

## **GE Global Research Software Commercial Off the Shelf (COTS) License Terms and Conditions (01/2011)**

This Agreement (also referred to as "Order") is made by Licensor, a company whose address and primary contact information are contained on the face of the GE purchase order ("Order Document") to which these terms apply, and General Electric Company, a company organized and existing under the laws of the State of New York, U.S.A., and acting through its GE Global Research operation with a place of business at One Research Circle, Niskayuna, New York 12309, U.S.A. ("GE").

1. **ACCEPTANCE AND TERMS AND CONDITIONS:** (a) Licensor accepts this Agreement, its terms and conditions, and any changes by signing the acceptance copy and returning it to GE. Commencement of any services called for by this Agreement in the absence of Licensor's written acknowledgment shall be deemed acceptance of this Agreement. (b) By acceptance of this Agreement, Licensor agrees to comply with all the terms and conditions of this Agreement, including all supplements and other documents referred to in this Agreement. (c) This Order does not constitute an acceptance by GE of any offer to sell, quotation, or proposal. Reference in this Agreement to any such offer to sell, quotation, or proposal shall not constitute a modification of any of the terms and conditions of this Agreement. GE acknowledges that the Products/Software are licensed and not sold, and may come with license terms. **ANY ATTEMPTED ACKNOWLEDGMENT OF THIS AGREEMENT CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF THIS ORDER IS NOT BINDING UPON GE UNLESS SPECIFICALLY ACCEPTED BY GE IN WRITING, AND GE HEREBY REJECTS ANY SUCH PROPOSED MODIFICATIONS. THIS INCLUDES ANY END USER LICENSING AGREEMENT, SHRINKWRAP AGREEMENT AND/OR CLICKWRAP AGREEMENTS IN CONFLICT WITH THE TERMS HEREIN.** (d) Any acceptance, approval and/or payment made by GE in connection with work hereunder, shall not relieve Licensor of its responsibilities under this Order.

2. **PRICES and PAYMENT:** 2.1 All prices are firm and shall not be subject to change. Licensor's price includes all payroll, occupational, and value added taxes not recoverable by GE, as well as any other taxes, fees and/or duties applicable to the goods and/or services purchased under this Agreement; provided, however, that Licensor must separately identify on Licensor's invoice any state and local sales, use, excise and/or privilege taxes, if applicable, and will not include such taxes in Licensor's price. If Licensor charges GE with any value added or similar tax, Licensor shall ensure such taxes are invoiced to GE in accordance with applicable rules so as to allow GE to reclaim such value-added or similar tax from appropriate government authorities. Neither party is responsible for taxes on the other party's income or the income of the other party's personnel or subcontractors. If no firm or other price appears, no payment in excess of any monetary limitation appearing on the face of the Order Document shall be permitted without the prior written approval of GE. Pricing shall not be adjusted without prior written approval of GE.

2.2 GE shall pay the License Fees according to the schedule on the Order Document. - Unless otherwise stated on the face of this Order, payment terms are due net one hundred and twenty (120) days from the Payment Start Date. The Payment Start Date is the later of 1) The delivery date identified on the Order, (2) The received date of the goods and/or services in GE's receiving system or (3) The date of receipt of valid invoice by GE. Seller's invoice shall in all cases bear GE's Order number. GE shall be entitled to reject any invoices failing to note GE's Order number or that are otherwise inaccurate. Any resulting delay in payment shall be Seller's responsibility. Licensor's invoice shall in all cases bear GE's PO number. GE shall be entitled to reject any invoices failing to note GE's PO number or that are otherwise inaccurate. Any resulting delay in payment shall be Licensor's responsibility. Failure or delay by GE to make payments, by reason of Licensor's failure to follow the instructions herein, shall not be deemed a breach of this Order. Licensor warrants it is authorized to receive payment in the currency stated in this Order.

2.3 Licensor agrees it shall ensure that GE receives the status of a most-favored customer with respect to matters of pricing for services or licenses provided hereunder. If Licensor agrees to more favorable terms to any of its other customers at the time of negotiations, or during the term of this Agreement, Licensor shall, within thirty (30) calendar days, notify GE in writing and ensure GE receives these more favorable pricing terms for all products and Services provided hereunder retroactive to the date of such offer - and for so long as those terms are offered to other customers. Upon such notice, this Agreement will be deemed by all parties to have been amended to incorporate all such favorable changes - excepting any changes as may be rejected in writing by GE. Licensor agrees to provide GE with certification of compliance with this clause, completed by an authorized Licensor official, upon request by GE.

