344 in the amount of \$114,994 for professional services; plus a contingency of 10% for a total amount of \$126,493.



General Manager



Date



Project Charter Document

Project Name: Power Resources Forecasting and Reporting Upgrade
Division: Power Production
Process: Forecasting and Reporting

Prepared By

Document Owner(s)	Project/Organization Role
Jeremy Sutton	Project Manager - Business

Project Charter Version Control

Version	Date	Author	Change Description
1.0	02/08/2010	Jeremy Sutton	Document created

1 PROJECT CHARTER PURPOSE

Background

Current methods of data collecting and reporting are laborious manual events. The amount of calculations and data storage are reaching the limitations of current software tools and are not readily available to required users. There are also no control measures in place for data calculation and presentation.

Project Description

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1.1 Project Outcomes

Outcomes
1) Key data that resides in DeltaV and SCADA systems will be accessible on the Business Network in a SQL Database
2) Current spreadsheets utilized in PR will be converted from a data storage and presentation function to data presentation only.
3) Data collection will be automated as much as possible including reductions in manual data entry, processing, and duplication.
4) Improve dispatch scheduling by enabling access for scheduling partners.
5) Proposed program of internal controls over the data
6) ??? Data dictionary, Master data, metadata

Transfer raw data from identified sources to a centralized location and make data easily available to all users. Allow greater controls of data, broader accessibility, and increased automation. Provide a platform that is secure, uniform, and is readily adaptable to changing needs and technologies

The controlling document for Novaspect work is Data Aggregation and Reporting Proposal prepared by Novaspect dated 11/24/2009.

Budget

- Novaspect \$115,000
- External Programming \$10,000
- Internal Hardware \$4,000
- Optional additional software \$6,000

Schedule

- Executive Approval
- Project Plan developed
- Detailed Design
- Pre-Installation Testing
- Installation
- Acceptance Testing
- Training
- Project Review

Internal Resources

- IT 60
- Power Resources 40
- SCADA Tech 40
- Project Manager 80
- Field Services 60

Roles

Project Team Role	Project Team Member(s)
Executive Sponsor	Wally Schlink
Project Manager – Business	Jeremy Sutton
Project Manager - Partner	Bryce Lawrence
RPU IS	TBD
Team Member	Bill Cook

Organization	Impact to and Participation of Organization
Technical Services	Provide project support to obtain data from SCADA system
Environmental and Regulatory	Provide project support to obtain data from SCADA system
System Operations	Minimal project support.
Information Services	Project support

1.2 Project Deliverables

The project is expected to include:

- Establish a budget for the project for 2010 work
 - Define users of data and subject matter experts
 - Identify all required data
 - Identify major milestones with expected completion dates
 - Choose technologies to retrieve data (Dashboard application)
 - Identify improvements in current data management processes (technological and process)
 - Future plans for additions
 - Plan for Ongoing maintenance and support of the system
-

1.3 Project Risks

- Data Security Issues
- Budgetary overrun
- Connectivity issues between components
- Hardware constraints
- Lack of RPU procedural requirements

2 APPROVALS

Prepared by _____
Jeremy Sutton and Bill Cook

Approved by _____
Project Sponsor (Jeremy Sutton)

Executive Sponsor (Wally Schlink)



Proposal For

RPU

Rochester, MN

Data Aggregation and Reporting

Rev.	Date	Description	By	Reviewed By / Date
B	01/11/10	Modified Architecture	BDL	
A	11/24/09	Original Lump Sum Proposal	BDL	

Note: Number in Rev. identifies version sent to customer. Lower case letter in Rev. identifies internal version.

Prepared By:

Novaspect

Process Management

An Emerson Process Management Local Business Partner

Novaspect, Inc.
*An Emerson Process Management
Local Business Partner*
1776 Commerce Drive
Elk Grove Village, IL 60007



	<h1>Novaspect</h1> <p>RPU Data Aggregation and Reporting Rochester, MN</p>	Proposal Number 014-BL-091124-001	
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1. Project Overview

This proposal is for the installation of a centralized data store (SQL Server) for measured and aggregated values from the existing DeltaV and SCADA systems. Additionally, costing and scheduling information will be pulled into the data store on a transactional basis.

The existing Microsoft Excel based calculations and reports will be replaced with SQL Server tables and a standardized reporting solution (ReportWorX)

Customer involvement and support throughout the project is desired and paramount to project success.

2. Preliminary Engineering

This proposal is based on our current understanding of the stated project requirements as well as our preliminary engineering. The "Proposal Development Checklist" documents how the data for the preliminary engineering was gathered. Disagreement with any of this data or the stated assumptions should be immediately brought to Novaspect's attention.


