

CITY OF YUBA CITY  
STAFF REPORT

**Date:** November 5, 2019  
**To:** Honorable Mayor & Members of the City Council  
**From:** Public Works Department  
**Presented by:** Benjamin K. Moody, Deputy Public Works Director – Engineering

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**Summary**

**Subject:** Wastewater Treatment Facility Improvements Project SCADA Equipment  
**Recommendation:** Adopt a Resolution awarding the purchase of SCADA equipment and software from GE Digital LLC of San Ramon, CA in the amount not to exceed \$95,000 and authorizing the City Manager to execute any necessary documents, with the finding that it is in the best interest of the City.  
**Fiscal Impact:** \$95,000 – CIP Account No. 981252-65518 (WWTF Improvements Project)

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**Purpose:**

Provide City-supplied materials for the Wastewater Treatment Facility Improvements Project's automation/control system per project design and contract.

**Background:**

On October 2, 2018, City Council awarded the Wastewater Treatment Facility (WWTF) Improvements Project construction contract to Western Water Constructors, Inc. of Santa Rosa, CA in the amount of \$18,860,167. Construction started in January 2019 and is on track to be completed in April 2021. The project includes barscreen replacement, digester improvements, new dewatering units, and plant-wide electrical, instrumentation, and automation/control system improvements. The construction contract documents require the City to provide Supervisory Control and Data Acquisition (SCADA) system equipment/software for the WWTF's upgraded automation/control system.

**Analysis:**

City staff and the project design engineers have evaluated comparable SCADA system software platforms and determined that GE's SCADA software is the best performance fit for the upgraded facility; GE Digital LLC is the local distributor for the proprietary GE SCADA software. Staff recommends the purchase of the necessary items from this regional distributor.

**Fiscal Impact:**

The cost for the SCADA system software is approximately \$87,000 (\$81,317 + tax), per the attached quote. Staff is requesting the funding amount of \$95,000 to cover the purchase costs with a reserve balance should contingency items arise.

**Alternatives:**

Direct staff to conduct a formal bid for the SCADA system. This may result in time delays, non-compatible equipment, and unpredictable pricing.

**Recommendation:**

Adopt a resolution awarding the purchase of SCADA equipment and software from GE Digital LLC of San Ramon, CA in the amount not to exceed \$95,000 and authorizing the City Manager to execute any necessary documents, with the finding that it is in the best interest of the City.

**Attachments:**

1. Resolution – GE Digital
  - a. Quote from GE Digital

**Prepared by:**

*[/s/ Benjamin K. Moody](#)*  
Benjamin K. Moody  
Deputy PW Director – Engineering

**Submitted by:**

*[/s/ Michael Rock](#)*  
Michael Rock  
City Manager

**Reviewed by:**

Department Head

[DL](#)

Finance

[SM](#)

City Attorney

[SLC by email](#)

# ATTACHMENT 1

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY  
TO AWARD THE PURCHASE OF SCADA EQUIPMENT AND SOFTWARE TO  
GE DIGITAL LLC OF SAN RAMON, CA IN THE AMOUNT NOT TO EXCEED  
\$100,000**

WHEREAS, the City of Yuba City desires to purchase Supervisory Control and Data Acquisition (SCADA) equipment and software for the Wastewater Treatment Facility Improvements Project, as required by the Project's contract; and,

WHEREAS, City staff and the Project Design Engineers have identified GE SCADA equipment as the best performance fit for the facility with unique design specifications, meeting the City's Purchasing Policies and Procedures regarding sole source purchases; and,

WHEREAS, GE Digital LLC of Sacramento, CA is the regional distributor for GE SCADA software and equipment; and,

WHEREAS, City staff has reviewed the price estimate for this equipment and considers it a fair and reasonable price; and,

WHEREAS, the City desires to award the purchase of SCADA equipment and software to GE Digital LLC of San Ramon, CA in the amount not to exceed of \$100,000.

NOW, THEREFORE, be it resolved by the City Council of Yuba City that the purchase of SCADA equipment and software be awarded to GE Digital LLC of San Ramon, CA in the amount not to exceed of \$95,000 and that the City Manager is authorized to execute any necessary documents, with the finding that it is in the best interest of the City and the price is fair and reasonable. Further, waiver of the competitive bidding process is warranted as the equipment and services needed to best fit the needs of the facility can only be obtained from GE, and GE Digital, LLC is the regional distributor of said equipment and services.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 5<sup>th</sup> day of November 2019.

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Shon Harris, Mayor

ATTEST:

\_\_\_\_\_  
Patricia Buckland, City Clerk

APPROVED AS TO FORM  
COUNSEL FOR YUBA CITY:

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Shannon Chaffin, City Attorney  
Aleshire & Wynder, LLP

Attachment(s):

Quote from GE Digital LLC

# ATTACHMENT 1a



GE Digital LLC  
 2623 Camino Ramon  
 San Ramon, CA 94583-9130  
 United States

**Quote No:** BMIQ-07112019-329888  
**Revision:** 4  
**Quote Date:** Aug 5, 2019  
**Quote Expiration:** Sep 5, 2019

**Primary Sales Person:** Mark Fusick  
**Sales Support Person:** Kelly Pontiff  
**Sales Support Email:** kelly.pontiff@cb-pacific.com  
**Sales Support Phone:** (425) 559-7575

**Quote Name:**  
**Customer RFQ:**

**Bill To:**  
 CITY OF YUBA CITY  
 1201 CIVIC CENTER BLVD -  
 YUBA CITY, CA 95993-3005  
**US**  
**Contact:** Joshua Ballard  
**CSN:** 10189400

**Ship To:**  
 CITY OF YUBA CITY  
 1201 CIVIC CENTER BLVD -  
 YUBA CITY, CA 95993-3005  
**US**  
**Contact:** Joshua Ballard  
**CSN:** 10189400