3. LICENSE GRANT and TYPE. Under this Agreement, Licensor grants to GE a non-exclusive, irrevocable, perpetual, transferable, worldwide license(s) to use and/or reproduce the Product as defined on the face of GE's purchase Agreement ("Order Document"). Such License Grant supersedes any End User License Agreement, Shrinkwrap or Clickwrap terms in conflict therewith. At a minimum, GE shall always maintain the right to transfer the license to another GE business, subsidiary or affiliate. GE shall have the right to use, reproduce, and install, the Software in accordance with the License Type(s) specified on the Order Document. Definitions of the commonly-used License Type are as follows:

- a) Enterprise License (or equivalent). GE may install the Software on any and all GE computers and Networks worldwide and allow use by an unlimited number of Users;
- b) Server License (or equivalent). GE may install the Software on the number of central processing units (CPUs) specified on the Order Document and allow access by an unlimited number of Users. GE may install, de-install, and move the Software among GE's various Computers so long as the number of CPU concurrent installations at no time exceeds the number designated on the Order Document;
- c) Concurrent/Named User License (or equivalent). GE may install the Software on any and all Computers and Networks worldwide and allow access by the number of Users designated on the Order Document.
- d) Node Locked Licenses (or equivalent). GE may install the Software on a single machine and allow access to all users of that system.

4. SCOPE OF LICENSE USE. Regardless of the License Type, GE's users, regardless of location, shall access and use the Software in accordance with the following provisions: (i) copy and use the Product in support of GE's internal, research or business operations; (ii) installation and use of the Product may be made for back-up or archival purposes, and for failover, disaster recovery, development, staging, technology integration, testing (including testing as part of any GE program to consolidate computer or network operations), and/or other such purposes, whether by GE or by Third Parties acting strictly on behalf of GE.

5. OWNERSHIP; RESERVATION OF RIGHTS. All Products/Software are licensed and not sold. Licensor reserves all rights not expressly granted herein. All ownership rights in and to the Software and Documentation (and all copies thereof) shall solely vest in and be the property of Licensor, and no implied license or right of any kind is granted to GE. Except as expressly provided herein, GE shall not allow third parties to reproduce, copy, market, sell, distribute, lease, transfer, translate, modify, adapt, disassemble, decompile, or reverse engineer (except as allowed by law) the Software or Documentation. GE shall not pledge the Software or Documentation as collateral or otherwise, and shall not encumber such Software or Documentation with any lien or security interest.

6. DELIVERY AND INSTALLATION. The delivery date for the Products are specified on the Order Document. Time is of the essence with this Agreement. By no later than the specified delivery date(s), Licensor shall provide to GE, in electronic format (by dongle if software requires) and/or by computer media, the Software and all related Documentation, all necessary passwords, instructions, materials and/or information to allow successful installation of the Product and any updates to Software. Upon delivery of the Software to GE, GE will install the Software, or in the event installation by Licensor is included in the Order Document, Licensor shall promptly install the Software. Licensor certifies that any administrative accounts set up by Licensor for the installation of Software (or other purposes) can: (i) easily be disabled by GE; or (ii) that Licensor will transfer all such accounts and related passwords to GE – with GE being able to establish new passwords values unknown by Licensor – at or before the completion of installation.

7. TECHNICAL INTEGRATION. If technical integration testing is indicated as an item on the Order Document, prior to delivery of the Product to GE, Licensor shall develop testing procedures and provide them to GE for its approval (such approval not to be unreasonably withheld). Such testing procedures shall be sufficient to test the functionality of the Product in GE's operating environment and using GE's data. Within thirty (30) days after installation of the Product, Licensor shall apply such testing procedures and, if such procedures are satisfied and the Product otherwise conforms to its specifications and the requirements of this Agreement, Licensor shall certify to GE that acceptance testing may commence. In the event that the Software fails to pass any of Licensor's testing procedures within said thirty (30) day-period, Licensor must make a good faith effort during the following thirty (30) days to remedy defects and functional/operational issues prohibiting successful testing. If testing fails after completion of this second thirty-day period, GE may cancel this Agreement and require immediate refund of all sums paid to Licensor, in addition to any other remedies accorded by law or under this Agreement.

