

## GE DIGITAL GENERAL TERMS AND CONDITIONS

### SOFTWARE AND SUPPORT SERVICES ONLY

The license or provision of the GE products and services ("GE Offerings") by the GE Digital business ("GE") providing this proposal or quote is expressly conditioned upon the terms and conditions contained or referred to herein. Any authorization by Customer to furnish the GE Offerings or order placed by Customer for GE Offerings will constitute acceptance of these terms and conditions.

#### 1. **DEFINITIONS.**

The capitalized terms used in this Agreement shall have the meaning given to them below. Words imparting the singular shall also include the plural and vice versa, as the context requires. GE and Customer are each referred to herein as a "Party" and together as "Parties." The term "General Terms and Conditions" shall mean the body of the text that follows and all appendices included therein. The term "Agreement" shall mean, collectively, these General Terms and Conditions and any Order issuing from the attached quote or proposal.

1.1. "**Affiliate**" means, with respect to a Party, an entity that controls, is controlled by, or is under common control with such Party, where control means ownership, directly or indirectly, of 50% or more of the voting shares of the subject entity or the right to appoint a majority of the board of directors of the subject entity.

1.2. "**Confidential Information**" of a Party means all of that Party's information and documentation disclosed to or accessed by the other Party in connection with this Agreement that is marked (or, if disclosed other than in writing, designated at the time of disclosure) as "confidential" or with a similar designation, including any information developed by reference to or use of the other Party's Confidential Information. GE's Confidential Information includes the GE Offerings. "Confidential Information" does not include information that: (a) is independently developed by the receiving Party, as demonstrated by the recipient's written records, without violating the disclosing Party's proprietary rights; (b) is or becomes publicly known (other than through unauthorized disclosure); (c) is disclosed by the owner of such information to a third party free of any obligation of confidentiality; (d) is already known by the receiving Party at the time of disclosure, as demonstrated by the receiving Party's written records, and the receiving Party has no obligation of confidentiality other than pursuant to this Agreement; or (e) is rightfully received by the receiving Party free of any obligation of confidentiality or (f) records which are considered "public records" under the Illinois Freedom of Information Act (5 ILCS 140/1, *et. seq.*). The foregoing subsection (f) applies to the extent GE may be performing a governmental function on behalf of Customer, records in GE's possession that relate to this Agreement, unless exempt under FOIA, may also be considered public records subject to inspection by the public. Therefore, GE agrees to cooperate with Customer the event a FOIA request for such records is received, and agrees to provide Customer with the requested records within two (2) business days.

1.3. "**GE Offerings**" means, collectively, the Software and Support Services provided by GE in accordance with this Agreement.

1.4. "**Infringement Claim**" is defined in Section 9.1.

1.5. "**Open Source Software**" means any software that is distributed as "free software," "open source software" or under a similar licensing or distribution model, including without limitation the GNU General Public License (GPL) (including the GNU Affero GPL License), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License.

1.6. "**Software**" is defined in Section 3.1.

1.7. "**Support Services**" means services associated with the support programs described in Appendix A.

1.8. "**Third Party Software**" is defined in Section 3.3.

#### 2. **SCOPE; ORDERS.**

2.1. **Scope.** Any offer made by GE herein is expressly conditioned upon acceptance of this Agreement, which sets forth the sole and exclusive terms and conditions that govern any Order for the provision of the GE Offerings. Any purchase order, order receipt, acceptance, confirmation, correspondence, online terms, or other confirmatory documents presented by Customer shall be deemed to be presented for payment purposes only. GE rejects, and shall not be bound by, any additional or different terms contained in such documents.

#### 3. **SOFTWARE.**

3.1. **Scope.** As used herein, the term "Software" shall mean certain computer software and related documentation described in an Order, that is provided to Customer by digital download or on physical media for Customer's installation on Customer's computers, including any updates or upgrades provided by GE in connection with Support Services.

As used herein, the term "Software" excludes any software hosted by or on behalf of GE and provided as a service.

3.2. **Licenses.** Subject to Customer's payment of all applicable fees and compliance with this Agreement, GE grants

to Customer a limited, non-transferable, nonexclusive license, for the license period specified in the applicable Order, to use the Software provided pursuant to an Order for Customer's internal business use. Customer must comply with any license scope or usage limitations (such as named user, concurrent user, processor, server, site, facility, or asset based limitations) described on the applicable Order. Customer shall not license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, or commercially exploit the Software, or make the Software available to any third party, other than as expressly permitted by this Agreement.

