



# City of Grand Island

Tuesday, October 10, 2006

Council Session

## Item G21

**#2006-303 - Approving General Electric Technical Information  
Letter Proposal - Utilities Department**

Staff Contact: Gary R. Mader; Dale Shotkoski

# **Council Agenda Memo**

**From:** Gary R. Mader, Utilities Director  
Dale Shotkoski, Interim City Attorney

**Meeting:** October 10, 2006

**Subject:** Authorization for General Electric to Proceed with  
Implementation of Gas Turbine TIL's 1275 and 1537

**Item #'s:** G-21

**Presenter(s):** Gary R. Mader, Utilities Director

## **Background**

Gas Turbines 2 and 3 at Burdick Station are the combustion turbines that were installed in 2003. These units are operated primarily during the summer when City electric demands exceed the capacity of the Platte Generating Station. The design of the combustion turbines allows them to be started and stopped on a daily basis to support peak hourly demands. These units were manufactured by General Electric, who will periodically issue Technical Information Letters (TIL's) regarding operational or maintenance issues based on feedback from their user fleet. GE recently issued TIL's 1275-1R2 and 1537-1 that discuss problems with three other units that experienced excessive gas fuel flow at startup. The excessive fuel flow has resulted in minor explosions in the exhaust ducts, resulting in the units being removed from service. As a result of these cases, GE issued urgent TIL's advising of modifications to Gas Turbine control systems that will monitor and inhibit a unit start when the conditions for an excessive fuel flow event exist. These modifications are to be performed at the first available opportunity.

## **Discussion**

The required modifications to the control systems require a review of the control logic programming and parameters that are slightly different for every unit. After this review, the appropriate revisions must be determined, downloaded into the system, and proper function verified. As GE is the manufacturer of these units, GE designed the control systems and performed the operational tuning during the initial startup, and are the only resource for the engineering expertise required to perform this modification. GE has provided a price of \$50,000 to perform the control system engineering for both of the

Burdick units. Because of our operational requirements, GT's 2 and 3 are subject to frequent unit starts, which is the situation for which these TIL's were issued. Therefore, the plant staff highly recommends that the GE proposal be authorized and the modifications implemented.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the Authorization for General Electric to Proceed with Implementation of Gas Turbine TIL's 1275 and 1537.
2. Refer the issue to a Committee.
3. Postpone the issue to future date.
4. Take no action on the issue presented in this motion.

### **Recommendation**

City Administration recommends that the Council authorize GE Energy, Inc., from Loveland, Colorado, to perform the engineering design and installation of Gas Turbine TIL's 1275 and 1537 for a price of \$50,000.

### **Sample Motion**

Motion to approve the price of \$50,000 from General Energy Co., Inc., for the engineering design and installation of Gas Turbine TIL's 1275 and 1537 as submitted.

City Of Grand Island  
Grand Island  
68801  
Grand Island, NE , 68801

**Proposal No:** OC1275-G06-0009

**Date:** October 6, 2006

**Attention:** Roger Frandsen

**Subject:** Implementation of TIL1275

Dear Sirs,

GE Energy is pleased to provide this quotation for City Of Grand Island for the supply of the items listed herein, in response to your recent enquiry.

Should you have any questions or require any additional information please do not hesitate to contact the undersigned.

Yours sincerely

For and on behalf of GE International Inc. (GEII)

Bill Geisler

Sales Manager

## 1. SUMMARY

GE Energy is pleased to provide City Of Grand Island with this proposal for the implementation of TIL 1275 on gas turbine serial numbers: 810409 810410 with Mark V (or Mark VI) control system(s).

### 1.1 PROPOSED SCOPE AND PRICING

Proposed Scope: TIL1275 Excessive Gas Fuel Flow @ Start-Up for Mark V and Mark VI

City Of Grand Island should use the following four (4) diagnostic monitoring guidelines during start-up to ensure safe reliable operation of their unit(s). These include P2 High prior to ignition sequence, P2 Very High during the ignition sequence, P2 Low during the ignition sequence, and ignition sequence greater than 10 seconds.

The TIL control software monitors the P2 pressure condition during startup and takes corrective action as required. Although the automated software monitors and takes the appropriate action, it is imperative to maintain and continue the operation and maintenance practices recommended in this TIL and GER-3620. It is also necessary to monitor the P2 pressure during startups, especially after maintenance service to the gas vales (SRV/Control Valves).

Bypassing the automated protection sequence to detect high P2 pressure during start-up or failing to follow the other recommendation mentioned in this TIL risks an excessive fuel gas flow at the beginning of the ignition sequence that can potentially lead to a combustible mixture in the exhaust plenum and an uncontrolled energy release event.

Please review the attachment for the benefits of implementing this TIL.



T12751r2.pdf

### Project Definition

On a per unit basis, a GE engineer will perform a manual line-by-line review of the existing Mark V and / or Mark VI operation code. This review will allow the engineer to determine if there are space limitations, that can be alleviated by using pre-assigned alarms, constants, logics, etc to be used for the Excessive Gas Fuel Flow software.

These alarms, constants, logics, etc will be configured per TIL1275 monitoring software to provide safe reliable operation of the gas turbine. The software will include P2 High prior to ignition sequence, P2 Very High during the ignition sequence, P2 Low during the ignition sequence, ignition sequence greater than 10 seconds, and Gas Leak Test.

This new functionality will be interlaced with the existing start checks, trips, and valve sequencing. For example, the Gas Leak Test tests, prior to startup and after flameout of the unit, leakage across the auxiliary stop valve (when applicable), across the stop valve, and then across the control valves. This leads to early warning detection of leaky valves before the unit attempts to fire. If a large enough leak is detected, the startup is stopped or upon shutdown a future start is inhibited.



Each unit's software will be documented per the TIL 1275 changes, tested at the factory, and provided with a site checkout procedure for the Control Specialist Engineer to exercise the installed software.

The customer will be provided an electronic copy of the updated unit files on per unit basis for a Field Engineer to install. During the installation, the Field Engineer will exercise off-line and on-line test and submit the data back to the factory for final review and approval.

## Project Data Required from Site

The following data is required back from the site Master HMI Server prior to the start of the cycle time for supplying this new software:

- For Mark VI Systems: M6B File
- For Mark V Systems: F: Unit 1 File

## Exclusions

Craft labor and / or Training

## Assumption and Clarifications

The installation of the new software at site will be performed on Time & Material basis at published rates.