**End User:**  
 CITY OF YUBA CITY  
 1201 CIVIC CENTER BLVD -  
 YUBA CITY, CA 95993-3005  
**US**  
**Contact:** Joshua Ballard  
**CSN:** 10189400

| Line No. | Part No.              | Description  | Comments | Std Lead Time | Qty | Unit Sell Price | Ext. Sell Price |
|----------|-----------------------|--|----------|---------------|-----|-----------------|-----------------|
| 1        | HS71E0000800000-M2    | Historian v7.1 Enterprise 8000 Points Two Mirror   |          | 0             | 1   | \$36,876.30     | \$36,876.30     |
| 2        | APN-PREM-PER-HIST-BDL | Acceleration Plan Bundle -Premier Level for Historian Perpetual License<br>Premier; Aug 2, 2019 - Dec 30, 2019   |          |               | 1   | \$2,440.91      | \$2,440.91      |
| 3        | IF60PDUNLEN-S         | iFix v6.0 Plus Development Unlimited Points English SCADA Synchronization  |          | 0             | 1   | \$11,286.90     | \$11,286.90     |
| 4        | HS70T0000100000       | Historian v7.0 Essential 1000 Points Add On  |          | 0             | 1   | \$0.00          | \$0.00          |
| 5        | APN-PREM-PER-AUTO-BDL | Acceleration Plan Bundle - Premier Level for Automation Perpetual License<br>Premier; Aug 2, 2019 - Dec 30, 2019 |          |               | 1   | \$747.10        | \$747.10        |
| 6        | IF60PRUNLEN-          | iFix v6.0 Plus Runtime Unlimited Points English Backup License   |          | 0             | 1   | \$3,038.40      | \$3,038.40      |
| 7        | HS70T0000100000       | Historian v7.0 Essential 1000 Points Add On  |          | 0             | 1   | \$0.00          | \$0.00          |
| 8        | APN-PREM-PER-AUTO-BDL | Acceleration Plan Bundle - Premier Level for Automation Perpetual License<br>Premier; Aug 2, 2019 - Dec 30, 2019 |          |               | 1   | \$201.12        | \$201.12        |
| 9        | IC60THDEN             | iClient v6.0 Thick Development English   |          | 0             | 2   | \$3,264.00      | \$6,528.00      |
| 10       | APN-PREM-PER-AUTO-BDL | Acceleration Plan Bundle - Premier Level for Automation Perpetual License<br>Premier; Aug 2, 2019 - Dec 30, 2019 |          |               | 2   | \$216.05        | \$432.11        |
| 11       | IC60THREN             | iClient v6.0 Thick Runtime English   |          | 0             | 7   | \$1,958.25      | \$13,707.74     |
| 12       | APN-PREM-PER-AUTO-BDL | Acceleration Plan Bundle - Premier Level for Automation Perpetual License<br>Premier; Aug 2, 2019 - Dec 30, 2019 |          |               | 7   | \$129.62        | \$907.33        |
| 13       | WS50I003SNEN          | WebSpace v5.0 iFIX 3 Clients Stand Alone Server Independent Server English                                       |          | 0             | 1   | \$3,520.75      | \$3,520.75      |



GE Digital LLC  
2623 Camino Ramon  
San Ramon, CA 94583-9130  
United States

| Line No. | Part No.              | Description   | Comments | Std Lead Time | Qty | Unit Sell Price | Ext. Sell Price |
|----------|-----------------------|---|----------|---------------|-----|-----------------|-----------------|
| 14       | APN-PREM-PER-AUTO-BDL | Acceleration Plan Bundle - Premier Level for Automation Perpetual License<br>Premier; Aug 2, 2019 - Dec 30, 2019                |          |               | 1   | \$233.05        | \$233.05        |
| 15       | DR-G00P253V0          | Drivers IGS- Industrial Gateway Server for Basic Points 253 Additional IGS Protocols IOT Gateway plug in No Tags                |          | 0             | 1   | \$873.54        | \$873.54        |
| 16       | APN-PREM-PER-AUTO-BDL | Acceleration Plan Bundle - Premier Level for Automation Perpetual License<br>Premier; Aug 2, 2019 - Dec 30, 2019                |          |               | 1   | \$57.82         | \$57.82         |
| 17       | DR-G00P253V0          | Drivers IGS- Industrial Gateway Server for Basic Points 253 Additional IGS Protocols IOT Gateway plug in No Tags Backup License |          | 0             | 1   | \$436.77        | \$436.77        |
| 18       | APN-PREM-PER-AUTO-BDL | Acceleration Plan Bundle - Premier Level for Automation Perpetual License<br>Premier; Aug 2, 2019 - Dec 30, 2019                |          |               | 1   | \$28.91         | \$28.91         |

**Quote Total: \$81,316.75**

**Note:**

Price is affected by a trade-in credit of \$25,735.29.

These assets will be inactivated and considered valueless upon fulfillment of this transaction:

- 100346971
- 200160559
- 100346975
- 100354190





GE Digital LLC  
2623 Camino Ramon  
San Ramon, CA 94583-9130  
United States

**Purchase Order Requirements**

PO MUST be written to:

GE Digital LLC  
2623 Camino Ramon  
San Ramon, CA 94583-9130

PO MUST state the following reference:

"GE Quote Number BMIQ-07112019-329888 and its associated Terms and Conditions."

PO MUST acknowledge payment terms:

Net 30

Deliver PO to:

GEDigital.orders@cb-pacific.com

This order is expressly conditioned upon Customer's acceptance of the GE Terms and Conditions. GE Digital LLC is not bound by any terms on Customer's order which attempt to impose any condition at variance with GE's terms attached hereto. GE's failure to object to provisions contained in any of Customer's forms shall not be deemed an acceptance of any of Customer's terms or a waiver of the provisions of GE's terms and conditions which shall constitute the entire, final, and exclusive statement of the agreement between the parties.

## Terms & Conditions

The license or provision of the **GE** products and services by the GE Digital business (hereinafter "GE") submitting 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 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 the "Parties." The term "General Terms and Conditions" shall mean specifically the body of the following section, and all appendices attached hereto. The term "Agreement" shall mean, collectively, these General Terms and Conditions and any Order issuing from the attached quote or proposal.

