

**GE MDS LLC and General Electric Company (defined below as GE) Terms  
and Conditions for Sale of Products and Services for Industrial  
Communications Solutions (INDC)**

**These updated Terms and Conditions of Sales apply effective for all Sales (Shipments) of above products made on or after June 14<sup>th</sup>, 2017. Previous Terms and Conditions of Sale apply for these Product and Service Sales (Shipments) prior to this effective date.**

Please note that the attached EM 104 (Grid Solutions) Terms and Conditions of Sale apply for sales of all GE MDS LLC and General Electric Company (defined below as GE) Products and Services.

Note for **Article 1**, the following definition has been added: **“Packaged Solution” means an integrated solution set comprising of custom engineering, design, GE manufactured and sourced products, enclosures, assembly, wiring, testing and possibly commissioning support, for Monitoring, Metering, Automation & Communications for utility and industrial applications.**

The only exception to the attached EM 104 Terms and Conditions of Sales is section **5. Warranty**, where subparagraph **5.2** is replaced by the following warranty statement:

**“5.2 The Warranty for all GE MDS manufactured Products shall expire two (2) years from delivery, except that Orbit MCR and ECR are warranted for five (5) years from delivery and PulseNET Network Management Software is warranted for one (1) year from delivery. Warranty repairs shall have a warranty based on the balance of the remaining warranty period from time of repair to the balance of the warranty as stated above. GE MDS manufactured Products that are out of Warranty and repaired under RMA at GE MDS factory shall be covered for 6 (six) months from the date of completion of repair. All other Services are warranted for thirty (30) days from the date of completion. Any sourced or non-GE manufactured products/parts, including those in a Packaged Solution, shall have a warranty period that is based on the original manufacturer’s warranty to GE. No warranty is provided for any batteries that are included in products.”**

The only exception to the attached Software License Addendum to Form EM104 is section **7. Limited Warranties**, where subparagraph **7.1** is replaced by the following warranty statement:

**“7.1 Licensor warrants, for Licensee’s benefit alone, that under normal use the media in which Software is embedded shall be free from defects in material and workmanship, for a period of one (1) year from the date of delivery of the initial Software (“Warranty Period”).”**

## Terms and Conditions for Sale of Products and Services Form EM 104 (Grid Solutions)

**NOTICE: Sale of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance.**

### 1. Definitions

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"Contract" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"Firmware" means software provided with or embedded in a Product and necessary for the proper functioning of the Product, but excluding software supplied by a third party and software applications licensed separately

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"Products" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.

"Seller" means the entity providing Products or performing Services under the Contract.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Site" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.

"Terms and Conditions" means these "Terms and Conditions for Sale of Products and Services", including any relevant addenda pursuant to Article 18, together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

### 2. Payment

2.1 Buyer shall pay Seller for the Products and Services by paying all invoiced amounts by direct bank transfer in the currency specified by Seller in the Contract, without set-off for any payment from Seller not due under this Contract, within thirty (30) days from the invoice date. Remittance advice notifying of payment is to be sent to [Remit.Renewable.Energy@ge.com](mailto:Remit.Renewable.Energy@ge.com). Invoicing and payment shall be in accordance with the Contract. If not otherwise agreed in the Contract, Seller shall issue invoices upon shipment of Products and as Services are performed, or if the Contract Price is U.S. Two Hundred Fifty Thousand Dollars (\$250,000) or more, progress payments shall be invoiced starting with twenty-five percent (25%) of the Contract Price for Products and Services upon the earlier of Contract signature or issuance of Seller's order acknowledgement and continuing such that ninety percent (90%) of the Contract Price for Products is re-

