

**Utility Resource Planning Software
Implementation for
Guam Power Authority
Statement of Work**

This Statement of Work ("SOW") is effective as of the date of last signature below ("Effective Date") by and between Hitachi Energy USA Inc., located at 400 Perimeter Center Terrace, Suite 500, Atlanta, Georgia 30346 ("Hitachi Energy") and Guam Power Authority located at Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913 ("Customer").

This SOW shall be performed pursuant to the Master Customer Agreement, as amended, between the Parties effective September 23, 2013 ("Agreement"). In the event of any conflict in the terms between this SOW and the Agreement, the terms of this SOW shall prevail. All capitalized terms not otherwise defined herein shall have the same meaning as in the Agreement.

Hitachi Energy Sales Executive

Name: *Kelly Bungay*
Phone: *(916) 634-9926*
Cell:
E-mail: *kelly.bungay@hitachienergy.com*

Hitachi Energy Project Manager

Name: *Carley Hennessy*
Phone: *(470) 618-7390*
Cell:
E-mail: *carley.hennessy@hitachienergy.com*

Customer Project Manager

Name:
Address:
Phone:
Mobile:
E-mail:

PO # :

Customer "Bill to" Contact/Dept.:

Name: *John M. Benevente, PE*
Address: *PO Box 2977, Hagatna, GU 96932-2977*
Phone:
Mobile: *671-648-3165*
E-mail: *jbenavente@gpagwa.com*

1 INTRODUCTION AND OBJECTIVES

Customer is reinstating maintenance for Hitachi Energy's Portfolio Optimization, Capacity Expansion ("CE") and Stochastics software. Professional Services are required.

Hitachi Energy submits this SOW for providing consulting services related to upgrading Customer's Portfolio Optimization, Capacity Expansion and Stochastics software to Hitachi Energy's most recent versions. Hitachi Energy will also provide database refinement services to Customer.

2 SCOPE OF WORK

Hitachi Energy documents the following scope for this project.

2.1 Database Refinement

Customer shall provide Hitachi Energy a copy of their previous or existing database. Upon review with Customer, Hitachi Energy will determine viability of the database for future use and upgradability. If Hitachi Energy determines that the existing database is unsuitable for upgrade purposes, a change order for Database Refinement efforts may be required.

2.2 Database and Software Upgrade

Customer shall provide Hitachi Energy a copy of their previous or existing database. Hitachi Energy intends, unless impossible as stated above, to execute the necessary upgrade scripts to bring the database forward to the latest software version.

2.3 Data Refinement and Configuration

After the database has been upgraded to the latest version, Hitachi Energy will update modeling constraints and parameters as necessary to successfully execute model runs on the upgraded database.

2.4 Installation and Training

After Hitachi Energy has upgraded and configured Customer's database, Hitachi Energy will assist Customer with installation of the latest version and import of the new database. Hitachi Energy will then schedule and conduct user training for Customer's business users and system administrators.

3 ESTIMATED SCHEDULE & ASSUMPTIONS

The following estimated schedule and deliverables have been identified within this SOW.

3.1 Estimated Schedule of Work

The estimated schedule of work will be agreed upon acceptance of the SOW by both parties.

3.2 Assumptions

The following assumptions have been made when producing this SOW. Deviations which arise during the project which affect tasks described or estimated costs will be managed through formal changes to this SOW. These changes may include charges on a time and materials basis using Hitachi Energy's rates in effect at the time of the adjustment for any resulting additional work or waiting time.

- Customer shall provide Hitachi Energy a copy of their previous or existing database. If previous database is not available or if database is determined to be unsuitable for refinement, a change order to increase fees will be required to prepare a new database.
- Services will be provided remotely unless otherwise specified in this SOW. If Customer requests onsite training, travel expenses will apply.
- The Hitachi Energy Project Manager will provide a single point of contact between Customer and Hitachi Energy with regard to scope, schedule, and resources assigned to accomplish the Hitachi Energy services.
- Hitachi Energy consultant(s) will work under the direction of a Hitachi Energy Project Manager or designee.
- Customer will provide functional and technical resources as needed throughout the life of the project that will serve as core team members, subject matter experts and project execution resources.
- No Acceptance Test or Warranty is applicable unless specifically noted in this SOW.
- No customizations are included in this statement of work.

4 CHARGES

4.1 Fee Summary

The fee(s) for this SOW is \$58,000 and will be performed on a Time and Materials (“T&M”) basis, exclusive of expenses and taxes. The estimates provided below are intended to be used for budgetary and Hitachi Energy resource scheduling purposes only.

All fees presented in this SOW are expressed in USD unless stated otherwise.

Task	Estimated Effort	Resources	Hourly Rate	Estimated Fee
Database Refinement	40 hours	Sr. Consultant – Advisors	\$290	\$11,600
Database Upgrade	40 hours	Sr. Consultant – Advisors	\$290	\$11,600
Database Reconfiguration	80 Hours	Sr. Consultant – Advisors	\$290	\$23,200
Training, including preparation	40 hours	Sr. Consultant – Advisors	\$290	\$11,600
TOTAL				\$58,000

4.2 Travel Expenses

Any travel expenses will be charged at cost and will be governed by Hitachi Energy’s Expense Reimbursement Policy as set forth in Attachment A.

4.3 Payment Terms


Hitachi Energy will invoice monthly in arrears. Invoices are due upon receipt and payable within thirty (30) days of the date set forth on each invoice.

5 Signature of Acceptance

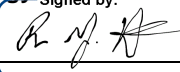
Pricing is subject to change at Hitachi Energy’s sole discretion if not accepted by Customer and returned to Hitachi Energy on or before December 16, 2024.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives.

Guam Power Authority


Signature: 
For
Printed Name: **John M. Benavente, P.E.**
Title: **General Manager**
Date: 12/16/2024

Hitachi Energy USA Inc.

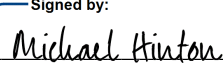
Signed by:
Signature: 
43FD1485070B406...
Printed Name: **Ron Hunt**
Title: **CFO**
Date: 10 December 2024

Guam Power Authority

APPROVED AS TO FORM:

Signature: 
Printed Name: **Marianne Woloshuk**
Title: **Staff Attorney**
Date: 12/16/2024

Hitachi Energy USA Inc.

Signed by:
Signature: 
AAB88DF2472E49B...
Printed Name: **Michael Hinton**
Title: **Global Head of Energy Portfolio Management**
Date: 10 December 2024

Attachment A – Expenses

Travel and living expenses include, but are not limited to, the following.

1. Travel to and from Customer site & while on site: Travel costs to and from the Customer's site, or any other authorized locations, and while on site will be billable. Mode of travel may include air or surface transportation. Hitachi Energy resources may elect to drive a personal car. Such travel will be billed on a per-mile basis based on the rate per mile allowable by the Internal Revenue Service.

2. Lodging while traveling to and from Customer's site and while on-site: Lodging costs, inclusive of all tips, taxes, and miscellaneous charges, will be billable.

3. Meals & Incidental expenses (M&IE): M&IE will be charged for every day or partial day on-site or while traveling to or from the Customer's site as incurred.

4. Weekend stays: To reduce travel, Hitachi Energy resources may elect to stay over the weekend at the Customer's work location. In these cases, the lodging and meal costs will be charged for the weekend days as incurred.

5. Long-term lodging: For assignments greater than three (3) months, Hitachi Energy resources may elect to obtain long-term accommodations, such as corporate housing. Long-term lodging costs will be billed on a monthly basis. The monthly cost will include all costs related to lodging. Customer will be responsible for loss of deposit due to terminated lease agreements if the charges are the result of termination of the project or the early release of a Hitachi Energy resource.

