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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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AMENDMENT No. 3  
TO  
**Form S-1**  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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## GENPACT LIMITED

(Exact name of registrant as specified in its charter)

**Bermuda**  
(State or other jurisdiction of  
incorporation or organization)

**541990**  
(Primary Standard Industrial  
Classification Code Number)

**98-0533350**  
(I.R.S. Employer  
Identification Number)

**Canon's Court**  
22 Victoria Street  
Hamilton HM  
Bermuda  
(441) 295-2244

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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**Victor Guaglianone, Esq.**  
1251 Avenue of the Americas  
New York, NY 10020  
(646) 624-5929

(Name and address, including zip code, and telephone number, including area code, of agent for service)

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**Approximate date of commencement of proposed sale to the public:**  
**As soon as practicable after the effective date of this Registration Statement.**

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If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering.

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**CALCULATION OF REGISTRATION FEE**

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| Title of Each Class of Securities to be Registered | Amount to be Registered(1) | Proposed Maximum Aggregate Offering Price(2) | Amount of Registration Fee(3) |
|--|----------------------------|--|-------------------------------|
| Common Shares, \$0.01 par value per share          | 40,588,236                 | \$730,588,248                                | \$22,429(4)                   |

- (1) Includes shares to be sold upon exercise of the underwriters' option to purchase additional shares.
- (2) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(a) of Regulation C under the Securities Act of 1933, as amended.
- (3) Calculated pursuant to Rule 457(a) under the Securities Act of 1933, as amended.
- (4) Includes \$18,420 previously paid.

\_\_\_\_\_

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

\_\_\_\_\_

\_\_\_\_\_

### **Explanatory Note**

This Amendment No. 3 is being filed solely for the purpose of amending Item 16(a) of Part II of the Registration Statement on Form S-1 (File No. 333-142875) and filing certain exhibits to the Registration Statement. No other changes or additions are being made hereby to the preliminary prospectus which forms part of the Registration Statement or to Items 13, 14, 15, 16(b) or 17 of Part II of the Registration Statement. Accordingly, the preliminary prospectus and Items 13, 14, 15, 16(b) and 17 of Part II of the Registration Statement have been omitted from this filing.

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PART II

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

| Exhibit Number | Description   |
|----------------|---|
| 1.1            | Underwriting Agreement.*  |
| 3.1            | Memorandum of Association of the Registrant.†   |
| 3.3            | Bye-laws of the Registrant.*  |
| 4.1            | Form of specimen certificate for the Registrant's common shares.*   |
| 5.1            | Opinion of Appleby.*  |
| 10.1           | Amended and Restated Shareholders' Agreement, dated as of _____, 2007 by and among the Registrant, Genpact Global Holdings SICAR S.à.r.l., Genpact Global (Lux) S.à.r.l. and the shareholders listed on the signature pages thereto.* |
| 10.2           | Master Services Agreement dated December 30, 2004 between Genpact Global Holdings SICAR S.à.r.l. and General Electric Company.**‡   |
| 10.3           | Master Services Agreement 1st Amendment dated January 1, 2005 between Genpact Global Holdings SICAR S.à.r.l. and General Electric Company.**  |
| 10.4           | Second Amendment dated December 16, 2005 between Genpact International S.à.r.l. and General Electric Company.**   |
| 10.5           | Master Services Agreement Third Amendment dated September 6, 2006 between Genpact International S.à.r.l. and General Electric Company.**‡   |
| 10.6           | Master Professional Services Agreement dated November 30, 2005 by and between Genpact International S.à.r.l. and Macro*World Research Corporation (a subsidiary of Wachovia Corporation).**‡  |
| 10.7           | First Amendment to Master Professional Services Agreement dated August 26, 2006 by and between Genpact International S.à.r.l. and Macro*World Research Corporation (a subsidiary of Wachovia Corporation).**                          |
| 10.8           | Agreement dated November 30, 2005 among Genpact Global Holdings SICAR S.à.r.l., Macro*World Research Corporation and Wachovia Corporation.**‡   |
| 10.9           | Amended and Restated Credit Agreement dated June 30, 2006 among Genpact International S.à.r.l., Genpact Global Holdings SICAR S.à.r.l., Bank of America Securities Asia Limited, Bank of America, N.A. and certain other parties.†    |
| 10.10          | Gecis Global Holdings 2005 Stock Option Plan.†  |
| 10.11          | Genpact Global Holdings 2006 Stock Option Plan.†  |
| 10.12          | Genpact Global Holdings 2007 Stock Option Plan.†  |
| 10.13          | Form of Stock Option Agreement.†  |
| 10.14          | Stock Option Agreement dated as of July 26, 2005 between Gecis Global Holdings SICAR S.à.r.l. and Pramod Bhasin.†   |
| 10.15          | Employment Agreement dated as of July 26, 2005, with effect from January 1, 2005, by and among Gecis Global Holdings SICAR S.à.r.l., Gecis International S.à.r.l. and Pramod Bhasin.†   |
| 10.16          | Employment Agreement dated as of July 26, 2005, with effect from January 1, 2005, by and among Gecis Global Holdings SICAR S.à.r.l., Gecis International S.à.r.l. and VN Tyagarajan.†   |

- 10.17 Reorganization Agreement dated as of July 13, 2007, by and among the Registrant, Genpact Global (Lux) S.à.r.l., Genpact Global Holdings SICAR S.à.r.l. and the shareholders listed on the signature pages thereto.†
  - 10.18 Fiduciary Share Exchange Agreement dated as of July 13, 2007, by and among the Registrant, Genpact Global Holdings SICAR S.à.r.l. and Sal Oppenheim Jr. & Cie. S.C.A.†
  - 10.19 Assignment and Assumption Agreement dated as of July 13, 2007, among the Registrant, Genpact Global Holdings SICAR S.à.r.l. and Genpact International, LLC.†
  - 10.20 Genpact Limited 2007 Omnibus Incentive Compensation Plan.†
    - 21.1 Subsidiaries of the Registrant.\*
    - 23.1 Consent of KPMG.†
    - 23.2 Consent of Appleby (contained in Exhibit 5.1).\*
    - 24.1 Powers of Attorney.†
- 

\* To be filed by amendment.

\*\* Filed with this amendment.

† Previously filed.

‡ Confidential treatment has been requested for certain portions that are omitted in the copy of the exhibit electronically filed with the SEC. The omitted information has been filed separately with the SEC pursuant to our application for confidential treatment.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Amendment No. 3 to its Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of New York, NY, on July 20, 2007.

GENPACT LIMITED

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

Name: Victor Guaglianone  
Title: Senior Vice President and General Counsel

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on the 20<sup>th</sup> day of July, 2007.

| Signature                       | Title  |
|---------------------------------|--|
| *<br>_____<br>Pramod Bhasin     | President, Chief Executive Officer and Director<br>(Principal Executive Officer) |
| *<br>_____<br>Vivek N. Gour     | Chief Financial Officer<br>(Principal Financial and Accounting Officer)          |
| *<br>_____<br>John Barter       | Director   |
| *<br>_____<br>J Taylor Crandall | Director   |
| *<br>_____<br>Steven A. Denning | Director   |
| *<br>_____<br>Mark F. Dzialga   | Director   |
| *<br>_____<br>Rajat Kumar Gupta | Director   |
| *<br>_____<br>James C. Madden   | Director   |
| *<br>_____<br>Denis J. Nayden   | Director   |
| *<br>_____<br>Gary M. Reiner    | Director   |
| *<br>_____<br>Robert G. Scott   | Director   |
| *<br>_____<br>A. Michael Spence | Director   |
| *<br>_____<br>Lloyd G. Trotter  | Director   |



**EXHIBIT INDEX**

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\* To be filed by amendment.