Cycle time is dependent upon receipt of current site configuration data. A GE Project Manager will be assigned after receipt of the order and will provide instructions for the download and transfer of site data as necessary. Site services to download the data are not included in this offering.

## Pricing

We are pleased to offer this quote for upgraded software for implementing TIL 1275 on all Gas Turbines (unit serial numbers 810409 810410 for the following price

Item	Qty	Description	Price
1	Lot	TIL1275 Excessive Fuel Gas Flow @ Start-up	\$ 50000

**Note:** The above price is in US Dollars, and does not include taxes or duties.

## 1.2 PROJECT SCHEDULE

Release for Shipment is expected to be 10 weeks after receipt of order. The projects delivery is based on receipt of complete site data as described in the SITE DATA REQUIRED WITH ORDER section



above within 2 weeks of PO receipt from the customer. Failure to receive the data within two weeks of PO receipt may delay the delivery cycle. If print approvals are required, delivery will be extended by additional time to release drawings to manufacturing.

The schedule is a best estimate based on current factory loading and lead times. GE will be willing to discuss better delivery dates to meet customer outage schedules. Delivery schedules will be agreed between GE and City Of Grand Island on acceptance of purchase order. City Of Grand Island and GE Project Managers shall develop and concur on a detailed project schedule after site kick off meetings.

A plant outage is required for TIL1275 installation. Installation will be performed on a Time and Material Basis according to current published rates (Attachment B). It is estimated that the installation and testing of TIL1275 will take approximately 4 hours per unit by a GE I&FS Specialty Engineer. The installation activities and project delivery schedule shall be coordinated with GE Project Manager and Service Manager.

### 1.3 DELIVERY TERMS

Seller shall deliver Products to Buyer EXW Seller's facility, place of manufacture or warehouse (Incoterms 2000). For all export shipments, Seller shall deliver Products to Buyer FCA Port of Export (Incoterms 2000). Title to Products shipped from the U.S. shall pass to Buyer immediately after each item departs from the territorial land, seas and overlying airspace of the U.S with risk of loss transferring to Buyer upon title passage.

### 1.4 TERMS OF PAYMENT

Our proposal is based upon the following payment schedule.

100% Shipment of Software

*All payments are net 30 days*

### 1.5 TERMS AND CONDITIONS

This proposal and commercial offer are subject to the below terms.

- Form ES104 (rev02) GE Terms And Conditions for Sale And Lease Of Products And Services attached.
- GE Software License Addendum To Terms And Conditions For Sale And Lease Of Products And Services

### 1.6 PURCHASE ORDER ADDRESS DETAILS

Upon the Buyer's decision to submit a purchase order, please address the Purchase order to:

GE International Inc. (GEII)  
3800 N Wilson Ave  
Loveland CO 80538  
Attn: Bill Geisler - Sales Manager

### 1.7 VALIDITY



This Proposal will remain valid for 30 days from the date indicated in the cover page and may be modified or withdrawn at any time by the Seller prior to receipt of Buyer's acceptance.

Prices quoted are based on the Assumptions and Clarifications and the Responsibilities Matrix as described in the Proposal Basis and performed according to the Terms and Conditions referenced or provided herein. If there are negotiated terms for this particular customer or project, the negotiated terms shall prevail.

## **1.8 TRANSFER TO SUBSIDIARY OR AFFILIATED COMPANY**

Seller may assign or transfer its rights and obligations regarding this proposal, in part or in whole, to one or more of the General Electric Inc. wholly owned subsidiaries upon written notice to Buyer setting forth the effective date of such assignment or transfer. Upon the effective date of such assignment or transfer, all of the rights and obligations of Seller under this Contract shall vest solely in the General Electric Inc subsidiaries. Buyer agrees to execute such documents as may be necessary to effect the assignment or transfer. Seller guarantees the performance of the General Electric Inc subsidiaries after the assignment or transfer takes effect. The delegation or assignment by Buyer of any or all of its duties or rights under this order without Seller's prior written consent shall be void.

## **1.9 TRADEMARK NOTICE**

Product and company names utilized in this document are trademarks or trade names of their respective companies.

## **1.10 DEFINED TERMS**

The following terms shall have the meanings set forth below as used throughout this Proposal.

"Buyer" means the entity to which Seller's proposal is directed, namely City Of Grand Island

"Buyer's Equipment" or "Unit(s)" means Buyer's equipment into which the Parts will be installed and on which the Services will be performed.

"Contract" means the contract between Seller and Buyer resulting from this Proposal.

"Contract Price" or "Proposal Price" means the price to be paid by the Buyer to the Seller under this Proposal or any resulting Contract for the Parts and Services.

"Parts" means the equipment, parts, materials, supplies, components and other goods, which Seller has identified in this Proposal.

"Primary Services" means such planning, management, Technical Advisory Services, labor, tools and incidental goods necessary to install the Parts identified herein and to move, install, assemble, modify, repair, modernize, start-up and/or maintain the Buyer's Equipment, in connection with any of the foregoing.

"Seller" means, GE International Inc. (GEII)

"Services" means all the Primary Services and the Supplementary Services to be performed or provided by Seller under this Proposal.

"Site" means the premises where the Buyer's Equipment is located.

"Supplementary Services" means any of the following, which are identified by Seller in this Proposal:





Engineering Study/Inspection/Test, meaning system design and/or analysis of equipment or systems which can be performed in a repair service shop or at the Site by competent, experienced personnel using special techniques, instruments or devices with the objective of reporting opinions or recommendations related to the current condition and future serviceability of the equipment or system.

Such other services as the parties agree in writing will be performed as Supplementary Services.

“Technical Advisory Services” or “Field Engineering Services” means technical advice and counsel from Technical Advisors or Field Engineers provided by Seller based on Seller's current engineering, manufacturing, installation and operation practices as applicable to the Parts. To the extent specified in this Proposal, such services may also include testing, adjustment, programming and other similar services. Unless otherwise specified in this Proposal, “Technical Advisory Services” / “Field Engineering Services” do not include supervision or management of Buyer's employees, agents, or other contractors.

This proposal and commercial offer are subject to the below terms.



## 2. ATTACHMENTS

- Form Es104 (Rev 2): Terms And Conditions For Sale And Lease Of Products And Services
- Form Es104 (Rev 1): Software License Addendum To Terms And Conditions For Sale And Lease Of Products And Services



**Form ES104 (Rev 2): TERMS AND CONDITIONS FOR SALE and LEASE OF Products and Services**

NOTICE: Sale or Lease of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Seller unless agreed to in writing by Seller; provided however, that no pre-printed facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Terms and Conditions or the Contract shall not be binding on either party. 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 or Contract, any quotation by Seller shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's acceptance.