ceived before the earliest scheduled Product shipment and Services are invoiced as performed ("the Progress Payments"). For each calendar month, or fraction thereof, that payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less. If the price is set by the Contract in a currency other than U.S. dollars, references to U.S. dollars in this Section 2.1 shall mean the equivalent amount in the applicable currency. In case of any increase in material or labor costs over the Contract execution period the Seller shall be entitled to get compensated as per the Contract price escalation mechanism specified in the Seller's offer. In case the Contract does not comprise a price escalation mechanism and if a Party can demonstrate that the continued performance of its contractual obligations has become excessively onerous due to an event as per Clause 10 (which will include evolution of any event preexisting at the time of signature of the Contract), the Parties are bound, within a reasonable time of written notice by one Party to the other, to negotiate alternative contractual terms or a mitigation plan which reasonably permit the consequences of the event to be mitigated or the restoration of the balance that was pre-existing at the signature of the Contract between the Parties. The Party serving notice under this Clause shall provide the other Party with as much commercially available details of the event or events affecting that Party's contractual obligations, the affected obligations themselves and how and to which extent these events are (and will be) affecting the performance of the Contract. The Parties shall act in the spirit of openness and transparency in this communication within the limits set by applicable antitrust laws and regulations. Where an agreement is reached, the Parties shall start implementing the agreed measures immediately, pending the signature of the relevant amendment to the Contract. In the event the Parties are unable to agree on alternative contractual terms or on a mitigation plan as provided above within fifteen (15) days of the written notice, and in the absence of any other agreement, the Party serving notice under this Clause will be entitled to either suspend its performance of the affected portion of the Contract, or to terminate the Contract, without any liability to the other party. If the Contract is suspended for a period greater than 60 consecutive days by that Party, either Party may terminate the Contract by sending written notice of termination to the other Party. In case of termination of the Contract hereunder, the Parties shall settle their accounts accordingly as if the Contract had been terminated through no fault of the Parties, without prejudice to any Party's right to apply the provisions of Clause 16.2 hereof. To support the prevention of fraud, in the event the Buyer is required to make a payment to a bank account that is not the one expressly agreed in the Contract, the Buyer shall before proceeding with payment request confirmation to the Seller that the bank account identified in the invoice or request for payment is valid. Verification must be anticipated not to lead to any delay in making payment.

2.2 As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Products are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment Security"). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened prior to commencement of work by Seller with respect to development, manufacturing and shipment of Products and at least sixty (60) days prior to commencement of Services, and (d) remain in effect until the latest of ninety (90) days after the last scheduled Product shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten (10) days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract.

2.3 Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments or acceptable Payment Security, Seller shall be entitled to an equitable extension of the schedule. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

### **3. Taxes and Duties**

Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract ("Seller Taxes"). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Seller Taxes ("Buyer Taxes"). The Contract Price does not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

### **4. Deliveries; Title Transfer; Risk of Loss; Storage**

4.1 For shipments that do not involve export, including shipments from one European Union ("EU") country to another EU country, Seller shall deliver Products to Buyer FCA Seller's facility or warehouse (Incoterms 2020). For export shipments, Seller shall deliver Products to Buyer FCA Port of Export (Incoterms 2020). Notwithstanding anything to the contrary, for any importation, Buyer shall be identified as the importer in all applicable documents. Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges plus

up to twenty-five (25%) percent. Partial deliveries are permitted. Seller may deliver Products in advance of the delivery schedule. In case Buyer and Seller agree on different transportation arrangement with cost of freight and delivery to destination included in the Contract Price, Seller will not be responsible for any increase in transportation costs occurring after the Contract signature unless if caused by Seller's sole negligence, and Seller will be entitled to invoice the Buyer the additional transportation costs it has actually incurred, subject to reasonable justification of such additional costs. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten (10) days after receipt.

4.2 For shipments that do not involve export, title to Products shall pass to Buyer upon delivery in accordance with Section 4.1. For export shipments from a Seller facility or warehouse outside the U.S., title shall pass to Buyer upon delivery in accordance with Section 4.1. For shipments from the U.S. to another country, title shall pass to Buyer immediately after each item departs from the territorial land, seas and overlying airspace of the U.S. The 1982 United Nations Convention of the law of the Sea shall apply to determine the U.S. territorial seas. For all other shipments, title to Products shall pass to Buyer the earlier of (i) the port of export immediately after Products have been cleared for export or (ii) immediately after each item departs from the territorial land, seas and overlying airspace of the sending country. When Buyer arranges the export or intercommunity shipment, Buyer will provide Seller evidence of exportation or intercommunity shipment acceptable to the relevant tax and custom authorities.

4.3 Risk of loss shall pass to Buyer upon delivery pursuant to Section 4.1, except that for export shipments from the U.S., risk of loss shall transfer to Buyer upon title passage.