\*\* Filed with this amendment.

† Previously filed.

‡ Confidential treatment has been requested for certain portions that are omitted in the copy of the exhibit electronically filed with the SEC. The omitted information has been filed separately with the SEC pursuant to our application for confidential treatment.

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## MASTER SERVICES AGREEMENT

by and between

GENERAL ELECTRIC COMPANY

And

GECIS INTERNATIONAL HOLDINGS, LUXEMBOURG, SWISS BRANCH ZUG

December 30, 2004

[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

Confidential Information of  
GE and Genpact

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**Exhibits**

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| Exhibit A – | List of Provider Affiliates   |
| Exhibit B – | Sample Statement of Work for Future SOWs  |
| Exhibit C – | Business Volume Commitment MVC Assumptions and Methodology  |
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| Exhibit P – | GE ITS SOWs   |
| Exhibit Q – | Form of Transferred SOW Subcontract Agreement   |

[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT (this “Agreement”) is entered into as of the 30<sup>th</sup> day of December, 2004 (the “Effective Date”) by and between GENERAL ELECTRIC COMPANY, a New York corporation with a principal place of business at 3135 Easton Turnpike, Fairfield, Connecticut 06431 (“GE”), and GECIS INTERNATIONAL HOLDINGS, LUXEMBOURG, SWISS BRANCH ZUG with a principal place of business at Baarerstrasse 21, 6304 Zug, Switzerland (“Company”).

**WITNESSETH:**

WHEREAS, GE and its Affiliates may require certain services, deliverables and work product as more particularly described herein for their business operations; and

WHEREAS, Company and its Subsidiaries desire to provide such services, deliverables and work product in accordance with the provisions of this Agreement and the statements of work hereunder.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS; INTERPRETATION**

1.1 **Certain Defined Terms.** For the purposes of this Agreement, the following terms will have the meanings specified in this Section 1.1 (Definitions; Interpretation):

“2005 Pricing Reduction” means the pricing reduction of [[[\*\*\*]]] previously applied to Transferred SOWs.

“Additional Services” means business process services that (i) are similar to any of the Services provided under a Customer SOW in effect as of the date of the request for proposal for such services as described in Article VIII (Right of First Opportunity), (ii) are performed or could reasonably be performed in facilities located in India, China, Hungary or Mexico, and (iii) are anticipated to involve an annual purchase dollar volume in excess of \$200,000; provided, however, that “Additional Services” does not include: (i) any services that are provided by the GE Medical Systems Information Technologies Business or the IT Services Business Component, (ii) any information technology-related or software-related services other than such services listed on Exhibit G and (iii) any services that are not Applicable Services.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such Person, and each Person who is the beneficial owner of twenty percent (20%)

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or more of the equity interests entitled to vote in the election of the board of directors, managers, trustees or other controlling Persons of such Person.

“Affiliated Providers” means such Affiliates or subsidiaries of Company that are providing Services to the Customer Group pursuant to a permitted subcontract to this Agreement.

“Applicable Services” means business process outsourcing services of the type provided by the Transferred BPO Business as of the date hereof.

“Agreement” means this Agreement together with all Exhibits and attachments hereto.

“Business Components” means any component within a Business (including, for example, GE Transportation -Lynn).

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York.

“Businesses” means the businesses (or any portions thereof) of one or more members of the Customer Group organized around key product lines (including, for example, GE Healthcare and GE Consumer and Industrial), which may be comprised of one or more Business Components.

“Business Productivity” means any Transaction Productivity or Cost Productivity achieved by a Customer Party as a direct consequence of an efficiency initiative by Provider (including the Affiliated Providers) and/or a Customer Party.

“Category of Service” means the following categories into which Provider divides its Service offerings (which categories may be amended from time to time by the Provider): collections, corporate services, customer care, finance, human resources, information technology, learning services, risk management, sales and marketing, and supply chain management.

“Cause” means a basis for termination of a Customer SOW set forth in Section 11.3 (Termination of Customer SOWs with Cause by Customer Group).

“Change of Control” means, with respect to Provider, (i) any Transfer (as defined in the Stockholders Agreement) of Company Equity Securities (as defined in the Stockholders Agreement) by a Stockholder (as defined in the Stockholders Agreement) resulting in any Person or “group” (as such term would be interpreted under Section 13(d) of the Exchange Act) of Persons not Stockholders (or Affiliates of Stockholders) prior thereto owning, directly or indirectly, Company Equity Securities which comprise or are convertible into more than fifty percent (50%) of the outstanding Common Shares (as defined in the Stockholders Agreement) on a Fully Diluted (as defined in the Stockholders Agreement) basis, (ii) the Transfer of all or

substantially all of the assets of the Company (determined on a consolidated basis) to any Specified Person or “group” of Specified Persons of more than fifty percent (50%) of the outstanding Common Shares on a Fully Diluted basis or (iii) the issuance or sale by the Company of Company Equity Securities, or any merger, consolidation, combination, reorganization, recapitalization or other transaction or series of related transactions that results in the ownership by any Specified Person or “group” of Specified Persons of more than fifty percent (50%) of the outstanding Common Shares on a Fully Diluted basis. With respect to Subsidiaries of Company or Affiliated Providers, Change of Control means a person or entity not previously having such control acquiring fifty percent (50%) or more of the voting control of the relevant entity.

“Confidential Information” means Information, documents and materials relating to the businesses currently or formerly conducted by Provider (including, in respect of Provider, the business conducted by the Transferred BPO Business immediately prior to the Effective Date) or the Customer Group or suppliers or customers of the Provider or Customer Group, irrespective of the form of communication (along with all notes, analyses, compilations, forecasts, data, translations, studies, memoranda, copies, extracts, reproductions or other documents that contain or otherwise reflect such Information, documents and materials). Confidential Information shall include Information, documents and materials related to pricing, rates, productivity, Fees or other similar information, Personal Data, training methods, business practices, plans, projections, trade secrets, this Agreement, customer lists, customer contracts, customer information, information with respect to competitors, account information, research information, accounting information, human resources and personnel information, marketing/sales information, third party contracts, licenses, audits, regulatory compliance information, Customer Solutions and Provider Solutions.

“Contract” means any written contract, agreement, instrument, undertaking, arrangement, lease, commitment or other legally binding obligation and any written modification, amendment, alteration, supplement or waiver with respect thereto.

“Controlled Affiliate” means, with respect to any Person, any Affiliate of such Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such Person.

“Cost Productivity” means, for any year, the sum of the reductions in each of the following as compared to the prior year: (i) direct and indirect material prices, (ii) overhead costs, (iii) the number of management working hours per Service and (iv) direct labor rates.

“Critical Performance Standards” means the Performance Standards that are identified as “critical performance standards” in any Customer SOW (including any identification performed during the review process for the Transferred SOWs set forth in Section 12.2 (Transferred SOWs)).

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“Cross License Agreement” means that certain Intellectual Property Cross License Agreement between Provider and GE, as the same may be amended, modified or supplemented from time to time in accordance with its provisions dated as of December 30, 2004.

“Cross License Customer IP” means Intellectual Property that is licensed to Provider by the Customer Group under the Cross License Agreement.

“Customer Group” means GE and its Affiliates other than Genworth Financial, Inc. and its Subsidiaries.

“Customer Party” means the member of the Customer Group that is a party to a Customer SOW or, where appropriate in the context of this Agreement, the Customer SOW to which the relevant provision of this Agreement relates.

