LICENSE AGREEMENT

PLEASE READ THIS LICENSE AGREEMENT ("<u>AGREEMENT</u>") CAREFULLY BEFORE PRESSING OR CLICKING THE "I ACCEPT" BUTTON.

BY CLICKING ON THE "I ACCEPT" BUTTON, AND/OR DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING THE LICENSED PRODUCT, AS DEFINED HEREIN, THE INDIVIDUAL OR ENTITY THAT IS CLICKING ON THE "I ACCEPT" BUTTON, AND/OR DOWNLOADING, INSTALLING, COPYING OR USING THE LICENSED PRODUCT IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND AGREES TO BE BOUND BY THE SAME. IN THIS RESPECT, CLICKING THE "I ACCEPT" BUTTON CONSTITUTES YOUR ELECTRONIC SIGNATURE TO THIS AGREEMENT AND CREATES A BINDING LEGAL AGREEMENT BETWEEN GT SOFTWARE, INC. ("<u>GT SOFTWARE</u>") AND THE INDIVIDUAL AND/OR ENTITY CLICKING ON THE "I ACCEPT" BUTTON AND/OR DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING THE LICENSED PRODUCT ("<u>LICENSEE</u>"). BY EXECUTING THIS AGREEMENT VIA THE "I ACCEPT" BUTTON, AND/OR DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING THE LICENSED PRODUCT, IF YOU, AN INDIVIDUAL, ARE EMPLOYED WITH AN ENTITY AND ARE EXECUTING THIS AGREEMENT VIA THE "I ACCEPT" BUTTON, AND/OR DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING THE LICENSED PRODUCT ON BEHALF OF THAT ENTITY, YOU REPRESENT AND WARRANT TO GT SOFTWARE THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ENTITY, AND THE TERM "LICENSEE" SHALL REFER TO THE ENTITY.

IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, PRESS "I DO NOT ACCEPT" AND YOU ARE NOT AUTHORIZED TO DOWNLOAD, USE, LOAD, STORE, OR OTHERWISE POSSESS ANY COPY OF THE LICENSED PRODUCTS.

1. **<u>Definitions.</u>**

Defined terms are set forth in Section 15 below.

2. **Purpose**.

This Agreement sets forth the terms and conditions under which the parties agree that Licensee may purchase licenses for Licensed Products and related Services pertaining to the Licensed Product, in return for applicable fees in accordance with the terms of this Agreement and any separately executed Order Form. No obligation to furnish or to pay for a particular license for Licensed Product or related Service arises under this Agreement until GT Software accepts an Order Form for a license for Licensed Products and/or related Services, and Licensee is not authorized to access or use, and shall not have a right to receive any other GT Software products or services, unless expressly set forth in a separate agreement between the parties.

3.   License to Licensed Products

3.1   <u>License Grant</u>. Subject to the terms and conditions of this Agreement and the applicable License Metrics and other limitations set forth on the Order Form, GT Software hereby grants to Licensee, and Licensee hereby accepts,

(a)   To the extent designated as an "Evaluation License" on the Order Form, a limited, nontransferable, non-assignable (except as set forth in Section 14.5), nonexclusive license to use a single copy of the Licensed Product on a single computer during the test period stated on the Order Form solely for internal, in-house use, solely for the benefit of Licensee, and for the sole purpose of testing and evaluating the Licensed Product at the location specified on the Order Form, without the further right to use, sublicense, distribute, transfer, or transmit the Licensed Product (an "Evaluation License"). Licensee agrees not to make copies of the Licensed Product or any part thereof without the express written consent of GT Software. NOTWITHSTANDING ANY CONTRARY TERMS IN THIS AGREEMENT, RECIPIENT ACKNOWLEDGES AND AGREES THAT THE LICENSED PRODUCT LICENSED UNDER AN EVALUATION LICENSE IS PROVIDED "AS IS."

(b)   To the extent <u>not</u> designated as an "Evaluation License" on the Order Form, a non-exclusive, non-assignable (except as set forth in Section 14.5), non-sublicensable and non-transferable rights and licenses during the License Term to store, load and run the Licensed Products and Deliverables in the operating environment identified by GT Software (a "Term License") and to use a reasonable number of copies of the Documentation in support of the license rights granted in this Section 3.1(b).

3.2   <u>General Limitations on License and Usage</u>. The license rights granted in this Agreement are conditioned and limited by the following:

(a)   The Licensed Products are for use only by Licensee, for an Evaluation License, and by Licensee and its Authorized Users, for a Term License.