8. ACCEPTANCE TESTING. (a) If the Order Document specifies "Acceptance Testing", then GE shall conduct acceptance testing of the Product within thirty (30) days of Product installation provided that, if applicable, the Product has passed the technical interoperability and integration testing required elsewhere under this Agreement. Successful completion (as determined solely by GE) of acceptance testing will require GE's acceptance of the Product. If the Product fails to pass any of the GE testing procedures or fails to function properly or in conformity with any specifications set forth in the Documentation, other written materials relating to the Product provided to GE, Licensor will have fourteen (14) days, from date of receipt of notification of failure from GE, to correct such defect and cause the Product to successfully pass all such tests or functionality, failing which GE may cancel this Agreement and require immediate refund of all sums paid to Licensor under this Agreement. (b) In the event that errors identified during GE's acceptance tests prevent GE from continuing or completing its acceptance tests, then such thirty (30) day acceptance testing period shall be extended by the elapsed time taken by Licensor to rectify the errors, which shall not exceed fourteen (14) days. Successful completion of an acceptance test does not absolve Licensor from the responsibility to provide bug fix and security patches to GE throughout the Licensor defined service life of the Software.

9. CUSTOMIZATION SERVICES. Should GE desire customizations or modifications to the Software or Documentation or other additional services related to the Product ("Additional Services"), such Additional Services shall be provided in accordance with the terms of a negotiated GE services order and the terms and conditions of the GE Global Research Service Order shall apply.

10. CONFIDENTIALITY. (a) Proprietary Information (defined in clause 28(c) below) shall remain the sole and exclusive property of the disclosing party (or the appropriate third party who provided such information to the disclosing party). Neither party shall disclose, reproduce, use, distribute, reverse engineer, decompile, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Proprietary Information, except as expressly provided in this Agreement.

(b) The disclosure of Proprietary Information does not confer upon the receiving party any license, interest, or rights in the Proprietary Information or property of the disclosing party, except as provided under this Agreement. Each party shall require its employees to abide by the restrictions of this Agreement and the receiving party shall only allow (i) its contract workers access to Proprietary Information if such contract workers are subject to nondisclosure restrictions no less protective of the Proprietary Information than this Agreement; and (ii) its employees and agents access to Proprietary Information only on a need-to-know basis.

(c) Subject to the terms set forth herein, each party shall protect the other party's Proprietary Information with the same degree of protection and care it uses to protect its own proprietary information, but in no event less than reasonable care.

(d) Proprietary Information obligations in this Section shall continue for the term of for a period of three (3) years after the date of initial disclosure unless otherwise agreed by the parties in writing.

(e) Nothing in this section shall prohibit or limit the receiving party's use of information proven by the receiving party to have been: (i) at disclosure, generally available to the public; (ii) after disclosure, generally available to the public, except through breach of this Agreement by the receiving party; (iii) in the receiving party's possession before disclosure and not acquired directly or indirectly from the disclosing party; (iv) after disclosure available to the receiving party from a third party that is not legally prohibited from disclosing such information, provided such information was not acquired directly or indirectly from the disclosing party; or (v) developed by or for the receiving party independently of the disclosure. The receiving party may disclose Proprietary Information to an agency of the U.S. government pursuant to a requirement of that government agency or by operation of law, provided the receiving party shall notify the disclosing party prior to disclosure to give the disclosing party an opportunity to seek an appropriate protective order. In the case of such disclosures to government agencies, only that part of the Proprietary Information which the receiving party is required to disclose shall be released.

11. WARRANTIES. For the term of the license, Licensor represents and warrants as to the Product and Services that:

(a) Licensor is the owner of the Product, including all associated intellectual property rights, or otherwise has the right to grant to GE the rights and licenses hereunder without violating any laws or conflicting with or infringing the rights of any third party. Licensor has the authority, license, or permission from any third party owner or security interest holder, to use said intellectual property in conjunction with the provisions of this Agreement.

(b) The Software, including any Updates and new releases, shall reside on media and/or through electronic download free from defects in manufacture, material, and workmanship and shall function properly and in conformity with performance specifications (including without limitation compatibility, capacity, reliability, throughput and interoperability requirements) in the Documentation and other written materials provided to GE that relate to the Software. Licensor agrees the Product contains no disabling features of any kind and waives any rights it has to self-help. If any original Documentation is revised or supplemented, Licensor shall deliver copies to GE at no charge in quantity equivalent to the quantity of such original Documentation.