**DEFINITIONS. UNLESS SELLER OTHERWISE AGREES:**

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

"Contract" means the documents that comprise the agreement between Buyer and Seller for the sale or lease of Products or Services, including these Terms and Conditions and any other documents incorporated therein by reference, such as, the final quotation, the agreed scope(s) of work, and Seller's order acknowledgement.

"Hazardous Materials" means any chemical, substance, material or emission that is or may be regulated, governed, listed or controlled pursuant to any international, national, federal, provincial, state or local statute, ordinance, order, directive, regulation, judicial decision or other legal requirement applicable to the Site as a toxic substance, hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, pesticide, radioactive material, regulated substance or any similar classification, or any other chemical, substance, emission or material, including, without limitation, petroleum or petroleum-derived products or by-products, regulated, governed, listed or controlled or as to which liability is imposed on the basis of potential impact to safety, health or the environment pursuant to any legal authority of the United States or the country of the Site.

"Leased Equipment" means all Products Seller has agreed to lease to Buyer under the Contract, as well as all equipment of Seller which will be located at the Site during all or some portion of the term of the Contract without Seller's personnel present, such as remote diagnostic equipment.

"Products" means all equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract, including Leased Equipment and Refurbished Parts.

"Refurbished Parts" means used Products that have been repaired and/or reconditioned by Seller for resale.

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

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

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

"Terms and Conditions" means these Terms and Conditions for Sale and Lease of Products and Services.

**2. PAYMENT. EXCEPT AS OTHERWISE AGREED TO BY SELLER IN WRITING, AND UPON APPROVED CREDIT, THE FOLLOWING PAYMENT TERMS APPLY:**

2.1 Buyer shall pay Seller all invoiced amounts in U.S. dollars, without right of set-off, within 30 days from date of invoice. Seller shall be entitled to payment of all charges associated with Seller's performance of Services as the Services are performed. For each Product with a price of U.S. \$500,000 or more, partial payments of the contract price shall be made as invoiced starting upon order placement, such that 80% of the Contract price is received before scheduled shipment. Buyer shall pay a monthly late payment charge computed at the rate of 1.5%, or the maximum interest rate permitted by applicable law, whichever is less, on any past-due amount for each calendar month (or fraction thereof) that the payment is overdue and all costs of Seller's collection efforts including reasonable attorney's fees.

2.2 Unless otherwise agreed in the Contract, in any transaction in which Buyer and Seller are domiciled in separate countries, Buyer shall establish an irrevocable, unconditional, sight letter of credit allowing for pro-rata payments for partial deliveries, storage, export shipment, price adjustments, cancellation or termination, and all other payments due from Buyer under the Contract and certification of the charges and grounds for such payment. The letter of credit shall be (a) confirmed by a bank that is acceptable to Seller, (b) payable at the counters of the confirming bank and (c) opened sixty (60) days prior to the earliest scheduled shipment and (c) remain in effect until ninety (90) days after the latest scheduled shipment. Buyer shall pay all banking charges. Seller will not begin performance until the letter of credit becomes operative. Buyer will increase the amounts and/or extend the validity period(s) and make appropriate modifications to any letter of credit within five business days of Seller's notification that such increase or extension is necessary to provide for payments to become due.

2.3 If at any time Seller reasonably determines that Buyer's financial condition does not justify the continuation of Seller's performance, Seller may require full or partial payment in advance or shall be entitled to suspend or terminate the Contract.

3. TAXES AND DUTIES. Unless otherwise specified in the Contract, Seller shall be responsible for and pay directly, all corporate and individual taxes measured by net income or profit imposed by any governmental authority on Seller, its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder ("Seller Taxes"). Buyer shall be responsible for and pay directly when due and payable all taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), other than Seller Taxes, imposed by any governmental authority on Seller or its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder ("Buyer Taxes"). All payments due and payable by Buyer to Seller hereunder shall be made in the full amount of the Contract price, free and clear of all deductions and withholding for Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts to Seller to cause the amounts Seller actually receives, net of deducted or withheld Buyer Taxes, to equal the full Contract price. Buyer shall provide to Seller within one month accurate official receipts from the appropriate governmental authority for deducted or withheld taxes.

**4. DELIVERY; TITLE TRANSFER; RISK OF LOSS; STORAGE.**

4.1 for shipments within the country of origin or manufacture and for u.s. exports, seller shall deliver products to Buyer exw seller's facility, place of manufacture or warehouse (incoterms 2000). For all other export shipments, seller shall deliver products to Buyer fca port of export (incoterms 2000). Buyer shall pay all delivery costs and charges or reimburse seller for shipping charges plus 25%. Except for those obligations that are consistent with incoterms 2000 specifically stated above, seller shall not be liable in any claim asserted by Buyer with respect to delivery. Partial deliveries will be permitted. If products delivered do not correspond in quantity, type or price to those itemized in the invoice for the shipment, Buyer will so notify seller within 10 days after receipt. Seller may deliver any or all products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by seller of all materials and information necessary to proceed with the work without interruption.

4.2 Title to Products shipped from the U.S. shall pass to Buyer immediately after each item departs from the territorial land, seas and overlying airspace of the U.S. For this purpose, the parties acknowledge that the territorial seas of the U.S. extend to twelve nautical miles from the baseline of the country determined in accordance with the 1982 United Nations Convention of the Law of the Sea. Title to Products shipped from within the country where Products will be installed shall pass to Buyer when Products are made available for shipment from the manufacturer's factory or the storage facility utilized by Seller. Title to Products shipped directly from a European Union ("EU") manufacturer or a EU storage facility outside the country where the Product will be installed shall pass to Buyer the earlier of (i) the port of export immediately after the Products have been cleared for export or (ii) immediately after each item departs from the territorial land, seas and overlying airspace of the EU sending country. Title to Products to be shipped from any other country shall pass to Buyer at the port of export immediately after the Products have been cleared for export. Title to Services shall pass to Buyer as performed. Notwithstanding the foregoing, for any software provided by Seller hereunder, only the license to the software transfers as set forth herein, and title to Leased Equipment shall remain at all times with Seller.