(b)   The Licensed Products shall be used only in accordance with the Documentation.

(c)   Licensee shall not use the Licensed Products or any of GT Software's Confidential Information to create any software, service, or documentation that is in any way similar to the Licensed Products.

(d)   Licensee shall not encumber, transfer, rent, donate, assign, lease, or otherwise use the Licensed Products in any time-sharing or service bureau arrangement.

(e)   Except as expressly provided in this Agreement, Licensee shall not, copy, reproduce, market, sell, distribute, sublicense, manufacture, adapt, create derivative works of, translate, localize, port, combine with other products or software, or otherwise modify or commercially exploit the Licensed Products.

(f)   Licensee shall not, and shall not permit any other third party to, decompile, disassemble, reverse compile, reverse assemble, reverse translate or otherwise reverse

engineer the Licensed Products, including use of any similar means to discover the source code of the Licensed Products, to discover the Confidential Information therein, or to otherwise circumvent any technological measures that control access to the Licensed Products.

(g)   Licensee shall not alter or remove any printed or on-screen copyright, trademark, patent, proprietary, or other legal notice contained on or in any Licensed Products and shall cause all such notices to be reproduced on all copies thereof.

3.3   Reservation of Rights. All rights including, without limitation, Intellectual Property Rights, not expressly granted in this Agreement are reserved to GT Software and its licensors. No rights are granted by implication. In this respect, Licensee acknowledges that it is receiving a license to Licensed Products or parts thereof and Licensed Products are not being sold to it, and any Licenses granted herein do not provide it with title to or ownership of the Licensed Product or any other GT Software products, software or services, or any other right to access or use the same, but only a right of limited use under the terms and conditions of this Agreement. GT Software may use, sell, assign, transfer and license copies of, and rights relating to, any Licensed Product to any and all third parties free from any claim whatsoever on the part of Licensee. The rights granted and Licensee's obligations in this Agreement are not contingent on the development or delivery of any future functionality or features.

4.   **Additional NetCOBOL Terms**

Additional rights, licenses and restrictions applicable to NetCOBOL are set forth in this Section 4. Certain language runtime components and tools necessary to deploy applications built with NetCOBOL ("Redistributable Software") are installed in the "Redist" subdirectory when NetCOBOL is installed or otherwise clearly marked as Redistributable Software. The Redistributable Software is provided as a Licensed Product and subject to all applicable terms and conditions of this Agreement. In addition, NetCOBOL is subject to the following additional terms and conditions. In the event of any conflict between the terms and conditions of this Section 4 and the terms and conditions of the Agreement, the terms and conditions of this Section 4 shall govern.

(a)   Licensee may distribute the Redistributable Software only in conjunction with and as a part of a software application product developed by Licensee ("Application") that adds significant and primary functionality to the Redistributable Software.

(b)   Licensee shall distribute the Application containing the Redistributable Software pursuant to an end user license agreement (which may be "break-the-seal", "click-wrap" or signed), with terms no less protective than those contained in the Agreement, including this Section 4.

(c)   Licensee may internally redistribute its own programs created with NetCOBOL's development environment for Licensee's own production purposes, subject to the other license limits and other terms and conditions of this Agreement.

(d)   Licensee shall not use GT Software or Fujitsu's name, logo, or trademarks to market or identify the Application.

(e)   Licensee shall indemnify, hold harmless, and defend GT and its licensors from and against any claims, lawsuits, damages, liabilities or expenses, including attorneys' fees, that arise or result from the use or distribution of the Application.

(f)   Licensee also agrees not to permit further distribution of the Redistributable Software by Licensee's end users, except that Licensee may permit further redistribution of the Redistributable Software by Licensee's distributors to Licensee's end-user customers if Licensee's distributors only distribute the Redistributable Software in conjunction with, and as part of, the Application and Licensee and its distributors comply with all other terms of the Agreement, including this Section 4.

5.   Maintenance Services Generally.

During the Maintenance Term, and as long as Licensee is not in default, GT Software will provide to Licensee maintenance services ("Maintenance Services") in accordance with the terms of this Section. Maintenance Services will be provided in accordance with GT Software's maintenance policy that is in effect at the commencement of Term (the "Maintenance Policy"). GT Software's Maintenance Policy, as it exists from time to time, is set forth at www.GTSoftware.com/MaintenancePolicies. Notwithstanding the foregoing, the Maintenance Services provided to Licensee at any time during the Maintenance Term will not be materially less than the Maintenance Services provided under the Maintenance Policy in effect on the Effective Date.