6. Parking: Parking of personal or rental cars while on-site, or parking at airports, will be billable. Hitachi Energy resources will utilize lower-cost parking lots when practical.

7. Changes: Additional costs incurred as a result of any travel changes are billable.

8. Other Costs: All reasonable other direct costs, including but not limited to the following, will be billable to the Customer:

- 8.1 Shipping and postage charges, including insurance, for hardware, equipment, and documentation.
- 8.2 Rental or purchase of direct materials and equipment as directed by Customer.
- 8.3 Reproduction of reports or documents.
- 8.4 Data communication, internet, and telephone charges.

DA-24-01009600.00

RENEWAL ORDER FORM**CUSTOMER:****Guam Power Authority****MASTER CUSTOMER AGREEMENT****("AGREEMENT") EFFECTIVE DATE:****September 23, 2013, as amended****ORDER FORM EFFECTIVE DATE:****Date of Last Signature Below****"SHIP TO" ADDRESS:**John M. Benevente, PE
671-648-3165
jbenevente@gpagwa.com**"BILL TO" ADDRESS (if different):**John M. Benevente, PE
671-648-3165
jbenevente@gpagwa.com**Guam Power Authority****Guam Power Authority**Gloria B. Nelson Public Service Building
688 Route 15
1st Floor, Room 101
Padian, GU 96913
Mangilao, GU 96913P. O. Box 2977
Hagatna, GU 96932-2977**SOFTWARE SENT ELECTRONICALLY: Yes**

This Order Form is attached to and, upon execution by both Customer and Hitachi Energy USA Inc. ("Hitachi Energy"), becomes a part of the Agreement. To the extent the terms of this Order Form conflict with or are inconsistent with the terms of the Agreement, the terms of this Order Form shall govern and the Agreement shall be deemed amended accordingly. Capitalized words not defined herein shall have the meanings ascribed to them in the Agreement.

MAINTENANCE:**ANNUAL ESCALATION CAP: CPI**

Licensed Software Suite	License Limitation	Maintenance Period Begin Date	Maintenance Period End Date	Payment Amount [USD]
Capacity Expansion	5 Named Users			
Stochastics	Fixed Fee			
Portfolio Optimization - Short Term Planning	600 MWs			
Portfolio Optimization - Long Term Planning	5 Named Users			
Year One Maintenance Fee		January 1, 2025	December 31, 2025	\$573,950.00 *
Year Two Maintenance Fee		January 1, 2026	December 31, 2026	\$114,448.00 + CPI
Year Three Maintenance Fee		January 1, 2027	December 31, 2027	Prior Year Fee + CPI
Year Four Maintenance Fee		January 1, 2028	December 31, 2028	Prior Year Fee + CPI
Year Five Maintenance Fee		January 1, 2029	December 31, 2029	Prior Year Fee + CPI

* The Year One Maintenance Fee of \$573,950.00 comprises the annual Maintenance fee plus cumulative Maintenance fees for the period during which Maintenance was declined and a Maintenance reinstatement fee.

PAYMENT: All fees under this Order Form are non-cancelable and non-refundable. For the Maintenance, Customer will pay to Hitachi Energy the fee provided for above, which shall be due upon the Order Form Effective Date and payable to Hitachi Energy within thirty (30) days of the date set forth on the invoice issued by Hitachi Energy. The parties acknowledge and agree that (i) Hitachi Energy shall provide Maintenance for the period beginning on January 1, 2025 and ending on December 31, 2029 and (ii) Customer is obligated to pay the total fees associated with the period beginning on January 1, 2025 and ending on December 31, 2029. For subsequent Maintenance Periods after December 31, 2029, Maintenance shall renew in accordance with the Agreement.

10-Dec-2024 12:59:01

ADDITIONAL TERMS AND CONDITIONS:**1. Additional Definitions:**

The following definitions are hereby added to the Agreement:

“Megawatt Limit” or **“MW Limit”** means the MW sum of the generation and demand response that a participant either owns or officially represents, which does not include the submission of meter data, to the defined market on behalf of another participant. Any MW configured within the Licensed Software will count towards the total number of MW; and bilateral deals between participants do not qualify as official representation.

2. Shipment and Delivery:

To the extent the software identified in this Order Form has not already been delivered, it will be shipped prepaid **FOB** Hitachi Energy shipping location.

3. Equipment:

To use any of the Licensed Software, Customer must also obtain, install on the Equipment, and maintain Hitachi Energy certified versions of certain third-party database software products, certain software, and hardware peripherals. By this notice, Hitachi Energy is advising Customer that Customer should consult with its Hitachi Energy representative to obtain a listing of such necessary third-party products and peripherals.

4. Impact of Coronavirus Outbreak:

The parties are aware of the outbreak of a Coronavirus (commonly known as COVID-19) or any mutation of such virus (“the Outbreak”). The Outbreak is impacting or may impact normal business operations or performance or delivery pursuant to this Order Form or the Agreement. Hitachi Energy shall be entitled to cost compensation, time extension or other reasonably required contract adjustments, if any consequences resulting out of, or in connection with the Outbreak, whether directly or indirectly, cause Hitachi Energy to incur additional cost or lead to any delay in performance or delivery or otherwise affect the fulfillment of Hitachi Energy’s contractual obligations or duties pursuant to this Order Form or the Agreement.


[continued on following page]

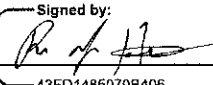
DA-24-01009600.00

Pricing is subject to change at Hitachi Energy's sole discretion if not accepted by Customer and returned to Hitachi Energy on or before December 16, 2024.

Guam Power Authority

Hitachi Energy USA Inc.

Signature: 

Signed by:
Signature: 
43FD1485070B406...

FOR
Printed Name: John M. Benavente, P.E.

Printed Name: Ron Hunt

Title: General Manager

Title: CFO

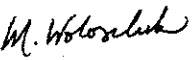
Date: 12/16/2024

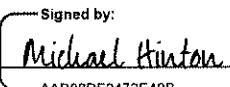
Date: 10 December 2024

Guam Power Authority

Hitachi Energy USA Inc.

APPROVED AS TO FORM:

Signature: 

Signed by:
Signature: 
AAB88DF2472E49B...

Printed Name: Marianne Woloschuk

Printed Name: Michael Hinton

Title: Staff Attorney

Title: Global Head of Energy Portfolio Management

Date: 12/16/2024

Date: 10 December 2024



MASTER CUSTOMER AGREEMENT

This Master Customer Agreement (the "Agreement") is made as of the latest of the dates below (the "Effective Date"), by and between Ventyx Inc., a Delaware corporation with offices at 400 Perimeter Center Terrace, Suite 500, Atlanta, Georgia 30346 for itself and on behalf of any Ventyx Affiliate, and Guam Power Authority corporation with offices at 1911 Route 16, Harmon, Guam 96911 (the "Customer").

This Agreement contains terms and conditions that will apply to Order Forms for Licensed Software or Maintenance, and/or Statements of Work ("SOWs") for Services, that the parties may enter into from time to time.

Customer and Ventyx agree as follows:

1. DEFINITIONS.

"Affiliate" means any entity that directly, or indirectly, is controlled by, is under common control with, or controls, a party. **"Control"** means the ownership of or exercise of voting control or direction over shares, securities or other voting instruments of such entity carrying fifty percent (50%) or more of the unrestricted voting rights, or ownership or exercise of other rights or powers entitling the holder thereof to direct, cause the direction of, or to manage the business of such entity.