4.3 Notwithstanding Section 4.1 above, in all events risk of loss shall transfer to Buyer upon title passage.

4.4 If any Products cannot be shipped to or received by Buyer when ready due to any cause not attributable to Seller, Seller will notify Buyer and then may ship Products to a storage facility, including a facility within the place of manufacture, or to an agreed freight forwarder. If Seller places Products in storage or if Products are detained at any port, the following conditions shall apply: (i) title and all risk of loss or damage shall immediately pass to Buyer if they had not already passed; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller's invoices; (iii) all expenses and charges incurred by Seller, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, demurrage, removal and any taxes shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of Products to the originally agreed point of delivery.

4.5 Buyer shall bear the sole risk of loss for Buyer's equipment during the term of the Contract, whether at the Site, the Seller's facility or in transit from the Seller's facility. If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for transporting the equipment to and from Seller's



facility. Buyer shall reimburse Seller at Seller's then current storage rate if the equipment remains at Seller's facility beyond 10 days after notification that the Services have been completed.

**5. Excusable Delays.** Seller shall not be liable nor in breach or default of its obligations under the Contract to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable price and performance adjustment.

**6. Compliance with Laws, Codes and Standards.** 6.1 Seller represents that the Products will be produced in compliance with applicable fair labor standards laws, occupational safety and health laws, and laws related to nonsegregation and equal employment opportunity.

6.2 The Contract price, delivery and performance dates and any performance guarantees will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change in industry specifications, codes, standards, applicable laws or regulations.

6.3 Seller's obligations are conditioned upon Buyer's compliance with all applicable trade control laws and regulations. Buyer shall not transship, re-export, divert or direct Products other than in and to the ultimate country of destination specified on Buyer's order or declared as the country of ultimate destination on Seller's invoice, except as permitted by applicable laws and regulations.

6.4 Notwithstanding any other provisions, Buyer shall timely obtain any required authorization, such as an export license, import license, foreign exchange permit, work permit or any other governmental authorization, even if Seller applies for the authorization. Buyer shall be solely responsible for obtaining, maintaining and/or effectuating any governmental authorizations or notifications, including, without limitation, the submission and approval of a spill prevention and control plan, oil processing notification, and required air permit modifications, if any, required for the lawful performance of the Services at the Site.

## 7. WARRANTY.

7.1 Seller warrants to Buyer that (i) the Products shall be shipped free from defects in material, workmanship and title and (ii) the Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Unless Seller expressly agrees otherwise in writing, any items not manufactured by Seller (including incidental materials and consumables used in the Services) shall carry only the warranty that the original manufacturers provide, and Seller gives no warranty on behalf of the manufacturers of such items. Furthermore, used Products other than Refurbished Parts shall be sold "as is."

7.2 Unless otherwise stated in the Contract, the warranty period for Products shall be one year from first use or 18 months from delivery, whichever occurs first, except that software and baghouses, precipitators and other particulate collection equipment are warranted for 90 days from delivery. If Services include installation or direction of installation of heavy duty gas and steam turbine parts, the warranty period for each such part shall be one year after completion of installation or four years from the date of delivery, whichever occurs first. Unless otherwise stated in the Contract, the warranty period for Services shall be one year from completion, except for software related Services, which shall have a warranty period of 90 days from completion, and repair Services, which shall have warranty periods as follows: centrifuges and underground mine equipment - 30 days; pumps, compressors, instrumentation, communication, x-ray and control devices - 90 days; and other mechanical equipment - 180 days.

7.3 If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing within the warranty period. Seller shall thereupon (i) at Seller's option, repair or replace the defective Products or (ii) re-perform the defective Services. If in Seller's reasonable judgment the Product cannot be repaired or replaced or the Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for that portion of Products or Services that do not meet the above warranties. Any repair, replacement or reperformance by Seller hereunder shall not extend the applicable warranty period. The parties shall mutually agree on the specifications of any test to determine the presence of a defect.

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

7.5 These warranties and remedies are conditioned upon (a) the proper storage, installation, operation, and maintenance of the Products and conformance with the proper operation instruction manuals provided by Seller or its suppliers or subcontractors, (b) Buyer keeping proper records of operation and maintenance during the warranty period and providing Seller access to those records, and (c)

modification or repair of the Products or Services only as authorized by Seller. Seller does not warrant the Products or any repaired or replacement parts against normal wear and tear or damage caused by misuse, accident, or use against the advice of Seller. Any modification or repair of any of the Products or Services not authorized by Seller shall render the warranty null and void.

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

## 8. LIMITATION OF LIABILITY.

8.1 The total liability of Seller for all claims arising out of or relating to the performance or breach of the Contract or use of any Products or Services or any order shall not exceed (a) the Contract price or (b) if this Contract is in the form of a frame or master agreement under which Buyer places an order with Seller for the Products and Services to be purchased, (i) the final price of the particular order under which the specific Products or Services giving rise to the claim are supplied or performed or (ii) ten thousand US dollars (US\$10,000) if the claim is not part of any particular order. Seller's liability shall terminate upon the expiration of the applicable warranty period, provided that Buyer may enforce a claim that accrued prior to that date by commencing an action or filing an arbitration, as applicable under the dispute resolution clause, before the expiration of the applicable statute of limitations or repose, but not later than one year after the expiration of such warranty period.

8.2 Seller shall not be liable for loss of profit or revenues, loss of product, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of cover, downtime costs, increased operating costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages.

8.3 If Buyer is supplying Seller's Products or Services to a third party, Buyer shall require the third party to agree to be bound by this Article. If Buyer does not obtain this agreement for Seller's benefit, Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims made by the third party in excess of the limitations and exclusions of this Article.

8.4 Seller shall not be liable for any advice or assistance that is not required under the Contract.

8.5 For the purposes of this Article, the term Seller shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their agents and employees, individually or collectively.

8.6 The limitations and exclusions in this Article shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise.

8.7 Buyer's and Seller's rights, obligations and remedies arising out of or relating to the Products or Services are limited to those rights, obligations and remedies described in this Contract. This Article shall prevail over any conflicting or inconsistent terms in the Contract, except to the extent that such terms further restrict Seller's liability.

**9. Dispute Resolution, Governing Law.** 9.1 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be resolved in accordance with this paragraph and will be settled, if possible, by negotiation of the parties. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management of each party, to be held within twenty (20) business days after giving notice. If the dispute is not resolved within thirty (30) business days after the date of the meeting of higher management, or any later date to which the parties may agree, either party may submit to arbitration or court depending on Buyer's pertinent place of business, as follows:

(a) If Buyer's pertinent place of business is in a country other than the U.S., the dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("LCIA") Rules, which are incorporated by reference into this clause. The number of arbitrators shall be one unless the amount in dispute exceeds the equivalent of U.S. \$1,000,000, in which event it shall be three. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within thirty (30) days, who shall be the Chairman. The single arbitrator or the Chairman may not be a national or resident of the country of the Site or the countries in which either party is organized or has its principal place of business, unless both parties otherwise agree. The seat, or legal place, of arbitration shall be London, England. The arbitration shall be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.