“Customer Personal Data” means, as it relates to the Services, (i) Personal Data obtained by Provider or any of its permitted subcontractors from any Customer Party, (ii) Personal Data (from whatever source) being Processed by Provider or any of its permitted subcontractors on behalf of any Customer Party, and (iii) Personal Data (from whatever source) pertaining to the personnel of Customer Group or its Representatives.

“Customer Solutions” means all Technology and Intellectual Property owned by a Customer Party pursuant to a Customer SOW.

“Customer SOWs” means collectively the Transferred SOWs and the Future SOWs.

“Data Subject” means (i) a natural person with whom certain Personal Data is identified or identifiable and (ii) for any Personal Data Processed in Luxembourg, Switzerland, Italy, and Austria, a Person with whom certain such Personal Data is identified or identifiable.

“Deliverables” means any Project Deliverables or Other Deliverables.

“Designated Arbitrator” means an arbitrator selected by the mutual written agreement of the Parties (it being understood that the Parties will review such appointment annually and upon mutual agreement may change such appointment).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Financial Statements of the Transferred BPO Business” means the audited financial statements of the Transferred BPO Business as of March 31, 2004.

“Force Majeure Event” means, with respect to a Person, an event beyond the reasonable control of such Person (or any other Person acting on its behalf), which by its nature

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could not have been foreseen by such Person (or such other Person), or, if it could have been foreseen, was unavoidable after using commercially reasonable efforts, and includes acts of God, strikes and labor unrest (other than those against the Person affected), storms, floods, riots, fires, sabotage, civil commotion or civil unrest, actions of a Governmental Entity limiting in a material fashion or prohibiting the provision of the Services, interference by civil or military authorities, acts of war (declared or undeclared), armed hostilities, other national or international calamity, one or more acts of terrorism, or failure of energy sources.

“FTE” means the all-time equivalent of the output of a natural person engaged by Provider or any of its permitted subcontractors who is dedicated to performing Services or any portion thereof.

“FTE Cost” means, with respect to an FTE during any time period, (i) the salary of such FTE during such time period, (ii) payroll taxes, applicable withholding, and other similar costs for such FTE during such time period, (iii) benefits provided to such FTE during such time period, and (iv)



bonuses and deferred compensation for such FTE during such time period.

“GAAP” means United States generally accepted accounting principles and practices.

“GE ITS SOWs” means the statements of work set forth on Exhibit P.

“Governmental Entity” means any domestic or foreign federal, state, provincial, local, county or municipal government or supra-national, governmental, judicial, regulatory or administrative agency, department, commission board, bureau, court or other authority or instrumentality or any arbitrator or arbitral panel.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Entity.

“Inflation Factor” means, with respect to each Transferred SOW during any year of the Term, an amount equal to [[[\*\*\*]]].

“Information” means information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, Software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), and other technical, financial, employee or business information or data.

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“Insurance Proceeds” means monies: (i) received by an Indemnified Party as a result of an insurance policy taken out by the Indemnifying Party; (ii) paid by an insurance carrier to the Indemnified Party on behalf of the Indemnifying Party; or (iii) received (including by way of set-off) by an Indemnifying Party on behalf of the Indemnified Party; and in the case of each of the foregoing (i)-(iii), received or paid (x) from or by any third party in the nature of insurance, contribution or indemnification in respect of any liability and (y) net of any applicable premium adjustments (including reserves and retrospectively rated premium adjustments), and costs or expenses incurred in the collection thereof.

“Intellectual Property” means all of the following, whether protected, created or arising under the Laws of the United States, India, China, Hungary, Mexico or any other foreign jurisdiction: (i) patents, patent applications (along with all patents issuing thereon), statutory invention registrations, and divisions, continuations, continuations-in-part, and substitute applications of the foregoing, and any extensions, reissues, restorations and reexaminations of the foregoing, and all rights therein provided by international treaties or conventions, (ii) copyrights, mask work rights, database rights and design rights, whether or not registered, published or unpublished, and registrations and applications for registration thereof, and all rights therein whether provided by international treaties or conventions or otherwise, (iii) trade secrets, (iv) trademarks, service marks, trade names, service names, trade dress, logos and other identifiers of source, including all goodwill associated therewith and all common law rights, registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing, (v) all rights arising from or in respect of domain names and domain name registrations and reservations, and (vi) all other applications and registrations related to any of the rights set forth in the foregoing clauses (i)-(v) above.

“Law” means any domestic or foreign federal, state, provincial or local statute, law (including common law), ordinance, regulation, rule, code or Governmental Order, or any other requirement or rule of law.

“Other Deliverable” means any deliverable or other work product that is not a Project Deliverable and is provided to any Customer Party as part of the Services.

“Party” means GE and Provider individually, and “Parties” means GE and Provider collectively.

“Performance Standards” means the performance standards critical to quality standards, service level requirements, specifications and acceptance criteria of the Services set forth in this Agreement and the Customer SOWs.

“Person” means any individual, partnership, corporation, trust, limited liability company, unincorporated organization, Governmental Entity and any other entity.

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“Personal Data” means (i) any information that is identified or identifiable with a natural person, including employees, directors, shareholders, customers, prospects, contacts and suppliers of the Customer Group, and (ii) for any information Processed in Luxembourg, Switzerland, Italy, and Austria, any information that is identified or identifiable with any Person.

“Processing” of Personal Data means and includes any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection; recording; organization; storage; adaptation or alteration; retrieval; accessing; consultation; use; disclosure by transmission, dissemination or otherwise making available; alignment or combination; blocking; erasure or destruction; and the terms “Process”, “Processes”, “Processor” and “Processed” have correlative meanings.

“Productivity” means Transaction Productivity, Cost Productivity, and Business Productivity.

“Project” means a project anticipated to have a finite (rather than indefinite or year-to-year) life span.

“Project Deliverable” means any deliverable or other work product that is developed as part of a Project, and delivered to any Customer Party as part of the Services. Project Deliverables may include e-learning products, analytics or Software, but exclude process-related deliverables.

“Provider” means Company and the entities set forth on Exhibit A, as such Exhibit may be amended from time to time.

“Provider Solutions” means all Technology and Intellectual Property owned by Provider (or an applicable Affiliated Provider) pursuant to a Customer SOW.

“Representatives” means, with respect to a Person, the Affiliates of such Person (or in the case of Provider, its Subsidiaries and the Affiliated Providers) and the directors, officers, partners, employees, agents, consultants, contractors, advisors, legal counsel, accountants and other representatives of such Person and its Affiliates (or in the case of Provider, its Subsidiaries and the Affiliated Providers).

“Services” means all services and Deliverables provided to the Customer Group under this Agreement and all Customer SOWs.

“Software” means the object and source code versions of computer programs and sufficient associated documentation, training materials and configurations to use and modify such programs, including programmer, administrator, end user and other documentation.

“Specified BPO Services” shall mean the business process outsourcing services provided pursuant to the Transferred SOWs.

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“Specified Person” means, as of a time of determination, any Person that was not a Stockholder (or Affiliate of a Stockholder) immediately prior to such time.

“Stranded Costs” means any costs and expenses of Provider (including the applicable Affiliated Providers calculated so as not to include any cost or expense twice and without any markup between Affiliated Providers and Provider) directly resulting from termination of a Transferred SOW pursuant to Section 11.6 (Termination for Convenience), including (i) any costs and expenses with respect to re-employment or termination of any employee directly engaged in rendering the terminated Services and (ii) any facility, hardware or equipment-related costs.