6.   Subscription Services Generally.

During the Subscription Term, and as long as Licensee is not in default, GT Software will provide to Licensee subscription services ("Subscription Services"). In addition to any other services identified on the applicable Order Form, Subscription Services include the licenses identified on the applicable Order Form and Maintenance Services.

7.   Additional Terms

7.1   Cooperation and Access. Licensee acknowledges that Licensee's cooperation and access, including remote access, to certain of Licensee's information, facilities, personnel, and equipment may be reasonably required by GT Software in order to provide the Services. The parties will mutually agree upon and coordinate all security protocols involving remote access. If Licensee desires GT Software to adhere to or use a specific security protocol and doing so will require GT Software to incur a material additional cost, Licensee shall reimburse GT Software for such cost.

7.2   Additional Services. GT Software shall provide SOW Services to Licensee as mutually agreed on a Statement of Work ("Statement of Work" or "SOW"). All Professional Services are provided on a time and materials basis, at Time and Materials Rates, and are subject to availability of GT Software Personnel. Any services requested by Licensee that are not within the scope of Maintenance Services or that are outside the scope of the SOW Services (collectively, "Additional Services") may be subject to an additional charge at Time and Materials Rates, at GT Software's discretion.

7.3   Subcontractors. GT Software may subcontract any work under this Agreement to any third party without Licensee's prior written consent. GT Software shall remain responsible for the performance, acts, and omissions of any subcontractors.

8.   Fees and Payments

8.1   License Fees. Licensee shall pay the License Fees set forth on the applicable Order Form. Unless otherwise stated in the Order Form, License Fees are due and payable within 30 days from execution of the Order Form. License Fees are not contingent under any circumstances upon the performance of any Services, including initial implementation.

8.2   Maintenance Fees. Unless otherwise specified on the Order Form, Licensee shall pay the fees for Maintenance Services ("Maintenance Fees") annually in advance. Any Maintenance Fees payable for less than a 12 month period shall be prorated on a daily basis.

8.3   Subscription Fees. If the Order Form provides for the payment of Subscription Fees rather than License Fees and Maintenance Fees, then Licensee shall pay the fees identified as Subscription Fees on the applicable Order Form ("Subscription Fees"). Unless otherwise specified on the applicable Order Form, Licensee shall pay the Subscription Fees annually in advance on or before the anniversary of the effective date of the Subscription Services. Any Subscription Fees payable for less than a full year shall be prorated on a daily basis.

8.4   Adjustments to Fees. GT Software may adjust the License Fees, Maintenance Fee, or Subscription Fees payable for any subsequent or additional License Term, Maintenance Term, or Subscription Term by providing Licensee written notice of such change at least 60 days prior to the end of the then-current License Term, Maintenance Term, or Subscription Term, as the case may be.

8.5   Professional Services Fees. Fees for Professional Services ("Professional Services Fees") are set forth either on an Order Form or the Statement of Work. Unless otherwise provided on an Order Form or the Statement of Work, Professional Services Fees are payable within 30 days after receipt of the applicable invoice.

8.6   Other Fees. All other Fees payable under this Agreement are due and payable within 30 days after receipt of an invoice for such Fees.

8.7   Currency. All Fees under this Agreement shall be payable in U.S. dollars.

8.8   Expenses. For any Professional Services and on-site Maintenance Services, Licensee shall reimburse GT Software for actual, reasonable travel, living, and other incidental expenses incurred.

8.9   Late Payment. Any amount not paid when due shall bear a late payment charge at the lesser of 1.5% per month or the maximum amount permitted by law until paid. If Licensee's account is in arrears for 30 days or more, GT Software may suspend the provision of Services until such time as Licensee's account is brought current. The rights in this Section are in addition to any other rights under this Agreement, at law, or in equity.

8.10   Taxes. All Fees and expenses are net amounts to be received by GT Software, exclusive of (other than taxes on GT Software's income or net worth) all taxes, duties, sales, use, and similar taxes ("Taxes"). Licensee shall pay all Taxes or reimburse GT Software for GT Software's payment of such Taxes.