4.4 If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller's facilities cannot be shipped to or received by Buyer or end user when ready due to any cause attributable to Buyer, its other contractors or the end user, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) Seller will be entitled to invoice the Buyer the costs of transportation to the storage facilities plus a lumpsum amount of 0.5% of the Contract Price per full week (or prorata thereof) of storage with a minimum of USD 1000 (one thousand United States Dollars). Invoices shall be on a weekly basis starting the beginning of third week of storage until the shipment of the Products can be made ; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery. If the Contract requires Seller to submit drawings or other documents for approval by Buyer, Buyer shall review and issue its response (either approval or disapproval with reasons for disapproval detailed) within 10 days of Seller's submittal. If Buyer fails to provide a response within 10 days, the submittal shall be deemed approved.

4.5 If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

## **5. Warranty**

5.1 Seller warrants that Products shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

5.2 The warranty for Products shall expire one (1) year from first use or eighteen (18) months from delivery, whichever occurs first, except that software is warranted for ninety (90) days from delivery. The warranty for Services shall expire one (1) year after performance of the Service, except that software-related Services are warranted for ninety (90) days.

5.3 If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall (i) at its option, repair or replace defective Products and (ii) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Products and Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

5.4 Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, re-installation and transportation of defective Products to Seller and back to Buyer.

5.5 The warranties and remedies are conditioned upon (a) proper storage, installation (by properly certified installers or under the supervision of properly certified supervisors, if required), use, operation, and maintenance of Products, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modifi-

cation or repair of Products or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear.

5.6 This Article 5 provides the exclusive remedies for all claims based on failure of or defect in Products or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article 5 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.

## **6. Confidentiality**

6.1 Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within twenty (20) days after the oral or visual disclosure. In addition, prices for Products and Services shall be considered Seller's Confidential Information.

6.2 Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

6.3 The obligations under this Article 6 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

6.4 Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Buyer nor Seller shall make any public announcement about the Contract without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Article 6 shall expire five (5) years after the date of disclosure. Article 6 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

## **7. Intellectual Property**

7.1 Notwithstanding the provisions of section 4.2, Seller grants only a non-exclusive license, and does not pass title, to any Firmware and other software provided by Seller under this Contract, drawings and other documentation delivered for use of Buyer shall remain subject to ownership and/or intellectual property rights of Seller, as applicable and title to any leased equipment remains with Seller.

7.2 Seller shall defend and indemnify Buyer against any claim by a non-affiliated third party (a "Claim") alleging that Products or Services furnished under this Contract infringe a patent in effect in the U.S., an EU member state or the country of the Site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of the Site, provided that Buyer (a) promptly notifies Seller in writing of the Claim, (b) makes no admission of liability and does not take any position adverse to Seller, (c) gives Seller sole authority to control defense and settlement of the Claim, and (d) provides Seller with full disclosure and reasonable assistance as required to defend the Claim.

7.3 Section 7.2 shall not apply and Seller shall have no obligation or liability with respect to any Claim based upon (a) Products or Services that have been modified, or revised, (b) the combination of any Products or Services with other products or services when such

combination is a basis of the alleged infringement, (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim, (d) unauthorized use of Products or Services, or (e) Products or Services made or performed to Buyer's specifications.

7.4 Should any Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option (a) procure for Buyer the right to continue using the Product or Service, or applicable portion thereof, (b) modify or replace it in whole or in part to make it non-infringing, or (c) failing (a) or (b), take back infringing Products or Services and refund the price received by Seller attributable to the infringing Products or Services.

7.5 Article 7 states Seller's exclusive liability for intellectual property infringement by Products and Services.

7.6 Each party shall retain ownership of all Confidential Information and intellectual property it had prior to the Contract. All rights in and to Firmware and software not expressly granted to Buyer are reserved by Seller. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment documentation as necessary to achieve that result.

## **8. Indemnity**

Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller's indemnity obligation, no part of the Products or Site is considered third party property.

## **9. Insurance**

During the term of the Contract, Seller shall maintain for its protection the following insurance coverage: (i) Worker's Compensation, Employer's Liability and other statutory insurance required by law with respect to work related injuries or disease of employees of Seller in such form(s) and amount(s) as required by applicable laws; (ii) Automobile Liability insurance with a combined single limit of \$2,500,000.00; and (iii) Commercial General Liability or Public Liability insurance for bodily injury and property damage with a combined single limit of \$2,500,000.00. If required in the Contract, Seller shall provide a certificate of insurance reflecting such coverage.