“Subsidiary” of any Person shall mean any corporation, general or limited partnership, joint venture, limited liability company, limited liability partnership or other Person that is a legal entity, trust or estate of which (or in which) (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors (or a majority of another body performing similar functions) of such corporation or other Person (irrespective of whether at the time the capital stock of any other class or classes of such corporation or other Person shall or might have voting power upon the occurrence of any contingency), (b) more than 50% of the interest in the capital or profits of such partnership, joint venture or limited liability company or (c) more than 50% of the beneficial interest in such trust or estate, is at the time of determination directly or indirectly owned or controlled by such Person; provided, however, that for purposes of this Agreement, Genworth Financial, Inc. shall not be deemed a Subsidiary of GE.

“Sweet Spot Services” means business process services that any member of the Customer Group requests that Provider provide that (i) are similar to any of the Services provided under a Customer SOW in effect as of the date of such request or are otherwise within Provider’s (including Affiliated Providers) then-current capabilities (including language capabilities), taking into account the location of Provider’s (including Affiliated Providers) then-current facilities and the then-current skill set of Provider’s (including Affiliated Providers) personnel, and (ii) are to be or could reasonably be performed in facilities located in India, China, Hungary or Mexico or any other of Provider’s platforms in existence as of the date of such request.

“Technology” means, collectively, all designs, formulas, algorithms, procedures, techniques, know-how, Software, programs, models, routines, databases, tools, inventions, creations, improvements, works of authorship, recordings, graphs, drawings, reports, analyses, and other writings, and any other embodiment of the above, in any form, whether or not specifically listed herein.

“Transaction Productivity” means, during any month, (i) the increase in the volume of Services performed per FTE as compared to the prior month and (ii) the performance of a fixed amount of Services utilizing fewer FTEs as compared to the prior month.

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“Transition Services” means all Services performed in the migration of a process or function from the Customer Group to the Provider upon the initial commencement of such Service or for additions to such Services.

“Transferred BPO Business” means the primarily English-language based remote business processing and offshore support business that provides the Specified BPO Services and that operates on a stand-alone basis from facilities located in India, China, Hungary and Mexico conducted by and through the following: the GE BPO assets in Hungary; GE Global Process Solutions LLC, GE Capital Global Process Solutions UK Ltd.; GE (Dalian) Administrative Management Technology Consulting Co., Ltd.; the BPO assets of GECIS Americas; and the BPO assets of EDM del Norte, EDM Monterrey and EDM del Noroeste; and GE Capital International Services other than certain BPO assets of GE Consumer Finance and certain treasury and tax accounting assets of GE;

“Transferred SOWs” means (i) all statements of work in effect immediately prior to the Effective Date between the Transferred BPO Business and any Customer Party (other than such statements of work that relate to GE’s business process outsourcing business (other than the Transferred BPO Business)), or similar documents specifying work to be performed and amounts to be paid), (ii) the GE ITS SOWs (at such time as, with respect to each GE ITS SOW, that the assignment of such GE ITS SOW to Company is effective), and (iii) those services provided immediately prior to the Effective Date by the Transferred BPO Business to a member of the Customer Group (other than such services that relate to GE’s business process outsourcing business (other than the Transferred BPO Business)) without a statement of work. To the extent necessary for its construction, each Transferred SOW will be deemed to incorporate by reference any definitions of terms used therein that were contained in the agreement to which it related.

“Transition Services Agreement” means the Transition Services Agreement between GE and Provider as the same may be amended, modified or supplemented from time to time in accordance with its provisions dated as of December 30, 2004.

1.2 **Other Terms.** For purposes of this Agreement, the following terms will have the meanings set forth in the Sections indicated:

| <u>Term</u>             | <u>Section</u> |
|-------------------------|----------------|
| AAA                     | Section 22.5   |
| Accessing Party         | Section 21.1   |
| After-Tax Basis         | Section 18.6   |
| Agreement               | Preamble       |
| BCP                     | Section 13.4   |
| Benchmark Rates         | Section 6.3    |
| Change Order            | Section 4.1    |
| Change Order Procedures | Section 4.3    |
| Company                 | Preamble       |

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| <u>Term</u>                       | <u>Section</u>  |
|-----------------------------------|-----------------|
| Contract Information              | Section 16.2(i) |
| Covered Personnel                 | Section 22.17   |
| Cross License Improvements        | Section 17.2    |
| Customer Group Policies           | Section 13.5    |
| Customer Information              | Section 16.2    |
| Customer Indemnified Parties      | Section 18.1    |
| Customer Information Privacy Laws | Section 16.2    |
| Customer Third Party Resources    | Section 17.6    |
| Dispute                           | Section 22.5    |
| Due Date                          | Section 9.3     |
| Effective Date                    | Preamble        |
| EU                                | Section 16.2    |
| Exclusive Tender Period           | Section 8.2     |
| Executive                         | Section 5.2     |
| Fees                              | Section 9.1     |
| FM Shortfall Amount               | Section 6.5     |
| Future SOWs                       | Section 2.1     |
| GLB                               | Section 16.2    |
| GE                                | Preamble        |
| HIPAA                             | Section 16.2    |
| Improvements                      | Section 17.4    |
| Indemnified Party                 | Section 18.4    |
| Indemnifying Party                | Section 18.4    |

|                                |              |
|--------------------------------|--------------|
| Indemnity Payment              | Section 18.6 |
| Information Owner              | Section 21.1 |
| Initial Term                   | Section 11.1 |
| Integrity Policy               | Section 13.5 |
| Liability                      | Section 18.6 |
| Losses                         | Section 18.1 |
| Material                       | Section 18.4 |
| Minimum Volume Commitment      | Section 6.1  |
| Minimum Volume Commitment Term | Section 6.1  |
| Moral Rights                   | Section 17.2 |
| MVCs                           | Section 6.2  |
| MVC Term                       | Section 6.2  |
| Provider Indemnified Parties   | Section 18.2 |
| Purchase Orders                | Section 2.1  |
| Ramp Down MVC                  | Section 6.2  |
| Ramp Down Term                 | Section 6.2  |
| Renewal Term                   | Section 11.1 |
| Required Consent               | Section 17.6 |

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| <u>Term</u>             | <u>Section</u> |
|-------------------------|----------------|
| Service Delivery Leader | Section 5.3    |
| Statements of Work      | Section 2.1    |
| Steering Committee      | Section 5.1    |
| Term                    | Section 11.1   |
| Tested Deliverables     | Section 3.1    |
| Warranty Period         | Section 12.3   |

1.3 **Interpretation.** Interpretation of this Agreement will be governed by the following rules of construction, unless the context requires otherwise: (i) words in the singular will be deemed to include words in the plural and vice versa and, in particular (but without limiting the generality of the foregoing), any word or expression defined in the singular has the corresponding meaning when used in the plural and vice versa; (ii) words of one gender will be deemed to include words of other genders; (iii) any reference to an Article, Section, Appendix, Exhibit, Annex, clause, subclause, paragraph, subparagraph, Schedule, Recital or Preamble is a reference to an Article, Section, Appendix, Exhibit, Annex, clause, subclause, paragraph, subparagraph, Schedule, Recital or Preamble of this Agreement; (iv) any reference to any statute will be construed as including all statutory provisions consolidating, amending or replacing such statute; (v) the terms “hereof,” “hereby,” “hereto,” “hereunder” and similar terms will refer to this Agreement as a whole; (vi) the word “including” and words of similar import will mean “including, without limitation” and “including, but not limited to”; (vii) provisions will apply, when appropriate, to successive events and transactions; (viii) the headings contained herein are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement; (ix) this Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted; and (x) all references to “dollars” or “\$” shall be to United States dollars.