(c) Licensor shall maintain the Product in good working order, keep it free from defects in material and workmanship, and remedy any failure of the Software to perform in accordance with this Agreement, including the warranties set forth herein, or which impairs GE's use thereof, or any other malfunction, defect or non-conformity in the Product. For the purposes of this Agreement, Updates to the Software (particularly those intended to remediate security vulnerabilities) shall be considered part of the Software and Licensor's warranty and support obligations with respect thereto shall be identical to, and coterminous with, Licensor's defined service life of the Software. Updates shall be treated for warranty purposes as the license of new software and GE shall be entitled to a separate warranty and Warranty Period for each such Upgrade. Any services delivered or performed under this Agreement shall be in accordance with the highest generally accepted standards of the profession in existence at the time such services are performed. During the Warranty Period of the Product, and for the term of any services provided hereunder, Licensor shall promptly notify GE of any defects or malfunctions in the Software or Documentation of which it learns from any source. For the full duration of the Licensor's defined service life of the Software, the Licensor will make available, through a publicly available medium, all updates required to maintain the security of the Software and remediate any Licensor-identified vulnerabilities.

(d) Warranties and Provisions for Services. If any services are purchased by GE under this Agreement, all such services furnished shall be performed by technically competent and qualified personnel in a safe and workmanlike manner, shall conform to the requirements of this Agreement including any specifications attached or referenced herein, and shall be performed in accordance with the highest generally accepted professional standards associated with the particular industry or trade.

(e) Software Updates. Licensor warrants and represents that (i) all Software Updates shall, at a minimum, be consistent with then-existing and released industry standards; (ii) no Software Upgrade will materially degrade the functionality, capabilities or features of the Product at the time of release of such Software Upgrade and; (iii) all Software Updates shall be backwardly compatible with the data structures, databases and system architectures employed with previously installed versions of the Software and Hardware provided under this Agreement and/or in use by GE nor shall such Software Upgrade require redeployment of any such data structures, databases, or system architectures.

(f) Third Party Pass-Through. Licensor hereby assigns to GE any and all manufacturers' or suppliers' warranties, guarantees, representations, services agreements and indemnities, if any, with respect to any third party hardware and software delivered by Licensor hereunder (i) to the extent assignable by Licensor; and (ii) only if the terms of such warranties, representations, services agreements, and indemnities are more favorable to GE than Licensor's warranties, representations, service agreements and indemnities hereunder. To the extent such warranties, guarantees, representations, services agreements and indemnities are not assignable by Licensor, Licensor agrees that GE may assert or enforce any right that GE may have to enforce such warranties, guarantees, representations, service agreements and indemnities, or if such can only be enforced by Licensor and in its own name, upon GE's request and at GE's sole expense, Licensor shall take all reasonable action requested by GE to enforce such warranties, guarantees, representations, service agreements and indemnities.

(g) Remedies for Breach of Warranty. If the Product does not meet the warranties during the Warranty Period or the term of any Support Services, Licensor shall provide, at no charge, the software and support required to attain the warranted standards. If Licensor cannot meet the warranties by performance of Support Services within the time frames and pursuant to the terms and conditions of this Agreement, GE shall have the right, in its sole discretion, and in addition to any other remedies, to one or more of the following remedies:

- (i) full or partial refunds of the license fees and/or support services fees from Licensor;
- (ii) reimbursements by Licensor for the reasonable costs of a consultant to fix the Software; or

(iii) acceptance of impaired performance by GE in exchange for a full setoff/credit from Licensor against license fees and/or support services fees.

(h) Disclaimer of Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS ORDER AND THOSE CONTAINED IN OR IMPLIED BY LICENSOR'S BROCHURES, LITERATURE, PAMPHLETS, SAMPLES AND PRODUCT DEMONSTRATIONS, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED EXCEPT AS PROVIDED BY APPLICABLE LAW.