3.3. **Separately Licensed Software.** Some Software may be supplied to Customer under a separate license agreement, including Open Source Software ("Third Party Software"). Customer's use of such Third Party Software will be governed by such separate license agreements. GE shall have no warranty, support, maintenance, or other obligations or liability under this Agreement with respect to such Third Party Software.

3.4. **Customer Responsibilities.** Unless otherwise specified in an Order, Customer shall be solely responsible for: a) properly installing, configuring, and using the Software in accordance with applicable documentation, b) providing any hardware, equipment, and physical infrastructure necessary to run the Software, c) providing any third party software not included in the Software, d) maintaining the security, privacy, and backup of Customer Content, e) compliance with applicable laws related to the use, storage, or processing of Customer Content, f) the proper operation, control, and maintenance of Customer equipment monitored by the Software, and g) applying patches, bug fixes, upgrades, and updates of the Software or third party software.

3.5. **GE Software Warranty.** GE warrants that as of the date of delivery by GE, Software will materially conform with the written product documentation supplied with the Software. If within ninety (90) days of the date of delivery it is shown that the Software does not meet this warranty, GE shall, at its option, either correct the defect or error in the Software, free of charge, or make available to Customer satisfactory substitute software, or, if none of the foregoing is reasonably practicable, offer to return to Customer all payments made as license fees therefor after Customer certifies that it has returned or deleted all copies of the Software in its possession. The remedy provided in this Section shall be Customer's exclusive remedy, and GE's sole obligation and liability, for any breach by GE of the foregoing warranty.

3.6. **DISCLAIMERS.** WITHOUT LIMITING THE DISCLAIMERS IN SECTION 6.2, GE SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT: (I) SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR WILL MEET CUSTOMER'S SPECIFIC NEEDS; (II) SOFTWARE WILL DETECT ANY PARTICULAR FAILURE, FAULT, OR CONDITION, OR PROVIDE ANY PARTICULAR DEGREE OF ADVANCE WARNING OF AN IMPENDING FAILURE, FAULT OR CONDITION OF THE CUSTOMER EQUIPMENT; OR (III) CYBERSECURITY SOFTWARE WILL PROVIDE COMPLETE OR COMPREHENSIVE PROTECTION AGAINST ALL POSSIBLE SECURITY VULNERABILITIES OR UNAUTHORIZED INTRUSIONS.

3.7. **Delivery.** Unless otherwise specified in an Order, Software will be made available for electronic download by Customer. GE shall be deemed to have delivered Software when GE makes the Software available for download by Customer. If an Order specifies that Software is to be delivered to Customer on physical media, then delivery of physical media will be made FCA GE's facility (Incoterms 2010). No title to the Software shall be transferred.

3.8. **Return or Destruction.** Upon the expiration of Customer's license, or its earlier termination in accordance with this Agreement, Customer shall certify, at GE's written request, the deletion or return of all copies of Software in Customer's possession.

#### 4. **DELIVERY.**

4.1. **General.** Unless otherwise agreed by the Parties in writing: (a) GE shall determine the method and routing of all deliveries; (b) delivery dates and times are approximate and based on (i) prompt receipt by GE of all information necessary to permit GE to proceed with work immediately and without interruption, (ii) Customer's compliance with the payment terms, (iii) prompt receipt by GE of all evidence GE may request that any required export or import license, as applicable, is in effect; (c) the prices for the GE Offerings include only GE's usual quality processes, systems, and tests; and (d) partial deliveries shall be permitted.

4.2. **Packing.** Hardware or tangible media delivered by GE shall be prepared, packed, and shipped by or on behalf of GE in accordance with good commercial practices, unless otherwise agreed by the Parties. A complete packing list shall be enclosed with all shipments. Customer agrees to reimburse GE for any costs for any non-standard packing, marking, or shipping directions requested by Customer.