"Confidential Information" means non-public information including, without limitation, the terms, conditions and pricing under this Agreement. Confidential Information of Ventyx includes, without limitation, the Licensed Software, all software provided with the Licensed Software, the Source Code, and all algorithms, methods, techniques and processes revealed by the Source Code. Confidential Information does not include information that: (a) was in the possession of, or was rightfully known by, the recipient without an obligation to maintain its confidentiality prior to receipt; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by the recipient from a third party having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by the recipient without reliance in any way on the Confidential Information.

"CPI" means at the time of escalation calculation, the percentage increase in the United States Consumer Price Index for all Urban Consumers for All Items, not seasonally adjusted, for the most recent twelve-month period ending prior to the Maintenance term expiration date.

"Documentation" means the user, installation, technical, and training publications delivered by Ventyx as available in conjunction with Licensed Software.

"Documented Defect" means a material deviation between the Licensed Software and its Documentation, for which Ventyx has confirmed that Customer has provided enough information for Ventyx to replicate on a computer configuration which is comparable to the certified computer configuration utilized by Customer.

"Employee" means an employee of each party, including contractors engaged to augment staff and/or perform duties traditionally performed by employees under such party's direct supervision.

"Equipment" means the Ventyx certified computer hardware and systems software configuration as specified in the Documentation.

"Hardware" means physical equipment, parts, or accessories that may be provided to Customer by Ventyx under an Order Form or SOW.

"Licensed Software" means the English language version of the particular Ventyx Software, Third-Party Software, and/or Documentation licensed by Ventyx to Customer pursuant to an Order Form.

"Maintenance" means Ventyx's then-current standard support and maintenance services for the Licensed Software, as amended from time to time, including the provision of (a) Updates as available for the Licensed Software; and/or (b) corrections of, workarounds, or avoidance procedures for, Documented Defects.

"Object Code" means computer programs assembled, compiled, or converted to magnetic or electronic binary form on software media, which are readable and usable by computer equipment.

"Order Form" means the document executed by both parties by which Customer orders Licensed Software and associated Maintenance.

"Services" means the implementation, training, customization, consulting, managed services, hosting, or other consulting services provided by Ventyx to Customer pursuant to a SOW under this Agreement.

"SOW" means a Statement of Work executed by both parties for the provision of Services to Customer.

"Source Code" means the English language source code version of the Licensed Software, and any accompanying comments or other programmer documentation.

"Territory" means the geographic area set forth in an Order Form in which Customer is authorized to use the Licensed Software.

"Third-Party Software" means Object Code versions of software licensed by Ventyx from third parties and sublicensed to Customer pursuant to an Order Form.

"Ventyx Software" means the Object Code versions of the software and any related databases developed by or for Ventyx,

and all Updates thereto provided by Ventyx under this Agreement.

"Work Product" means any expression of Ventyx's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, designs, programs, enhancements, modifications, interfaces, Object Code, and other technical information.

"Updates" means subsequent releases, corrections, versions, or revisions to the Licensed Software provided by Ventyx under this Agreement.

2. LICENSED SOFTWARE.

2.1 **License Grant.** Subject to the terms, conditions and restrictions set forth in this Agreement and the applicable Order Form, Ventyx grants to Customer a limited, non-exclusive, non-transferable license to use the Licensed Software for Customer's own internal business operations. Customer acknowledges that the Licensed Software may contain usage protection procedures that limit access to, and usage of, the Licensed Software for that use permitted under the applicable Order Form. Ventyx does not grant Customer a license to the Source Code of the Licensed Software. The computer readable media containing the Licensed Software may also contain software for which Customer is not granted a license to use. Customer may not make use of any software for which Customer is not expressly obtaining a license under the applicable Order Form. Any rights not expressly granted in this Agreement or the applicable Order Form, are expressly reserved.

2.2 **Restrictions.** Except as otherwise expressly set forth in an applicable Order Form, Customer shall not, or permit any third party to, directly or indirectly: (a) reverse engineer, disassemble, or decompile the Licensed Software or any portion thereof; (b) sublicense, rent, lease or otherwise transfer the Licensed Software, or any portion thereof; (c) use the Licensed Software for any third-party use including, but not limited to, training, facilities management, time-sharing, service bureau use, or data processing; (d) publish any results of benchmark tests run on the Licensed Software; (e) attempt to circumvent or render inoperative any usage restriction features contained in the Licensed Software; (f) remove, obscure, alter, or move Ventyx's and its licensors' proprietary notices on the Licensed Software or Documentation; or (g) use any Third-Party Software except solely in conjunction with the Ventyx Software and except in accordance with any applicable Third Party Software licensor terms and conditions, which terms and conditions are incorporated herein by reference and/or set forth in the applicable Order Form. Any interface information necessary to achieve interoperability of the Licensed Software with independently created computer programs will be provided by Ventyx at Ventyx's then-current fees upon execution of an applicable Order Form and upon Customer's written request.

2.3 **Installation.** Licensed Software may only be installed on Customer's or Ventyx's Equipment. If Customer's Equipment is owned or controlled by a third party, then such third party must execute an agreement that is consistent with the obligations of this Agreement. Customer may transfer the Licensed Software to other Customer Equipment and shall provide prompt written notice of such transfer to Ventyx. Customer shall be responsible for all costs related to any such transfer. In conjunction with any such transfer, all Licensed Software must be promptly deleted in its entirety from the initial

Equipment, and from each back-up copy existing for the initial Equipment.

2.4 **Delivery.** Unless otherwise specified in the Order Form, Licensed Software will be shipped prepaid FOB (Incoterms 2010) Ventyx shipping location.

2.5 **Copies of Licensed Software.** Customer may make a reasonable number of backup copies of the Licensed Software as is consistent with Customer's normal backup or disaster recovery procedures, or as otherwise permitted the applicable Order Form. Customer shall maintain a log of the number and location of all originals and copies of the Licensed Software, which shall be provided to Ventyx upon request. Any copies made for disaster recovery purposes may not be used by Customer in any manner except in the event of a disaster. In the event of a disaster which causes Customer to use any copy of the Licensed Software, Customer must promptly inform Ventyx of the disaster and must stop using such copy promptly after the disaster is abated.

2.6 **Certification.** On Ventyx's request, but not more than once per year, Customer shall furnish Ventyx with a signed certification verifying that Customer's use of the Licensed Software is in accordance with the terms and conditions of this Agreement and the applicable Order Form.

3. MAINTENANCE.

3.1 **Maintenance.** Customer may elect to order Maintenance for Licensed Software pursuant to an Order Form. Ventyx shall provide Maintenance for the period of time set forth in the Order Form (the "Maintenance Period"). Any such Maintenance will be provided by Ventyx or its Affiliates or subcontractors using commercially reasonable efforts and subject to the terms of this Agreement as further modified by the Order Form and Ventyx's applicable maintenance and support policies in effect at the beginning of the then-current Maintenance Period. Ventyx's obligation to provide Customer with Maintenance for Third Party Software is limited to providing Customer with the Maintenance that the third party licensor provides to Ventyx. Unless otherwise set forth in the applicable Order Form or SOW, Ventyx does not provide Maintenance for Hardware. If Customer orders Maintenance, Customer may not exclude any portion of the Licensed Software from Maintenance.

