

REMARK D33

REVISION 3/14/2014
TERMS AND CONDITIONS FOR LICENSING OF SOFTWARE

THESE TERMS AND CONDITIONS APPLY IN ADDITION TO REMARK C64/I64

TABLE OF CONTENTS:

01	DEFINITIONS
02	TERMS AND CONDITIONS
03	SCOPE
04	LICENSE
05	DELIVERY AND ACCEPTANCE
06	WARRANTY

ARTICLE 1 - DEFINITIONS. As used throughout this Agreement:

- (a) "Computer(s)" shall mean any digital system incorporating display and/or communications capabilities, including without limitation, any and all computers, computing devices, personal digital assistants, or digital telephones, which are (i) owned, leased, rented by Licensee, or (ii) owned by a third party and controlled at the time of use by Licensee, or (iii) outsourced, managed or operated by any third party for the benefit of or on behalf of Licensee.
- (b) "Documentation" shall mean all materials supplied under this order with the exception of the Software, as hereinafter defined, including any and all installer's, operator's and user's manuals, training materials, sales and marketing literature, "technical white papers", guides, functional and/or technical specifications, commentary, listings and other materials, (including, without limitation, all materials describing the interoperability of the Software with other hardware or Software), in any or all media, for use in conjunction with the Software.
- (c) "Goods" includes Software and Documentation, supplied by Seller under this order.
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- (e) "Licensor" shall mean the party contracting to provide the Goods to Licensee hereunder.
- (f) "Network" shall mean an aggregation of Computers, or any other devices which may perform the functions of computation, data storage, and/or data communications, and which are interconnected by cable or wireless communications means so as to permit the passage of machine-readable information among two or more such devices; Network shall include without limitation any publicly accessible communications systems capable of digital and/or analog communications, which systems may be generally known as the Internet, the World Wide Web, or other designation.
- (g) "Site" shall mean one or more buildings or portion(s) thereof that are located within an area defined by a fifty (50) mile radius, and are (i) used in the conduct of Licensee business, and (ii) are under common management control within Licensee's organizational structure.
- (h) "Software" shall mean the computer program (in object executable code) supplied under this order and any and all modifications thereof (including revisions, patches, fixes, new releases and other improvements to the Software, "Updates"), including any programs provided pursuant to Software upgrades, and performing the functions and complying with the descriptions, proposals and specifications identified in the Documentation.
- (i) "Third Parties" shall mean, in the case of Licensee, contractors, business partners, customers and prospective customers, and suppliers of Licensee and/or any GE Affiliate.
- (j) "Warranty Period" shall mean one (1) year beginning on the date of Licensee's Final Acceptance of the Software.

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ARTICLE 3 - SCOPE.

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- ii) Licensee shall have the right to install and use Software on Computers and Networks, in support of Licensee's Computer services outsourcing business;
 - iii) Licensee shall have the right to use or install the Software for failover, disaster recovery, development, staging, technology integration, testing (including for purposes of testing as part of any Licensee program to consolidate Computer or Network operations), and/or other such purposes, whether by Licensee, a GE Affiliate or by Third Parties acting strictly on behalf of Licensee ("Non-Production Use");
 - iv) All references to use by Licensee shall be construed to permit and include use by Users of the Software in furtherance of their business with Licensee.
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- (d) Seller agrees to contact Purchaser upon knowledge of any known or suspected security breach affecting the Goods (contraband, smuggling, threatening or suspicious activities detected, tampered container, trailer, lock or seal including a seal broken during a customs inspection).
- (e) Section 365(n). All rights and licenses granted under this order are deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "Code"), licenses to rights to "intellectual property" as defined under the Code. The parties agree that Licensee shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Licensor, Licensee retains all rights under this order.

ARTICLE 5 — DELIVERY AND ACCEPTANCE.