## **10. Excusable Events**

Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, pandemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. If an excusable event occurs, the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment.

Buyer recognizes that in case of epidemics or pandemics (or evolution of existing epidemics or pandemics), the precautionary, mitigation or corrective measures implemented by the Seller in the frame of the Contract are implemented in the best interest of the Buyer and the Contract performance, and the Buyer and Seller both agree that the additional costs reasonably incurred by Seller in implementing such measures shall be compensated by the Buyer to the Seller.

## **11. Termination and Suspension**

11.1 Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.

11.2 If Buyer terminates the Contract pursuant to Section 11.1, (i) Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Contract Price allocable to Products completed, (b) lease fees incurred, and (c) amounts for Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.

11.3 Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Buyer providing Payment Security, making any payment when due, or fulfilling any payment conditions.

11.4 If the Contract (or any portion thereof) is terminated for any reason other than Seller's default under Section 11.1, Buyer shall pay Seller for all Products completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to 80% of the Contract Price applicable to uncompleted made-to-order Products and 15% of the Contract Price applicable to all other uncompleted Products or Services.

11.5 Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event (as described in Article 10) lasting longer than ninety (90) days or such other period agreed upon in writing. In such case, Buyer shall pay to Seller amounts payable under Section 11.4, provided that Buyer's payments shall include the cancellation charge for uncompleted Products if the excusable event(s) leading to the termination included an act or omission of the Buyer or Buyer's contractors or suppliers but Buyer shall not be required to pay the cancellation charge if the excusable event(s) leading to termination did not include any act or omission of the Buyer or Buyer's contractors or suppliers.

11.6 Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

## **12. Compliance with Laws and Regulations**

12.1 Seller shall comply with laws applicable to the manufacture of Products and its performance of Services. Buyer shall comply with laws applicable to the purchase, application, operation, use and disposal of the Products and Services, including without limitation those regarding anticorruption/antibribery, fair competition (antitrust), and environment, health and safety (EHS). Buyer acknowledges it had access, reviewed, and fully understands GE's Integrity Policies. Seller shall at all times comply with the GE Integrity Policies. The GE Integrity Policies can be accessed electronically at [https://www.ge.com/sites/default/files/S&L\\_Booklet\\_English\\_0.pdf](https://www.ge.com/sites/default/files/S&L_Booklet_English_0.pdf)

12.2 Seller's obligations are conditioned upon Buyer's compliance with all US, EU, UK and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct or otherwise make or allow any disposition of equipment, materials, services, technology, technical data, software, or other information or assistance or Product furnished by the Seller under the Contract other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice. The Buyer hereby certifies that the equipment, materials, services, technology, technical data, software, or other information or assistance or product furnished by the Seller under the Contract will not be used in the design, development, production, stockpiling or use of chemical, biological, or nuclear weapons. The Buyer shall also ensure that the bank or financial institution or other entity executing any payments or financial transactions under the Contract on behalf of the Buyer (including without limitation the issuance of any payment securities such as a letter of credit) is not subject to any export regulation prohibiting to do business with such bank, financial institution or entity. Should the Buyer fail to comply with any of the obligations as specified above, the Seller may, without prejudice to the exercise of any other rights or remedies which may be available to it, terminate the Contract by giving the Buyer notice in writing to that effect. In the event of a change in applicable trade control laws and regulations, including but not limited to the laws of the US, EU and UK and changes in the interpretation thereof, or in the event an authorization pursuant to said laws is either denied, revoked, withdrawn or cancelled at any time, preventing the Seller from executing its obligations without breaching such applicable trade control laws and regulations or makes Seller's execution of its obligations unreasonably burdensome or unbalanced, Seller shall have the right without incurring liability to the Buyer to (i) withdraw its proposal, or either (ii) suspend its performance of the Contract or terminate the Contract. If the suspension lasts more than four (4) months, any of the Parties shall have the right to terminate the Contract by giving the other Party notice in writing to that effect.