(b) If Buyer's pertinent place of business is in the U.S., any claim, legal action or proceeding (including without limitation claims for set-off or counterclaim) regarding the dispute shall be brought in the U.S. District Court for the Northern District of Georgia, or in the event that court lacks jurisdiction to hear the claim, in the appropriate state courts of Cobb County, Georgia, and the parties irrevocably consent to the exclusive jurisdiction of those courts for such claims. Each party submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to its person and property, and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery to the party or by registered or certified mail, postage prepaid, to its address for notice under the Contract.

9.2 Notwithstanding the terms above, each party has the right at any time, at its option and where legally available, to commence an action or proceeding in a court of competent jurisdiction to apply for interim or conservatory measures, but not monetary damages.

9.3 The validity, performance and all matters relating to the interpretation and effect of the Contract and all further documents executed pursuant to it shall be construed and interpreted in accordance with the laws, excluding the rules on the conflict or choice of laws, of (i) the State of New York, U.S., if the Buyer has its pertinent place of business in the U.S., or (ii) England and Wales if the Buyer has its pertinent place of business outside of the U.S. If the Contract includes the sale of Products and the Buyer has its pertinent place of business outside of the U.S., the United Nations Convention on Contracts for the International Sale of Goods shall apply.

**10. CONFIDENTIALITY.**

10.1 In connection with the Contract, 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." "Confidential Information" means (a) all pricing for Products and Services, (b) all terms of the Contract, (c) all information that is designated in writing as "confidential" or "proprietary" by the Disclosing Party at the time of written disclosure, and (d) all information that is orally designated as "confidential" or "proprietary" by the Disclosing Party at the time of oral disclosure and is confirmed to be "confidential" or "proprietary" in writing within 10 days after oral disclosure. The obligations of this Article shall not apply as to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than from disclosure by the Receiving Party, its representatives or its affiliates; (ii) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when the source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party; (iii) is independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law, a valid legal process or a government agency; or (v) is approved for disclosure in writing by an authorized representative of the Disclosing Party.

10.2 The Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and permitted use(s) and maintenance of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees, agents or financing parties who have a need to know for Buyer to perform its obligations under the Contract or to use and maintain Products or Services, and (iii) not to disclose the Confidential Information to a competitor of the Disclosing Party. The Receiving Party agrees to obtain a commitment from any recipient of Confidential Information to comply with the terms of this Article. Confidential Information shall not be reproduced without the Disclosing Party's written consent, and the Receiving Party shall return all copies of Confidential Information to the Disclosing Party upon request except to the extent that the Contract entitles the Receiving Party to retain the Confidential Information. Seller may also retain one copy of Buyer's Confidential Information until all its potential liability under the Contract terminates.

10.3 If either party or any of its affiliates or representatives is required by law, legal process or a government agency to disclose any Confidential Information, that party agrees to provide the Disclosing Party with prompt written notice to permit the Disclosing Party to seek an appropriate protective order or agency decision or to waive compliance by the Receiving Party with the provisions of this Article. In the event that efforts to secure confidential treatment are unsuccessful, Seller may lawfully revise the Confidential Information to make it nonproprietary or to minimize the loss of its proprietary value.

10.4 Nothing in this Article grants the Receiving Party any license under any invention, patent, trademark or copyright now or later owned or controlled by the Disclosing Party.

10.5 Buyer shall not disclose Confidential Information to Seller unless it is required to do so to enable Seller to perform work under the Contract. If Buyer does disclose Confidential Information, Buyer warrants that it has the right to disclose the information, and Buyer shall indemnify and hold Seller harmless against any claims or damages resulting from improper disclosure by Buyer.

10.6 As to any individual item of Confidential Information, the restrictions of this Article shall expire the earlier of five (5) years after the date of disclosure or three (3) years after termination or expiration of the Contract.

10.7 This Article does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

**11. HEALTH AND SAFETY MATTERS.**

11.1 Buyer shall take all necessary precautions, at all times, for the health and safety of Seller personnel at the Site. These include, but are not limited to: providing to seller for review, and instructing seller's personnel regarding, Buyer's safety practices; proper and safe handling of, and protection of Seller's personnel from exposure to, Hazardous Materials; energization and de-energization of all power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out procedures; and conducting periodic safety meetings.

11.2 Seller may, from time to time, conduct safety audits to ensure the existence of safe site and working conditions and make recommendations to Buyer concerning them. Whether or not Seller conducts safety audits or makes recommendations, Buyer will remain responsible for providing a work environment that is safe and that complies with all applicable legal requirements. Buyer will make its local medical facilities and resources available to Seller personnel who need medical attention, for the duration of their needs. Under no circumstance will Seller personnel be required to work more than any maximum time periods allowed by applicable law.

11.3 If, in Seller's reasonable opinion, the safe execution of the Contract at the Site is, or is apt to be, imperiled by security concerns, local conditions, war (declared or undeclared), armed conflict or threatened conflict, civil unrest, terrorist acts or threats, threat to safety or well-being of the Site or personnel or Seller's persons or interests, 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 the Site, suspend performance of all or any part of the Contract, and/or transfer such performance and supervise it at a location solely determined by Seller. Buyer shall assist in any evacuation. Any delay that results shall be considered excusable.

11.4 Before issuing its purchase order, Buyer shall advise Seller in writing of all applicable Site-specific rules, regulations, safety codes, and laws that apply to Products and Services.

11.5 Operation of Buyer's equipment is the responsibility of Buyer. If Buyer requires or permits Seller's personnel to operate Buyer's equipment at the Site, Buyer shall indemnify and save Seller, its employees and agents, harmless from expense and liability (including reasonable attorneys' fees) incurred by or imposed upon Seller, its employees and agents, based upon exposure to Hazardous Materials, injury to persons (including death) or damage to property resulting from operation of equipment at the Site by Seller personnel. Buyer shall not require Seller personnel to work on other projects or equipment during the term of the Contract.