## **5. PAYMENT.**

5.1. **Payment Terms.** Except to the extent otherwise specified by GE in writing, invoices for GE Offerings shall be issued pro rata as shipments are made or services performed or made available. If GE consents to delay shipments after completion of any equipment, payment shall become due, title shall pass, and equipment shall be held at Customer's risk and expense as of the date when GE is prepared to make shipment. GE shall provide invoices to Customer for services rendered and Customer shall approve and thereafter pay any undisputed portions thereof in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et. seq., "the Act", within thirty (30) days from date of invoice. Approved, but unpaid invoiced amounts shall accrue interest in the manner and to the extent authorized by the Act." Also in accordance with the Act, if payment is not made within such 30 day period, an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof after the expiration of such 30 day period, until final payment is made

5.2. **Financial Condition.** If the financial condition of Customer at any time does not, in the judgment of GE, justify continued performance on the terms of payment previously agreed upon, GE may require full or partial payment in advance or otherwise shall be entitled to terminate any Order or Statement of Work and receive any early termination charges specified therein.

5.3. **Late Payments.** Shall be in accordance with Illinois Local Government Prompt Payment Act as more specifically described in Section 5.1 above.

5.4. **Sales and Similar Taxes.** GE shall be responsible for and shall pay any and all corporate and personal income taxes imposed on GE and its employees by applicable laws ("GE Taxes"). Customer shall be responsible for and shall pay to GE all taxes, duties, fees, and other charges of any nature (including, but not limited to, ad valorem consumption, excise, franchise, gross receipts, import, export, license, property, sales and use, stamp, contract duty / registration fees, storage, transfer, turnover, value-added taxes ("VAT"), Business and Occupation or other similar taxes, and any and all items of deficiency, penalty, addition to tax, interest, or assessment related thereto), imposed by any governmental authority of any country in connection with the execution or performance of the Agreement ("Customer Taxes"), but excluding GE Taxes. All prices are exclusive of Customer Taxes, which may be added by GE to Customer's invoice if applicable, unless Customer provides a direct pay or exemption certificate to GE where permitted by law. If Customer deducts or withholds any GE Taxes from payments owed hereunder, Customer shall provide to GE, within 30 days from payment, the official receipt issued by the competent government authority to which the GE Taxes have been paid, or an alternative document acceptable to the relevant tax authorities. In respect of taxes to be withheld, if any, Customer shall comply with any applicable bilateral conventions against double taxation. The Parties shall reasonably cooperate to claim any available exemptions from tax, fees, or duties that may apply to this Agreement. When Customer arranges the export or intra-European Union ("EU") community shipment, Customer shall provide to GE, free of charge and within 90 days (or, in the case of exports from the U.S., 30 days), evidence (obtained from Customer's forwarder) of exportation or intra EU community shipment. If the laws in the country in which GE performs under this Agreement, or the laws in the country of incorporation of Customer, require the Agreement to be subject to stamp duty, fee, or registration with any local authority, Customer shall be responsible for the required formalities and bear the related costs. Customer shall return to GE a copy of the registration certificate or a registered copy of the Agreement within 10 days from the due date required by said laws to apply for such fee, duty, or registration.

## **6. REPRESENTATIONS AND WARRANTIES.**

6.1. **General Conditions of Warranty.** The warranties and remedies set forth herein are conditioned upon: proper storage, installation, use, and maintenance of the GE Offering in accordance with the applicable documentation, the proper design, operation, and configuration of the system into which the GE Offering is installed, conformance with any applicable recommendations of GE, and GE's ability to reproduce and observe the claimed defect, and prompt notification to GE of any defects and, as required, promptly making any personnel and computer systems available. Any unauthorized modification to or use of the GE Offerings by Customer will void the warranty.

6.2. **Disclaimer of Implied Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, GE AND ITS AFFILIATES AND LICENSORS MAKE NO WARRANTIES, CONDITIONS, OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND GE AND ITS LICENSORS EXPRESSLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, DATA ACCURACY, SYSTEM INTEGRATION, AND FITNESS FOR A PARTICULAR PURPOSE.

6.3. **Customer Warranties.** Customer represents and warrants that it has all rights and consents necessary to disclose Customer Content to GE and to permit GE to use the Customer Content to perform GE's obligations hereunder.

## **7. OWNERSHIP.**

7.1. **Customer Content.** As between Customer and GE, Customer retains all rights, title, and interests in and to Customer Content. Except as provided in this Agreement, GE obtains no rights under this Agreement from Customer to any Customer Content.