- 1.1. **"Acceptable Use Policy"** is defined in Appendix A..
- 1.2. **"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.
- 1.3. **"Change Order"** is defined in Section 6.1.
- 1.4. **"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.
- 1.5. **"Customer Content"** means data, information, documentation, and software provided by Customer for use in connection with the GE Offerings.
- 1.6. **"Deliverables"** are defined in Section 6.3.
- 1.7. **"Data Protection Plan"** is defined in Section 3.7.
- 1.8. **"Embedded Software"** is defined in Section 4.2.
- 1.9. **"GE Offerings"** means, collectively, the Hosted Services, Hardware, Software, Professional Services, and Support Services provided by GE in accordance with this Agreement.
- 1.10. **"Hardware"** means hardware equipment that is provided by GE to Customer, as described in Section 4.
- 1.11. **"Hosted Services"** are defined in Section 3.
- 1.12. **"Infringement Claim"** is defined in Section 12.1.
- 1.13. **"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.
- 1.14. **"Order"** means Customer's acceptance of GE's quote or proposal to which these General Terms and Conditions are attached.
- 1.15. **"Professional Services"** are defined in Section 6.1.
- 1.16. **"Service Documentation"** is defined in Section 3.1.
- 1.17. **"Software"** is defined in Section 5.1.
- 1.18. **"SOW" or "Statement of Work"** is defined in Section 6.1.
- 1.19. **"Support Services"** means services associated with the support programs described in Appendix A.

1.20. "Third Party Services" are defined in Section 3.9.

1.21. "Third Party Software" is defined in Section 5.3.

1.22. "User" is defined in Section 3.8.2.

## 2. SCOPE

This Agreement sets forth the terms and conditions that govern any Order issued based on this quote or proposal and the provision of GE Offerings described herein and consists of: (a) these General Terms and Conditions, (b) the GE proposal or quote to which these General Terms and Conditions are attached, and (c) the appendices attached hereto. 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, and GE specifically objects to, and shall not be bound by, any additional or different terms contained in such documents. In the event of any inconsistency, these General Terms and Conditions shall take precedence over any conflicting or inconsistent term in the Order.

## 3. HOSTED SERVICES

**3.1. General.** "Hosted Services" are computer software applications, software platforms, and equipment monitoring services that are hosted by GE and provided as a service to Customer. GE shall provide Customer with remote access to the Hosted Services for the term of Customer's paid subscription, as described in the Order. Customer agrees to use the Hosted Services solely in accordance with this Agreement, the product-specific terms and conditions described in Appendix A, and the written documentation published or provided by GE for the Hosted Services (collectively, "Service Documentation").

**3.2. Hosted Services Warranty.** For the term of Customer's paid subscription to the Hosted Services, GE warrants that such Hosted Services will materially comply with the then current Service Documentation provided for the Hosted Service. Customer acknowledges that GE may deliver continuous updates, changes, and improvements to the Hosted Services and the Service Documentation. GE may notify Customer of such changes by publishing updates or changes to GE's Web site for the Hosted Services or by means of written notice to Customer. Customer's sole remedy, and GE's sole obligation and liability, for any failure of the Hosted Services to conform to this warranty is for GE, at its option, to: (1) provide a correction or work-around or provide an issue resolution, or (2) permit Customer to terminate its subscription to the affected Hosted Services and receive a refund of the prepaid fees, if any, for the terminated and unexpired portion of such subscription.

**3.3. Disclaimers.** WITHOUT LIMITING THE DISCLAIMERS IN SECTION 9.2, GE SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT HOSTED SERVICES WILL OPERATE FREE FROM ERROR, INTERRUPTION, OR DISRUPTION, INCLUDING, WITHOUT LIMITATION, DUE TO CYBER-ATTACKS, MALICIOUS OR OTHERWISE, OR FROM INTERRUPTIONS IN INTERNET CONNECTIVITY (INCLUDING DELAYS OR PACKET LOSS). CUSTOMER ACKNOWLEDGES THAT THE HOSTED SERVICES ARE NOT INTENDED FOR REAL-TIME CONTROL OR MONITORING DUE TO THE POSSIBILITY OF INTERRUPTIONS IN SERVICE OR CONNECTIVITY. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SAFE AND CONTINUOUS OPERATION OF ITS EQUIPMENT, FOR VERIFYING RESULTS GENERATED BY THE HOSTED SERVICES, AND FOR TAKING APPROPRIATE ACTIONS BASED ON SUCH RESULTS.

**3.4. Changes.** GE may change, discontinue, or deprecate any of the Hosted Services (including individual services or the Hosted Services as a whole) or change or remove features or functionality of the Hosted Services or revise the applicable Service Documentation. Without limiting the generality of the foregoing, GE may change, terminate, or discontinue all or a portion of a Hosted Service if required by changes in GE's relationship with a third party provider or licensor; if required to comply with law or requests or government entities; if providing the Hosted Services could create a substantial economic or technical burden or material legal or security risk; or if GE determines that use of the Hosted Services by Customer or the provision of the Hosted Services to Customer is prohibited or impractical due to a legal or regulatory reason. GE may change, discontinue, or add to the Support Services for the Hosted Services from time to time by posting a notice to the Web site where such Support Services are described. If such changes have a materially adverse effect on Customer's use of the Hosted Services, Customer may notify GE in writing, and GE may propose resolutions or work-arounds. If GE is unable to provide Customer with a resolution or work-around reasonably satisfactory to Customer, then Customer may terminate its subscription to the affected Hosted Services upon written notice to GE and receive a refund of the prepaid fees, if any, for the terminated and unexpired portion of such subscription.

**3.5. Use Limitations.** Customer's Order may specify usage or deployment limitations relating to the Hosted Services. GE may enforce such usage limitations by technical or resource restrictions, or GE may permit excess usage and invoice Customer for such use at GE's standard rates. Customer agrees to pay for such additional invoices in accordance with the payment terms of this Agreement. If a usage limitation designated in the Order is based on limitations or entitlements not monitored by GE, then Customer agrees to limit its usage only to the designated scope and promptly notify GE if such limitations are exceeded. Customer shall use the Hosted Services solely for its internal business purposes as permitted by this Agreement and shall not license, sublicense, sell, resell, rent, lease, transfer, assign, publish, disclose, time share or otherwise commercially exploit the Hosted Services or make the Hosted Services available to any third party, other than as expressly permitted by this Agreement.

**3.6. Suspension.** GE may suspend Customer's right to access or use any portion or all of the Hosted Services upon notice to Customer if GE determines that Customer's use of or registration for the Hosted Services: (i) is unlawful, fraudulent, or prohibited by law, (ii) poses a security threat to the Hosted Services, GE, GE's Affiliates, or any third party, (iii) may adversely impact the integrity of the Hosted Services or the systems or content of any other customer, (iv) may subject GE, GE's Affiliates, or any third party to liability, (v) violates the Acceptable Use Policy or acts in a manner inconsistent with Customer's Responsibilities as set forth in Section 3.8, or (vi) exceeds the scope of use authorized by GE. GE may also suspend Hosted Services if Customer is more than 30 days overdue on any payment obligation under this Agreement. GE shall use commercially reasonable efforts to re-establish Hosted Services after GE determines the cause of the suspension has been resolved. Any suspension under this paragraph shall not excuse Customer's payment obligations under this Agreement.