9.   Proprietary Rights

9.1   Ownership.

(a)   GT Software. GT Software and its suppliers retain sole and exclusive ownership of their respective Confidential Information, Licensed Products, Deliverables, and all Intellectual Property Rights in, to, or embodied in or associated with the Licensed Products, Deliverables, and Services, and all copies and Modifications thereof (whether developed by GT Software, Licensee, or a third party). Licensee shall not take any action inconsistent with such title and ownership.

(b)   Licensee. Licensee retains sole and exclusive ownership of Licensee's Confidential Information and all copies and Modifications thereof. GT Software shall not take any action inconsistent with such title and ownership. Notwithstanding anything in this Agreement to the contrary, any suggestions or proposed Modifications to the Licensed Products (in any form) provided by Licensee to GT Software may be freely used by GT Software without limitation, and any Modification to the Licensed Products resulting from such suggestions or proposed Modifications shall be exclusively owned by GT Software.

9.2   Confidentiality. By virtue of this Agreement, the parties may be exposed to or provided with certain Confidential Information of the other party. Each party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own Confidential Information, but in no event less than a reasonable amount of care. Except as required by law, neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement and as may be required to report to its regulators and legal and financial advisors. Except as otherwise expressly set forth in this Agreement, neither party will disclose to third parties the other's Confidential Information without prior written consent of the other party. Licensee shall cause Authorized Users and each party shall cause their respective Personnel to be bound in writing by obligations of confidentiality at least as restrictive as set forth in this Agreement. If the receiving party is legally required to disclose any Confidential Information of the disclosing party in connection with any legal or regulatory proceeding, the receiving party shall, if lawfully permitted to do so, endeavor to notify the disclosing party within a reasonable time prior to disclosure and to allow the disclosing party a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure and/or waive compliance with the terms of this Agreement. If these protective measures or other remedies are not obtained, or the disclosing party waives compliance with the terms of this Agreement, the receiving party may disclose only that portion of that Confidential Information that it is legally required to disclose and shall exercise reasonable efforts to obtain assurance that confidential treatment shall be accorded to that Confidential Information. The responsibilities under this Section 9.2 shall continue during the term of this Agreement and for five years thereafter for Confidential Information that is not a trade

secret under law and for trade secrets shall continue for so long as such Confidential Information remains a trade secret.

9.3   Injunctive Relief. The parties agree that monetary damages are not an adequate remedy if Sections 3, 4, 9.1, or 9.2 of these General Terms and Conditions are breached and that the non-breaching party will suffer irreparable damage, and therefore, either party, in addition to any other legal or equitable remedies, shall be entitled to seek an injunction or similar equitable relief against such breach or threatened breach.

10.   Warranties

10.1   Software Warranty. Except for Software licensed pursuant to an Evaluation License, for a period of 90 days from the date of first delivery of the Software, GT Software warrants that the Software will conform in all material respects to the Documentation, provided the Software is installed and used according to the Documentation. Licensee shall promptly notify GT Software in writing if the Software fails to perform in accordance with this warranty. GT Software shall, within 30 days of its receipt of Licensee's notice, (i) correct such Error; (ii) provide Licensee with a plan reasonably acceptable to Licensee for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from GT Software, then GT Software or Licensee may terminate the license, and Licensee will be entitled to a refund of the applicable License Fees.

10.2   Sole Remedy. The warranties in Section 3.1(a) and Section 10.1 constitute GT Software's sole and entire liability and Licensee's exclusive remedies with respect to such warranty. GT Software shall not be obligated to correct any breach of the above warranty if Licensee has not notified GT Software of the specific existence and nature of such breach promptly during the applicable warranty period. Without limiting the foregoing, GT Software does not warrant and is not responsible for (i) any third-party products or (ii) services not provided solely by GT Software Personnel.

10.3   Disclaimer. EXCEPT AS SET FORTH IN SECTION 3.1(A) AND THIS SECTION 10, NEITHER GT SOFTWARE NOR ITS LICENSORS MAKES ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, CONDITION, OR AGREEMENT WITH RESPECT TO THE LICENSED PRODUCTS OR THE SERVICES. GT SOFTWARE AND ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL WARRANTIES OF QUALITY, NON-INFRINGEMENT, TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER STATUTORY OR ARISING FROM USAGE, CONDUCT, OR COURSE OF TRADE. GT SOFTWARE DOES NOT REPRESENT THAT THE OPERATION OF THE LICENSED PRODUCTS AND DOCUMENTATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE, THAT ALL ERRORS WILL BE CORRECTED, THAT THE LICENSED PRODUCTS WILL OPERATE WITH LICENSEE'S OTHER SOFTWARE OR COMPUTING SYSTEMS, OR THAT THE USE OF THE LICENSED PRODUCTS WILL MEET LICENSEE'S REQUIREMENTS.