3.2 **Maintenance Renewal.** Unless Maintenance is cancelled by either party by written notice no less than ninety (90) days prior to the end of the then-current Maintenance Period, the Maintenance Period shall automatically renew for additional one (1) year periods, except as otherwise set forth on an applicable Order Form. For each year of Maintenance after the initial year, the Maintenance fee for Ventyx Software shall automatically increase by CPI (the "Annual Escalation Cap"). Third Party Software Maintenance fee increases may exceed the Annual Escalation Cap. Unless otherwise set forth in the applicable Order Form, Maintenance fees after the initial Maintenance Period are due on the first day of the last month of the prior Maintenance Period. If applicable, Ventyx may prorate Maintenance fees so that Maintenance fees for all Licensed Software are renewable on the same date even if the Licensed Software was not ordered on the same date. In the event that Customer declines or terminates Maintenance, and Customer subsequently orders or reinstates Maintenance, Customer shall pay: (a) the cumulative Maintenance fees for that period during which Maintenance was declined or terminated at the then-current list price; and (b) an additional Maintenance

reinstatement fee in the amount of the lesser of 10% of the then-current annual Maintenance fee or \$50,000; in addition to (c) Maintenance fees for the current Maintenance Period at the then-current list price.

3.3 Customer's Maintenance Obligations. Customer shall apply any Updates provided by Ventyx. Customer shall cooperate with Ventyx by providing access to the Equipment to the extent required to diagnose or resolve issues.

3.4 Customizations. Ventyx shall not be responsible for providing Maintenance for any customizations or modifications. In the event that Ventyx agrees to provide Maintenance for customizations or modifications, additional Maintenance fees may apply.

4. SERVICES.

4.1 Services. Ventyx (directly, through one or more of Ventyx's Affiliates or through subcontractors or consultants) will provide to Customer the Services set forth in an applicable SOW.

4.2 Customer Obligations. Customer shall perform its obligations as set forth in the applicable SOW, as well as the following obligations (collectively referred to as "Customer Obligations"): (a) designate and provide one Customer Project Manager who will be responsible for coordinating the Customer Obligations under a SOW; (b) provide sufficient, qualified, knowledgeable personnel capable of: (i) performing Customer Obligations; (ii) making timely decisions; and (iii) participating in the project and cooperating with Ventyx; (c) provide Ventyx with reasonable access to Customer's facilities during Customer's normal business hours and otherwise as reasonably requested by Ventyx, including remote access as applicable; (d) provide Ventyx with reasonable working space, equipment and office support; and (e) perform such other duties and tasks as set forth in an applicable SOW to facilitate performance of the Services.

4.3 Condition for Services. Customer agrees that Ventyx's ability to perform the Services is conditioned upon Customer's timely performance of the Customer Obligations and any assumptions described in the applicable SOW. In the event Customer does not perform Customer Obligations in a timely manner, Ventyx may: (a) suspend the Services; (b) take any action as set forth in the applicable SOW; and/or (c) terminate the applicable SOW in accordance with this Agreement.

4.4 Change Procedures. Any change to a SOW shall be made in writing and signed by both parties. All such changes shall be processed in accordance with Ventyx's then-current change request procedures.

4.5 Suspension.

(i) At any time, by written notice to Ventyx, Customer may suspend the performance of all or any portion of the Services to be performed under this Agreement. Upon receipt of such notice, Ventyx shall, unless the notice requires otherwise:

(a) immediately discontinue its provision of the affected Services on the date and to the extent specified in the notice;

(b) place no further orders for material, services, or facilities with respect to suspended Services other than to the extent required in the notice;

(c) promptly make every reasonable effort to obtain suspension or termination upon terms satisfactory to Customer of all orders, contracts and rental agreements to the extent they relate to performance of suspended Services;

(d) continue to protect and maintain the Work Product including those portions on which the Services has been suspended; and

(e) take any other reasonable steps to minimize costs associated with such suspension.

(ii) As full compensation for such suspension, Ventyx will be reimbursed for the following:

(a) a standby charge to be paid to Ventyx during the period of suspension of Services, which standby charge shall be sufficient to compensate Ventyx for keeping its organization and equipment committed to the suspended Services on a standby basis;

(b) all reasonable costs associated with mobilization and demobilization of Ventyx's plant, forces and equipment;

(c) an equitable amount to reimburse Ventyx for the cost of maintaining and protecting that portion of the Services upon which performance has been suspended, and

(d) if as a result of any such suspension, the cost to Ventyx of subsequently resuming the Services is increased, an equitable adjustment will be made in the Services fees.

All such charges set forth above shall include reasonable amounts for overhead and profit.

(iii) Upon receipt of notice to resume suspended Services, Ventyx shall resume performance under this Agreement to the extent required in the notice as soon as reasonably practical. If Ventyx intends to assert a claim for equitable adjustment under Section 4.5(ii), Ventyx must, within thirty (30) calendar days after receipt of notice to resume the suspended Services, submit to Customer a written statement setting forth the schedule impact and monetary extent of such claim in sufficient detail to permit thorough analysis.

5. HARDWARE.

5.1 General. Ventyx will provide any Hardware specified in an Order Form or SOW.

5.2 Delivery of Hardware.

(a) All Hardware manufactured, assembled or warehoused in the continental United States is delivered F.O.B. (Incoterms 2010) Sugar Land, Texas, USA. Customer shall be responsible for any and all demurrage or detention charges.

(b) If the scheduled delivery of Hardware is delayed by Customer or by Force Majeure, Ventyx may move the Hardware to storage for the account of and at the risk of Customer whereupon it shall be deemed to be delivered.

(c) Shipping and delivery dates are contingent upon Customer's timely approvals and delivery by Customer of any documentation required for Ventyx's performance hereunder.

(d) Claims for shortages or other errors in delivery must be made in writing to Ventyx within ten days of delivery. Hardware may not be returned except with the prior written consent of and subject to terms specified by Ventyx. Claims for damage after delivery shall be made directly by Customer with the common carrier.

5.3 Title and Risk of Loss for Hardware. Title to Hardware shall remain in Ventyx until fully paid for by Customer.

5.4 Hardware Inspection, Testing and Acceptance.

(a) Any inspection by Customer of Hardware on Ventyx's premises shall be scheduled in advance to be performed during normal working hours.

(b) If the applicable Order Form provides for factory acceptance testing, Ventyx shall notify Customer when Ventyx will conduct such testing prior to shipment. Unless Customer states specific objections in writing within ten (10) days after completion of factory acceptance testing, the factory acceptance test shall be deemed accepted, and Ventyx shall be authorized to ship the Hardware.

(c) If the Order Form provides for site acceptance testing, testing will be performed by Ventyx personnel to verify that the Hardware has arrived at site complete, without physical damage, and in good operating condition. Completion of site acceptance testing constitutes full and final acceptance of the Hardware. If, through no fault of Ventyx, acceptance testing is not completed within thirty (30) days after arrival of the Hardware at the site, the site acceptance test shall be deemed completed and the Hardware shall be deemed accepted.

5.5 OSHA. Ventyx warrants that the Hardware will comply with the relevant standards of the Occupational Safety and Health Act of 1970 ("OSHA") and the regulations promulgated thereunder as of the Effective Date. Upon prompt written notice from Customer of a breach of this warranty, Ventyx will replace the affected part or modify it so that it conforms to such standard or regulation. Ventyx's obligation shall be limited to such replacement or modification. In no event shall Ventyx be responsible for liability arising out of the violation of any OSHA standards relating to or caused by Customer's design, location, operation, or maintenance of the Hardware, its use in association with the Equipment or other equipment of Customer, or the alteration of the Hardware by any party other than Ventyx.

5.6 Resale of Hardware. If Customer resells any of the Hardware, the sale terms shall limit Ventyx's liability to the buyer to the same extent that Ventyx's liability to Customer is limited hereunder.