### 3.7. Security and Data Privacy

3.7.1. Security. GE shall use reasonable efforts to implement appropriate measures, in accordance with GE's standard security policies applicable to the Hosted Services ("Data Protection Plans") designed to secure Customer Content against accidental or unlawful loss, access, or disclosure. GE reserves the right to modify Data Protection Plans from time to time upon notice to Customer. Customer consents to GE's collection, use, and disclosure of information associated with the Hosted Services as described in this Agreement and the applicable Data Protection Plan, and in particular to the processing of Customer's Content in, and the transfer of Customer Content into, any country in which GE or its affiliates or subcontractors maintain facilities (including the United States). GE shall treat Customer contact information (including business contact information of Customer representatives) in accordance with GE's Privacy Policy available at <http://www.ge.com/privacy>. Customer consents to the disclosure of Customer Content to GE's subcontractors and Affiliates who agree to maintain and use Customer Content in accordance with this Agreement.

3.7.2. Regulated Data. If Customer Content includes any data subject to specific legal or regulatory requirements (including, but not limited to, health care data, EU personal data, export-controlled data, or sensitive government data), Customer shall notify GE in writing of such requirements and provide any information that is necessary or reasonably requested by GE to determine the applicable regulatory requirements. Except as may be specified by GE in writing, GE shall not have any responsibility to discover or provide a hosting environment that complies with such regulatory requirements. . Without limiting the generality of the foregoing, if Customer intends to use the Hosted Services to process personal data of individuals located in the European Union, Customer shall notify GE in writing and the parties will reasonably cooperate to comply with their respective obligations under the EU General Data Protection Regulation.

### 3.8. Customer's Responsibilities

3.8.1. Customer Content and Equipment. Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content and Customer equipment. Customer is responsible for securing all necessary rights and permissions to provide Customer Content to GE and to use Customer Content with the Hosted Services. For example, Customer is solely responsible for:

- a) the technical operation of Customer Content, including ensuring that calls Customer makes to or from any Customer application or service are compatible with the Hosted Services;
- b) compliance of Customer Content with the Acceptable Use Policy, Data Protection Plan, and applicable Service Documentation;
- c) compliance by Customer with all applicable laws, executive orders, administrative rules and regulations, safety standards, ordinances, and court orders in using the Hosted Services;
- d) any third party claims relating to the legal status of Customer Content;
- e) the operation, control, conditions, use, and maintenance of Customer equipment and ensuring that Customer's computer systems and equipment meet the current technical requirements for the Hosted Services;
- f) the accuracy, completeness, and timeliness of Customer Content; and
- g) proper handling and processing of notices sent to Customer (or any of Customer's Affiliates) by any person claiming that Customer Content violates such person's rights, including notices pursuant to the U.S. Digital Millennium Copyright Act or similar laws of other countries.

3.8.2. Customer Security. Customer is responsible for properly configuring and using the Hosted Services and taking Customer's own steps to maintain appropriate security, integrity, and backup of Customer Content, which may include routine archiving of Customer Content and the use of encryption technology to protect Customer's Content and credentials. Customer's credentials (which may include username, passwords, tokens, certificates, keys, and pins) issued by GE or selected by Customer for accessing the Hosted Services are for Customer's internal use only and Customer may not share or disclose them to any other entity or person, except that Customer may disclose Customer's credentials to Customer's employees, agents, and subcontractors performing work on Customer's behalf ("User"). Customer is responsible for any use of Customer's credentials and for notifying GE immediately of any breach of security related to Customer's credentials. Customer is responsible for complying with the Data Protection Plan and all other security requirements published by GE or communicated to Customer for securing Customer Content in connection with using the Hosted Services. Customer is deemed to have taken any action that Customer permits, assists, or facilitates any User or other person or entity to take related to this Agreement, Customer Content, or the Hosted Services. Customer shall not take any action to circumvent any security feature or attempt to exceed authorized access to the Hosted Services or its related systems or networks; interfere with or disrupt the integrity or performance of the Hosted Services or the data contained therein; or send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs. If Customer becomes aware of any violation of the foregoing by a User, Customer shall immediately terminate such User's access to Customer's account and notify GE.

3.8.3. Connectivity. Except as expressly provided in the Order, Customer is solely responsible for providing Internet connectivity for Customer's facilities and Customer equipment as necessary to access and use the Hosted Services (including all ISP charges). GE does not and cannot control the flow of data to or from the Hosted Services infrastructure and other portions of the

Internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof).

**3.9. Third Party Services.** If specified on GE's Web sites for the Hosted Services, third parties may offer independent services, including hosted application services ("Third Party Services"), directly to Customer under a separate agreement, and Customer's acceptance of such offers will constitute a separate agreement solely between Customer and the third party provider thereof. If Customer subscribes to Third Party Services, Customer consents to GE sharing with the third party provider: (i) Customer contact and account information, (ii) Customer Content in connection with Customer's use of the Third Party Services, and (iii) additional information, if any, disclosed in writing to Customer in connection with the Third Party Services. GE shall have no warranty, support, maintenance, or other obligations or liability under this Agreement with respect to such Third Party Services.

#### **4. HARDWARE**

**4.1. Delivery.** Delivery of Hardware sold will be made FCA GE's facility (Incoterms 2010). Title to Hardware shipped by GE from the United States shall pass to Customer immediately after each item departs from the territorial land, seas, and overlying airspace of the United States. Title to all other Hardware sold shall pass when the product is made available for shipment at the point of shipment. Delivery of Hardware leased to Customer shall be made by commercially reasonable means. Title to such leased Hardware shall not pass to Customer. Title to any software embedded in or included with Hardware ("Embedded Software") does not pass to Customer.

**4.2. Embedded Software.** GE grants to Customer a limited, nonexclusive license to use any Embedded Software only with and as embedded within the associated Hardware, and Customer shall have no other rights with respect to Embedded Software, including any right to copy or modify the Embedded Software. Customer may transfer the Embedded Software to a third party only to the extent that Customer is permitted to transfer the associated Hardware under this Agreement. Embedded Software is otherwise governed by the license restrictions set forth in Section 10.4 below.