12. INDEMNIFICATION. Licensor, at its own expense, shall indemnify and hold harmless GE, GE Affiliates, and their directors, officers, employees, agents, successors and assigns, and defend any action brought against same with respect to any claim, cause of action, liability, damage, cost, loss or expense, including attorneys' fees and expenses, based on a claim that any information, design, specification, instruction, trade secrets, software, data, or material furnished by Licensor, including the Product (collectively, "Materials"), in connection with this Order infringes or violates any patent, copyright, trade secret, license, or other proprietary right of any third party. Licensor shall control such defense and all negotiations relative to the settlement of any such claim; provided, however, that Licensor shall not enter into any settlement or compromise that adversely affects any rights of or imposes any obligation or liability on GE without the prior consent of GE. Upon Licensor's request, GE will provide Licensor with the assistance, information, and authority reasonably necessary to perform the above defense, and Licensor shall reimburse GE for reasonable out-of-pocket expenses incurred in providing such assistance. GE may, at its own expense, further assist in such defense if it so chooses. GE shall promptly provide Licensor with written notice of any claim which GE believes falls within the scope of this Section; provided, however, that failure by GE to provide such notice shall not affect Licensor's obligations under this Section to the extent that Licensor is not materially prejudiced thereby. At any time after Licensor becomes aware of any such claim, Licensor shall, to the extent possible, procure for GE the right to continue to use the Materials. If the Materials or any portion thereof is held to constitute an infringement and its use is enjoined, Licensor shall, at its option and at its own expense: (i) modify the infringing Materials without impairing in any respect the functionality or performance, so that it is non-infringing; (ii) procure for GE, at Licensor's cost, the right to continue to use the infringing Materials; or (iii) replace the Materials with an equally suitable, non-infringing replacement, which GE shall have the right to subject to reasonable acceptance testing. If none of the foregoing alternatives are available to Licensor, GE shall receive, in addition to its rights and remedies available to it under this Agreement and pursuant to law, a repayment of all license fees and Support Services fees paid to Licensor plus any costs incurred by GE in the removal of such Materials and installation of alternative products. Licensor shall accept return of the Materials at its expense, once GE has arranged for the continuation of the functions performed thereby. THIS STATES LICENSOR'S ENTIRE LIABILITY WITH RESPECT TO INDEMNIFICATION FOR PATENT, TRADEMARK, COPYRIGHT AND TRADE SECRET INFRINGEMENT FOR THE PRODUCT.

13. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. THIS LIMITATION OF LIABILITY SHALL NOT APPLY IN THE CASE OF A BREACH OF EITHER PARTY'S OBLIGATIONS OF CONFIDENTIALITY OR TO THE ABOVE INDEMNIFICATION OBLIGATIONS (CLAUSE 12).

14. TERM AND TERMINATION. This Agreement shall remain in effect for the duration(s) specified on the Order Document, or until terminated as provided below. Without prejudice to any other remedies at law or in equity, the parties shall have the right to terminate this Agreement: (a) if the other party commits a material breach of this Agreement which remains uncured thirty (30) days after written notice of breach is delivered to the other party; (b) immediately upon breach by either party of any obligations set forth in Section 5, 6, 8, 10, or 11; (c) by either party on thirty (30) days notice if the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws, laws of debtor's moratorium or similar laws, or suffers a material adverse change in financial condition affecting its ability to perform; (d) GE, at its sole option, may terminate this Agreement by giving written notice of the occurrence of any of the following: (i) discovering that any representation or warranty made by Licensor proved to be false or misleading or Licensor materially failed to perform any of its covenants, agreements or conditions (ii) Licensor fails to correct deficiencies pursuant to the provisions of this Agreement; or (e) GE may terminate, by registered letter, with return receipt requested, upon three (3) months notice.

15. EFFECT OF TERMINATION. If Licensor terminates this Order for GE's material breach: (a) all Licenses shall promptly terminate and GE shall promptly cease the use of the Software and Documentation; (b) GE shall promptly return to Licensor or destroy all Licensor property, including, but

not limited to, all copies of the Software and any other Proprietary Information of Licensor. If this Order is terminated by GE, for cause, prior to the expiration of the Warranty Period, Licensor shall refund to GE all payments made hereunder. Expiration or termination of this Agreement for any reason other than GE's material breach shall not abridge or diminish in any way the rights of GE to use the Product previously licensed or to receive Support Services as provided in this Agreement. If Licensor, except for reasons beyond its reasonable control, fails to perform or observe any of its material obligations as expressly specified in this Agreement and Licensor fails to take effective corrective action within thirty (30) days following written notice thereof by GE, GE may, without waiving its right to terminate the Agreement, accept Licensor's impaired performance and make a reasonable proportional reduction in payment for the specific defaulting Product or service. Notwithstanding and regardless of termination cause, any and all provisions or obligations contained in this Agreement which by their nature or effect are required or intended to be observed or performed after termination (including, without limitation, those related to liability, warranties, indemnities, and confidentiality) will survive the termination.

16. **AUDIT.** The parties agree to apply reasonable efforts to minimize reporting requirements in the administration of this Agreement. GE shall, upon sixty (60) days written notice, provide to Licensor, at Licensor's sole expense, written certification not more than once in twelve (12) consecutive months, of GE's compliance with the license terms of this Agreement. Such report shall include information reasonably requested by Licensor relating to deployment within GE of Licensor's products covered by this agreement.