FURTHER, LICENSEE ACKNOWLEDGES AND AGREES THAT THE LICENSED PRODUCT IS NOT FAULT TOLERANT AND IS NOT DESIGNED OR INTENDED FOR USE

OR LICENSING AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS OR "LIFE AND DEATH" ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE LICENSED PRODUCT COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, I.E. "CRITICAL CONTROL APPLICATIONS". LICENSEE SHALL BE SOLELY RESPONSIBLE FOR, AND SHALL INDEMNIFY AND HOLD GT SOFTWARE HARMLESS FOR ANY USE OR INCORPORATION OF THE LICENSED PRODUCT WITH, OR INTO, LICENSEE'S PRODUCTS PERFORMING ANY CRITICAL CONTROL APPLICATIONS.

11. Limitation of Liability, Remedy

11.1 <u>Limitation of Remedy</u>. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTION 9.2, GT SOFTWARE, ITS LICENSORS, AND OTHER SUPPLIERS SHALL NOT BE LIABLE TO LICENSEE, LICENSEE AFFILIATES, AUTHORIZED USERS, OR ANY THIRD PARTY, FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL EXHIBITS OR AMENDMENTS, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH, FOR DAMAGES ARISING FROM DELAY AND DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOST SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF OR DAMAGE TO DATA, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, PROGRAM, OR DATA, OR CLAIMS BY ANY THIRD PARTY REGARDLESS OF WHETHER SUCH DAMAGES OR LIABILITIES HAVE BEEN COMMUNICATED TO GT SOFTWARE AND REGARDLESS OF WHETHER GT SOFTWARE HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES. THIS LIMITATION SHALL SPECIFICALLY SURVIVE A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES THAT MAY BE PROVIDED IN THIS AGREEMENT.

11.2 <u>Limitation of Liability</u>. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTION 9.2, THE CUMULATIVE, AGGREGATE LIABILITY (INCLUDING ATTORNEYS FEES AWARDED UNDER THIS AGREEMENT) OF GT SOFTWARE, ITS LICENSORS, AND OTHER SUPPLIERS TO LICENSEE, AUTHORIZED USERS, OR ANY THIRD PARTY FOR ALL CLAIMS, LIABILITIES AND DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL EXHIBITS OR AMENDMENTS THERETO, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, SHALL NOT EXCEED THE FEES LICENSEE PAID TO GT SOFTWARE IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE THAT THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL GT, ITS SUBSIDIARIES, ITS ASSOCIATED COMPANIES, OR ITS LICENSORS BE LIABLE TO LICENSEE FOR AN EVALUATION LICENSE UNDER THIS AGREEMENT OR OTHERWISE, REGARDLESS OF THE FORM OF CLAIM OR ACTION, IN AN AMOUNT THAT EXCEEDS THE SUM OF $1,000.00. THIS

LIMITATION SHALL ALSO SPECIFICALLY SURVIVE A FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDIES THAT MAY BE PROVIDED IN THIS AGREEMENT.

12. Term and Termination

12.1 <u>Terms</u>. Unless otherwise stated on the applicable Order Form, or unless earlier terminated as provided in this Agreement:

(a) The term of the licenses granted under this Agreement and the applicable Order Form ("<u>License Term</u>") commences on the effective date of the applicable Order Form ("<u>Order Form Effective Date</u>") and continues for the period described on the applicable Order Form;

(b) The term for Maintenance Services ("<u>Maintenance Term</u>") commences on the Order Form Effective Date and continues for the period described on the applicable Order Form; and

(c) The term for Subscription Services ("<u>Subscription Term</u>") commences on the Order Form Effective Date and continues for the period described on the applicable Order Form.

12.2 <u>Term Licenses</u>. Unless earlier terminated as provided in this Agreement and except for an Evaluation License, for any licenses that are not perpetual, the License Term and Maintenance Term shall be co-extensive. Any termination or expiration of the Maintenance Term shall terminate the License Term and vice versa.