## ARTICLE II SERVICES

### 2.1 **Services.**

(a) Provider agrees to provide Services to the Customer Group during the Term in accordance with the terms and conditions of this Agreement, all Transferred SOWs and all statements of work (“Statements of Work”) and purchase orders (“Purchase Orders” and, collectively with the Statements of Work, the “Future SOWs”) entered into between Provider and a member of the Customer Group in accordance with Section 2.2 (Future SOWs).

(b) Each Customer SOW will be deemed a separate contract between Provider and the Customer Party that are signatories to it, and will be an independent contractual obligation from any other Customer SOW.

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### 2.2 **Future SOWs.**

(a) All Future SOWs will be in writing and signed by a duly authorized representative of each of Provider and the Customer Party prior to the commencement of any Services under such Future SOW.

(b) Each Statement of Work executed after the Effective Date will be numbered consecutively and dated. Purchase Orders issued after the Effective Date may or may not be numbered consecutively with Statements of Work executed after the Effective Date. All Statements of Work will be substantially in the form set forth in Exhibit B, and may contain the following elements:

- (i) a detailed description of the Services to be performed;
- (ii) Critical Performance Standards and other Performance Standards for the Services;
- (iii) penalties and incentives in respect of nonperformance and performance of the Critical Performance Standards;
- (iv) acceptance criteria for any Deliverables to be provided;
- (v) the amount, schedule and method of compensation, including monthly or annual minimum payments, if any, to be paid by the Customer Party to Provider;
- (vi) a description of the Six Sigma methodology to be established for particular Services described in such Statement of Work, if any;
- (vii) the Customer Group's standard operating procedures relating to Provider's or its Representatives' performance of the Services, including operations and compliance requirements, training schedules and updates;
- (viii) the term of such Statement of Work, including any renewal options;
- (ix) the information technology support requirements of the Customer Party;
- (x) the currency in which payments will be calculated and made;
- (xi) training and support commitments;
- (xii) if appropriate given the pricing methodology for the Statement of Work, the estimated number of FTEs required; and
- (xiii) the services that the Customer Party will provide to enable or support the Services and any other obligations of the Customer Party; and

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- (xiv) the entities that will be providing Services.

(c) The parties to each Statement of Work will modify any provisions of this Agreement to the extent necessary to comply with the local Laws of the country in which such Statement of Work is executed or the local Laws of the country or countries where the Services are rendered while reflecting, to the maximum extent possible, the intent of the Parties reflected herein.

### 2.3 **Order of Precedence.**

(a) In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Future SOW, the terms and conditions of such Future SOW will prevail if the Future SOW specifically references the provisions of this Agreement that are inconsistent therewith. Each Future SOW will be deemed to incorporate by reference the terms and conditions of this Agreement unless the applicable Future SOW expressly states otherwise.

(b) In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Transferred SOW, the terms and conditions of this Agreement will prevail and the terms of any Change Order shall prevail over both the Transferred SOW and this Agreement. Each Transferred SOW will be deemed to incorporate by reference the terms and conditions of this Agreement.

(c) All master services agreements between the Transferred BPO Business and members of the Customer Group shall terminate as of the Effective Date. However, notwithstanding the foregoing or anything else in this Agreement or in any other agreement, no agreement between the Transferred BPO Business and any member of the Customer Group or any Transferred SOW thereunder shall be modified or terminated before receiving all required approvals from Governmental Entities and other entities having contractual consent rights. The Customer Group and Provider shall use reasonable efforts to obtain any such required government approvals and, pending such approvals, the parties shall continue to operate under such existing agreements without amendment. Any amounts paid under any existing agreements will be counted toward the MVC and Provider and the Customer Group shall make a financial adjustment so that Provider receives the benefit of its bargain as reflected in this Agreement and the Transferred SOW without taking into account this Section 2.3(c).

(d) For Transferred SOWs, to the extent (i) Provider's obligations to comply with the provisions and requirements of Section 9.7 (Electronic Invoicing); 10.1 (Books and Records), 10.4 (Reporting), 13.1 (Data), 13.5(b) (Customer Group Policies), 13.6 (Security Standards), 14.1

(Cooperation by Parties) and 17.8 (Additional Acts) (as those provisions and requirements exist as of the Effective Date) or (ii) Provider and the Customer Party agree to implement improved practices in respect of Section 15.2 (Compliance with Laws) and Section 16.2 (Data Protection) are materially in excess (on a Transferred SOW-by-Transferred SOW

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basis) of the practice of the Transferred BPO Business prior to the Effective Date and the cost of such obligations as reflected in the Financial Statements of the Transferred BPO Business, and the excess is identified during the period between the Effective Date and June 30, 2006, the parties to the Transferred SOW will discuss the potential increased costs and methods for reducing those costs and either, at the sole discretion of GE or the Customer Party, (A) GE or the Customer Party will agree to amend the Transferred SOW (for the remainder of its term) to require payment of additional compensation in an amount equal to the reasonable increased cost of complying with each such obligation after the Effective Date as compared to the associated costs reflected in the Financial Statements of the Transferred BPO Business; or (B) GE and the Customer Party will agree to amend the Transferred SOW (for the remainder of its term) (which may involve a change in level or method of providing Services) so those obligations are not materially in excess of the practice of the Transferred BPO Business prior to the Effective Date and the cost of such obligations as reflected in the Financial Statements of the Transferred BPO Business. This provision will not apply to any excess that was not either discussed between Provider and the Customer Group or notified by Provider to GE and the Customer Party on or prior to June 30, 2006.

(e) Notwithstanding anything else in this Agreement or a Customer SOW to the contrary, the order of precedence set forth in this Section 2.3 shall control.

2.4 **Divestitures.** In the event that any member of the Customer Group directly or indirectly divests more than fifty percent (50%) of its equity interest in a Customer Party or sells all or substantially all of the assets of such Customer Party, such Customer Party may assign, upon notice, its rights under the Customer SOW to the acquirer or divested entity, as may be appropriate, in which case Provider will continue to provide services in accordance with the applicable Customer SOW to the acquirer or divested entity, as may be appropriate, and the acquirer or divested entity will assume the responsibilities and obligations of the Customer Party under the applicable Customer SOW. If appropriate, Provider and the acquirer will negotiate any modifications (including to reflect increased or decreased fees resulting from increased or decreased costs to Provider (including the costs of the Affiliated Providers calculated so as not to include any cost twice and without any markup between Affiliated Providers and Provider) reasonably necessary to account for the fact that the acquirer may not be an Affiliate of GE and thus certain provisions of this Agreement may not be appropriate.

2.5 **Independent Contractor.** Provider will remain for all purposes an independent contractor under this Agreement and the Customer SOWs. The Customer Group or Provider (as the case may be) will have no power (and will not represent that it has any power) under this Agreement or the Customer SOWs to bind the other party or to assume or create any obligations, express or implied, on behalf of the other party. Nothing in this Agreement will be deemed to constitute or will be construed as constituting a partnership, joint venture or principal-agency relationship between the Customer Group and Provider. All Provider personnel, including any subcontractors permitted hereunder, will be considered solely Provider's employees or agents, and Provider will be responsible for (i) compliance with all Laws relating

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to such personnel and (ii) payment of all wages, Taxes and other costs and expenses relating to such personnel (including unemployment, social security and other payroll taxes) and compliance with all withholding requirements as required by Law. No Provider personnel will have any right to payment of wages, Taxes or any other costs or expenses directly from any member of the Customer Group.

2.6 **Locations.** All Services will be provided from (i) Provider's or the Affiliated Providers' facilities located in India, China, Hungary or Mexico, (ii) such other facilities of Provider or the Affiliated Providers that the Parties agree upon in writing, including in any Customer SOW, or (iii) if required by a Customer SOW, the Customer Group's facilities.