7.2. **Service Data.** Customer consents to GE's use of Customer Content to provide the GE Offerings to Customer and to perform GE's obligations under this Agreement. Customer further agrees that GE and its Affiliates may use information derived from Customer Content or generated by the GE Offerings to maintain, protect, create, develop, and improve the GE Offerings and other GE products and services, to the extent permitted by applicable law.

7.3. **Reserved Rights.** Customer acknowledges that the GE Offerings are protected by the copyright, patent, trade secret, trademark, and/or other intellectual property laws of the United States and other countries. As between GE and Customer, GE (or its Affiliates and licensors) own and reserve all rights, title, and interests in the GE Offerings, except those rights and licenses expressly granted to Customer by this Agreement.

7.4. **Restrictions.** Except as expressly authorized by this Agreement, Customer shall not (a) sublicense, copy, distribute, modify, or create derivative works of any GE Offering, except to the extent authorized by GE under separate agreements, (b) reverse engineer, disassemble, or decompile any GE Offering or apply any other process or procedure to derive the source code of the GE Offerings, (c) access or use the GE Offerings in a way intended to avoid incurring fees or to exceed usage limits or quotas, or (d) remove, alter, or obscure any proprietary notices that accompany the GE Offerings; or authorize or assist others to do any of the foregoing.

7.5. **Suggestions.** If Customer provides GE or its Affiliates with any feedback or suggested improvements to the GE Offerings, then Customer consents to GE's use and implementation of such suggestions, without compensation to Customer, and as between the Parties, GE shall solely own products and services developed by or for GE from such suggestions.

## 8. **CONFIDENTIALITY.**

8.1. **Non-Disclosure and Non-Use.** Subject to the Freedom of Information Act, a Party receiving Confidential Information (the "Receiving Party") shall not directly or indirectly, at any time, without the prior written consent of the Party disclosing such Confidential Information (the "Disclosing Party"), use or disclose the Confidential Information or any part thereof for any use other than necessary for the performance of the Receiving Party's obligations under this Agreement or as otherwise expressly permitted by this Agreement. The Receiving Party shall use reasonable efforts, but not less than those efforts it uses to protect its own information of a similar nature, to avoid disclosure, dissemination, or unauthorized use of the Confidential Information of the Receiving Party.

8.2.

**Compelled Disclosure.** If the Receiving Party is requested by a governmental authority to disclose any Confidential Information, it shall promptly notify the Disclosing Party, to the extent permitted by law, to permit the Disclosing Party to seek a protective order or take other appropriate action, and shall assist in such activities. The Receiving Party shall only disclose that part of the Confidential Information as is required by law to be disclosed and the Receiving Party shall use commercially reasonable efforts to obtain confidential treatment therefor.

8.3. **Injunctive Relief.** In addition to any other rights and remedies under this Agreement or at law, the Receiving Party acknowledges and agrees that, due to the nature of the Confidential Information, its confidentiality obligations to the Disclosing Party under this Agreement are of a unique character and agrees that any breach of such obligations may result in irreparable and continuing damage to the Disclosing Party for which there may be no adequate remedy in damages and accordingly the Disclosing Party shall be authorized and entitled to seek injunctive or other equitable relief.

## 9. **INDEMNIFICATION.**

9.1. **By GE.** GE shall, at GE's expense, defend or, at GE's option, settle any claim brought against Customer by a third party that any GE Offering infringes any third party's United States patent, copyright, trademark, or trade secret (an "Infringement Claim"), and pay any final judgments awarded by a court of competent jurisdiction or settlements entered into by GE on Customer's behalf. As a condition of GE's obligation, Customer must notify GE promptly of any Infringement Claim in writing, tender to GE sole control and authority over the defense or settlement of such claim, and reasonably cooperate with GE and provide GE with available information in the investigation and defense of such claim. Any effort by Customer to settle an Infringement Claim without GE's involvement and written approval shall void any indemnification obligation hereunder. If use of any GE Offering becomes, or in GE's opinion is likely to become, enjoined or subject to a valid claim of infringement, GE may, at GE's option, (i) procure, at no cost to Customer, the right to use such GE Offering, or (ii) modify the GE Offering or provide a substitute that is non-infringing. If the foregoing is not commercially reasonable, GE may terminate Customer's license to the affected Software and refund the license fees. GE shall have no obligation or liability under this Section for any Infringement Claim to the extent caused by: (a) a modification to the GE Offerings not provided or performed by GE,