System Data Flow		X	
System Data Sources			X
Calculation Requirements			X
Reporting Requirements			X

2.1. Customer Supplied Documents

Type	File	Rev	Date
Excel	Master File 2009.xlsm		10/26/09
Excel	NRGSL09.xlsx		10/26/09
Excel	Sep09_data_anal.xlsx		10/26/09
Excel	slp10-26-09.xlsm		10/26/09

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2.2. Assumptions

1. RPU will be responsible for defining the points designated for the centralized data store from both the DeltaV and the SCADA systems.
2. RPU will be responsible for supplying, configuring and installing a server to be used for the centralized data store.
3. RPU will be responsible for supplying the following software for installation in the centralized data store server; Microsoft Windows Server 2003 or 2008, Microsoft SQL Server 2005 or 2008, and Microsoft Excel 2007.
4. RPU will be responsible for supplying the required network infrastructure (including cabling, switches, etc.) to connect the centralized data store server to the RPU business network, DeltaV system and SCADA system.
5. The centralized data store server will have access to the MISO website and the RPU email server for the scheduling information.
6. Data values pulled from the SCADA system through the ODBC connection will occur no more frequently than once per hour.
7. RPU will provide the required personnel for answering questions as well as attending a project kickoff meeting and three (3) design review meetings at the RPU facility, customer acceptance testing at the Novaspect facility, and site acceptance testing.
8. This proposal expires on 7/31/2010.

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3.2. Project Management

A Project Manager will be assigned to every Project Team. The remainder of the project team will consist of Lead Engineers, Consultants, Application Engineers and Designers as required. Customer communications will be primarily through the Project Manager. All communications and meetings minutes will be documented, distributed and preserved via email. Included are a project kickoff meeting and three (3) design review meetings to be held at the RPU facilities in Rochester, MN.

Standard change order control will be used by the Novaspect Project Manager. Depending on when a change order is received and the type of change, the affect to the project schedule and budget will be communicated to the customer.

3.3. Detailed Design

The following describes the detailed design services needed to complete a successful project. Refer to the "Project Performance Checklist" in section 3.1 for the definition of responsible parties.

System Interfaces

Design and configuration of the communication interfaces between the central data store server and the DeltaV and SCADA data sources.

Data Transactions

Design and configuration of the BridgWorX transactions to push data from the DeltaV and SCADA systems as well as retrieve the MISO and scheduling information. Each transaction has a table storing the points to be pulled as part of the transaction and includes a user interface for editing this table.

Data Storage and Aggregation


Installation and configuration of the SQL Server data aggregation software. Also includes configuration of the aggregation points required for the reports.

Reports

Design and configuration of the reports, based on the supplied Excel spreadsheets, using the ReportWorX software (referenced in section 2.1). All values for the report will be pulled from the central data store SQL Server.

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3.4. Drawings

The following describes the drawing services needed to complete a successful project. Refer to the “Project Performance Checklist” in section 3.1 for the definition of responsible parties.

System Architecture

Drawings depicting the location and general connections of the computer hardware, software, and switches.

System Network

Ethernet drawings depicting nodes and the location of nodes on the Ethernet Network. Includes a ip addresses and domain information.

3.5. Hardware Configuration

The following describes the hardware configuration services needed to complete a successful project. Refer to the “Project Performance Checklist” in section 3.1 for the definition of responsible parties.

Software Installation and Configuration

Installation of all the required software on the central data storage server. Also includes the removal (from the DeltaV) and re-installation of the BridgeWorX software.

Network Configuration

Configuration of the network communication settings for communication between the center data storage server and the RPU business network, DeltaV network, and SCADA network.

System Security Configuration


Configuration of the domains and associated trusts and security settings on the central data storage server to enable secure communications across the networks.

3.6. Software Configuration

Implement, via application software provided within the Control System, those elements designed during the “Detailed Design” phase of the project (section 3.3).

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3.7. Pre-Installation Testing

The Novaspect project team will perform internal testing at the Novaspect's testing facility to ensure that all aspects of the implemented configuration meet the customer expectations.

Upon successful completion of internal testing, the Customer Acceptance Test will be performed in the same manner and location with guidance and support from the Novaspect project team. Successful completion of the Customer Acceptance Test will release all system software components for shipment to the customer's site. This proposal includes for Customer Acceptance Testing at the Novaspect facility.

3.8. Installation

All required demolitions and physical installation of the system as well as the connection communication cables are the responsibility of the customer. Installation services to be provided by Novaspect included in this proposal are as follows:

System Communications Testing

Verification of the communications between the central data storage server and the RPU business network, DeltaV network, and SCAD network.

Site Acceptance Testing


Customer witnessed site acceptance testing of the installed solution.

3.9. On-Going Support

1 year of software support (free upgrades) and technical phone support is included in the proposal. Additional support may purchased annually for a price of \$4,500.