2.7 **Materials.** Unless otherwise set forth in any Customer SOW, Provider will provide or arrange for all of its telecommunications services, data services, facilities, materials, hardware, Software and other requirements in order to perform the Services.

2.8 **Provider Not Precluded from Providing Services to Third Parties.** Subject to Articles XVII (Ownership; Intellectual Property) and Article XXI (Confidentiality), nothing in this Agreement will preclude or otherwise limit in any way Provider's right to provide services of any kind or nature whatsoever to any third party.

2.9 **Assignment of Transferred SOWs.** Provider will use commercially reasonable efforts to document the assignment of the Transferred SOWs from the Transferred BPO Business to Provider promptly after the Effective Date on terms such that Provider and the Customer Party receive the benefit of their bargain as reflected in this Agreement and the Transferred SOWs.

2.10 **GE ITS SOWs.** In the event that any GE ITS SOW is not assigned to Company within three (3) months after the Effective Date, the Customer Group may, upon written notice to Provider, enter into a Statement of Work with Provider that has substantially similar Services and is on substantially the same terms as such GE ITS SOW. Provider and the notifying Customer Group member agree to accept such Statement of Work, and such Statement of Work will be deemed a Transferred SOW for all purposes under this Agreement.

### ARTICLE III TESTING AND ACCEPTANCE OF DELIVERABLES

3.1 Sections 3.1 through 3.5 will apply only to Project Deliverables generally and to those Project Deliverables in particular for which testing and review is appropriate and Deliverables under Future SOWs under which testing and review of Deliverables is appropriate (collectively, “Tested Deliverables”). In addition, Sections 3.1 through 3.5 will be superseded for any Project or non-Project Transferred SOW by any provisions regarding testing and review contained in that Transferred SOW. At the request of any Customer Party, Provider will provide such Customer Party with testing results or other data sufficient to verify that each Tested

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Deliverable conforms to the applicable Performance Standards set forth in the applicable Customer SOW. Provider will promptly provide written notice to the Customer Party upon the completion of a Tested Deliverable under a Customer SOW (or, if such Customer SOW requires that the Tested Deliverable be installed at such Customer Party’s site, upon the successful installation of such Tested Deliverable), and will promptly deliver such Tested Deliverable to such Customer Party (unless such Tested Deliverable has already been installed at such Customer Party’s site). To the extent possible, Provider will deliver electronic versions of Tested Deliverables to the Customer Party.

3.2 Each Customer Party will also have the right to conduct its own testing and review of each Tested Deliverable upon receipt of such written notice. Provider agrees to assist such Customer Party as reasonably requested by such Customer Party in the performance of such testing and review, and to cooperate with other vendors and suppliers of the Customer Group in the conduct of such testing and review. Such testing and review conditions will reasonably reflect the actual environments in which such Tested Deliverable is likely to be used, and will include testing and review of such Tested Deliverable with networks, hardware and Software with which such Tested Deliverable is designed to operate.

3.3 Such Customer Party may, in its sole discretion, (i) elect to accept such Tested Deliverable, (ii) reject it due to a failure of such Tested Deliverable to comply with the applicable specifications and acceptance criteria specified in the applicable Customer SOW in any material respect, or (iii) reasonably request additional Information, documents or materials from Provider should further testing and review be required in order to determine whether such Tested Deliverable complies with the applicable specifications and acceptance criteria specified in the applicable Customer SOW in all material respects. If such Customer Party rejects such Tested Deliverable, it will provide a written notice of rejection to Provider or its designee specifying in reasonable detail the reasons for such failure. Provider will correct any such failure and provide such Customer Party with a revised Tested Deliverable as soon as practicable but, unless otherwise agreed in writing, no later than thirty (30) days after its receipt of the notice of rejection from such Customer Party. Such Customer Party will have the right to accept or reject the corrected Tested Deliverable in accordance with this Article III (Testing and Acceptance of Deliverables). If such Customer Party determines that Provider has not corrected any such failure, such Customer Party may elect to (a) terminate the applicable Customer SOW or (b) hire a third party to correct such failure under reasonable terms and conditions, at Provider’s expense; provided, however, that such Customer Party, to the extent practical, shall give due consideration to using a third party proposed by Provider. Notwithstanding the foregoing, such Customer Party’s and Provider’s compliance with this Article III (Testing and Acceptance of Deliverables) will not relieve Provider of any of its representations, warranties and obligations contained herein or in any Customer SOW. If Provider or its designee receives a request for further Information, documents or materials from such Customer Party, Provider will evaluate such request and determine the best approach for providing the requested Information, documents and materials, and produce the requested Information, documents and materials within a reasonable

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time period agreed upon between Provider and such Customer Party (which will in no event exceed fifteen (15) Business Days).

3.4 If, within ninety (90) days (or such longer period as may be agreed upon in a Customer SOW) of receipt by such Customer Party of the written notice described under Section 3.1, such Customer Party has not (i) provided written notice to Provider or Provider’s designee of the Customer Party’s acceptance of such Tested Deliverable, (ii) provided written notice of rejection to Provider in accordance with the foregoing, or (iii) requested additional Information, documents or materials from Provider or its designee in accordance with the foregoing, then such Tested Deliverable will be deemed to have been accepted by such Customer Party.

3.5 In the event that one or more Tested Deliverables are to be used together by such Customer Party, after such Customer Party’s acceptance of such Tested Deliverables individually, such Customer Party will have the right to perform an integrated acceptance test of all such Tested Deliverables together in accordance with Sections 3.2, 3.3 and 3.4.

3.6 For non-Project Transferred SOWs that have not reached all production and non-Project Future SOWs, unless otherwise agreed upon by the Parties as of the Effective Date, Provider will utilize the migration/transition toolkit used by the Transferred BPO Business prior to the Effective Date, agree with the Customer Party on performance standards, baseline those performance standards and, unless otherwise agreed with the Customer Party, conduct a pilot program as a “tollgate” before the process moves to production, all consistent with the conduct of the Transferred BPO Business prior to the Effective Date.

#### ARTICLE IV CHANGE ORDER PROCEDURES

4.1 From time to time, the parties that are signatories to a Customer SOW may mutually change, amend, alter or otherwise modify such Customer SOW, including the nature and scope of the Services provided thereunder, the number of FTEs required to be dedicated to such Services, Performance Standards or Fees for such Services. Subject to Section 11.9 (Volume Fluctuations), the Customer Party may increase or decrease the number of FTEs used in providing Services (with a corresponding Fee adjustment) on reasonable advance written notice to Provider, consistent with the practices of the Transferred BPO Business prior to the Effective Date. Without the consent of Provider, no changes may be made to the Performance Standards or price per FTE under the Transferred SOWs, except as provided in Article VII. No such proposed amendment, alteration or other modification will be effective or binding upon such parties until an addendum to such Customer SOW (“Change Order”) has been executed by such parties.

4.2 Each Change Order will contain: (i) the identity of the requesting party and the date of the request for the change; (ii) the reason for the change; (iii) the requested

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changes (including associated changes, if any, in Fees and Performance Standards); and (iv) a timetable for implementation of the changes. Change Orders may also contain provisions relating to the specifications and acceptance criteria of the requested changes.