#### **4.3. Hardware Warranties**

**4.3.1. Hardware Sold.** During the applicable warranty period stated below, GE warrants that Hardware sold will be free from material defects in material and workmanship and will materially conform to any specifications agreed to by the Parties in writing. If any failure to meet this warranty appears within applicable warranty period from the date of shipment of the Hardware, and Customer returns such equipment to GE pursuant to GE's applicable repair and replacement policy, GE shall correct any such failure at its option, (i) by repairing any defective or damaged part or parts of the equipment, or (ii) by making available, FCA GE's shipment facility (Incoterms 2010), any necessary repaired or replacement parts. Inbound shipping charges to GE, including associated taxes, duties, tariffs, etc., shall be paid by Customer. Return (outbound) warranty repair shipping charges shall be paid by GE to Customer's destination. GE shall have no warranty obligation for Hardware damage or malfunction caused by accident, abuse, misuse, neglect, or improper repair, storage or handling by Customer or its agents. If in GE's reasonable judgment such repair or replacement of Hardware is not practicable, GE shall offer to refund or credit monies paid by Customer for such Hardware upon a return of such Hardware to GE. The applicable warranty period for sold Hardware is twenty-four (24) months from shipment date, unless otherwise stated in the Order or an appendix hereto.

**4.3.2. Hardware Leased.** Provided that Customer has paid all amounts due, GE warrants that Hardware leased will be free from material defects in material and workmanship and will materially conform to any specifications agreed to by the Parties in writing during the lease period. If leased Hardware fails to meet this warranty during the lease period, GE shall correct any such failure at its option, (i) by repairing any defective or damaged part or parts of the Hardware, or (ii) by delivering, in accordance with standard delivery protocols, any necessary repaired or replacement parts. If in GE's reasonable judgment such repair or replacement of Hardware is not practicable, GE shall permit Customer to terminate the lease and return such Hardware. In the event GE determines that the damage to the leased Hardware resulted from accident, abuse, misuse, neglect, or improper repair, storage or handling by Customer or its agents, Customer shall be charged the then applicable list price for the replacement of the Hardware.

**4.3.3. Remanufactured Subassemblies or Parts.** Unless prohibited by law, certain Hardware may contain remanufactured subassemblies or parts which have been cleaned, refinished, inspected, and tested to new-product standards. The warranty for any such product will be as provided in this agreement or any applicable warranty of the third party manufacturer, if applicable.

**4.3.4. Third Party Hardware.** GE warrants Hardware manufactured by third parties including, but not limited to, personal computers, gateways, routers, servers, sensors, edge devices, micro drives, rotary disks, compact flash, cables and accessories, and embedded third party firmware only to the extent that the manufacturer's or third party's warranty allows GE to transfer such warranty to Customer. GE shall pass through to Customer any such warranties. Except to the extent any such manufacturer or third party provides a pass-through warranty, such Hardware is provided "AS IS" without warranty of any kind and the manufacturers and/or third parties disclaim all warranties, whether express or implied, including but not limited to the implied warranties of merchantability, title, non-infringement, or fitness for a particular purpose. The manufacturers or third parties shall not have any liability for special, indirect, punitive, incidental, or consequential damages. Customer's sole remedy for breach of such warranty shall be the remedy offered by and available from the manufacturer or third party, if any. GE shall have no liability, whether in contract, tort, negligence, or otherwise, to Customer with respect to third party Hardware and associated Embedded Software.

The remedies stated in this Section 4.3 are Customer's exclusive remedy, and GE's sole obligation and liability, for any breach of the warranties for Hardware.

## 5. **SOFTWARE**

**5.1. Scope.** As used herein, the term "Software" shall mean certain computer software and related documentation described in the 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.

**5.2. 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 the 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.

**5.3. 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.

**5.4. Customer Responsibilities.** Unless otherwise specified in the 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.

**5.5. 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.

**5.6. DISCLAIMERS.** WITHOUT LIMITING THE DISCLAIMERS IN SECTION 9.2, 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.

**5.7. Delivery.** Unless otherwise specified in the 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 the 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.

**5.8. 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.

## 6. **PROFESSIONAL SERVICES**

**6.1. Services.** GE shall provide Customer with the professional services ("Professional Services") set out in a written statement of work describing the scope of services, functionality, fees, deliverables, milestones, and estimated delivery dates, and other requirements thereof ("Statement of Work" or "SOW") that is included in the Order or that issues in accordance with an Order. All material changes to any Statement of Work shall be effective only if set forth in a fully executed change order (each a "Change Order").

**6.2. Fees and Expenses.** In addition to the fees stated in the Statement of Work, Customer shall reimburse GE for all reasonable and customary travel, lodging, and other related expenses incurred by GE or its personnel in connection with the performance of Professional Services.

**6.3. Deliverables.** The deliverables resulting from Professional Services to be provided by GE to Customer will be described in the applicable Statement of Work ("Deliverables"). Acceptance procedures for the Deliverables, if any, shall be stated in the applicable Statement of Work. Otherwise, Deliverables shall be deemed accepted by Customer if GE has not received written notice of material defects or non-conformity within five (5) business days after delivery. No schematics or source code shall be furnished, unless specified in the Statement of Work.

**6.4. License.** As between the Parties, GE shall retain all rights, title, and interests to any copyright, patent, trademark, trade secret, or other proprietary or intangible rights, that arise from GE's performance of the Professional Services, including any such rights embodied in the Deliverables, except for the following license to Customer: upon full payment by Customer to GE of all applicable fees, GE grants to Customer a limited, non-exclusive, non-transferable license to use the Deliverables for its internal business purposes, which license shall be perpetual and royalty-free unless otherwise stated in the applicable SOW.

**6.5. Customer Responsibilities.** If Professional Services are to be provided at Customer's site or a third-party site designated by the Customer, Customer shall on an ongoing basis provide GE access to: (i) such site in a clean, lighted, safe, and level condition; (ii) adequate power sources, networks, telephone, and data lines, and other utilities; and (iii) personnel, information, and documentation as reasonably required by GE. Customer shall be responsible to obtain any required permits, approvals, authorizations, or the like to permit GE to perform services at the site. To the extent Customer discloses or makes available to GE any materials, including Customer Content, Customer represents that it has the full right and authority to disclose such materials to GE for purposes of performing GE's obligations hereunder.