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4. Financial Summary

Fixed Price Services

Project Management and Meetings	
Preliminary Engineering	
Detailed Design	
Drawings	
Hardware Configuration	
Software Configuration	
Pre-installation Testing and Customer Acceptance	
Site Installation and Acceptance Testing	\$89,120

Software

Per Bill of Materials in Appendix A	\$25,875
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Total Software and Engineering Service: **\$114,994**

Options

BridgeWorX installed on the centralized data store server	
BRIDGEWORX-LITE V9 software	
1 year of software/technical support.	
Installation service for BridgeWorX software	\$6,950

Note:


The above project pricing is contingent upon client agreement with the attached Novaspect Terms and Conditions. Requested modifications to these Terms and Conditions will require a pricing adjustment.

Payment Schedule

On Receipt of Order	20%
Completion of Design Review	20%
Completion of Internal Testing	20%
Completion of Software Acceptance	20%
Successful Completion of Site Acceptance or 90 days after completion of Customer Acceptance Testing (whichever come first)	10%

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Notes:


1. Terms and Conditions are listed in the Appendix.
2. All freight charges will be pre-paid and billed at cost.
3. Change orders will be handled via defined change request procedures. All change orders will be priced individually and agreed upon prior to commencement of the work.

Please request information from and send purchase order to:

Novaspect, Inc.
7565 Corporate Way
Eden Prairie, MN 55344
Attn: Larry Link
Phone 952-975-1574
FAX 952-934-1279

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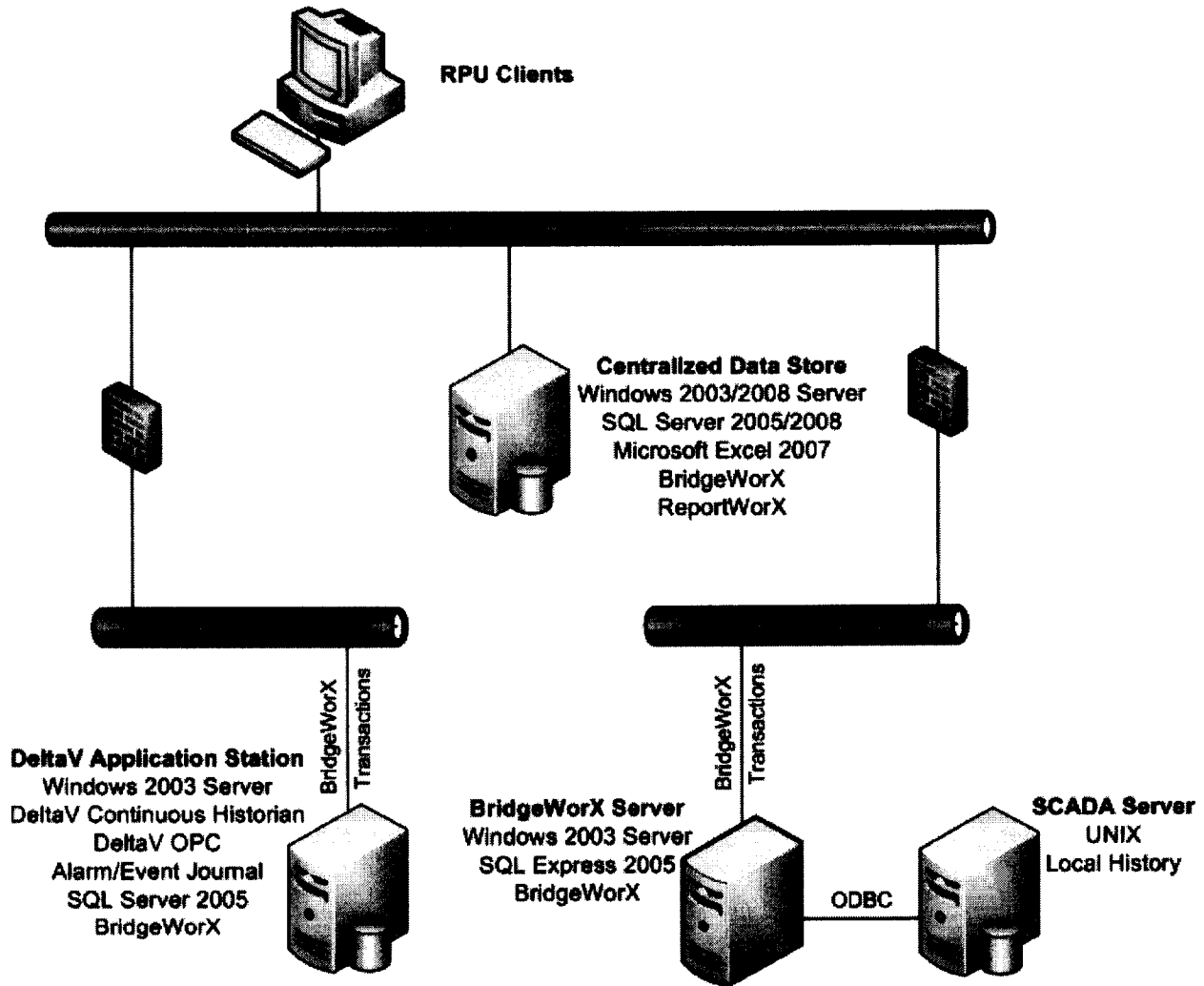
APPENDIX A – Bill of Materials