- (a) Delivery of the Software shall be done in the format as specified within the order and shall be completed on the date specified therein.
- (b) Following delivery, unless otherwise agreed by the parties in writing, Licensee shall complete acceptance testing as follows:
- i) The Software shall be used by Licensee for the processing of Licensee's operational data in a simulated or production environment for a period of forty-five (45) days;
 - ii) The Software shall, during the forty-five (45) day period, conform in all material respects to the description, proposals and specification identified or set forth in the Documentation, and meet or exceed the performance standard set forth in this order;
 - iii) At the end of the forty-five (45) day period, there shall be no unresolved or uncorrected program errors that would impair the functions that the Software is designed to perform;
 - iv) The successful completion of the forty-five (45) day period shall be deemed "Final Acceptance".
 - v) In the event that the Software fails to pass the Final Acceptance as set forth above or fails to function properly or in conformity with the Documentation during Final Acceptance and such errors are not corrected within the above time periods, in addition to any other rights it may have, Licensee may elect to cancel this order and Licensor shall immediately refund all sums previously paid to it by Licensee hereunder.
 - vi) In the event that errors identified during the acceptance test period prevent Licensee from continuing the acceptance tests, then such forty-five (45) day period (as applicable) shall be extended by the elapsed time taken by Licensor to rectify the errors, which shall not exceed fourteen (14) days;
 - vii) Upon delivery of the Software, Licensee shall own the copy(ies) of the Software so delivered.
- (c) There are no additional charges. All charges for which Licensee shall be liable under this order or related to the Software have been specified herein. All charges are subject to Licensee's issuance of a definitive Purchase Order.

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- (c) During the Warranty Period, the Software shall (i) if physically delivered in machine readable form, when delivered, reside on media used to store and deliver the Software to Licensee that shall be free from defects in manufacture, material and workmanship, (ii) remain in good working order, (iii) function and operate properly (A) and in conformity with the warranties herein, (B) in accordance with this order, including but not limited to the Documentation and any specification and requirements contained within the order, (C) on the hardware and system Software, including Software updates or new releases to such hardware, system Software and other Software, and (D) in accordance with the highest generally accepted industry standards, and (iv) fully and completely interoperate with Licensee's other programs and systems. In addition, the Documentation shall completely and accurately reflect the operation of the Software, and shall be in form and substance at least equal to comparable materials generally in use in the industry. If at any time such original Documentation is revised or supplemented by additional Documentation, thereupon Licensor shall deliver to Licensee copies of such revised or additional Documentation at no charge in quantity equivalent to the quantity of such original Documentation then in Licensee's possession.
- (d) The Software will conform to any and all Licensee specified security requirements (including security requirements for web-based software applications).
- (e) For the Warranty Period and for the term of any Software Services procured through this order (which are further governed by C64/I64), Licensor warrants and represents that it shall maintain the Software in good working order, keep it free from defects in material and workmanship, and remedy any failure of the Software to perform in accordance with this order, including the warranties set forth herein and the exhibits hereto, or which impairs Licensee's use thereof, or any other malfunction, defect or non-conformity in the Software. For the purposes of this Agreement, updates to the Software shall be considered as part of the Software and Licensor's warranty and Software Services obligations with respect thereto shall be identical to, and coterminous with, Licensor's warranty and Software Services obligations for the Software. Updates shall be treated for warranty purposes as the license of new Software and GE shall be entitled to a separate warranty and Warranty Period for each such upgrade. Software Services delivered or performed shall be in accordance with the highest generally accepted standards of the profession existent at the time such Services are delivered or performed.
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- (h) Licensor hereby assigns to Licensee any and all manufacturers' or suppliers' warranties, guarantees, representations, services agreements and indemnities, if any, with respect to any third party hardware and Software delivered by Licensor hereunder (i) to the extent assignable by Licensor; and (ii) only if the terms of such warranties, representations, services agreements, and indemnities are more favorable to Licensee than

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- (i) In the event that the Software does not meet the above warranties during the Warranty Period, Licensor shall provide, at no charge, the Software and Software support services as are required to attain the levels or standards set forth in said warranties. In the event Licensor cannot meet the warranties by performance of Software support services within the timeframes designated by Licensee, Licensee shall have the right, in addition to any remedies herein, within Licensee's sole discretion to exercise one or more of the following remedies:
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 - ii) Full or partial refunds of the license fees and/or support services fees;
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 - iv) Licensee accepts impaired performance in exchange for a setoff/credit against license fees and/or support services fees.