(b) Customer Content and Customer designs and specifications, (c) the combination of the GE Offerings with other hardware, software, content, or services not provided by GE, (d) use of an infringing GE Offering after GE has provided a non-infringing alternative, or (e) use of the GE Offerings beyond the scope authorized by this Agreement or contrary to applicable documentation. This Section states GE's sole obligation and exclusive liability, and Customer's sole remedy, for any third party claims of infringement or misappropriation of any intellectual or proprietary right.

#### 10. **LIMITATIONS OF LIABILITY.**

EXCEPT IN INSTANCES OF GE'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT, GE, INCLUDING ITS AFFILIATES AND LICENSORS, SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR REVENUE, USE, GOODWILL, DATA, OR COSTS OF SUBSTITUTE GOODS OR SERVICES, REGARDLESS OF THE THEORY OF LIABILITY. CUSTOMER IS SOLELY RESPONSIBLE FOR, AND BEARS ALL RISKS ASSOCIATED WITH THE CONTROL, OPERATION, AND USE OF CUSTOMER EQUIPMENT. EXCEPT TO THE EXTENT DIRECTLY CAUSED BY GE'S NON-COMPLIANCE WITH THE APPLICABLE GE DATA PROTECTION PLANS, GE SHALL HAVE NO LIABILITY ARISING FROM CYBERATTACKS OR UNAUTHORIZED INTRUSIONS. GE, INCLUDING ITS AFFILIATES AND LICENSORS, SHALL NOT BE LIABLE FOR CLAIMS ARISING OUT OF THIS AGREEMENT IN A CUMULATIVE AMOUNT EXCEEDING CUSTOMER'S ACTUAL DIRECT DAMAGES, UP TO THE AMOUNTS PAID BY CUSTOMER FOR THE PRODUCT OR SERVICE GIVING RISE TO THE LIABILITY.

#### 11. **TERM AND TERMINATION.**

11.1. **Term.** The term of this Agreement will commence on the date that GE executes or accepts the Order governed by this Agreement and will remain in effect until the termination or expiration of such Order and any renewals thereof, as provided herein.

11.2. **Automatic Renewal.** Except as otherwise stated in the Order, each license or subscription for Software having a fixed and limited initial term shall be renewed automatically for successive one (1) year renewal terms, unless a Party provides the other Party with written notice of its intent to not renew at least thirty (30) days prior to the end of the initial or successive term.

#### 11.3. **Termination.**

11.3.1. **For Breach.** Either Party may terminate this Agreement, or any individual Order or Statement of Work, for a material breach by the other Party, which breach is not cured within thirty (30) days of written notice provided to the breaching Party, or which breach is incapable of being cured.

11.3.2. **For Insolvency.** A Party may terminate this Agreement upon notice to the other Party if the other Party becomes insolvent, makes an assignment for the benefit of creditors, has a receiver or trustee appointed, or is the subject of a proceeding under bankruptcy or insolvency law that is not dismissed within thirty (30) days of the filing date thereof.

11.3.3. **Effect of Termination.** The expiration or termination of this Agreement, or of any Order or Statement of Work, shall terminate the licenses granted and services provided thereunder, except as otherwise provided in Section 11.1 or agreed in writing. Upon any termination or expiration of this Agreement, the following Sections survive: 5 (Payment), 7 (Ownership), 8 (Confidentiality), 9 (Indemnification), 10 (Limitations of Liability), 11 (Term and Termination), and 12 (Miscellaneous).

11.4 **Deletion of Expired Software.** Upon the expiration or termination of any license to Software (including the expiration of a limited-term license), unless otherwise renewed, Customer shall immediately uninstall and delete or return to GE all copies of such Software. At GE's request, Customer shall promptly deliver to GE a written certification, signed by a duly authorized representative, that Customer has not retained any copies of such Software.

## 12. MISCELLANEOUS.

12.1. **Performance by GE.** GE shall have the right to use subcontractors and Affiliates to perform its obligations under this Agreement, and in such event, GE shall remain responsible to Customer for such obligations.