Item Qty Description	Price
1 1 PGT-DATA-AGG Site wide license for a SQL Server application used for automatic aggregation and storage of data. Includes a user interface for setting up the aggregation based on the data type and roll-up length (day, week, month, etc.). Includes 1 year of software support agreement.	\$5,750
2 1 REPORTWORX-STD V9 ReportWorX allows site-wide client connections and the ability to create, schedule, direct and Web-enable reports. Includes fifteen (15) active reports and 100 templates from an unlimited number of data sources. Mix database information with real-time machine data from multiple OPC and SNMP protocols as well as historic trend and alarm information from SCADA and MES systems into configurable reports which can be scheduled, emailed, PDF'd, faxed, stored to disk, printed and published to a Web server. Includes 1 year of software support agreement.	\$14,375
3 1 BRIDGEWORX-LITE V9 BridgeWorX bridges data between virtually any data source such as Microsoft SQL Server, MSDE, Access, Oracle, SAP, other custom databases and/or real-time devices. Use OPC, ODBC, OLEDB or Web services connections to integrate live manufacturing data, historic trend and alarm information with enterprise database data. Configure transactions to trigger off of a flexible time-based scheduler, real-time events (live data) or changes in database values. Visual transaction data mapping wizards simplify configuration. Includes fifteen (5) enabled transactions and 25 configured transactions. Includes 1 year of software support agreement.	\$5,750

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APPENDIX B – Proposed Architecture



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APPENDIX C – Terms and Conditions

NOVASPECT, INC.

The proposal to which these Terms and Conditions are attached (the "Proposal"), these Terms and Conditions and any Change Orders (as defined herein) shall constitute the entire agreement between the parties and shall collectively be referred to herein as the "Agreement."

1. **ACCEPTANCE.** ACCEPTANCE OF THIS AGREEMENT BY BUYER WITHIN 30 DAYS OF THE DATE HEREOF (OR SUCH LONGER PERIOD AS NOVASPECT, INC. ("NOVASPECT") SHALL, IN ITS SOLE DISCRETION, AGREE TO IN WRITING) CREATE A CONTRACT BETWEEN NOVASPECT AND BUYER FOR THE PERFORMANCE OF SERVICES ("SERVICES") AND THE SALE OF HARDWARE, SOFTWARE, FIRMWARE AND/OR OTHER PRODUCTS ("GOODS"), EACH AS PARTICULARLY DESCRIBED IN THE PROPOSAL. BY ACCEPTING THIS AGREEMENT WITHIN THE REQUISITE TIME PERIOD, BUYER AGREES TO ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. TO THE EXTENT BUYER'S PURCHASE ORDER OR ANY OTHER STATEMENT OF BUYER CONTAINS ANY TERMS OR CONDITIONS IN ADDITION TO OR DIFFERENT FROM THE TERMS OF THIS AGREEMENT, SUCH TERMS AND CONDITIONS ARE HEREBY REJECTED BY NOVASPECT AND HEREBY WAIVED BY BUYER AND SUCH TERMS AND CONDITIONS SHALL NOT AFFECT THIS AGREEMENT NOR BE BINDING UPON NOVASPECT ABSENT AN EXPRESS WRITTEN STATEMENT BY NOVASPECT TO THE CONTRARY. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES WITH RESPECT TO THE SERVICES AND THE DELIVERY OF THE GOODS AND SUPERSEDES ANY OTHER NEGOTIATIONS, AGREEMENTS AND REPRESENTATIONS BETWEEN THE PARTIES, WRITTEN OR ORAL. NO MODIFICATION OF THIS AGREEMENT SHALL BE OF ANY FORCE OR EFFECT UNLESS IN WRITING AND SIGNED BY NOVASPECT. IN THE EVENT OF ANY CONFLICT BETWEEN THESE TERMS AND CONDITIONS AND THE PROPOSAL, THE TERMS OF THE PROPOSAL SHALL GOVERN. IN THE EVENT OF ANY CONFLICT BETWEEN ANY CHANGE ORDER AND THESE TERMS AND CONDITIONS OR THE PROPOSAL, THE TERMS OF THE CHANGE ORDER SHALL GOVERN.