17. **ESCROW.** (a) **Source Code License.** Licensor grants to GE a non-exclusive, perpetual, irrevocable, license upon a release event to use, copy, maintain, modify and enhance (either itself or through third-parties) the source code of the Software, and any runtime software necessary to execute the Software, including but not limited to compilers, interpreters and templates, and to use such materials to prepare Derivative Works of each Software; and assemble or compile additional copies of each Software, including the Derivative Works so prepared. "Derivative Work" means any revision, enhancement, modification, translation, abridgement, condensation, expansion, or extension related to the Product. A Derivative Work shall also include any compilation that incorporates a preexisting work related to the Product.

(b) **Escrow Agreement.** Upon request by GE, Licensor shall place in escrow with a reputable escrow agent a fully commented and documented copy of the Software source code, including a listing thereof and Commentary. Licensor shall be responsible for all charges incurred in establishing and maintaining such escrow account. If Licensor corrects any defects in, or provides any revision to, the Software hereunder, or under any software maintenance agreement, Licensor shall simultaneously furnish the escrow agent a corrected or revised copy of the source code form of the Software, a revised listing thereof, and revised Commentary.

(c) **Release Conditions.** GE shall be entitled to a copy of the escrowed materials if: (i) Licensor ceases doing business and its business is not continued by another corporation or entity, or is continued by another corporation or entity which GE for reasonable cause deems unsatisfactory; (ii) Licensor becomes insolvent or party to any bankruptcy or receivership proceedings or makes an assignment for the benefit of creditors.

18. **IMPORT/ EXPORT REGULATIONS.** Both parties agree to comply with all applicable trade control laws and regulations of the United States or other countries of intermediate or final delivery of Products or Services. Licensor shall promptly inform GE of all components of the Product or of all enhancements, modifications, revisions, or Updates thereto (including Software Updates), that are subject to United States export laws and regulations.

19. **ASSIGNMENT.** GE may assign, sublicense, or otherwise transfer this Agreement, the Product or any part thereof to any GE parent, affiliate, operation, or subsidiary or any successor organization which acquires GE or any GE parent, affiliate or subsidiary or into which GE or GE parent, affiliate or subsidiary or portion thereof is merged, sold or otherwise transferred. Any assignment of this Order by Licensor without GE's prior written consent shall be null and void.

20. **PUBLICITY.** Licensor shall not: (i) use the name, trade name, trademark, trade device, service mark, logo, symbol or any abbreviation, contraction or simulation thereof, owned by GE or its Affiliates (the "Marks") in any advertising, marketing, promotional materials, publicity, client list, press release, case studies, references, Internet posting, or otherwise; or (ii) represent, directly or indirectly, that any product or service has been approved or endorsed by GE. Neither party shall disclose the existence or terms of this Agreement to any third party without the prior written approval of the other. These obligations will survive the cancellation or other termination of this Agreement.

21. GOVERNING LAW AND VENUE. This Agreement and performance hereunder shall be governed by, subject to, and interpreted in accordance with the laws of the State of New York without regard to conflicts of laws principles. Any and all proceedings arising out of or relating to the subject matter hereof must be brought and maintained in a court of competent jurisdiction located in Schenectady or Albany county in the State of New York; the parties agree these courts shall have exclusive jurisdiction. The parties disclaim application of the UN Convention on the International Sale of Goods.

22. MISCELLANEOUS. Each party acknowledges that this Agreement, including all documents incorporated by reference, constitute the complete and exclusive statement of the terms and conditions between the parties regarding its subject matter, and supersedes and merges all prior or contemporaneous oral, and all prior written proposals, understandings and representations, as well as all other agreements between the parties relating to the subject matter of this Agreement. In the event of a conflict between this Agreement and any documents incorporated by reference, this Agreement shall control. This Agreement may not be modified or altered except by written instrument duly executed by the parties to be bound. All communications required or otherwise provided under this Agreement shall be in writing, in English, and shall be deemed given when delivered (i) by hand, (ii) by registered or certified mail, postage prepaid; (iii) by a nationally recognized overnight courier service to the address set forth on the Order Document. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another. In case any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. No provision of this Agreement shall be construed to provide or create any third party beneficiary right or any other right of any kind in any third party, with the exception of those provisions applying to the rights of the United States Government. The rights and remedies of the parties are not exclusive and are in addition to any other rights and remedies available to the parties at law or in equity. Licensor acknowledges it has received a copy of GE's Supplier Integrity Guide (available at <http://www.research.ge.com/sourcing/>) and shall comply with applicable policies. The term "days" used herein shall in all cases mean calendar – unless otherwise specified.