12.3 <u>Termination</u>. This Agreement may be terminated by a party:

(a) If the other party materially breaches a provision of this Agreement and fails to cure such breach within 30 days of the receipt of written notice of such breach, except that Licensee shall not be entitled to a 30 day cure period for any non-remediable breach of this Agreement; or

(b) If any assignment is made by the other party for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of any or all of the other party's property, or if the other party files a voluntary petition under federal bankruptcy laws or similar state statutes or such a petition is filed against the other party and is not dismissed within 60 days.

12.4 <u>Effects of Termination</u>. Upon termination of this Agreement for any reason, all rights and obligations of the parties hereunder and all licenses and Services shall cease, except as follows:

(a) Licensee's liability for any Fees, charges, payments, or expenses due to GT Software that accrued prior to the termination date shall not be extinguished by termination, and such amounts shall be immediately due and payable.

(b)   Licensee shall deliver to GT Software, at Licensee's expense, all originals and copies of the Licensed Products and all Confidential Information of GT Software in the Licensee's possession or control. Licensee shall certify in writing to GT Software within ten days following termination that it has complied with this Section 12.4(b); provided, however, that if Licensee has an Evaluation License and wishes to obtain a Term License for the Licensed Product, then GT Software may or may not require the return of such materials, but, in any event, Licensee shall execute a new Order Form specifying the terms and conditions relating to the Licensee's continued use of the Licensed Product.

(c)   GT Software shall return to Licensee any Confidential Information of Licensee in the possession or under the control of GT Software; provided, however, that if Licensee has an Evaluation License and wishes to obtain a Term License for the Licensed Product, then Licensee may or may not require the return of such materials until the termination of the following License Term as provided in the subsequent Order Form specifying the terms and conditions relating to the Licensee's continued use of the Licensed Product.

(d)   The provisions of Sections 3.3, 8 (for accrued but unpaid Fees and expenses), 9, 10.3, 11, 12.4, 13, and 14 of this Agreement shall survive any termination of this Agreement. Unless otherwise expressly set forth in this Agreement, any termination of this Agreement is without prejudice to any other rights that a party may have under this Agreement, at law, in equity, or otherwise.

13.   Dispute Resolution; Arbitration

In the event of any dispute, claim or controversy arising out of or relating to this Agreement or the breach thereof (a "Dispute"), including any dispute regarding Disputed Charges, except in the case of injunctive relief as set forth in Section 9.3 above, the parties shall first attempt to resolve the Dispute, without formal proceedings, through a telephone conference between GT Software's designated representative and Licensee's designated representative. If the parties do not reach a solution within a period of thirty (30) days, then upon notice by either party to the other, the Dispute shall be finally determined and settled by binding arbitration to be conducted in Atlanta, Georgia USA. The parties may choose an arbitrator and rules of arbitration by mutual agreement. The parties agree to permit reasonable discovery proceedings as determined by the arbitrator. The parties agree that the arbitrator shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty), incidental or consequential damages. The arbitrator shall award all costs of the arbitration, including arbitrator's fees, arbitration filing fees, travel costs of witnesses, costs of depositions and reasonable attorney fees to the substantially prevailing party; provided, however, that the arbitrator's award for the costs of the arbitration shall not exceed the actual amount paid by the substantially prevailing party. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law.

14.   General Provisions

14.1   Authorized Users. Licensee shall cause all Authorized Users to be bound by the terms and conditions of this Agreement that are applicable to Licensee, and any default by any Authorized User of the terms and conditions of this Agreement shall be a default of Licensee.

14.2   Delivery. Delivery of each Licensed Product shall be deemed to occur upon the earlier to occur of (i) initial delivery of the Licensed Product by GT Software to a third party shipper addressed to Licensee; or (ii) the initial date the Licensed Product or license keys are made available by GT Software for download by Licensee.

14.3   Governing Law. The validity, construction, and performance of the Agreement and the legal relations among the parties to the Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, USA, excluding that body of law applicable to choice of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

14.4   Order of Precedence. Nothing contained in any Order Form or similar document shall in any way modify or add any additional terms or conditions to this Agreement. Licensee understands and agrees that any additional or conflicting terms in Licensee's current or future Order Form, which are not included in this Agreement, are deemed rejected and are not part of the Agreement between GT Software and Licensee.

14.5   Assignment. Except in connection with a merger or sale involving a majority of the stock or assets of a party, this Agreement and the rights and obligations hereunder, may not be assigned in whole or in part by either party without the prior written consent of the other party. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators, and assigns of the parties hereto. Any attempt at assignment without such consent shall be null and void and of no force and effect. Any applicable fees resulting from any assignment will be based on GT Software's then current pricing, terms, and conditions.