12.2. **Excusable or Delayed Performance.** GE shall not be liable for delays or nonperformance due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of Customer, prerequisite work by others, acts of civil or military authority, government priorities, changes in laws or regulations, fires, strikes or other labor disturbances, floods, epidemics, war, terrorism, riot, delays in transportation or car shortages, or inability to obtain or delay in obtaining suitable labor, materials, government permits, or facilities, due to causes beyond its reasonable control. In the event of any such delay, the time of performance shall be extended for a period equal to the time lost because of the delay, or if performance is rendered impossible, GE shall be excused from performance subject to an equitable adjustment to the applicable fees. In the event GE is delayed by conditions caused by Customer or by prerequisite work by other contractors or suppliers of Customer, GE shall be entitled to an equitable price adjustment in addition to extension of the time of performance.

12.3. **Independence.** GE and Customer are independent contractors, and neither Party, nor any of their respective Affiliates, is an agent, partner, or joint-venturer of the other for any purpose or has the authority to bind the other. Both Parties reserve the right (a) to develop or have developed for it products, services, concepts, systems, or techniques that are similar to or compete with the products, services, concepts, systems, or techniques developed or contemplated by the other Party and (b) to assist third party developers or systems integrators who may offer products or services which compete with the other Party's products or services.

12.4. **No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

12.5. **Trade Compliance.** Each Party shall comply with applicable laws that govern the import, export, or re-export of data or materials supplied under this Agreement. Without limiting the foregoing, Customer agrees that it shall not sell, distribute, disclose, release, or otherwise transfer any item or technical data provided under this Agreement to: (i) any country designated as a "State Sponsor of Terrorism" by the U.S. Department of State including, for this Agreement, the countries of Cuba and North Korea (ii) any entity located in, or owned by an entity located in, a "State Sponsor of Terrorism" country, Cuba, or North Korea, (iii) the region of Crimea, or (iv) any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce, the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other applicable prohibited party list of the US Government. This clause shall apply regardless of the legality of such a transaction under local law. Except as otherwise agreed in writing between the Parties, each Party shall be responsible for obtaining and maintaining any authorization required for its performance under this Agreement (including the transfer any item or technical data under this Agreement), such as export license, import license, exchange permit or other required government export or import authorization. Each Party shall provide reasonable assistance necessary for the other Party to secure and comply with such authorizations as may be required. Each Party shall not be liable if any government export authorization is delayed, denied, revoked, restricted or not renewed despite commercially reasonable efforts by the Party. Additionally, such delay, denial, revocation or non-renewal shall not constitute a breach of this Agreement. Customer acknowledges that GE may conduct periodic screening of Customer and of its beneficial owners to comply with applicable laws and consents to the foregoing.

12.6. **Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

12.7. **Severability and Interpretation.** If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement shall remain in full force and effect. Any invalid or unenforceable portions shall be interpreted to effect the intent of the original portion. If such construction is not possible, the invalid or unenforceable portion shall be severed from this Agreement but the rest of the Agreement shall remain in full force and effect. Section headings are used for convenience only.

12.8. **Audit.** Customer agrees to permit GE or GE's designated agent, upon reasonable notice to Customer, to audit Customer's books, records, and facilities to verify Customer's compliance with the terms and conditions of this Agreement, including any usage limitations or restrictions applicable to the GE Offerings. If any audit reveals an underpayment by Customer, GE may invoice Customer for such underpayment in accordance with GE's standard policies. Customer agrees to pay such invoice in accordance with the payment terms of this Agreement. GE shall pay for any audits, unless an audit reveals that Customer has underpaid by more than 15% of the fees owed in any 3-month period, in which case, Customer shall reimburse GE for its reasonable audit costs.

12.9. **Notices.** GE may provide any notice required or permitted to be given to Customer under this Agreement by sending a written notice to the mailing or email address set forth in the Order or otherwise provided by Customer to GE during account registration, as may be updated by Customer from time to time upon written notice to GE. Notices to GE may be provided as follows:

By personal delivery, overnight courier, or U.S. Postal registered or certified mail:

GE Digital LLC  
58 Charles Street .  
Cambridge, MA 02114  
Attention: GENERAL COUNSEL

If to the Customer:

City of Aurora  
Attn: Director of Purchasing  
44 E. Downer Place  
Aurora, IL 60507

City of Aurora  
Attn: Law Department  
44 E. Downer Place  
Aurora, IL 60507

12.10. **Assignment.** Neither Party may assign this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other Party, and any assignment in violation of this provision shall be void. Notwithstanding the foregoing, GE may assign this Agreement, or any of its rights or obligations hereunder, without the necessity for obtaining consent, to any Affiliate of GE. Subject to these requirements, this Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and assigns.