23. PRODUCT SPACE. If Licensor releases an alternative software product that substantially incorporates the functionality of the Product, Licensor shall make such software product available to GE at no additional cost pursuant to the Software Maintenance Agreement.

24. GOVERNMENT USE. The Software is provided with restricted rights only; use, duplication or disclosure by the U.S. Government is subject to restrictions set forth in this Agreement and in subparagraph (c)(1) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19; subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, subparagraph (d) of the Commercial Computer Software Licensing clause at NASA FAR supplement 16-52.227-86; or their equivalent.

25. LICENSE EXTENSION. GE will have the option to extend the Licenses provided under this Agreement to include concurrent use of the Software at additional Sites within GE, which it may exercise in its sole discretion at any time and from time to time by tendering to Licensor payment pursuant to the Order Document for each additional Site at which the Software will be so used, together with a notice identifying such additional location.

26. U.S. CODE SECTION 365(n). All rights and licenses granted under this Agreement are deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "Code"), licenses to rights to "intellectual property" as defined under the Code. The parties agree that GE shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Licensor, GE retains all rights under this Agreement.

27. PURCHASE OF SERVICES. If this Order includes the provision of software support or maintenance services, then the following additional terms and conditions shall apply to this Agreement:

- (d) If Licensor's work under this Order involves operations by Licensor on the premises of GE or one of its customers, Licensor shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work, and except to the extent that any such injury or damage is due solely to GE's or its Customer's

negligence, shall defend and indemnify GE against any claim which may result in any way from any act or omission of Licensor, its agents, employees or subcontractors.

- (b) Notwithstanding the any other provisions of this Agreement, Licensor shall keep confidential any technical, process or economic information provided by or derived from drawings, specifications and other data furnished by GE in connection with this Order and shall not directly or indirectly divulge such information for the benefit of any other party without obtaining GE's prior written consent (and, if applicable, the consent of the U.S. Government). Except as required for the efficient performance of this Order, Licensor shall not use such information or make or permit copies to be made of such information without prior written consent of GE. If any reproduction is made with prior consent, notice referring to the requirements of the foregoing paragraph shall be provided thereon. Upon completion or termination of this Agreement, Licensor shall promptly return to GE all materials incorporating any such information and any copies thereof, except for one record copy.
- (c) Licensor is and shall remain for all purposes an independent contractor, and it shall have no power, nor shall it represent that it has any power, to bind GE or to assume or create any obligation, expressed or implied, on behalf of GE.
- (d) "Personal Data" includes any information relating to an identified or identifiable natural person; "GE Personal Data" includes any Personal Data obtained by Licensor from GE; and "Processing" includes any operation or set of operations performed upon Personal Data, such as collection, recording, storage, alteration, retrieval, consultation, disclosure by transmission, blocking, or destruction. (ii) Licensor, including its staff, shall Process GE Personal Data only on a need-to-know basis and only to the extent necessary to perform this Agreement. (iii) Licensor shall use reasonable technical and organizational measures to ensure the security and confidentiality of GE Personal Data. Licensor shall immediately inform GE of any breach of this undertaking. (iv) These undertakings shall remain in force until Licensor no longer possesses GE Personal Data. Upon termination of this Agreement, for whatever reason, Licensor shall stop Processing GE Personal Data, unless instructed otherwise by GE. (v) Licensor agrees that GE may require Licensor to provide certain Personal Data ("Licensor Personal Data") such as the names, telephone numbers, and e-mail addresses of Licensor's representatives and that GE may store such data in databases located and accessible globally and use it for purposes reasonably related to this Agreement. Licensor agrees it will comply with legal requirements associated with transferring Licensor Personal Data. GE agrees to use reasonable technical and organizational measures to ensure that Licensor Personal Data is processed in conformity with applicable data protection laws.

28. ACCESS TO GE'S PREMISES. Notwithstanding any other terms contained herein, Licensor shall not be permitted access to GE's premises (either physical access or through remote administration systems) without GE's advance authorization. If GE does grant Licensor access to GE's premises, Licensor shall at all times: (i) take all necessary precautions to prevent the occurrence of any injury to persons or damage to property; (ii) strictly follow GE instructions and processes with regard to safety, IT security, and physical security; and (iii) except to the extent that any injury or damage is due solely to GE's negligence, shall defend and indemnify GE against any claim which may result in any way from any act or omission of Licensor, its agents, employees, or subcontractors.