**6.6. Professional Services Warranty.** GE warrants that Professional Services performed by GE will materially conform to specifications agreed to by the Parties in the Statement of Work and be performed in a manner consistent with standard commercial practices in the industry. If Customer notifies GE of any material breach of this warranty within ninety (90) days from the delivery of the Deliverables, GE shall, at GE's option (i) reperform any defective portion of the Professional Services furnished, or (ii) if reperformance is not practicable, furnish without charge additional Professional Services in an amount essentially equal to those which, in GE's sole judgment, would have been required for reperformance. The Parties agree that the remedy set forth in this Section shall be GE's sole obligation and liability, and Customer's sole remedy, for warranty claims arising from or in connection with Professional Services.

**6.7. Disclaimers.** WITHOUT LIMITING SECTION 9.2, IF PROFESSIONAL SERVICES INCLUDE PROVIDING CUSTOMER WITH ADVICE OR DATA, CUSTOMER ACKNOWLEDGES THAT THE INTERPRETATION OR APPLICATION OF ANY SUCH ADVICE OR DATA DEPENDS ON MANY FACTORS OUTSIDE OF GE'S ABILITY TO CONTROL OR FORESEE, AND THEREFORE, CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR CONFIRMING SUCH ADVICE OR DATA WITH APPROPRIATE TESTING PRIOR TO TAKING ANY ACTION OR DECISION. UNLESS OTHERWISE STATED IN A STATEMENT OF WORK, GE DOES NOT GUARANTEE THAT PROFESSIONAL SERVICES WILL PRODUCE ANY PARTICULAR RESULT OR OUTCOME.

## **7. DELIVERY**

**7.1. 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.

**7.2. 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.

## **8. PAYMENT**

**8.1. 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. Unless otherwise agreed in the Order, payment is due net thirty (30) days from the date of invoice. All payments shall be made without set off for claims arising out of other sales by GE. Payment shall be made in the currency quoted.

**8.2. 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.

**8.3. Late Payments.** Customer shall pay a monthly late payment charge computed at the rate of 1.5%, or the maximum interest rate permitted by law, whichever is less, on any past due amount for each calendar month (or fraction thereof) that the payment is overdue, and Customer shall reimburse GE for any and all costs and expenses of GE's collections efforts including reasonable attorney's fees, and costs associated with compromises and judgments arising therefrom. GE retains a security interest and right of possession in the Hardware articles until Customer makes full payment, and Customer agrees to sign documentation at GE's request as reasonably necessary to perfect such interest.

**8.4. 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.

## **9. REPRESENTATIONS AND WARRANTIES**

**9.1. 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.

**9.2. 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.

**9.3. 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.

## **10. OWNERSHIP**

**10.1. 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.

**10.2. 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.

**10.3. 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.

**10.4. 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.

**10.5. 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.

## **11. CONFIDENTIALITY**

**11.1. Non-Disclosure and Non-Use.** 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.

**11.2. 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.

**11.3. 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.



## 12. INDEMNIFICATION

**12.1. 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, as applicable: (x) suspend or terminate Customer's subscription to the affected Hosted Service and refund the unexpired portion of the prepaid fees for the suspended or terminated Hosted Services, or (y) terminate Customer's license to the affected Software and refund the pro-rated license fees, or (z) accept a return of the affected Hardware and refund the purchase price, less reasonable depreciation. 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.

**12.2. By Customer.** Customer shall defend and indemnify GE, GE's Affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) Customer's or any of its Users' use of the GE Offerings, other than an Infringement Claim; (b) the legal status of Customer Content or the combination of Customer Content with other applications, content, or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Customer Content or by the use, development, design, production, advertising, or marketing of Customer Content; (c) a dispute between Customer and any User; or (d) personal injury and/or property damage alleged to be caused by Customer's use of GE Offerings to manage Customer equipment.

## 13. LIMITATIONS OF LIABILITY

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 (INCLUDING NEGLIGENCE). 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, AND, IN THE CASE OF HOSTED SERVICES, UP TO THE AMOUNTS PAID BY CUSTOMER IN THE ONE (1) YEAR PERIOD PRECEDING THE CLAIM.

## 14. TERM AND TERMINATION

**14.1. Term.** The term of this Agreement will commence on the Order acceptance or execution date and will remain in effect with respect to the Order (including the term of any license or subscription provided therein, and any renewals thereof), unless earlier terminated in accordance with Section 14.3.

**14.2. Automatic Renewal.** Except as otherwise stated in the Order, each license or subscription for Software or Hosted Services 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.

### 14.3. Termination

**14.3.1. In General.** A Party may not terminate this Agreement or the Order issued hereunder, unless in accordance with Sections 14.3.2 or 14.3.3, or as expressly permitted by the Order.

**14.3.2. For Breach.** Either Party may terminate this Agreement 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.

**14.3.3. 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.

**14.3.4. Effect of Expiration or Termination.** The expiration or termination of this Agreement shall terminate the licenses granted and services provided hereunder, except as otherwise expressly stated in the Order 14.1 or agreed in writing. Upon any termination or expiration of this Agreement, the following Sections survive: 8 (Payment), 10 (Ownership), 11 (Confidentiality), 12 (Indemnification), 13 (Limitations of Liability), 14 (Term and Termination), and 15 (Miscellaneous).

## 15. MISCELLANEOUS

**15.1. 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.

**15.2. 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.

**15.3. 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.

**15.4. 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.

**15.5. 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.

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

**15.7. 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.

**15.8. 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.

**15.9. Notices.** GE may provide any notice required or permitted to be given to Customer under this Agreement by sending a notice to the mailing or email set forth in the Order or registered by Customer with GE for receipt of notices, as may be updated by Customer from time to time upon 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  
2700 Camino Ramon  
Suite 450  
San Ramon, CA 94583  
Attention: GENERAL COUNSEL

By email: [CONTRACTS.SOFTWARE@GE.COM](mailto:CONTRACTS.SOFTWARE@GE.COM)

**15.10. 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.

**15.11. 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.

**15.12. 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.

**15.13. 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.

**15.14. Choice of Law.** This Agreement shall be governed by the laws of the State of New York, 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. All disputes arising out of or relating to this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration. The seat, or legal place, of arbitration shall be New York, New York. The language of arbitration shall be English. The Emergency Arbitrator Provisions shall not apply. The obligations under this Section shall not apply to any claim (including for injunctive relief) by a Party relating to any actual or alleged infringement of its copyright, patent or patent application, trademark, or trade secret, or for any breach of confidentiality hereunder.