12. Site Access and Conditions; Hazardous Materials. 12.1 Buyer shall provide Seller access to the Site and any other facilities free of charge, including the operating and development environment and information, as necessary for Seller's performance of the Contract. Prior to Seller starting any work at the Site, Buyer will (i) provide documentation that identifies any existing Hazardous Materials on or about the Site, and (ii) allow Seller, at its option, access to the Site to perform or have performed a Site evaluation, including without limitation, a review of applicable documents and visual examination of the Site. Whether or not Seller conducts any evaluation, Seller will have no responsibility or liability for existing Site conditions.

12.2 Seller shall promptly, and, if feasible, before such conditions are disturbed, notify Buyer in writing of: (i) subsurface, latent physical or other conditions at the Site, including but not limited to Buyer's health and safety requirements, differing materially from those indicated in the Contract or otherwise disclosed by Buyer, and (ii) previously unknown physical conditions at the Site, including archeological remains, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. Buyer shall promptly investigate those conditions. If it is determined that any conditions do materially differ and cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, the parties shall make an equitable adjustment in price and schedule and modify the Contract in writing accordingly.

12.3 If, at the Site, Seller encounters Hazardous Materials that require special handling or disposal, Buyer shall immediately take whatever precautions are required to eliminate legally the hazardous conditions so that the work under the Contract may safely proceed. Seller shall not be obligated to commence or continue work until Buyer causes the hazardous conditions to be removed. If any such Hazardous Materials cause an increase in Seller's cost of or time required for performance of any part of the work, the parties shall make an equitable adjustment to the price and schedule and modify the Contract in writing accordingly. Buyer agrees to properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.

12.4 Buyer shall indemnify and hold Seller harmless for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to any Hazardous Materials which are or were (i) present on or about 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 the Site by parties other than Seller.



**13. Termination and Suspension.** 13.1 Buyer may terminate the Contract (or any portion thereof) for cause if Seller: (i) substantially breaches a material obligation 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 (or such extended period as is considered reasonable by the parties), to either (1) commence and diligently pursue cure of the breach, or (2) provide reasonable evidence that the breach has not occurred; or (ii) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws. If Buyer terminates the Contract as provided in this Section: (a) Buyer shall pay to Seller all portions of the Contract price allocable to work performed (for example, the price for Products completed or partially completed before the termination), Lease Fees incurred, and all Services performed at the Seller's then-current standard time and material rates; and (b) Seller shall pay Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably paid by Buyer to another supplier for that scope.

13.2 Seller shall have the right to suspend or terminate the Contract (or any portion thereof) immediately for cause if: (i) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) there is an excusable delay (as per Section 5 above) lasting longer than 120 days; (iii) any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; or (iv) Buyer materially fails to comply with any terms of the Contract, including but not limited to, failure to make any payment when due or to fulfill any payment conditions.

13.3 If the Contract (or any portion thereof) is terminated for any reason other than those set forth in Section 13.1 above, Buyer shall pay Seller for all Products completed or partially completed, Lease Fees incurred, and Services performed before the effective date of termination, plus a cancellation charge equal to 15% of the Contract price allocable to the uncompleted Products, unfinished Lease Term and unperformed Services. The following shall apply when determining the amount due from Buyer for Services performed before the date of termination: (i) for Services performed under time and material pricing, Buyer shall pay for all hours performed at Seller's then-current standard time and material rates and (ii) for Services performed under a firm fixed price, Buyer shall pay (a) the applicable price for all milestones achieved and (b) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Seller's then-current standard time and material rates.

13.4 Buyer shall pay any reasonable expenses incurred by Seller in connection with a suspension or termination, including expenses for repossession, fee collection, demobilization/remobilization or costs of storage during suspension upon submission of Seller's invoice(s). Performance of Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

**14. SOFTWARE, LEASED EQUIPMENT, REMOTE ENVIRONMENTAL SERVICES, REMOTE DIAGNOSTIC SERVICES, PCB SERVICES, EPC SERVICES.**

14.1 If Seller provides any software to Buyer, the terms of this Contract shall apply including the Software License Addendum. 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 terms of this Contract shall apply including the Lease Agreement Addendum. If Seller provides any remote environmental services to Buyer, the terms of this Contract shall apply including the Remote Environmental Services Addendum. If Seller provides any remote diagnostic services to Buyer, the terms of this Contract shall apply including the Remote Diagnostic Services Addendum. If Seller provides any PCB Services to Buyer, the terms of this Contract shall apply including the PCB Services Addendum. If Seller provides any EPC Services to Buyer, the terms of this Contract shall apply including the EPC Services Addendum. If there is any conflict between these terms and the terms of any applicable addendum, the terms of the addendum shall prevail.

14.2 If Seller performs Services related to Seller's own proprietary software, Buyer agrees that Seller owns all proprietary rights, including, but not limited to any patent, copyright, trade secret, trademark and other proprietary rights, in and to that software and any work derived from that software ("Derivative Work"). "Derivative Work" is (i) any work that is based upon one or more pre-existing work, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, extension or any other form in which such pre-existing work may be recast, transformed, or adapted, and that, if prepared without the authorization of the owner of the copyright to such pre-existing work, would constitute a copyright infringement and (ii) any compilation that incorporates such a pre-existing work. Buyer shall have only a "right to use" license to a Derivative Work for internal business purposes and shall not disclose, sell, lease, distribute, or otherwise transfer the Derivative Work to any third party except as may be permitted by these terms or as approved in writing by Seller.

14.3 For the purposes of this Article, Seller means Seller, its affiliates, and their successors or assigns.

**15. INTELLECTUAL PROPERTY INDEMNIFICATION.**

15.1 Subject to the terms of the Contract, Seller shall indemnify Buyer against any damages, costs and expenses arising out of any suit, claim, or proceeding (a "Claim") alleging that Products or Services infringe a patent in effect in the U.S., an EU member state or country of delivery (provided there is a corresponding patent issued by the U.S. or an EU member state), or U.S. copyright or copyright registered in the country of delivery; provided that: (a) Buyer promptly notifies Seller in writing of any such Claim; (b) Buyer makes no admission of liability and gives Seller sole authority, at Seller's expense, to direct and control all defense, settlement, and compromise negotiations; and (c) Buyer provides Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

15.2 Seller shall have no obligation or liability with respect to any Claim based upon: (a) any Products or Services that have been altered, modified, or revised; (b) the combination, operation, or use of any Products or Services with other products when such combination is part of any allegedly infringing process; (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim; (d) unauthorized use of Products or Services, including, without limitation, a breach of the provisions of the Contract; or (e) Products or Services made or performed to Buyer's specifications.

15.3 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 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 Products or Services and refund any fees received by Seller attributable to the infringing Product or Service.