6. PAYMENT.

6.1 Fees. Customer shall pay to Ventyx the fees set forth in each Order Form or SOW. Unless otherwise provided in the applicable Order Form or SOW, all fees are due upon the Effective Date thereof, and are payable to Ventyx within thirty (30) days of the date set forth on each invoice issued by Ventyx without set-off, deduction or other withholding. All Order Forms, SOWs, and fees are non-cancelable and non-refundable. Any fees payable by Customer hereunder that are not paid when due shall accrue interest at a rate equal to the lesser of (a) 1.5% per month; or (b) the maximum amount allowed by applicable

law. Customer agrees to pay to Ventyx all reasonable costs and expenses of collection, including reasonable attorneys' fees and court costs, incurred by Ventyx to collect payments due. If any invoice is not paid when due, Ventyx may (i) suspend performance of the applicable Maintenance and/or Services until payment in full; and/or (ii) upon five (5) days prior written notice, recover or disable the applicable Licensed Software until payment is made in full.

6.2 Taxes. Customer is liable for any and all sales, use, excise, value added, GST (goods and services tax), customs fees, or other similar taxes to be paid by either party in connection with this Agreement, including withholding taxes arising from international transactions Ventyx must pay. If Customer is exempt from the payment of any such taxes, Customer must provide Ventyx with a valid tax exemption certificate; otherwise, absent proof of Customer's direct payment of such taxes to the applicable taxing authority, Ventyx will invoice Customer for and Customer will pay to Ventyx all such taxes. Subject to the foregoing, Ventyx shall be solely responsible for all taxes based on its income.

7. PROPRIETARY RIGHTS.

7.1 Ownership. Customer owns all right, title and interest in and to all of Customer's Confidential Information. Ventyx owns all right, title, and interest in and to all Ventyx Confidential Information including, without limitation, all patent, trademark, copyright, trade secret, and other intellectual property rights related thereto. Ventyx's licensors own all right, title, and interest in and to all Third Party Software and related Documentation including, without limitation, all patent, trademark, copyright, trade secret, and other intellectual property rights related thereto. All Work Product, and all patent, trademark, copyright, trade secret, and other intellectual property rights related thereto, is the property of Ventyx on creation and is licensed nonexclusively to Customer, at no additional license fee, pursuant to the applicable SOW and subject to the terms of this Agreement.

7.2 Assignment of Rights; Cooperation. To the extent Customer acquires any rights in any Work Product, Customer hereby assigns all such rights to Ventyx. Customer shall give Ventyx all reasonable assistance and execute all documents necessary to assist or enable Ventyx to perfect, preserve, register and/or record such assignment and Ventyx's right, title, and interest in and to any Work Product.

7.3 Protection of Confidential Information. Each party may furnish the other party with Confidential Information. Neither party shall (a) directly or indirectly disclose or cause to be disclosed, or otherwise transfer any Confidential Information of the other party to any third party; or (b) utilize Confidential Information for any purpose, except as expressly contemplated by the Order Form or SOW, or otherwise authorized in writing by the other party. Each party will limit the disclosure of the other party's Confidential Information, to Affiliates and Employees with a need-to-know and who have been advised of the confidential nature thereof, or third party consultants with a need-to-know and who have been contractually obligated to maintain such confidentiality through signature of a written nondisclosure agreement acknowledging the non-disclosure obligations of this Agreement; provided, however, that Customer will obtain Ventyx's prior written consent before disclosing any Ventyx Confidential Information to any third party. Each party shall provide the other party with copies of any such nondisclosure

agreements upon written request. Each party shall be liable for any breach by any Employee or third party consultant of the confidentiality obligations contained herein.

7.4 **Required Disclosures.** In the event a party is required under applicable law, rule, regulation, court or administrative order to disclose Confidential Information of the other party, the first party shall use commercially reasonable efforts to: (a) give at least ten (10) days prior written notice of such disclosure to the other party; (b) limit such disclosure to the extent possible; and (c) make such disclosure only to the extent so required.

8. LIMITED WARRANTIES.

8.1 **Licensed Software Limited Warranty.** Ventyx warrants that, subject to this Section 8, the Ventyx Software will perform without Documented Defects ("Software Warranty") for a period of three (3) months following the earlier of: (a) delivery of the Licensed Software to Customer; or (b) the start of implementation Services for the Licensed Software (the "Software Warranty Period"). Warranties related to any Third Party Software, if any, shall be specified in the applicable Order Form. Customer must notify Ventyx in writing of any claim under the Software Warranty prior to the end of the Software Warranty Period (the "Software Warranty Notice"). Customer will give Ventyx sufficient access, including remote access, to the Licensed Software and the Equipment, and sufficient information and time, to allow Ventyx to duplicate the Documented Defect.

8.2 **Services Limited Warranty.** Ventyx warrants that the Services will be performed in a workmanlike manner consistent with generally accepted industry standards and in compliance with the applicable SOW (the "Services Warranty"). Written Notice of any claim under the Services Warranty must be made within thirty (30) calendar days of completion of the Services which Customer alleges were not performed consistent with the Services Warranty.

8.3 **Limited Warranty for Hardware.** Ventyx warrants that Hardware shall be delivered free of defects in material and workmanship as limited herein: (i) the warranty period for refurbished or repaired parts shall end ninety (90) days after date of shipment; (ii) the warranty period for new spare parts shall end twelve (12) months after date of shipment; and (iii) the warranty period for all other Hardware shall end twelve (12) months after installation or eighteen (18) months after date of shipment, whichever first occurs (the "Hardware Warranty," and together with the Software Warranty and the Services Warranty, the "Ventyx Limited Warranties"). Notice of any claim under the Hardware Warranty must be made prior to the end of the applicable warranty period for the type of Hardware which is the subject of the claim. Hardware supplied by Ventyx but manufactured by others is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

8.4 **Warranty Obligations of Ventyx.**

8.4.1 Ventyx's sole obligation under the Software Warranty shall be to provide corrections of, or avoidance procedures for, the Documented Defect identified in the Software Warranty Notice.

8.4.2 Ventyx's sole obligation under the Services Warranty shall be to re-perform the Services which were not as warranted.

8.4.3 Ventyx's sole obligation under the Hardware Warranty shall be, at Ventyx's sole option, to either (i) repair or replace the nonconforming portion of the Hardware; or (ii) refund the portion of the fees applicable to the nonconforming portion of the Hardware. Notwithstanding the foregoing, Ventyx shall not be responsible for providing working access to the nonconforming Hardware, including disassembly and re-assembly of non-Ventyx supplied equipment, or for providing transportation to or from any repair facility, all of which shall be at Customer's sole risk and expense.

8.4.4 TO THE EXTENT PERMITTED BY LAW, THIS SECTION SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE VENTYX LIMITED WARRANTIES.

8.5 **Limitations.** The Ventyx Limited Warranties shall not apply: (a) to any customizations or modifications; (b) if the Licensed Software is not used on the Equipment, or in accordance with the Documentation or this Agreement; (c) if the Services or Licensed Software has been installed, implemented, customized, modified, enhanced or altered by Customer or any third party; (d) if Customer is not using the most recent version of the Licensed Software and the Documented Defect has been remedied in the newer version; (e) to any error or defect caused by Customer, any third party, or any third-party software, or Force Majeure; (f) to any error or defect arising as a result of drawings, designs or specifications provided by Customer; (g) to any additional user, server or instance licenses of Licensed Software for which the Software Warranty has already expired; (h) to any Updates; (i) to Hardware that has been improperly repaired or altered; (j) to Hardware that has been subjected to misuse, negligence or accident; (k) to Hardware that has been used in a manner contrary to Ventyx's instructions; (l) to Hardware comprised of materials provided by or a design specified by Customer; or (m) to Hardware that has failed as a result of ordinary wear and tear.