2. **AGREEMENT TO MAKE PAYMENT.** Buyer shall pay to Novaspect the fees and purchase prices set forth in the Proposal, as increased or decreased pursuant to any adjustments set forth in any Change Orders (the "Payments"). Any Goods ordered other than those specifically set forth in the Proposal, including additional copies of data/documentation or non-standard data/documentation, shall be priced at Novaspect's prices then in effect.

3. **INVOICES; METHOD OF PAYMENT.** Novaspect shall issue an invoice to Buyer (an "Invoice") each month for the amount due Novaspect, as determined pursuant to the terms of the Proposal. Buyer shall pay to Novaspect the amount set forth in each Invoice within 30 days of receipt of such Invoice. Any amount which is not paid when due shall bear interest at the rate of 1.5% per month or portion thereof from the date such amount became due through the date on which payment is received by Novaspect. All payments shall be made without deduction or setoff to Novaspect at the address set forth in the Proposal.

4. **SECURITY.** As security for the purchase price of the Goods, Buyer hereby grants and conveys to Novaspect a purchase money security interest in the Goods. Buyer shall, upon request of Novaspect, sign any financing statements and other instruments requested by Novaspect and shall otherwise cooperate with Novaspect in any manner deemed necessary to evidence, perfect or continue such security interest. The security interest granted to Novaspect shall be terminated only upon payment in full for the Goods.

5. **SCHEDULING.** Buyer understands that any product design services to be performed by Novaspect are unique, extremely complex and involve a great degree of Buyer/Novaspect interaction. The schedule for completion of the Services and delivery of the Goods set forth in the Proposal is a good faith estimate of Novaspect. The time actually required to complete the Services and deliver the Goods will be subject to Buyer availability, Buyer's timely delivery of information described in the Proposal or otherwise requested by Novaspect, the accuracy of such information, unforeseen design issues, design changes and modifications requested by Buyer pursuant to Change Orders, and other matters which generally effect product choice or product design services. Novaspect shall use all commercially reasonable efforts to meet all schedules set forth in the Proposal. Novaspect shall have no liability to Buyer or any other party for any loss or damage arising out of any Service or Good which is provided later than designated in the Proposal.

6. **DELIVERIES.** Novaspect shall deliver to Buyer the Goods described in the Proposal. All deliveries from Novaspect to Buyer shall be F.O.B. shipping point and title and risk of loss with respect to such deliveries shall pass to Buyer upon delivery to Buyer or representatives of Buyer including, but not limited to, any common or contract carrier, bailee, agent, or employee of Buyer. If Buyer does not accept such F.O.B. delivery, Buyer shall be responsible for all storage charges and other expenses incurred in handling and moving the Goods. Buyer shall pay transit insurance, packaging, handling, shipping and carrier costs associated with the Goods and all sales, use, excise and other taxes levied upon the Goods. Buyer's sole remedy for lost Goods, damage caused during shipment or any delay attributable to shipment shall be an action against the carrier. Buyer agrees to hold Novaspect harmless against any and all penalties, claims, demands, losses, causes of action, suits, judgements, costs and expenses, including reasonable attorneys' and paralegals' fees, of whatever nature arising out of or in connection with the shipment or storage of Goods. Novaspect reserves the right to withhold any and all deliveries in the event Buyer fails to pay any invoice in accordance with its terms or in the event Novaspect has reason to believe Buyer does not have the financial ability to pay any future invoice when due.

7. **CHANGE ORDERS.** In the event that Buyer requests any modifications to the Services or to the type or number of Goods, Novaspect shall, if commercially reasonable, prepare and deliver to Buyer a Change Order Proposal describing such modifications and the changes in the Services and/or Goods necessary to effect such modifications (a "Change Order"). The Change Order will also set forth the additional Payments, if any, and the basis upon which additional Payments will be computed and an estimate of the revised schedule for completion of the Services and delivery of the Goods. After receipt of a Buyer request, verbal or written, for modifications to the Services or to the type or number of Goods, Novaspect may elect not to continue or complete the Services or deliver Goods until Novaspect receives a written authorization to proceed with the additional scope of work. The execution of the written authorization required hereunder by Buyer shall constitute authorization from Buyer for Novaspect to proceed with the Services and delivery of the Goods as modified by the Change Order and Buyer's consent to the increase or decrease in the Payments and the revised schedule set forth in the Change Order.