12.3 Notwithstanding any other provision, Buyer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfillment of Buyer's obligations, except that Seller shall obtain any license or registration necessary for Seller to generally conduct business and visas or work permits, if any, necessary for Seller's personnel. Buyer shall provide reasonable assistance to Seller in obtaining such visas and work permits.

## **13. Environmental, Health and Safety Matters**

13.1 Buyer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method.

13.2 Buyer shall timely advise Seller in writing of all applicable Site-specific health, safety, security and environmental requirements and procedures. Without limiting Buyer's responsibilities under Article 13, Seller has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site.

13.3 If, in Seller's reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, and/or remotely perform or supervise work. Any such occurrence shall be considered an excusable event. Buyer shall reasonably assist in any such evacuation.

13.4 Operation of Buyer's equipment is the responsibility of Buyer. Buyer shall not require or permit Seller's personnel to operate Buyer's equipment at Site.

13.5 Buyer will make its Site medical facilities and resources available to Seller personnel who need medical attention.

13.6. Seller has no responsibility or liability for the pre-existing condition of Buyer's equipment or the Site. Prior to Seller starting any work at Site, Buyer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Buyer's equipment or the Site that Seller may encounter while performing under this Contract. Buyer shall disclose to Seller industrial hygiene and environmental monitoring data regarding conditions that may affect Seller's work or personnel at the Site. Buyer shall keep Seller informed of changes in any such conditions.

13.7 Seller shall notify Buyer if Seller becomes aware of: (i) conditions at the Site differing materially from those disclosed by Buyer, or (ii) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and schedule shall be made.

13.8 If Seller encounters Hazardous Materials in Buyer's equipment or at the Site that require special handling or disposal, Seller is not obligated to continue work affected by the hazardous conditions. In such an event, Buyer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Seller's work under the Contract may safely proceed, and Seller shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in Seller's cost of, or time required for, performance of any part of the work. Buyer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.

13.9 Buyer shall indemnify Seller for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present in or about Buyer's equipment or the Site prior to the commencement of Seller's work, (ii) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on Site by parties other than Seller.

#### **14. Changes**

14.1 Each party may at any time propose changes in the schedule or scope of Products or Services. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

14.2 The scope, Contract Price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's Site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. However, no adjustment will be made on account of a general change in Seller's manufacturing or repair facilities resulting from a change in laws or regulations applicable to such facilities. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at Seller's time and material rates.

14.3 It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding or new part or version number compared to the part or version number listed in the Contract.

#### **15. Limitations of Liability**

15.1 The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products or Services, shall not exceed the (i) Contract Price, or (ii) if Buyer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order and ten thousand US dollars (US \$10,000) for all claims not part of any particular order.

15.2 Seller shall not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of replacement power, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers for any of the foregoing types of damages.

15.3 All Seller liability shall end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.

15.4 Seller shall not be liable for advice or assistance that is not required for the work scope under this Contract.

15.5 If Buyer is supplying Products or Services to a third party, or using Products or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 15, or (ii) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 15.

15.6 For purposes of this Article 15, the term "Seller" means Seller, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Article 15 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Seller's liability.

## **16. Governing Law and Dispute Resolution**

16.1 This Contract shall be governed by and construed in accordance with the laws of (i) the State of New York if Buyer's place of business is in the U.S. or (ii) England and Wales if the Buyer's place of business is outside the U.S., in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction (the "Governing Law"). If the Contract includes the sale of Products and the Buyer is outside the Seller's country, the United Nations Convention on Contracts for the International Sale of Goods shall apply.

16.2 In the event of any dispute arising out of or in connection with this Contract, including any question regarding its existence or validity, the parties agree to submit the matter to mediation under the ICC mediation Rules, without prejudice to either party's right to seek emergency, interim or conservatory measures of protection at any time.

If the dispute has not been settled pursuant to the ICC Mediation Rules within thirty (30) days following the filing of a request for Mediation or within such other period as the parties may agree in writing, such dispute 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. In case the arbitral tribunal is constituted of more than one arbitrator, the party-appointed arbitrators shall, for a period of two (2) weeks following the date on which their appointments have both been confirmed, attempt to reach agreement on the president of the arbitral tribunal. For this purpose, the arbitrators may communicate with the parties on an *ex-parte* basis.