4.3 With respect to any such change, amendment, alteration or other modification to a Customer SOW, the following procedures will apply (the “Change Order Procedures”):

- (a) a party to such Customer SOW will notify the other party thereto that it desires to make a change, amendment, alteration or other modification to such Customer SOW;
- (b) such parties will discuss such change, amendment, alteration or other modification within ten (10) Business Days after such request;
- (c) within ten (10) Business Days after such discussion, (i) if such requesting party is a Customer Party, such Customer Party will make a written request to Provider for such a change, amendment, alteration or other modification, and Provider will, unless otherwise agreed upon, submit a proposed Change Order to such Customer Party within ten (10) Business Days after such written request; or (ii) if Provider is such requesting party, Provider will provide a proposed Change Order to the Customer Party. Each such proposed Change Order will be signed by Provider and will constitute a firm offer by Provider until the date that Provider specifies as the expiration of validity of the proposed Change Order (which will not be fewer than ten (10) Business Days); and
- (d) within such period of validity of such proposed Change Order, the Customer Party will evaluate such proposed Change Order and, as appropriate, either request further information, approve the Change Order, or notify Provider of the rejection of the Change Order. The signing of the Change Order by such Customer Party will signify acceptance of a change by the parties to the Customer SOW. If such change is rejected, such parties will enter further discussions and adhere to the dispute resolution procedures described in Section 22.5 (Dispute Resolution).

4.4 **Temporary Emergency Changes.** Notwithstanding the foregoing, Provider may make temporary changes to the Services required by an emergency if Provider has been unable to contact the appropriate representative under the applicable Customer SOW to obtain approval after making reasonable efforts. Provider shall document and report such emergency changes to such representative no later than the next Business Day after the changes are made. Such changes shall not be implemented on a permanent basis unless and until approved via the Change Order Procedures. A Customer Party shall not be obligated to pay any amounts with respect to such changes without its approval or its determination, not to be unreasonably withheld, that such changes were reasonably required. In addition, any Customer Party may, if it is subject to an emergency warranting on a temporary basis Services additional to those provided under the applicable Customer SOW, acquire such Services and Provider will use

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best efforts to the extent of a similarly situated provider of services to accommodate any such emergency request for additional Services and charge the Customer Party at a rate not to exceed the amounts specified in the Customer SOW plus an additional amount not to exceed Provider's incremental cost (including the Affiliated Providers' incremental cost, calculated so as not to include any incremental cost twice and without any markup between Affiliated Providers and Provider) incremental cost associated with the emergency nature of the assignment; provided that no such Customer-initiated emergency arrangement shall be effective for more than ten (10) Business Days without approval through the Change Order Procedures.

## ARTICLE V STEERING COMMITTEE; PERSONNEL

### 5.1 Steering Committee.

(a) GE and Provider will each appoint an equal number of representatives to comprise a steering committee (the "Steering Committee") to perform the functions set forth in this Agreement. The Steering Committee will meet either in person or via teleconference at a regularly scheduled time at least once per month.

(b) The Steering Committee will:

(i) review and approve project milestones, objectives and other procedures and the performance of all obligations under this Agreement and the Customer SOWs;

(ii) discuss any significant business or operational issues raised by either Provider or the Customer Group under this Agreement or any Customer SOW in accordance with Section 22.5 (Dispute Resolution);

(iii) evaluate the Services for competitiveness;

(iv) at least once each year assess GE's compliance with the MVCs and Provider's compliance with the Transaction Productivity commitments in this Agreement and the Customer SOWs, including by reviewing Provider's business plans related to the Customer Group, Provider's audited financial statements prepared in accordance with GAAP, the Transaction Productivity gains in Provider's performance of the Services, the actual purchase dollar volumes of the Customer Group under this Agreement, the Services being provided to the Customer Group under all Customer SOWs, the Critical Performance Standards under all Customer SOWs, and Provider's compliance with such Critical Performance Standards;

(v) facilitate the Customer Group's support of the Services in accordance with the terms and conditions of this Agreement and the Customer SOWs; and

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(vi) perform such other duties and responsibilities as the Steering Committee deems necessary or appropriate.

(c) Notwithstanding anything to the contrary in this Agreement or a Customer SOW, the Steering Committee will have no authority to amend or modify this Agreement or any Customer SOW.

5.2 Executives. Each Party will appoint a senior executive ("Executive") to serve as the primary overall contact under this Agreement between the Parties. Each Party's Executive will perform the functions specified in this Agreement and any additional functions specified in any Customer SOW, and will have the authority to act for and bind such Party.

5.3 Service Delivery Leaders. For certain mutually agreed upon Businesses and certain mutually agreed upon Categories of Service, the Customer Group and Provider will designate an individual (each a "Service Delivery Leader") to serve on its behalf as a primary contact between the Customer Group and Provider. Each Service Delivery Leader will be responsible for the administration of such Business or Category of Service, coordinating the resolution of any operational issues and working with the counterpart Service Delivery Leader to plan, staff and supervise such Business or Category of Service. Provider acknowledges and understands that the Customer Group deems it essential to the successful relationship of the Parties that the Customer Group be reasonably satisfied with the performance of Provider's Service Delivery Leaders. In the event that Provider proposes to replace any of its Service Delivery Leaders, Provider will provide the counterpart Service Delivery Leader of the Customer Group prior written notice of the name and summary of qualifications of such proposed replacement, and the Customer Group may request an opportunity to meet with such proposed replacement. The Customer Group and Provider will agree to replacement of Provider's Service Delivery Leader in a manner consistent with the practices of the Transferred BPO Business prior to the Effective Date. The Customer Group may change its Service Delivery Leaders from time to time upon prior written notice to Provider.

5.4 Personnel. Provider will provide sufficient personnel of suitable training and skills to perform the Services. For each Customer SOW: (i) Provider will assign competent personnel to provide the applicable Services under such Customer SOW, (ii) all such personnel will have the qualifications and training as Provider reasonably determines are necessary to satisfactorily discharge their obligations in connection with such Services, and (iii) such personnel shall have the experience reasonably necessary to satisfactorily discharge their obligations in connection with such Services. In the event that any Customer Party notifies Provider that any of Provider's individual personnel is deemed to be, in the sole opinion of the Customer Group, unsatisfactory, Provider will promptly, where not prohibited by Law, replace such personnel and not reassign such personnel to any Services without the prior written consent of such Customer Party.

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**ARTICLE VI  
BUSINESS VOLUME COMMITMENT**

6.1 **Minimum Volume Commitment.** For the five (5)-calendar year period beginning on January 1, 2005 (the "Minimum Volume Commitment Term"), the Customer Group will purchase from Provider Services that would result in an aggregate minimum annual purchase dollar volume to Provider under all Customer SOWs of \$360 million ("Minimum Volume Commitment").

6.2 **Ramp Down Volume.** For the three (3)-year period following the Minimum Volume Commitment Term (the "Ramp Down Term" and collectively with the Minimum Volume Commitment Term, the "MVC Term"), the Customer Group will purchase Services from Provider that would result in a minimum annual purchase dollar volume to Provider of: (a) \$270 million in the sixth year of the Term, (b) \$180 million in the seventh year of the Term, and (c) \$90 million in the eighth year of the Term ("Ramp Down MVC" and collectively with the Minimum Volume Commitment, the "MVCs").