14.6   Export. Licensee shall not, directly or indirectly, without prior written consent, if required, of the office of Export Administration of the US Department of Commerce, Washington D.C. 20230, export or transmit any of the Licensed Products or the source code of the Licensed Products to, or use the Licensed Products in, any country, person or entity to which such transmission or use is restricted by applicable regulations or statutes, including all laws and regulations regarding re-export and deemed export.

14.7   License to the Government. If any Licensed Product is acquired by or on behalf of a unit or agency of the United States Government, the Government agrees that such Licensed Product is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement with GT Software to the contrary, the Government's rights with respect to such Licensed Products are, in the case of civilian agency use, Restricted Rights, as defined in FAR §52.227.19, and if for Department of Defense use, limited by the terms of this Agreement, pursuant to DFARS §227.7202.

14.8   Force Majeure. If either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision, including, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including ecommerce software, payment gateways, chat, statistics or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment ("Force Majeure Event"), the affected party's performance shall be extended for the period of delay or inability to perform due to such occurrence, and provided further that the other party may terminate this Agreement if such condition continues for a period of 180 days. This provision shall not apply to payment obligations.

14.9   Notices. Any notice or communication from one party to the other shall be in writing and either personally delivered or sent via nationally recognized overnight service, or certified mail, postage prepaid and return receipt requested, addressed to the attention of Legal at the address of the other party as specified in an Order Form. All notices shall be in English and shall be effective upon receipt.

14.10   Compliance. During the term of this Agreement and for a period of one year following its expiration or termination, Licensee shall maintain and make available to GT Software, upon ten days advance written notice, records sufficient to permit GT Software or an independent auditor retained by GT Software to verify Licensee's compliance with the terms of this Agreement; provided, that such audit shall be performed during regular business hours and subject to Licensee's reasonable confidentiality requirements. If such verification process reveals any noncompliance by Licensee, Licensee shall pay the applicable Fees and shall reimburse GT Software for the reasonable costs and expenses of such verification process (including, but not limited to the fees of an independent auditor) incurred by GT Software, and Licensee shall promptly cure any such noncompliance; provided, however, that the obligations under this Section are not a waiver of GT Software's termination rights or other rights under this Agreement, at law, in equity, or otherwise.

14.11   Miscellaneous. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor, except as otherwise expressly provided otherwise in this Agreement, shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power, or privilege by such party. If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified, or severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect. Nothing contained in this Agreement shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint ventures or partners for any purpose. There are no express or implied third party beneficiaries of this Agreement. The parties and each individual executing this Agreement on behalf of a party represent and warrant that such individual is duly authorized to execute and deliver this Agreement on behalf of his or her party. This Agreement, and all Order Forms, constitute the entire agreement between the parties with regard to the subject matter hereof. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver,

consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

14.12 <u>Construction</u>. In the interpretation of this Agreement, words importing the singular or plural number shall include the plural and singular number respectively, words denoting gender shall include all genders and references to persons shall include corporations or other entities and vice versa. The word "including" and its derivatives, (such as "include" and "includes") means including, without limitation, whether or not capitalized and whether or not "without limitation" or words of similar meaning are included in other provisions of this Agreement. Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or construing this Agreement. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another, because the parties participated equally in preparing this Agreement. Unless the context otherwise specifically requires, all references to sections of this Agreement shall refer to all subsections thereof.

15. Definition of Terms

In addition to any other terms set forth in this Agreement, the following terms shall have the following meanings:

(a) "<u>Affiliate</u>" means those entities that are controlled by, controlling, or under common control with Licensee. The term "<u>control</u>" as used in this definition means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

(b) "<u>Authorized User</u>" means a Licensee Personnel who both has a need to access and use the Licensed Product solely for Licensee's benefit and as authorized in this Agreement.

(c) "<u>Confidential Information</u>" means any information that is of value to its owner, or is required to be kept confidential by contract or otherwise, and is treated as confidential, that is disclosed by or on behalf of the discloser or otherwise directly or indirectly obtained from the discloser. Confidential Information includes, but is not limited to, the following: trade secrets, proprietary information, technical processes and formulas, the Licensed Products in source code, Object Code, and any other form, Documentation, benchmark and performance test results, product designs, any sales, cost, and other unpublished financial information, product and business plans, projections and marketing data, and the terms and conditions (but not the existence) of this Agreement. Confidential Information does not include information (i) generally known to the public through no act or omission of recipient; (ii) independently developed by the recipient without use of or reference to the discloser's Confidential Information; and (iii) obtained by recipient from any third party not owing any confidentiality obligation to the discloser.