29. DEFINITIONS. In addition to other terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

(a) "**Commentary**" shall include explanations, flow charts, schematics, algorithms and subroutine descriptions, memory and overlay maps, statements of principles of operations, and architecture standards, describing the data flows, data structures, and control logic of the escrowed software and any other documentation of the source code form of the escrowed software, all in sufficient detail to enable a trained programmer through study of such materials to maintain and/or modify the escrowed software without undue experimentation

(b) "**Computer(s)**" shall mean any digital system incorporating display and/or communications capabilities, including without limitation, any and all computers, computing devices, personal digital assistants, or digital telephones, which are (i) owned, leased, rented by GE, or (ii) owned by a third party and controlled at the time of use by GE, or (iii) outsourced, managed or operated by any third party for the benefit of or on behalf of GE.

(C) "**Proprietary Information**" shall mean any information, data, or communications conveyed by the disclosing party to the receiving party in relation to this Agreement; provided that such



information is (i) at the time of disclosure, in writing or other tangible form, clearly identified on its face as being confidential or proprietary; or (ii) when initially disclosed in oral or other intangible form, identified as proprietary or confidential at the time of disclosure by the disclosing party, and then reduced to a properly marked tangible form and provided to the receiving party within thirty (30) calendar days from the date of the initial disclosure.

(d) **"Documentation"** shall mean all materials supplied under this Agreement with the exception of the Software, as hereinafter defined, including any and all installer's, operator's and user's manuals, training materials, sales and marketing literature, "technical white papers", guides, functional and/or technical specifications, Commentary, listings and other materials, (including, without limitation, all materials describing the interoperability of the Product with other Hardware or software), in any or all media, for use in conjunction with the Software.

(e) **"GE"** shall mean General Electric Company; its successors and assigns; any and all components (including, but not limited to its individual operating businesses or divisions), subsidiaries, parents, affiliates and joint-venture partners worldwide of General Electric Company; all entities controlling, controlled by, or under common control with General Electric Company; and all entities which may hereafter control, be controlled by, be under common control with, or become affiliated with General Electric Company.

(f) **"Hardware"** shall mean the Computers and related equipment on which the Software is to be run

(g) **"Licenses"** mean all software licenses granted to GE under this Agreement.

(i) **"Network"** shall mean an aggregation of Computers, or any other devices which may perform the functions of computation, data storage, and/or data communications, and which are interconnected by cable or wireless communications means so as to permit the passage of machine-readable information among two or more such devices; Network shall include without limitation any publicly accessible communications systems capable of digital and/or analog communications, which systems may be generally known as the Internet, the World Wide Web, or other designation.

(j) **"Site"** shall mean one or more buildings or portion(s) thereof that are (i) used in the conduct of GE business, and (ii) are under common management control within GE's structure.

(k) **"Software"** shall mean the computer program supplied under this Agreement, in object (executable) form including without limitation any Work Product, Updates (and consisting, with respect to any such item of Software, of a "Server Component" and a "GE Component") and associated magnetic media relating to such Software.

(l) **"Support Services"**, if applicable, shall mean the services performed by Licensor for GE hereunder, as described in the Order Document or its attachments. In all circumstances, any on-site Support Services are subject to all GE safety policies in place at the time of delivery.

(m) **"Product"** shall mean, as of the Effective Date of this Agreement any products or goods included on the Order Document, as well as all related materials, documents, information and modifications thereof, and received by GE from Licensor pursuant to this Agreement. Product includes, without limitation, the Software and the Documentation.

(n) **"Third Parties"** shall mean, in the case of GE, contractors, business partners, customers and prospective customers, and suppliers of GE.

(o) **"Updates"** mean all revisions, patches, fixes, new releases and other improvements to the Software in object (executable) code form which Licensor may provide to GE under this Agreement or any other agreement between the parties, in the sole discretion of Licensor.

(p) **"Users"** means GE's officers, employees, contractors, consultants, and Third Parties Joint Venture partners engaged in work on behalf of GE and in the provision of services by such parties to GE's [clients][customers][third parties], worldwide, whether on or off Site and regardless of whether the Software is installed on Computer(s) or accessible and operable from the Web ("Web-based Software")

(q) **"Warranty Period"** shall mean ninety (90) days beginning on the date of GE's acceptance of the Product, or, in the case of a Software Upgrade, ninety (90) days from the acceptance of such Software Upgrade, as hereinafter defined.

(r) **"Work Product"** means all modifications, revisions, and derivative works of the Software and other deliverables as may be provided to GE by Licensor and are not otherwise owned by GE in

accordance with the provisions of this Agreement. For purposes of this Agreement, "Work Product" is a part of the Software.