12.11. **Entire Agreement.** This Agreement is the entire agreement between Customer and GE regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between Customer and GE, whether written or oral, regarding the subject matter of this Agreement.

12.12. **Amendments.** Any Amendments to this Agreement must be in writing and must be signed by both Parties. No oral agreement, course of dealing, or trade usage shall be deemed to modify this Agreement.

12.13. **Waivers.** The failure of a Party to enforce any provision of this Agreement shall not constitute a present or future waiver of such provision or limit a Party's right to enforce such provision later. All waivers must be in writing and signed by the Party issuing the waiver.

12.14. **Choice of Law.** This Agreement shall be governed by the laws of the State of Illinois, without reference to its conflict of laws provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. The exclusive fora for any litigation arising out of this contract shall be the United States District Court for the Northern District of Illinois (Eastern Division) or the Circuit Court of the Sixteenth Judicial Circuit, Kane County Illinois.

12.15. **High Risk Uses.** Customer acknowledges that the GE Offerings are not designed for real-time control or time-sensitive applications that have the potential to cause death, personal injury, or property damage or that could result in radioactive, chemical, or biological contamination or environmental damage. Customer assumes the entire risk for any such use and shall defend and indemnify GE and its Affiliates from any liability to third parties resulting therefrom. Customer agrees not to use the GE Offerings for control of any nuclear facility or activity.

12.16. **U.S. Government Contracting.** If Customer is a U.S. Government entity or procures GE Offerings for or on behalf of a U.S. Government entity, the following provisions apply: (a) Customer agrees that all GE Offerings meet the definition of "commercial-off-the-shelf" (COTS) or "commercial item" as defined in FAR 2.101, and that the subparagraph terms of FAR 52.212-5(e) or FAR 52.244-6 (or, for orders from the U.S. Government, FAR 52.212-5 and FAR 52.212-4 with tailoring to the extent permitted by FAR 12.302 by replacing all paragraphs except those listed in FAR 12.302(b) with these terms and conditions), and (subject to subsection (e) below) DFARS 252.212-7001(c) or DFARS 252.244-7000, whichever are applicable, apply only to the extent applicable to COTS or commercial items and only as appropriate for the dollar value of this order; (b) with regard to any terms related to Buy American Act or Trade Agreements, the country of origin of GE Offerings is unknown unless otherwise specifically stated in writing by GE; (c) Customer agrees that any services offered by GE are exempt from the Service Contract Act of 1965 (FAR 52.222-41); (d) Customer agrees that this sale is not funded, in whole or in part, by the American Recovery and Reinvestment Act unless otherwise set forth in a written agreement of the Parties; (e) GE makes no representations, certifications, or warranties whatsoever with respect to the ability of GE Offerings to satisfy DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals; (f) with regard to DFARS 252.204-7012, Customer agrees that no Unclassified Controlled Technical Information or Covered Defense Information shall be provided to GE, delivered by GE to Customer, or used by GE in the performance of this Agreement; and (g) Customer is solely and exclusively responsible for compliance with any other applicable statutes or regulations governing sales

to the U.S. Government, and GE makes no representations, certifications or warranties whatsoever with respect to the ability of GE Offerings or prices to satisfy any such statutes and regulations other than those contained herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the last date written below by their respective duly authorized officers or representatives.

GE DIGITAL LLC

**Error! Reference source not found.:** CITY OF AURORA

Signature \_\_\_\_\_

Signature\_\_\_\_\_

Print Name / Title\_\_\_\_\_

Print Name / Title\_\_\_\_\_

Date\_\_\_\_\_

Date\_\_\_\_\_

## **Appendix A**

### **Product Specific Terms and Conditions**

The following terms and conditions apply to specific GE Offerings listed below, in addition to the terms and conditions of the main body of the Terms and Conditions. In the event of any conflict between the terms and conditions in this Appendix and the main body of the Terms and Conditions, these terms and conditions shall take precedence with respect to the GE Offerings described below.