**15.15. 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.

**15.16. 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.

## 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 General Terms and Conditions. In the event of any conflict between the terms and conditions in this Appendix and the main body of the General Terms and Conditions, these terms and conditions shall take precedence with respect to the GE Offerings described below.

#### 1. Predix Platform / APM (Hosted Service).

**1.1. Service Documentation.** The Service Documentation for the Predix platform services includes descriptions of services, analytics, and apps, and associated documentation published by GE on the Predix Web site (Predix.io), as may be modified by GE from time to time. The Service Documentation for Asset Performance Management (APM) includes documentation that GE provides for the APM applications and the functionality described on Customer's Order. Customer shall comply with the Predix Acceptable Use Policy found at <https://www.predix.io/legal/acceptable-use-policy> ("Acceptable Use Policy") when uploading, storing, or processing any Customer Content.

**1.2. APIs.** GE may change, discontinue, or deprecate any application program interface utilized for the Predix platform ("API") from time to time but shall use commercially reasonable efforts to continue supporting the previous version of any API changed, discontinued, or deprecated for 12 months after the change, discontinuation, or deprecation (except if supporting the previous version would pose a security issue or is rendered impossible or impractical as a result of a legal or technological requirement).

**1.3. Data Security.** GE shall secure the Predix platform and APM applications hosted on Predix according to the published Data Protection Plan available at <https://www.predix.io/legal/data-protection>, as it may be updated by GE from time to time. Each Party agrees to comply with its respective obligations under the Data Protection Plan. GE may limit or otherwise restrict the ability of third party devices, including gateways, that have not been provided, approved, or certified by GE from accessing or connecting to the Predix Platform or APM applications, if in GE's opinion, such access or connection could pose a security risk or create a security vulnerability to the Hosted Services infrastructure or to other customers.

#### 2. 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.

#### 3. Advisory Intelligence (Hosted Service).

**3.1. Internet Advisory Site.** As the Parties may agree in the Order, GE shall set up and/or host the internet server site ("Internet Advisory Site") to provide Customer with equipment monitoring services ("Advisory Intelligence Services") using sensor data or other parameter data provided by Customer ("Advisory Source Data"). More specifically, Advisory Intelligence Services comprises estimates of the values of Advisory Source Data, residuals of the estimates and Advisory Source Data, difference alerts statistically indicating that the Advisory Source Data is different from what the proprietary technology expects, and incident messages defined by rules applied to all the above.

**3.2. DISCLAIMER.** WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMERS IN SECTION 9.2, GE SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT ADVISORY INTELLIGENCE SERVICES WILL DETECT ANY PARTICULAR FAILURE, FAULT, OR CONDITION, OR PROVIDE ANY PARTICULAR DEGREE OF ADVANCE WARNING OF AN IMPENDING FAILURE, FAULT, OR CONDITION OF CUSTOMER EQUIPMENT.

#### 4. Gateway Devices (Hardware).

GE has the right to remotely administer any device provided by GE pursuant to the Order for collecting and transmitting machine process data in order to provide a GE Offering ("Gateway Device"). If a Gateway Device is lost, stolen, damaged or destroyed, the Customer may order a replacement unit at the then current list price without extending the term of the Agreement with GE. Except as otherwise stated in the Order, upon termination of the applicable subscription or lease, Customer shall return the Gateway Device in accordance with GE's instructions. If specified in the Order, the Gateway Device may be provided by Customer (and not GE) and therefore shall remain the sole property and responsibility of Customer. GE shall have no warranty or other obligation with respect to Customer-provided Gateway Devices. GE has the right to remotely administer any Gateway Device and apply critical software updates, in coordination with Customer.

#### 5. Cyber-security Products.

**5.1. Cyber-security Products and Services.** GE may offer GE's cybersecurity products and services, as defined in the Order. Specific terms and conditions applicable to specific Cybersecurity products and services are described below and in the applicable Order.

## 5.2. OpShield (Software and/or Hardware).

- 5.2.1. "OpShield" means the cybersecurity software and/or hardware products designated "OpShield" "OpShield Virtual Machine Appliance" or "VMA" in an Order, which includes OpShield Field Units.
- 5.2.2. "OpShield Virtual Machine Appliance" or "VMA" means the GE cybersecurity Software product designated in an Order. The VMA is a Software-only virtual machine that can be run on supported software programs called hypervisors (each a "Hypervisor").
- 5.2.3. "OpShield Field Unit" means the cybersecurity Software and/or Hardware products designated "300-4, 400-2, or 400-4" in an Order.
- 5.2.4. If the VMA was purchased by Customer based on an OpShield-VMA-Flat-Pricing pricing model as set forth in an applicable Order, then no more than "x" instances of the VMA may be loaded by Customer onto a Hypervisor, where "x" is the quantity of OpShield-VMA-Flat-Pricing purchased in the Order.
- 5.2.5. If the OpShield-VMA-Per-Field-Unit was purchased (as designated in an Order), then a) no more than x instances of the VMA may be loaded onto a hypervisor and b) the total number of OpShield field units managed by the VMA instance(s) must not exceed x, where "x" is the quantity of OpShield-VMA-Per-Field-Units purchased in the Order. For example, if a quantity of 8 OpShield-VMA-Per-Field-Units were purchased then Customer may create 2 instances of the VMA to manage a maximum combined total of 8 OpShield Field Units.
- 5.2.6. United States Government Entities. OpShield is not intended for Customers that are United States government entities. Licensing and use of OpShield by United States government entities are subject to additional restrictions and requirements.
- 5.2.7. Protection Packs. Protection Packs are updates designed to enhance OpShield's ability to protect against known cyber security vulnerabilities. For purposes of this Agreement, Protection Packs are considered "Software" as defined in the Agreement and will be provided by GE on a pre-paid subscription basis as described in a Customer Order. Protection Packs are separate from any software updates provided by GE.
- 5.2.8. Warranty. The warranty period for OpShield hardware is one (1) year from shipment date.