If the two arbitrators are unable to agree upon the third, upon request of either Buyer or Seller, the President of the ICC shall appoint the third.

The seat, or legal place, of the mediation and arbitration shall be Geneva, Switzerland.

The language to be used in the mediation and in the arbitration shall be the English language.

The parties' written submissions shall, to the extent possible, contain all arguments and supporting materials on fact, law and damages, including all exhibits on which each party intends to rely, supporting witness statements, expert reports and legal authorities.

## **17. Inspection and Factory Tests**

Seller will apply its normal quality control procedures in manufacturing Products and perform any factory tests in accordance with Seller's standard procedures. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work. Travel and living expenses of Buyer personnel to witness such tests shall be borne by Buyer. Unless otherwise agreed, failure by the Buyer or its representative to attend the factory tests on the scheduled date shall entitle the Seller to proceed with such factory tests alone and the Seller shall promptly share the results of such tests with the Buyer. In the event the factory tests or any other tests to be performed under the Contract cannot be either witnessed or performed (as the case may be) by the Buyer for any reason (including as a consequence of any pandemic) and the Buyer cannot delegate any third party to represent it, or to perform the tests in its name and on its behalf, the Seller may propose to the Buyer alternate measures in order to avoid delaying the testing, including but not limited to the use of electronic messaging services such as Skype, Teams or equivalent, recording devices such as cameras, and a distribution of results via electronic storage media such as DVD or streamed videos. The Buyer and the Seller shall make their best efforts to agree on such measures with a view not to delay the testing of the Products. If despite reasonable alternate measures proposed by the Seller, the Buyer instructs the Seller to suspend or postpone the performance of the tests, the Seller shall, notwithstanding anything to the contrary in the Contract, be entitled to a reasonable exten-

sion of the time for completion and compensation by the Buyer for the additional costs incurred as a result of the suspension or postponement of the affected tests.

#### **18. Firmware, Software, Leased Equipment, Remote Diagnostic Services, PCB Services**

Seller grants Buyer a non-exclusive license to use Firmware solely in connection with use of the Product for which the Firmware is provided by Seller. Buyer shall not sublicense, assign, or otherwise transfer the license to use the Firmware to any third party, except with that specific Product and to the extent such transfer is not otherwise restricted by the Contract. If Seller provides any software to Buyer other than Firmware, the Software License Addendum shall apply. If Seller leases any of Seller's equipment or provides related Services to Buyer, including placing Seller's equipment at Buyer's site to provide remote Services, the Lease Addendum shall apply. If Seller provides remote diagnostic services to Buyer, the Remote Diagnostic Services Addendum shall apply. If Seller provides PCB Services to Buyer, the PCB Services Addendum shall apply. If there is any conflict between these "Terms and Conditions for the Sale of Products and Services, Form EM 104" and the terms of any addendum incorporated pursuant to this Article 18, the terms of the addendum shall take precedence with respect to the applicable scope.

#### **19. General Clauses**

19.1 Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability. Consent of Seller to any such use, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

19.2 Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) shall be void.

19.3 Buyer shall notify Seller immediately upon any change in ownership of more than fifty percent (50%) of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), and/or (c) put in place special controls regarding Seller's Confidential Information.

19.4 If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

19.5 The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 18, 19 and 20.

19.6 The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products and Services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.

19.7 Except as provided in Article 15 (Limitations of Liability) and in Section 19.1 (no nuclear use), this Contract is only for the benefit of the parties, and no third party shall have a right to enforce any provision of this Contract, whether under the English Contracts (Rights of Third Parties) Act of 1999 or otherwise.

19.8 This Contract may be signed in multiple counterparts that together shall constitute one agreement. If permitted by applicable laws, the Contract may be signed by the parties using certified digital signature tools such as DocuSign, or any other agreed upon certified means.

#### **20. US Government Contracts**

20.1 This Article 20 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.

20.2 Buyer agrees that all Products and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. Unless otherwise specifically stated by Seller

in this Contract, Seller makes no representation or warranty as to the country of origin of Products. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). The version of any applicable FAR clause listed in this Article 20 shall be the one in effect on the effective date of this Contract.

20.3 If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

20.4 If Buyer is procuring the Products or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.