15.4 This states Seller's entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for Products and Services.

15.5 Notwithstanding the foregoing, with respect to any Products or Services, or portions thereof, which are not manufactured/developed by Seller, only the indemnity of the manufacturer/developer, if any, shall apply.

**16. Changes.** 16.1 Each party may at any time propose changes in the schedule or scope of Products or Services in the form of a draft change order. Some changes requested by Buyer may require analytical or investigative work to evaluate the change, and this evaluation work may be charged to Buyer at prevailing rates. The parties may mutually agree on the length of time within which a decision shall be made regarding the change. If mutually agreed, the changes will be documented in a written document signed by authorized representatives of each party, along with any equitable adjustments in the Contract price or schedule. Seller is not obligated to proceed with the changed schedule or scope until both parties agree in writing. Changes in applicable laws, rules and regulations shall be treated as a change within the meaning, and subject to the requirements, of this Article. Unless otherwise agreed by the parties, pricing for additional work arising from changes in laws, rules and regulations shall be at time and material rates.

16.2 All Products delivered shall conform to Seller's part or version number specified or (at Seller's option) its equivalent or the superseding number subsequently assigned by Seller. If the number ordered is no longer available, Seller is authorized to ship a valid interchangeable Product without notice to Buyer.

**17. Inspection and Factory Tests.** The quality control exercised by Seller in its manufacture of Products shall be in accordance with Seller's normal quality control policies, procedures and practices. Seller shall attempt to accommodate Buyer's requests to witness Seller's factory tests of Products, if such witnessing can be arranged without delaying the work. Such access shall be limited to areas directly concerned with Products ordered by Buyer and shall not include restricted areas where development work or work of a proprietary nature is being conducted.

**18. General Clauses.** 18.1 Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity without the written consent of Seller. Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, unless Seller agrees to the use in writing. 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 damages, injury or contamination, and in addition to any other legal or equitable



rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against any such liability. If Seller agrees in writing to any such use, the parties shall agree upon special terms and conditions that provide Seller protections against nuclear liability and which are acceptable to Seller under the then current laws that apply.

18.2 Seller may assign or novate its rights and obligations under the Contract, in part or in whole, to any of its affiliates without Buyer's consent, and may subcontract portions of the work, so long as Seller remains responsible for it. Buyer agrees to execute any documents that may be necessary to effect Seller's assignment or novation. The delegation or assignment by Buyer of any or all of its duties or rights under the Contract without Seller's prior written consent shall be void.

18.3 Buyer shall notify Seller immediately upon any change in the ownership of more than fifty percent (50%) of Buyer's voting rights or in Buyer's controlling interest. 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), or (c) put in place special controls regarding Seller's Confidential Information.

18.4 If any provision of the Contract is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will replace any such

void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and is valid and enforceable.

18.5 The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17 and 18.

18.6 The Contract represents the entire agreement between the parties. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing by the parties' authorized representatives.

18.7 For direct and indirect U.S. government contracts only, all Products and Services provided by Seller shall be considered "commercial items" as defined in FAR Part 2, 2.101 and in accordance with FAR 52.244-6. If the reasonableness of the price cannot be established, if cost or pricing data is required for any other reason, or if the Products or Services cannot be considered "commercial items," Seller may cancel the Contract without liability.

18.8 This Contract may be executed in multiple counterparts that together shall constitute one agreement.

18.9 Except as provided in the Article entitled "Limitation of Liability," and in 18.1 above regarding nuclear use, this Contract is for the benefit of the parties and not for any third party



**Form ES104 (Rev 0): Software License Addendum To Terms And Conditions For Sale And Lease Of Products And Services**

**1. Definitions**

Unless otherwise agreed to by licensor, the following terms shall mean:

"documentation" means all material, including all printed material and on-line or electronic documentation (excluding training materials), referencing the software and third-party software provided hereunder.

"licensee" means the Buyer as that term is defined in the terms and conditions.

"licensor" means the seller as that term is defined in the terms and conditions.

"software" means licensor's proprietary computer software and software security devices provided by licensor under this license.

"terms and conditions" means licensor's terms and conditions for sale and lease of products and services to which this license is attached.

"third-party software" means any proprietary computer software owned by a third party that licensor may provide to licensee hereunder.

**2. License Grant**

2.1 subject to the terms of this license, licensor hereby grants to licensee a non-transferrable and nonexclusive license to use the software and documentation, including upgraded, modified or enhanced versions provided by licensor, and to use the third-party software, all for licensee's internal business purposes only.

2.2 licensee has no right to (i) lease, rent, transfer, distribute, sublicense, timeshare, or allow third parties to access the software, documentation, or third-party software, nor assign any rights hereunder to a third party without licensor's prior, written agreement; (ii) disassemble, decompile, reverse engineer, or otherwise attempt to reconstruct or discover the source code of the software or third-party software; (iii) pledge the software or third-party software as collateral or otherwise, or encumber such software or third-party software with any lien or security interest; or (iv) remove any product identification, copyright, trademark, or other notice from the software, documentation or third-party software. If licensee believes that it is entitled to reverse engineer the software as a matter of local law (e.g., the council directive of may 14, 1991, of the council of the european communities, as amended), licensee agrees that it shall first request technical information from licensor. Licensee shall use any technical information delivered by licensor only for purposes of ensuring "interoperability" and compatibility and shall treat such technical information as proprietary information (defined below). Any reverse engineering of the software shall void any warranties or indemnification obligations of licensor and shall automatically release licensor from any obligation to provide support services under this or any separate agreement.

2.3 certain software licensor provides to licensee may contain third-party software, including but not limited to "open source" software. Use of the third-party software and its source code may be governed by separate copyright notices and license provisions, which may be found or identified in the documentation or on the media delivered with the software and which are incorporated by reference into this license. Licensee shall not modify or combine the software and/or any third-party software in any manner that could cause, or could be interpreted or asserted to cause, the software or any modifications thereto to become subject to the terms of any license applicable to third party software. All third-party software provided hereunder is bundled with the products and licensed for use with the products only.

2.4 unless otherwise provided in the contract, licensee shall only have the right to install and use a single copy of the software and third-party software on a single computer workstation for use by a single user.

2.5 licensee may make one (1) copy of the software, documentation, and third-party software for backup purposes only. Licensee must reproduce and include all proprietary rights and copyright notices on any backup copies. Except as authorized under this license, no copies of the software, documentation, or third-party software may be made by licensee or any third party; provided, however, licensee may print on-line software documentation for its own internal use, provided the maximum number of copies may not exceed the number of users licensed hereunder.