8.6 **DISCLAIMER.** EXCEPT AS OTHERWISE PROVIDED HEREIN, VENTYX MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE VENTYX SOFTWARE, OR ANY MAINTENANCE OR SERVICES PROVIDED BY VENTYX INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND VENTYX EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES. VENTYX DOES NOT WARRANT THAT: (a) THE VENTYX SOFTWARE WILL OPERATE UNINTERRUPTED; (b) ALL VENTYX SOFTWARE ERRORS CAN BE CORRECTED; (c) THE APPLICATIONS CONTAINED IN THE VENTYX SOFTWARE ARE DESIGNED TO MEET ALL OF CUSTOMER'S BUSINESS REQUIREMENTS; OR (d) THE INFORMATION OR DATA PROVIDED BY VENTYX IS ACCURATE OR ERROR-FREE. CUSTOMER ACKNOWLEDGES THAT IT HAS ASSESSED FOR ITSELF THE SUITABILITY OF THE LICENSED SOFTWARE FOR ITS REQUIREMENTS.

8.7 **DATA SERVICES DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT FOR SERVICES COMPRISED OF DATA, INFORMATION, ANALYSES, OR MODELS, VENTYX OBTAINS ITS DATA FROM THIRD PARTY SOURCES, WHICH MAY OR MAY NOT BE

COMPLETELY THOROUGH AND ACCURATE, AND THAT CUSTOMER SHALL NOT RELY ON VENTYX FOR THE ACCURACY OR COMPLETENESS OF INFORMATION SUPPLIED THROUGH SUCH SERVICES. CUSTOMER ACCEPTS ALL SUCH INFORMATION ON AN "AS IS" "AS AVAILABLE" BASIS.

9. INDEMNIFICATION.

9.1 General Indemnification. Except for claims covered by Section 9.6 below, each party ("Indemnifying Party") shall indemnify and defend the other party ("Indemnified Party") against any third party claim, including costs and reasonable attorney's fees, in which the Indemnified Party is named as a result of negligent conduct or willful misconduct by the Indemnifying Party or its Employees, while performing its obligations pursuant to any Order Form or SOW, which result in death, personal injury or property damage; provided that (a) the Indemnified Party gives the Indemnifying Party prompt notification in writing of any such claim and reasonable assistance, at the Indemnifying Party's expense, in the defense of such claim; and (b) the Indemnifying Party has the sole authority to defend or settle such claim as long as such settlement shall not include a financial obligation on the Indemnified Party.

9.2 Infringement Indemnification. Ventyx shall indemnify and defend Customer against any claim brought against Customer by third parties alleging the use of any of the Licensed Software or Work Product (collectively, the "Ventyx Deliverables"): (a) infringes a patent, copyright or trademark registered as of the date Ventyx provides Customer with the Ventyx Deliverables; or (b) misappropriates any third party trade secret (collectively, an "Infringement Claim"); provided that (i) Customer gives Ventyx prompt notification in writing of any such Infringement Claim and reasonable assistance, at Ventyx's expense, in the defense of such Infringement Claim; and (ii) Ventyx has the sole authority to defend or settle such Infringement Claim as long as such settlement shall not include a financial obligation on Customer.

9.3 Indemnification Limitations. Ventyx shall have no obligation for any Infringement Claim arising out of or relating to: (a) a modification created by or at the direction of Customer or a third party; (b) use of a Ventyx Deliverable other than in accordance with the terms of this Agreement, the Order Form or SOW as applicable, or the Documentation provided as part of the Ventyx Deliverable; (c) use of any of the Ventyx Deliverables in combination with any other hardware, software or other materials, where absent such combination, such that the affected Ventyx Deliverable would not be the subject of the Infringement Claim; (d) use of Licensed Software or version thereof for which Ventyx no longer offers Maintenance; (e) use of the Licensed Software without Customer's implementation of all applicable Maintenance; or (f) any Third-Party Software.

9.4 Effect of Infringement Claim. If an Infringement Claim is or, in Ventyx's reasonable belief, is likely to be asserted, (a) Ventyx may require Customer to discontinue use of the applicable Ventyx Deliverable immediately; and (b) Ventyx will, at its sole option, either (i) procure for Customer the right to use and exercise its rights with respect to the Ventyx Deliverable; (ii) replace the affected Ventyx Deliverable with other non-infringing Ventyx Deliverables or modify the affected Ventyx Deliverable to make it not infringing while retaining substantially similar functionality; or (c) if the remedies set forth in clauses (b)(i) and (b)(ii) are not commercially feasible, as determined by Ventyx in its sole discretion, terminate the affected Order Form or SOW, in

whole or in part, and any licenses granted therein, and pay to Customer a pro rata refund of the fees paid by Customer for the applicable Ventyx Deliverable, depreciated on a five-year straight line basis (including a pro rata refund of unused Maintenance fees paid by Customer if the affected Ventyx Deliverable is Licensed Software).

9.5 Exclusive Remedy. THE PROVISIONS OF THIS SECTION STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF VENTYX TO CUSTOMER, AND ARE CUSTOMER'S SOLE REMEDY WITH RESPECT TO, ANY CLAIM OR ALLEGATION OF INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

9.6 Nuclear Liability Indemnification.

9.6.1 In the event that Customer is not the owner, operator or service provider for a nuclear facility, Customer acknowledges and agrees that it may not use the Ventyx Deliverables for any use whatsoever for any part of any nuclear facility.

9.6.2 To the extent that Customer is the owner, operator or service provider for a nuclear facility (the "Nuclear Power Plant"), Customer shall be subject to the additional terms and conditions set forth below:

(a) Customer recognizes that it is a fundamental condition for the entering into this Agreement by Ventyx that Customer shall be exclusively liable for damage resulting from a nuclear incident in the Nuclear Power Plant (a "Nuclear Incident").

(b) For the purpose hereof, a Nuclear Incident is any occurrence or series of occurrences having the same origin which causes personal injury or death or damage to property through radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste.

(c) None of Ventyx nor its parent, subsidiaries, affiliates or associated companies, none of Ventyx's sub-suppliers of any tier or kind, including licensors and suppliers of information and services, and none of the employees of any of the foregoing entities (all of the foregoing entities and employees being hereinafter referred to as "Ventyx Indemnified Parties") shall under any circumstances or at any time be liable for any Nuclear Damage resulting directly or indirectly from a Nuclear Incident in the Nuclear Power Plant. Consequently Customer hereby irrevocably waives any right to pursue a claim against any of the Ventyx Indemnified Parties for any Nuclear Damage whether based on contract, tort, strict liability or otherwise. The term "Nuclear Damage" used herein includes any damage, loss or claim based on personal injury or death of any person, damage to property of any person or entity (including but not limited to damage to the Nuclear Power Plant itself and any property on or off the site where the Nuclear Power Plant is situated) resulting directly or indirectly from a Nuclear Incident in the Nuclear Power Plant and includes any incidental or consequential damages, losses, costs or expenses flowing from any of the foregoing.

(d) Customer hereby agrees to indemnify each of the Ventyx Indemnified Parties against any claims by third

parties, including insurers, for any Nuclear Damage whether such claims are based on contract, tort, strict liability or otherwise.