## 5.3. ATP (Hardware).

- 5.3.1. Devices Under Test. "ATP" means the hardware designated Achilles Test Platform in the Order. Notwithstanding anything to the contrary in this Agreement, a device or equipment that is tested for certain defined security vulnerabilities using an ATP ("Device Under Test") must be: (a) equipment manufactured by Customer for its own purposes or for sale to a third party; or (b) equipment procured by Customer from a third party and used by Customer for its own business purposes or incorporated into or deployed with Customer's equipment or systems.
- 5.3.2. Test Results. Results of tests generated by Customer using an ATP are GE Confidential Information and may be used only for Customer's internal business purposes, and may not be published, disclosed or distributed to any person other than: (i) GE; (ii) if manufactured by a third party, the third party manufacturer of a Device Under Test; and (iii) if the Device Under Test is manufactured by Customer or included in equipment or systems manufactured by Customer, the purchasers or prospective purchasers of a Device Under Test.
- 5.3.3. Restrictions. Software provided with an ATP: (i) may be used only to test Devices Under Test in secure, controlled testing conditions; and (ii) may not be used to access, connect to, or interoperate with (whether for testing or any other purpose) any device or system that is in live productive use.
- 5.3.4. Keys. Installation and use of software provided with ATP may require use of a specific key, which controls the specific modules of software that may be used with an ATP unit ("Key"). Customer shall use each Key only for the purpose of installing and using the ATP Software in accordance with this Agreement. Customer shall not authorize or permit a Key to be used by or on behalf of any other person
- 5.3.5. Warranty. The warranty period for ATP hardware is ninety (90) days from shipment date.

**5.4. Achilles Practices Certification (APC) and Communications Certification (ACC) Services (Professional Services).** GE's Achilles Practices and Communications certification services are provided by GE to Customer pursuant to a Statement of Work. The APC and ACC services and any licensing to the Achilles certification marks will be subject to the terms and conditions of this Agreement, in addition to the terms set forth in an applicable Order.

**5.5. CYBER-SECURITY PRODUCTS AND SERVICES DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT (I) INDUSTRIAL CYBER SECURITY IS NOT AN EXACT SCIENCE AND THAT ATP, APC, AND OPSHIELD WHEN USED IN ACCORDANCE WITH APPLICABLE DOCUMENTATION, ARE DESIGNED TO DETECT AND PREVENT ONLY CERTAIN VULNERABILITIES AND UNAUTHORIZED INTRUSIONS BASED UPON A FINITE SET OF TEST CASES, AND DOES NOT PROVIDE COMPLETE OR COMPREHENSIVE PROTECTION AGAINST ALL POSSIBLE SECURITY VULNERABILITIES OR UNAUTHORIZED INTRUSIONS; AND (II) TESTING USING CYBERSECURITY PRODUCTS MAY CAUSE DAMAGE TO DEVICES UNDER TEST, AND CUSTOMER AGREES THAT CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR ALL DAMAGE TO DEVICES UNDER TEST.

## 6. ThingWorx / PTC (Software).

ThingWorx and PTC Software are licensed only for use in conjunction with, and as part of, the software application package provided by GE and may not be separated from the software application package or used on a standalone basis.

## 7. Meridium Products (Software and Hosted Services).

**7.1. Asset Answers Service (Hosted Service).** Asset Answers is a service that allows Customer to compare the performance of Customer's assets against comparable assets at similarly situated operating environments based on metrics derived from Customer's asset performance data and aggregated statistics derived from peer users ("Asset Answers Service"). To use the Asset Answers Service, Customer must opt into the service by submitting a specified data set to the Asset Answers Service via the Asset Answers portal ("Benchmark Data"). GE will anonymize this Benchmark Data, pool it with other anonymized data, and use the resulting database to generate key comparison metrics for Customer and other users. By using the Asset Answers Service, Customer consents to the collection and use of Benchmark Data in the manner and for the purpose described above. Any Customer Content other than Benchmark Data will be maintained separately and will not be included in the Asset Answers database. Customer acknowledges that as between Customer and GE, GE owns the Asset Answers Service, including the Asset Answers database.

**7.2. Meridium Third Party Components (Software).** Some Meridium software add-on modules are licensed to GE by third parties under the condition that GE incorporate certain additional terms and conditions in this Agreement when providing such modules to Customer. These additional terms and conditions are stated in the Meridium Activation Schedule that accompanies the Order, and to the extent that Meridium has licensed such modules to Customer under the applicable Activation Schedule, such additional terms and conditions are deemed to be incorporated herein by reference.

## 8. Predix Studio and App Engine (Hosted Service).

Predix Studio provides an integrated development environment to enable development of custom software code and plugins designed to run on Predix App Engine. For the term of Customer's subscription to Predix Studio, GE shall provide Customer with hosted access to Predix Studio and Predix App Engine for Customer's internal use only. As between GE and Customer, GE shall solely and exclusively own all modifications or other derivative works of Predix Studio or Predix App Engine and Customer shall retain ownership of any other Customer Content.

## 9. ServiceMax (Hosted Services / Professional Services).

**9.1. ServiceMax Products and Services.** GE offers the ServiceMax Service as a Hosted Service and other related ServiceMax services as Professional Services under the terms of this Agreement. Specific terms and conditions applicable to the ServiceMax products and services are described below and in the applicable Order.

**9.2. Salesforce.com Terms and Conditions.** Unless otherwise specified in the Order, the ServiceMax Service is hosted on infrastructure provided by salesforce.com ("Salesforce") via <http://www.salesforce.com/AppExchange>, and/or other designated websites, including associated services and offline components, all as sublicensed by ServiceMax from Salesforce. Accordingly, the Order for the ServiceMax Service is subject to the Salesforce service agreement available on ServiceMax's website at <http://www.servicemax.com/pdfs/titaniumterms.pdf> ("SFDC Service Agreement"). In the event of a conflict between the terms of this Agreement and the terms of the SFDC Service Agreement, the terms of the SFDC Service Agreement shall control in all respects with respect to the ServiceMax Service.

**9.3. Fees.** Unless otherwise specified on the Order, the subscription fees stated in each Order for ServiceMax services shall be effective during the initial term specified in that Order and subscription fees shall be billed on an annual basis payable in advance.

## 10. Acceleration Plans (Support Services).

**10.1. 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.

**10.2. 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.

**10.3. 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.

**10.4. Term, Renewal and Termination.**

10.4.1. 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 U.S. City Average (December to December percent) for ALL Urban Consumers (CPI-U).

10.4.2. Reinstatement Fee. If for any reason, Customer permits the Support Services to lapse, then GE may charge a re-instatement fee as a condition to reactivating such Support Services.

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