**3. Support Services; Upgrades**

This license does not obligate licensor to provide maintenance and support on any software or third-party software licensed hereunder. Support services are available under separate agreement. If the software is an upgrade of a previous version (provided such upgrade was obtained under a separate support services agreement with licensor or a licensor authorized distributor), licensee may use the upgraded software only in accordance with this license.

**4. Verification**

During the term of this license and for 3 years thereafter, licensor may upon reasonable notice require that an independent audit of the use of the software and third-party software be conducted during licensee's normal business hours. Upon such notice, licensee shall provide licensor's independent auditor site access and the right to inspect relevant portions of licensee's computer system on which the software and third-party software resides. Licensee agrees to pay promptly: (a) all underpaid license fees and (b) if the underpayment is more than 5% of the license fees paid before audit, all audit costs and expenses.

**5. Term And Termination**

5.1 the software, documentation, and third-party software shall be considered accepted by licensee upon receipt.

5.2 this license is effective until terminated. Licensor may terminate this license immediately if licensee fails to comply with any of the terms and conditions herein. The license for any software or third party software provided with leased equipment shall terminate concurrently with termination of the lease. Upon termination, licensee shall (a) cease using the software, documentation, and third-party software and (b) certify to licensor within one (1) month of the termination that licensee has destroyed or returned to licensor the software, documentation, and third-party software, and all copies thereof.

**6. Ownership**

6.1 all software, documentation, and third-party software are licensed and not sold. Licensee agrees that licensor and its suppliers own all proprietary rights, including, but not limited to any patent, copyright, trade secret, trademark, and other proprietary rights, in and to the software, documentation, and third-party software, including any derivative works (defined in the terms and conditions) thereof, and any corrections, bug fixes, and updates to such software, documentation, third-party software, or derivative works. Licensee shall have only a "right to use" license to any derivative works in accordance with the terms of this license.

6.2 for the purposes of this article, the term "licensor" shall mean licensor, its affiliates, and their successors or assigns.

**7. Limited Warranties**

7.1 licensor warrants, for licensee's benefit alone, that under normal use the media in which the software is embedded shall be free from defects in material and workmanship, for a period of ninety (90) days from the date of delivery of the initial software ("warranty period").

7.2 licensor warrants, for licensee's benefit alone, that during the warranty period, the software will perform substantially in accordance with its documentation. If, during the warranty period, an error occurs (where "error" is defined as a problem caused by an incorrect operation of the unmodified computer code in the software or an incorrect statement or diagram in the documentation that produces incorrect results), licensee will use commercially reasonable efforts to correct such error, provided licensee furnishes licensor with the following: (a) written notice of the warranty claim, including a description of the failure to perform in accordance with the documentation and a specific description of the operating conditions (including the specific software/hardware configuration) under which the failure occurred, and (b) to the extent feasible, a representative sample of inputs for repeating and analyzing the failure. If licensor is unable, after commercially reasonable efforts, to correct the error, licensee's sole remedy shall be termination of this license and a refund of the license fees allocable to the specific nonconforming software that have been paid by licensee to licensor hereunder.

7.3 this article sets forth the exclusive remedies for all claims based on failure of or defect in the software and documentation, whether the failure or defect arises before or during the warranty period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence) or civil liability, strict liability, or otherwise. The warranties provided herein are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied, or statutory. No implied statutory warranty of merchantability or fitness for a particular purpose shall apply. Without limiting the foregoing, licensor does not warrant that the software or documentation (or licensee's use thereof) will be free from all errors or its use will be uninterrupted.

7.4 any remedial steps taken by licensor hereunder shall not extend the applicable warranty period.

7.5 except as expressly authorized by licensor in writing, all third-party software shall carry only the warranties provided by the owners thereof and licensor gives no warranties for such third-party software.

**8. Proprietary Information; Equitable Relief**





8.1 all information concerning or embedded in the software (including but not limited to source code and training materials), documentation, and third-party software is confidential and shall be considered licensor's (or its suppliers') proprietary information ("proprietary information") whether or not the information is marked as proprietary information. The proprietary information includes commercially valuable, substantial trade secrets, the design and development of which reflect the effort of skilled development experts and investment of considerable amounts of time and money.

8.2 licensee acknowledges: (a) any use of the software, documentation, or third-party software in a manner inconsistent with this license or (b) any other misuse of the proprietary information of licensor (or its suppliers), will cause immediate irreparable harm to licensor (or its suppliers) for which there is no adequate remedy at law. Licensee agrees that licensor (or its suppliers) shall be entitled to immediate and permanent injunctive relief from a court of competent jurisdiction in the event of any such misuse or threatened misuse by licensee. The parties agree and stipulate that licensor shall be entitled to such injunctive relief without posting of a

bond or other security; provided, however, that if the posting of a bond is a prerequisite to obtaining injunctive relief, then a bond in an amount equivalent to u.s. \$1,000 shall be sufficient. Nothing contained herein shall limit licensor's right to any remedies at law, including the recovery of damages from licensee for breach of this license.

8.3 the confidentiality obligations set forth in the terms and conditions with respect to items of confidential information shall expire, with respect to software and documentation, five years after termination of the contract.

By signing below licensee acknowledges and agrees to the terms and conditions of this license:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



RESOLUTION 2006-303

WHEREAS, Burdick Station Gas Turbines 2 and 3 are operated using computerized control systems; and

WHEREAS, said Gas Turbines were manufactured by General Electric and installed in 2003, to be operated primarily during the summer when city electric demands exceed the capacity of the Platte Generating Station; and

WHEREAS, General Electric periodically issues Technical Information Letters regarding operating or maintenance issues based on feedback from their user fleet; and

WHEREAS, excessive fuel flow during startups of some units has resulted in minor explosions in the exhaust ducts, resulting in damage and in the units being removed from service; and

WHEREAS, General Electric has issued urgent Technical Information Letters 1275-1R2 and 1537-1, advising that modifications must be performed at the first available opportunity; and

WHEREAS, General Electric is the manufacturer of the pump; and

WHEREAS, it is recommended that General Electric be authorized to proceed with the implementation of Gas Turbine Technical Information Letters 1275-1R2 and 1537-1 in the amount of \$50,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that General Electric of is hereby authorized to proceed with the implementation of Gas Turbine Technical Information Letters 1275-1R2 and 1537-1 in the amount of \$50,000.00 at Burdick Station.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 10, 2006.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form    ☐ \_\_\_\_\_  
July 25, 2006            ☐ City Attorney