(e) If after entering into this Agreement, any applicable law or international convention expires or is modified in such a way that the Ventyx Indemnified Parties may be held liable for Nuclear Damage in connection with a Nuclear Incident in the Nuclear Power Plant, then Customer undertakes to inform Ventyx promptly thereof and to ensure by legally enforceable means (e.g., waivers of liability, government indemnity and/or insurance) that Ventyx and all other Ventyx Indemnified Parties shall incur no such liability.

(f) Customer represents that, at the time of signing of this Agreement, Customer is the sole owner of the Nuclear Power Plant and that at such time no other party has ownership or equivalent interest (including a party leasing the Nuclear Power Plant) in the Nuclear Power Plant.

(g) The provisions above shall:

(i) apply to any Nuclear Damage where the provision of goods, services or any information in connection with this Agreement may have played any part or may be alleged to have played any part; and

(ii) be in effect for as long as the Nuclear Power Plant is in operation and thereafter until all radioactive material has been removed from the site; and

(iii) be unaffected by any completion, termination or cancellation of this Agreement or any Order Form or SOW; and

(iv) be unaffected by any failure on the part of Ventyx to fulfill its obligations under this Agreement or any Order Form or SOW; and

(v) be unaffected by the bankruptcy, insolvency or termination of existence of Ventyx; and

(vi) apply notwithstanding any other provisions of this Agreement or any Order Form or SOW.

10. LIMITATIONS OF LIABILITY.

10.1 EXCEPT FOR CLAIMS ARISING OUT OF (a) BREACH OF CONFIDENTIALITY; (b) BREACH OF VENTYX INTELLECTUAL PROPERTY RIGHTS; (c) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (d) THE PARTIES' INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 EXCEPT FOR CLAIMS ARISING OUT OF (a) BREACH OF CONFIDENTIALITY; (b) BREACH OF VENTYX INTELLECTUAL PROPERTY RIGHTS; OR (c) THE PARTIES' INDEMNIFICATION OBLIGATIONS, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE

LIABLE FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID OR PAYABLE BY CUSTOMER TO VENTYX FOR THE VENTYX DELIVERABLE OR MAINTENANCE OR SERVICES TO WHICH THE CLAIM RELATES.

10.3 EACH PARTY ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT VENTYX WOULD NOT ENTER INTO THIS AGREEMENT OR APPLICABLE ORDER FORM OR SOW WITHOUT THESE LIMITATIONS ON ITS LIABILITY. NOTWITHSTANDING THE FOREGOING, SECTIONS 10.1 AND 10.2 SHALL NOT APPLY TO LIABILITIES THAT CANNOT BE LIMITED BY LAW.

10.4 IN NO EVENT, REGARDLESS OF CAUSE, SHALL VENTYX BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR PENALTIES.

11. TERM AND TERMINATION.

11.1 Term. This Agreement shall become effective as of the Effective Date and shall continue in effect, except as otherwise set forth in an Order Form or SOW, or unless terminated under Section 11.2 below.

11.2 Termination. This Agreement may be terminated as follows:

(a) by either party thirty (30) calendar days after providing the other party with written notice of the other party's material breach of this Agreement, unless during such thirty (30) day period the breaching party has (i) cured such breach; or (ii) if cure within thirty (30) days is infeasible, provided the non-breaching party with a written plan reasonably acceptable to the non-breaching party to cure such breach and made substantial progress to cure within the thirty (30) day period; or

(b) by Ventyx ten (10) calendar days after Ventyx provides Customer with notice of Customer's failure to remit timely payment to Ventyx; or

(c) immediately by either party if the other party becomes insolvent, makes an assignment for the benefit of creditors, appoints (or has appointed on its behalf) a trustee, receiver or similar officer, or commences a proceeding seeking reorganization, liquidation or similar relief under any bankruptcy, insolvency or similar debtor-relief statute.

11.3 Effect of Termination.

11.3.1 Upon termination of this Agreement by Customer pursuant to Section 11.2(a) or 11.2(c), above: (a) all amounts due and owing by Customer to Ventyx for Licensed Software under this Agreement will be immediately payable, and Ventyx shall be entitled to retain any and all fees paid by Customer, except that Ventyx shall refund any unearned, prepaid Maintenance fees; and (b) all of Ventyx's Maintenance and Services obligations will cease.

11.3.2 Upon termination of this Agreement by Ventyx for any reason set forth in Section 11.2, above: (a) all amounts due and owing by Customer to Ventyx under this Agreement will be immediately payable, and Ventyx shall be entitled to retain any and all fees paid by Customer; (b) use of the Licensed Software

will immediately cease; and (c) all of Ventyx's Maintenance and Services obligations will cease. Within thirty (30) days of termination of this Agreement pursuant to this subsection, Customer shall destroy or return to Ventyx all copies of applicable Licensed Software and any other Ventyx Confidential Information, and will certify to Ventyx that all copies have been destroyed or returned.

11.4 Upon expiration of any term-based license to Licensed Software, (a) all amounts due and owing by Customer to Ventyx under the applicable Order Form will be immediately payable, and Ventyx shall be entitled to retain any and all fees paid by Customer; (b) use of the Licensed Software will immediately cease; and (c) all of Ventyx's obligations concerning such Licensed Software will cease. Within thirty (30) days of the expiration, Customer shall destroy or return to Ventyx all copies of the applicable Licensed Software and any other Ventyx Confidential Information, and will certify to Ventyx that all copies have been destroyed or returned.

11.5 Survival. The terms of this Agreement or any Order Form or SOW that, by their nature should survive termination, shall survive termination, including, without limitation, the provisions concerning protection of Confidential Information, proprietary rights, disclaimers, indemnification and limitations of liability.

12. GENERAL PROVISIONS.

12.1 Assignment. Neither this Agreement, nor any Order Form or SOW, nor any rights, duties or obligations set forth therein, may be assigned, sublicensed, or otherwise transferred by Customer, in whole or in part, whether directly or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Ventyx, and any attempt to do so without the express prior written consent of Ventyx shall be deemed void. Ventyx's consent may be conditioned upon payment by Customer of a transfer, assignment or other fee, and such condition shall not be deemed unreasonable.

12.2 Right to Injunctive Relief. Customer acknowledges that Customer's breach of its obligations with respect to Ventyx's proprietary rights will cause irreparable injury to Ventyx and will entitle Ventyx to seek injunctive or other equitable relief.

12.3 Dispute Resolution Process. Except for claims arising out of the confidentiality obligations hereunder or Ventyx's intellectual property rights, neither party will invoke formal dispute resolution procedures other than in accordance with this Section. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within ten (10) calendar days after delivery of such notice, executives of the parties who have authority to resolve the dispute will meet to attempt to resolve the dispute. If the matter has not been resolved within ten (10) days after the disputing party's notice, or if the executives fail to meet within the ten (10) day period, either party may then proceed as set forth in Section 12.4 herein. All negotiations pursuant to this Section will be deemed Confidential Information and treated as compromise and settlement negotiations.

12.4 Arbitration. Except with respect to equitable remedies and disputes related to the ownership and protection of Licensed Software or Work Product, the parties agree that any dispute, claim or controversy relating in any way to this Agreement shall be fully and finally settled by binding arbitration in accordance

with the Commercial Arbitration Rules of the American Arbitration Association in Atlanta, Georgia. The arbitration panel shall include only persons with experience in information technology or computer software licensing or implementation matters. Each party shall choose one arbitrator, and the two arbitrators so selected shall choose the third arbitrator. Determinations of the arbitrators will be final and binding upon the parties, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The existence, subject, evidence, proceedings, and ruling resulting from the arbitration proceedings shall be deemed Confidential Information, and shall not be disclosed by any party, their representatives, or the arbitrators except as ordered by any court of competent jurisdiction or as required to comply with any applicable governmental statute or regulation. All arbitration proceedings and submissions shall be in the English language. The arbitrators shall apply the governing law of this Agreement (without giving effect to its conflict of law principles) to all aspects of the dispute, including but not limited to the interpretation and validity of this Agreement, the rights and obligations of the parties, the mode of performance, and the remedies and consequences of the alleged breach.