8. **TERMINATION.** Buyer may, by written notice to Novaspect (a "Termination Notice"), terminate its order for Goods and Services or any portion thereof at any time. Notwithstanding the "Notices" provision hereof, a Termination Notice shall not be effective until actually received by Novaspect (the "Termination Date"). Novaspect shall cease performance of the Services and delivery of the Goods as soon as is reasonably possible following receipt of a Termination Notice. Within 15 days after receipt of a final invoice, Buyer shall pay to Novaspect that portion of the Payments allocated to Services performed through the Termination Date, as determined by Novaspect, plus all expenses and non-cancelable commitments incurred by Novaspect prior to or in connection with such termination including, without limitation, the cost of all Goods and all processing, handling and fabrication costs incurred in connection with the Goods (collectively, the "Termination Payment"). Novaspect shall prepare a final Invoice with respect to the Termination Payment as soon as is practicable following receipt of a Termination Notice.

9. **INDEMNIFICATION.**

- (a) Novaspect hereby agrees to indemnify and hold Buyer harmless from and against penalties, claims, demands, losses, causes of action, suits, judgements, costs and expenses, including reasonable attorneys' and paralegals' fees from (i) the injury or death of any employee, contractor, subcontractor, agent of or other person acting on behalf of or otherwise engaged by Novaspect (a "Novaspect Representative") caused by the negligent act or omission of a Novaspect

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Novaspect

RPU
Data Aggregation and Reporting
Rochester, MN

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Representative and (ii) the injury or death of any person other than a Novaspect Representative caused by the negligent act or omission of a Novaspect Representative; provided however, Novaspect's liability set forth in the preceding clause (ii) shall be limited to the proportionate share of liability caused by the Novaspect Representative vis-a-vis all other parties contributing to the cause of such injury, sickness or death. In no event shall Novaspect's liability under this paragraph exceed the amount of Payments actually received by Novaspect under this Agreement.

- (b) Novaspect hereby agrees to indemnify and hold Buyer harmless from and against penalties, claims, demands, losses, causes of action, suits, judgments, costs and expenses, including reasonable attorneys' and paralegals' fees from the damage to or destruction of property caused by the negligent act or omission of a Novaspect Representative in providing the Services. In no event shall Novaspect's liability under this paragraph exceed the amount of Payments actually received by Novaspect under this Agreement.
- (c) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, BUYER AGREES THAT NOVASPECT SHALL NOT BE LIABLE TO BUYER FOR ANY DELAY IN PERFORMANCE NOR SHALL NOVASPECT'S LIABILITY IN ANY EVENT EXTEND TO INCLUDE INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES WHETHER OR NOT NOVASPECT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH CLAIM INCLUDING, WITHOUT LIMITATION, LOSS OF TIME, LOSS OF USE, OR LOSS OF ANTICIPATED PROFITS OR REVENUE.
- (d) Buyer hereby agrees to indemnify and hold Novaspect harmless from and against penalties, claims, demands, losses, causes of action, suits, judgments, costs and expenses, including reasonable attorneys' and paralegals' fees from (i) the failure of Buyer to keep, perform and observe its obligations hereunder; (ii) any injury, sickness or death of a person other than a Novaspect Representative or damage to property to the extent not caused by the negligent act or omission of a Novaspect Representative; (iii) any injury, sickness or death of a Novaspect Representative not caused by the negligent act or omission of a Novaspect Representative; (iv) the failure of Buyer to comply with and observe all present and future laws, orders, codes, regulations, ordinances, rules and decrees of each governmental agency or instrumentality which may be applicable to the Goods or Buyer's business; (v) any actual or alleged infringement of any third party's intellectual property rights to the extent arising from designs, design information, specifications, processes or formulas supplied by Buyer; and (vi) specifications, design information, processes or other information or representation supplied or made by Buyer which proves to be inaccurate or which was not supplied by Buyer but should have been under the circumstances.

10. LIMITED WARRANTY:

- (a) Novaspect warrants that the Goods shall be fit for the purpose intended provided such purpose has been communicated to Novaspect by Buyer and provided (i) Novaspect has not indicated in a writing delivered to Buyer that it disagrees with Buyer's selection of any such Goods or (ii) the purpose intended has not been affected by (A) improper handling, storage or installation by a person other than a Novaspect Representative, (B) deterioration, corrosion or other adverse affect to the Goods arising from exposure to chemicals, fumes or other environmental variants not known to Novaspect, (C) specifications, design information, under the circumstances, (D) any alterations or repairs not approved by Novaspect or any accident affecting the Goods not caused by a Novaspect Representative or (E) abuse or improper use or maintenance of the Goods. Novaspect's Representatives' oral statements do not constitute warranties and should not be relied upon by Buyer as such. All warranty claims for the particular purpose intended shall be deemed unconditionally waived by Buyer unless Buyer shall notify Novaspect in writing of such alleged breach within one year of delivery of the Goods. Buyer shall afford Novaspect prompt and reasonable opportunity to inspect all Goods as to which any breach of warranty claim is made hereunder. If the requisite notice is provided and the Goods are not fit for Buyer's intended purpose, Novaspect will either replace or repair the Goods or adjust the matter fairly and promptly, but under no circumstances shall Novaspect be liable for any delay in performance nor shall Novaspect's liability in any event extend to include incidental, special, exemplary, consequential or punitive damages whether or not Novaspect has been previously advised of the possibility of such claim including, without limitation, loss of time, loss of use, or loss of anticipated profits or revenue. In no event shall Novaspect's liability under this paragraph exceed the amount of Payments actually received by Novaspect under this Agreement.
- (b) EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH (A) ABOVE, (i) NOVASPECT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY; AND (ii) BUYER'S SOLE AND EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THE WARRANTIES, IF ANY, OF THE ORIGINAL EQUIPMENT MANUFACTURER(S) OF THE GOODS.