(d) "Computing Device" means any physical object that has the capacity to process instructions in executable code form, including personal computers, servers, mobile devices, tablets, routers, switches, wireless access points, and card readers.

(e) "Core" means the basic computation unit of a CPU.

(f) "CPU" means a microprocessor that performs the general processing of data for a Computing Device. A CPU may contain more than one Core.

(g) "Deliverable" means documents, material, and computer software, including interfaces, delivered or made accessible to Licensee by GT Software in the provision of Professional Services, except that the Licensed Products, Documentation, and source code of the Licensed Products are not included in the definition of Deliverables.

(h) "Documentation" means the user guide(s), installation instructions, user instructions, release notes, manuals, and on-line help files in the form generally made available by GT Software to its customers regarding the use of the applicable Licensed Products, including the minimum hardware, software, operating system, and other system and configuration requirements for the proper use of the Licensed Products, as Modified and provided to Licensee from time to time.

(i) "Error" means a material failure of the Licensed Product to conform to the functional specifications described in its Documentation.

(j) "Error Correction" means any Modification, workaround, or routine intended to correct the practical adverse effect of an Error.

(k) "Fees" means License Fees, Maintenance Fees, Subscription Fees, Professional Services Fees, and all other fees payable to GT Software under this Agreement.

(l) "Intellectual Property Rights" means any and all rights existing from time to time in any jurisdiction under copyright law, patent law, trade secret law, confidential information law, trademark law, unfair competition law, or other similar rights.

(m) "License Fee" means the fee payable by Licensee for the license of the Licensed Products, as described on the applicable Order Form.

(n) "License Metrics" means the limitations on the usage of the Licensed Products as designated on the applicable Order Form. Among other metrics that may be used, certain defined terms are identified as potential License Metrics.

(o) "Licensed Products" means the Software, Third Party Software, Documentation, and Deliverables, together with any new Versions thereof provided by GT Software as a part of Maintenance Services from time to time.

(p) "Location" means the physical location identified on an Order Form where the Licensed Product is licensed to operate.

(q) "Modification" means any enhancement, new Version, Error Correction, derivative work, or other change.

(r) "Object Code" means machine-readable computer software code generated from source code by a compiler, interpreter, assembler, or similar technology.

(s) "Operating System" means the operating system that is used by the Licensed Product in order to function. Operating Systems include Windows, Linux, UNIX, OSX, and Android.

(t) "Order Form" means the document executed by the parties or attached to this Agreement that specifies the Licensed Products and/or Services that GT Software agrees to license or provide to Licensee in accordance with this Agreement.

(u) "Personnel" means an employee, contractor, agent, or consultant who is employed by or provides services to an entity.

(v) "Professional Services" means the SOW Services and Additional Services to be provided to Licensee, if such Services are attached or incorporated into this Agreement.

(w) "Server" means a Computing Device that normally provides processing or data to persons who access such software and data through another Computing Device.

(x) "Services" means the Maintenance Services, Professional Services, and Additional Services to be provided in accordance with the terms of this Agreement.

(y) "Software" means the Object Code version of the software identified on the Order Form (other than Third Party Software), including all Modifications provided by GT Software to Licensee from time to time.

(z) "SOW Services" means those installation, implementation, training, consulting and other services provided by GT Software in accordance with any Statement of Work, if attached or incorporated into this Agreement.

(aa) "Subscription Fees" means the fees for Subscription Services as more particularly described on an applicable Order Form.

(bb) "Third Party Software" means either (i) software that is provided to Licensee but not owned by GT Software as identified on the Order Form or (ii) open source software that is separately licensed to Licensee.

(cc) "Time and Materials Rates" means, unless otherwise provided on an Order Form or Statement of Work, GT Software's standard quoted rates for time and materials at the time the Professional Services are performed.

(dd) "Version" means software as it exists or is used at a point in time. Versions of software are normally identified by number. Software identified by Version includes all iterations of such software that are identified by a number that is not included in the licensed Version. For example, versions identified as 2.1.1 and 2.1.2 are included within the meaning of Version 2.1.