1. **Trial Offerings**. From time to time, GE may offer Customer access to certain GE Offerings that GE designates as "beta," "evaluation," or "trial" on the Predix Web site or in Order documents ("Trial Offerings"). Trial Offerings are provided to Customer free of charge, except as otherwise specified by GE. GE may limit, suspend, or terminate Customer's license or subscription to any portion of the Trial Offerings for any reason, in GE's sole discretion, including, for example, the expiration of the Trial Offerings period, to enforce Trial Offering usage limitations, or to protect GE's services or systems. Any product or service designated "alpha," "beta," or "pre-release" is subject to change without notice, may differ substantially upon commercial release, and may have limited or no Support Services. Trial Offerings have not been fully tested and may contain defects, may lack standard security features, and may be taken offline or become unavailable without notice. Customer acknowledges that Trial Offerings may not meet all the security standards in the Data Protection Plan, and Customer is advised not to process or store any sensitive or confidential information or manage a production environment using Trial Offerings. TRIAL OFFERINGS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND GE HAS NO OBLIGATION OR LIABILITY WITH RESPECT TO TRIAL OFFERINGS.

#### **2. Acceleration Plans (Support Services)**

2.1. **Support Services**. GE shall provide the support program and associated level of support as reflected in the applicable Order ("Support Services"). The applicable program, level of service and included or a la carte components that constitute the Support Services are further described in the Acceleration Plans Support & Services Guide and shall be acknowledged by GE (the "Support Confirmation"). Support Services may include various types of Services as described in the Acceleration Plans Support & Services Guide.

2.2. **Nature of Support Services**. Support Services may be provided independently as a GE Offering or as a required component of another GE Offering. To the extent Support Services are provided as a component part of another GE Offering, the relevant Support Services must be purchased and shall terminate when such GE Offering is terminated or shall be extended to the extent such GE Offering is extended (including any automatic renewals thereof). To the extent Support Services are associated with Software, such Support Services shall automatically terminate in the event the license to the underlying Software is terminated.

2.3. **Support Disclaimer**. Customer acknowledges that the interpretation or application of key indicators, metrics, information, or advice provided in connection with Support Services depends on many factors outside of GE's ability to control or foresee, and therefore, Customer assumes sole responsibility for appropriate testing and validation prior to taking any action or decision. GE does not and cannot guarantee that every fault condition can be foreseen or detected or that GE will be able to provide any particular amount of advance warning of any impending fault or failure.

#### **2.4. Term, Renewal and Termination**

2.4.1. **Support Services Associated with Software**. The Support Services subscription term will be as stated on the Confirmation. The subscription term shall be for such initial term and thereafter be renewed automatically for successive one (1) year renewal terms unless a Party provides the other Party with written notice of its intent to not renew at least thirty (30) days prior to the end of the initial or successive term. The renewal rate shall be increased at each renewal to reflect the annually published Consumer Price Index plus one percent (1%) over the prior period. CPI shall mean the twelve-month U.S. City Average for ALL Urban Consumers (CPI-U). The twelve-month period will be updated by GE no more than twice per year.

2.4.2. **Reinstatement Fee**. If for any reason, Customer permits the Support Services to lapse then GE may charge a reinstatement fee as a condition to reactivating such Support Services.

2.4.3. **No Right of Refund**. Payment for any and all Support Services is required in advance, without right of refund for any reason.

**3. OS-Restricted Products (Software).**

**3.1 System Restrictions.** For versions of iFIX, CIMPLICITY, and other on-premise GE Offerings that are labelled as “Embedded” or “IOT” versions (collectively, the “OS-Restricted Offerings”), the Customer is only granted a right to run the OS-Restricted Offerings on the specific version and edition of the operating system identified below:

<b>GE Product version</b>	<b>Permitted operating system</b>
Embedded	Windows 7 Embedded
IOT	Windows 10 IOT Enterprise

**3.2 License Prohibitions.** Use of the OS-Restricted Offering on other operating systems is prohibited, and such use is a breach of the Agreement. In addition, OS-Restricted Offerings may not operate or perform properly when run under prohibited operating systems. Such non-operation or mis-operation under prohibited operating systems shall not constitute a breach of the Agreement by GE.