11. **DEFAULTS.** In the event that Buyer fails to pay all or any portion of the Payments when the same is due and payable or is otherwise in default of any of its covenants hereunder or fails to comply with any of the terms or conditions hereof, or, in Novaspect's reasonable opinion, Buyer's ability to make timely Payments hereunder is impaired, or Buyer becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or bankruptcy, reorganization, arrangement or insolvency proceeding or other proceedings for any relief under any bankruptcy or similar law for the relief of debtors are instituted by or against Buyer, then in any such event Novaspect may, (a) terminate and cancel this Agreement forthwith upon written notice to Buyer, (b) require cash payment, satisfactory security, and/or other assurances before providing further Services and Goods, (c) declare the Termination Payment and all other sums payable to Novaspect hereunder to be immediately due and payable whereupon such amount shall forthwith become immediately due and payable to Novaspect, (d) if full payment for the Goods has not been received, enter upon Buyer's premises or any other place where the Goods are located and repossess all of the Goods without notice, hearing, court order or further process of law and otherwise exercise any rights as a secured party under the Uniform Commercial Code and/or (e) pursue any other remedy available to Novaspect at law or in equity.

12. **RETURN.** Novaspect shall not accept return of the Goods unless it notifies Buyer in writing to the contrary. In the event Novaspect accepts return of the Goods, neither transportation charges for the return of Goods nor any other costs or charges incurred in connection therewith shall be paid by Novaspect unless authorized in advance by Novaspect.

13. **SAFETY WARNINGS/COMPLIANCE WITH LAWS.** Buyer accepts and assumes all liability and responsibility for all safety warnings in connection with the Goods and for compliance of the Goods with all federal, state and local laws.


14. **INSTALLATION.** Buyer shall be responsible for receiving, storing, installing, starting up and maintaining the Goods. If requested by Buyer, Novaspect shall provide a quotation for services to assist Buyer in these functions.

15. **BUYER SUPPLIED DATA.** Notwithstanding anything contained herein, to the extent that Novaspect has relied upon any specifications, information or representation of Buyer, whether relating to the operating conditions of Buyer or any other state of affairs impacting the selection or design of the Goods, the provision of the Services or the preparation of the Proposal, which specification, information or representation proves to be inaccurate, Novaspect shall have no liability to Buyer or persons claiming under Buyer resulting from such inaccuracy. In the event of such inaccuracy, Novaspect and Buyer shall modify the Services and/or the selection of the Goods to accommodate the true state of affairs and shall modify the Proposal accordingly including, without limitation, adjusting the Payments and re-establishing time deadlines.

16. **SOFTWARE AND COMPUTER PROGRAMS.** Buyer acknowledges and agrees that Buyer's right to use any software or firmware constituting part of the Goods shall be governed by, and subject to the conditions of, a separate software license agreement. Buyer acknowledges and agrees that all title to the software or firmware constituting part of the Goods shall remain vested in the manufacturer of such software or firmware or the licensor thereof and shall be furnished to and used by Buyer only after execution of, and subject to, such separate license agreement. Buyer's sole and exclusive remedy with respect to any software or firmware provided hereunder shall be limited to the warranties, if any, of the manufacturer or licensor of such software or firmware. Buyer shall have no right to alter, modify, copy or

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	<h1 style="margin: 0;">Novaspect</h1> <p style="margin: 0;">RPU Data Aggregation and Reporting Rochester, MN</p>	Proposal Number 014-BL-091124-001	
		Date 01/11/10	Rev B
		Ref	Page 13

prepare derivative works of any software or firmware except in accordance with such license agreement.