12.5 Third Party Beneficiaries. Third Party Software licensors shall be third party beneficiaries to this Agreement for purposes of enforcing their rights with respect to the applicable Third Party Software.

12.6 Independent Contractors. Nothing in this Agreement or in the course of dealing between Ventyx and Customer shall be deemed to create between Ventyx and Customer a partnership, joint venture, association, employment relationship co-ownership or any other relationship other than an independent contractor relationship. Nothing in this Agreement or in the course of dealing between Ventyx and Customer shall be deemed to empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as entitled to do the same.

12.7 Severability. If any provision of this Agreement is held invalid or unenforceable, the provision shall be deemed modified only to the extent necessary to render it valid or eliminated, as the case may be, and the remainder shall be enforced and construed as if the provision had been included as modified or as if it had not been included, as the case may be.

12.8 Waiver. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver on any other occasion or of any other provision.

12.9 Counterparts. This Agreement, Order Forms and SOWs may be signed in counterparts, each of which shall be deemed an original and which shall together constitute one instrument.

12.10 Insurance. Each party shall maintain, during the term of this Agreement, the following insurance: (a) workers' compensation insurance as required by applicable law; (b) employer's liability insurance with a limit of \$1,000,000 per occurrence; and (c) general liability insurance, which insurance shall include bodily injury, personal injury, property damage, contractual liability and completed operations/products liability coverage, and shall be written on an occurrence basis with a combined single limit of \$1,000,000 per occurrence and in the aggregate. Each party shall provide for the other party additional

insured status under the general liability insurance required hereunder, to the extent of each party's indemnification obligations hereunder, and such general liability insurance shall be primary to any insurance which each party maintains, but only to the extent of the additional insured status. Each party shall cause the insurance required hereunder to include a waiver of subrogation in favor of the other party. Upon the written request, each party shall provide the other party with a certificate of insurance evidencing the insurance required hereunder. Each party shall maintain the insurance required hereunder at their own cost and expense and shall maintain such insurance in full force and effect during the term of this Agreement and for one (1) year after the expiration or termination of the last SOW under this Agreement.

12.11 Publicity. Ventyx shall have the right to identify Customer as a customer of Ventyx as part of Ventyx's marketing efforts, including customer lists and press releases.

12.12 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Georgia, USA without giving effect to its choice of law principles. With the exception of the Arbitration provision set forth above, the parties hereby irrevocably submit to the exclusive jurisdiction of the State of Georgia in Atlanta. The parties hereby acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

12.13 Restricted Rights. The Licensed Software and any accompanying documentation has been developed at private expense and are deemed to be a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19(c) or other agency data rights provisions, as may be applicable. Use, duplication, and disclosure by DOD agencies are subject solely to the terms of this Agreement as stated in DFAR 227.7202. All U.S. Government Users license the Licensed Software with only those rights set forth herein, including, without limitation, the following: Licensed Software may be transferred to the U.S. government only with the prior written consent of an officer of Ventyx and solely as restricted computer software as provided in FAR 52.227-19 or subsequent citation (or DFAR 227-7202 or subsequent citation if the transfer is to a defense-related agency).

12.14 Export Control Notice. Customer agrees not to disclose, use, export or re-export, directly or indirectly, any Ventyx Deliverable, any information provided by Ventyx, or the "direct product" thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such regulations. Customer acknowledges its obligation to comply with all applicable export control laws in its use, export or re-export of the Licensed Software. Customer shall defend, indemnify, and hold Ventyx and its licensors harmless from and against any and all claims, judgments, awards, and costs (including reasonable legal, including attorneys' fees) arising out of Customer's noncompliance with applicable export laws.

12.15 Audit Rights. Customer and Ventyx will maintain books and records applicable to performance under this Agreement. Each party shall have the right during the term of this Agreement and for up to one (1) year after the termination of

this Agreement, upon reasonable written notice and during normal business hours, to audit and inspect such books and records of the other party in order to verify compliance with the terms of this Agreement. Audits will be made no more than once in any twelve (12) month period. If an audit reveals that Customer has underpaid for Licensed Software based on Customer's actual use of such software, then Customer will pay Ventyx, promptly upon demand by Ventyx: (a) the applicable license fees at Ventyx's then-current list rates; (b) additional associated fees for any Maintenance at Ventyx's then-current list rates; (c) any applicable late charges; and (d) if an audit reveals that Customer has underpaid for Licensed Software by five percent (5%) or more, Ventyx's reasonable costs of conducting the audit. If an audit reveals Customer is utilizing the Licensed Software in a manner not permitted by this Agreement, Customer agrees to take, at Customer's expense, all reasonable corrective action requested by Ventyx.

12.16 Notices. All notices or other communications must be in writing and will be deemed to have been duly given (a) when delivered by hand (with written confirmation of receipt); or (b) two (2) calendar days after being deposited for delivery with a nationally recognized overnight delivery service and addressed to the appropriate address set forth on the first page of this Agreement (or to such other address as a party may designate by written notice to the other party). All notices to Ventyx shall be addressed to the attention of Ventyx's Chief Financial Officer with a copy delivered to Ventyx's General Counsel.

12.17 Force Majeure. Other than for payments due, neither party will be liable to the other for any failure or delay in performance due to circumstances beyond its reasonable control including, without limitation, acts of God, labor disruption, war, terrorist threat or government action; provided that if either party is unable to perform its obligations for one of the foregoing reasons it shall give prompt written notice thereof to the other party and the time for performance, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.18 No Set-Off. Each Order Form and SOW represents separate and independent contractual obligations. Customer will not withhold or set-off payments that are due and payable under an Order Form or SOW because of the status of another Order Form or SOW or this Agreement, or any other agreement with Ventyx or a Ventyx Affiliate.

12.19 Ventyx Affiliates. Any Ventyx Affiliate may contract under this Agreement by entering into an applicable Order Form or SOW with Customer. Such Ventyx Affiliate shall be deemed to be "Ventyx" for purposes of the applicable Order Form or SOW.

12.20 Choice of Language. The original of this Agreement is in English. If this Agreement is translated into any other language the English version shall control.

12.21 Entire Agreement. This Agreement, together with the applicable Order Form or SOW, shall be the complete agreement and understanding between the parties and replace any prior oral or written communications between the parties related thereto, including but not limited to, any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Customer to Ventyx regardless of any statement to the contrary contained in any such purchase order or document. In the event of any

conflict or discrepancy between an Order Form or SOW and this Agreement, the Order Form or SOW, as applicable, shall control.

GUAM POWER AUTHORITY

Signature: _____

Printed Name: JOAQUIN C. FLORES, P.E.

Title: GENERAL MANAGER

Date: 9/16/13

VENTYX INC.

Signature: _____

Printed Name: Samantha Phillips

Title: VP Finance Americas

Date: 9/23/13

VENTYX INC.

Signature: _____

Printed Name: Chris Warrington

Title: President of the Americas

Date: 9/23/2013

REVIEWED AND
APPROVED AS TO FORM

GL by MW 9/19/13