17. **HIRING OF EMPLOYEES.** Buyer agrees that during the execution of the Services by Novaspect, and for a period of twelve (12) months after completion of the Services, Buyer will not directly or indirectly, individually or as a shareholder, investor, advisor, partner, member, manager, owner, director, officer, employee, consultant or agent of any corporation, partnership, limited liability company, or any other entity (a) solicit, encourage or have contact with any of Novaspect's employees for the purpose of encouraging them to end their employment with Novaspect; (b) hire any employee of Novaspect; (c) solicit, encourage or have contact with any of Novaspect's contractors or their employees for the purpose of encouraging them to end their relationship with Novaspect; or (d) hire any Novaspect contractor or employee of a Novaspect contractor.

If Buyer breaches this Section 17, in addition to any and all other remedies available to Novaspect in law or in equity, Buyer shall pay as damages, and not as a penalty, \$125,000 for each breach. The parties agree that the foregoing damages shall not preclude Novaspect from obtaining any further damages, in law or in equity, in connection with any and all breaches of this Section 17. In addition, Buyer agrees that in the event Novaspect institutes or becomes involved in any action to enforce or defend this Section 17, Novaspect shall be entitled to recover from the Buyer its reasonable attorneys' fees and costs related to such action.

18. **FORCE MAJEURE.** Novaspect shall not be liable for any failure to perform resulting from acts of God, war, riot, fire, explosion, accident, flood, sabotage, the shortage of or inability to obtain from anticipated sources adequate materials, components, parts or Goods, or transportation facilities, compliance with governmental requests, law, regulations, orders or actions, the breakage or failure of machinery or apparatus, national defense requirements or any other event beyond the reasonable control of Novaspect; or in the event of labor trouble, strike, lockout or injunction affecting Novaspect or its supplies, suppliers or transporters which event makes impractical the provision of the Services or the manufacture, procurement, transportation, delivery, acceptance or use of the Goods. Novaspect shall give written notice to Buyer with reasonable promptness after the occurrence of any such event.

19. **RELATIONSHIP OF PARTIES.** The relationship of the parties shall be that of independent contractors and not as partners or joint ventures. Each party is, and is intended to be, engaged in its own and entirely separate business.

20. **NOTICES.** All notices and other communications given hereunder shall be in writing and deemed to have been given when (i) personally delivered, (ii) one business day after delivery to a nationally recognized overnight courier service, (iii) upon the written confirmation of receipt following the transmission of a telecopy or (iv) three days after being mailed by certified mail, postage prepaid, to the addresses of Novaspect or Buyer as set forth in the Proposal or to such other addresses as either party may request by notice given in accordance with this paragraph.

21. **GOVERNING LAW; JURISDICTION AND VENUE/LIMITATION PERIOD.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. NOVASPECT AND BUYER IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT OR ANY DOCUMENT, INSTRUMENT OR TRANSACTION IN CONNECTION HERewith SHALL BE HEARD OR LITIGATED EXCLUSIVELY IN COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS. NOVASPECT AND BUYER CONSENT AND SUBMIT TO THE PERSONAL JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID CITY, COUNTY AND STATE AND IRREVOCABLY WAIVE ANY RIGHT TO TRANSFER OR CHANGE VENUE OF ANY SUCH ACTION OR PROCEEDING OR OBJECT TO THE JURISDICTION OF ANY SUCH COURT OVER THE PARTIES HERETO. NO ACTION OTHER THAN AN ACTION FOR UNPAID PAYMENTS UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.

22. **COLLECTION/ENFORCEMENT EXPENSES.** In addition to any other amounts due hereunder, Buyer shall reimburse Novaspect for all costs and expenses (including reasonable attorneys' and paralegals' fees and expenses) incurred by Novaspect in collecting any amount due to Novaspect or enforcing any provision of this Agreement.

23. **GENERAL PROVISIONS.** Except as expressly set forth herein, any waiver by any party of its rights under this Agreement shall be in writing and signed by the party waiving such right. The failure of either party to enforce any of the provisions of this Agreement or any rights in respect thereto, or to exercise any election herein provided, shall not waive such provisions, rights or elections or subsequent breaches thereof. No course of dealing shall be deemed to constitute a continuing waiver of any breach or default or right or remedy hereunder. Buyer shall not assign its rights or obligations under this Agreement to any party without Novaspect's prior written consent. This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and permitted assigns. Except as otherwise stated herein, termination of this Agreement shall not release either party from any liability or obligation which has theretofore accrued and remains to be performed as of the date of such termination.

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RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a purchase order agreement with Novaspect, Inc. for

Power Resources Forecasting and Reporting Upgrade

The amount of the purchase order agreement to be \$114,994 for professional services plus a contingency of 10% for a total amount of **ONE HUNDRED TWENTY-SIX THOUSAND FOUR HUNDRED NINETY-THREE DOLLARS AND 00/100 (\$126,493.00)**.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of April, 2010.

President

Secretary