6.3 **Reduction of MVCs.**

(a) The MVCs will only be:

(i) reduced by the purchase dollar volume of any Customer SOW or Services terminated by the Customer Group with Cause (subject to Section 11.3(h)) for each year of the remaining term (excluding any renewal period) of such Customer SOW or Services (or one (1) year if no term is set forth in the applicable Customer SOW);

(ii) reduced by the revenues attributable to any Sweet Spot Services that the Customer Group offers to Provider from and after the date that Customer Group actually acquires such Sweet Spot Services from a third party and that Provider either (i) declines or (ii) offers to perform at rates exceeding the Benchmark Rates; provided, however, that after January 1, 2006, in the event the annual revenue run rate (on a trailing twelve (12) month basis) for all Customer SOWs is one hundred fifteen percent (115%) or more than the MVC, this Section 6.3(a)(ii) shall not be applied to reduce the MVC. For purposes of this provision, "Benchmark Rates" means, (1) for Services already offered under a Transferred SOW on terms (including subcontracting relationships) comparable to those offered to Provider, the rates set forth in the most comparable Transferred SOW (as may be reasonably determined by Provider and GE); and (2) for services not already offered under a Transferred SOW on terms (including subcontracting relationships) comparable to those offered to Provider, market rates for such services of similar quality under similar terms offered by a similarly situated supplier established pursuant to neutral benchmarking procedures to be agreed to by Provider and the Customer Party. Disputes over the Benchmark Rates shall be resolved through the dispute resolution procedures described in Section 22.5 (Dispute Resolution);

(iii) reduced by the purchase dollar volumes of any Customer SOW or Services that Provider has been unable to perform pursuant to, or unable to provide for more than one hundred eighty (180) days as the result of, a Force Majeure Event of Provider or an Affiliated Provider for each year that the term (without any renewal period) of such Customer SOW or Services (or the Term, if no term is set forth in the applicable Customer SOW) would have extended had such Customer SOW or Services not been terminated; and

(iv) reduced by the purchase dollar volume of any Customer SOW or Services terminated by the Customer Group for a Change of Control as provided in Section 11.5 (Termination upon a Provider Change of Control by the Customer Group) for each year of the remaining term (excluding any renewal period) of such Customer SOW or Services (or one year if no term is set forth in the applicable Customer SOW).

(b) For the purposes of this Section 6.3 (Reduction of MVCs), purchase dollar volumes for any terminated or suspended Services will be determined (i) based on any actual purchase dollar volumes set forth in the applicable Customer SOW less any amounts already paid thereunder, or (ii) if no purchase dollar volumes are set forth in the applicable Customer SOW, projected for the remaining term based on the Fees due to the Provider during the prior twelve (12) month period for such Services or such lesser period as is available if a twelve (12) month period is not available (pro-rated as applicable).

(c) Unless expressly stated otherwise in this Agreement, references to the Minimum Volume Commitment, Ramp Down MVC, and MVCs will mean such terms as adjusted in accordance with this Section 6.3 (Reduction of MVCs).

6.4 **Determining Actual Purchase Dollar Volumes.**

(a) During the MVC Term, the Parties will determine the actual purchase dollar volume of the Customer Group on an annual calendar-year basis in accordance with the methodology set forth on Exhibit C and other methodologies agreed upon by the Parties in writing.

(b) For purposes of the MVCs:

(i) any Transaction Productivity payments or adjustments provided to the Customer Group will be deducted from the calculation of the purchase dollar volume;

(ii) purchasing of services by any member of the Customer Group (a) from Provider, whether under this Agreement or another agreement, and (b) under any GE ITS SOW that is not assigned to Provider shall be included on a dollar-for-dollar basis (notwithstanding any provision to the contrary in any Customer SOW) in the calculation of the MVC; provided, however, that the purchase dollar volume from an entity that

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becomes a member of the Customer Group after the Effective Date that was not previously a member of the Customer Group shall only apply to the extent purchasing (on an annual basis) is at a level exceeding the level (on a trailing twelve (12) month basis) existing immediately prior to its becoming a member of the Customer Group;

(iii) the purchase dollar volume to Provider from any statements of work entered into with a divested business pursuant to Section 2.4 (Divestitures) (or any renewal or extension thereof) will be included in the calculation of the amount of the purchase dollar volume of the Customer Group;

(iv) any Transition Services, termination services and capital expenditures that are billed to the Customer Group at the actual costs incurred by Provider (including the Affiliated Providers calculated so as not to include any costs twice and without any markup between Affiliated Providers and Provider; and not including any mark-ups or margins on such costs or any mark-ups or margins which may be included in the price per FTE specified in the applicable Customer SOW), will not be counted towards the annual purchase dollar volume; and

(v) amounts invoiced in currencies other than dollars will be converted to dollars on a quarterly basis at the prevailing exchange rate on the last day of each calendar quarter as reported in *The Wall Street Journal* for all Services performed during such quarter.

#### 6.5 MVC Shortfall and Excess Adjustments.

(a) Subject to Sections 6.5(c) and (d) (MVC Shortfall and Excess Adjustments), in the event Provider's actual purchase dollar volume from the Customer Group for any calendar year during the MVC Term is below the applicable MVC for such year, GE will pay to Provider (within ninety (90) days of the end of such calendar year) a pricing adjustment for the Services provided to the Customer Group in such year in an amount equal to (i) (a) the amount of such shortfall multiplied by [[[\*\*\*]]]. Provider shall use reasonable good faith efforts to mitigate any Stranded Costs including efforts to redeploy any effected employees, facility, hardware or equipment in connection with Provider's and the Affiliated Providers' then-current business. GE acknowledges that it is Provider's expectation that GE actually purchase the minimum level of Services rather than pay such shortfall amount, while Provider acknowledges that GE's only binding commitment is either to purchase the MVC level of Services or to pay the amount detailed in clauses (i) and (ii). GE will make efforts in good faith to reach the MVCs through requests for actual service, rather than pay such shortfall amount.

(b) In the event Provider's actual purchase dollar volume from the Customer Group for any calendar year during the MVC Term exceeds the applicable MVCs, the amount of such excess, up to 5% of the then-applicable MVC, will be credited against any shortfalls in the MVCs in each of the following two (2) years or up to 10% of the then-applicable MVC will be

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credited against any shortfalls in the MVCs in the following year, with the choice being in the sole discretion of GE.

(c) In the event Provider's actual purchase dollar volume at any point during the MVC Term from the Customer Group is below the applicable MVC for such year in whole or in part because of services suspended or terminated by reason of a Force Majeure Event (i) of Provider (or an Affiliated Provider) that prevented such entity from providing Services for one hundred eighty (180) days or less or (ii) of the Customer Group that entitled the Customer Group to suspend receipt of Services, the Customer Group shall not be liable for any MVC shortfall (or obligated to make any payment under Section 6.5(a)) resulting in whole or in part from the reduction in purchase dollar volume for a period of up to one (1) year from the date such entity becomes able to resume the suspended or terminated Services or the Customer Group has resumed operations that were the subject of the suspended or terminated Services, but the Customer Group shall replace any difference between the amounts that would have been required to be purchased under the applicable MVC and the actual amounts purchased (the "FM Shortfall Amount"). The FM Shortfall Amount will be calculated in total dollars, not dollars per year, and will represent any amount of revenue that Provider would have been entitled to receive because of the applicable MVC, but did not receive, by reason of the Force Majeure Event. All FM Shortfall Amounts accruing from Force Majeure Events taking place within one year shall be aggregated together into a single FM Shortfall Amount. The Customer Group shall purchase from Provider Services under all Customer SOWs that would result in aggregate dollar volume equal

to the FM Shortfall Amount in addition to its obligation regarding the applicable MVC beginning in the second calendar year following the Force Majeure Event according to the following schedule, there being no penalty for early purchasing of the required amounts:

(i) [[\*\*]]

If the periods over which the FM Shortfall Amount is to be purchased would extend beyond the Term, the portion of the FM Shortfall Amount that would extend beyond the end of the Term will instead be purchased in the last calendar year of the Term. If a Force Majeure Event occurs mid-year, the foregoing amounts shall be pro-rated so that the multi-year periods specified above beginning at the time of the Force Majeure Event are allocated across the calendar years to which the MVCs apply. The remedy for failure to purchase any FM Shortfall Amount will be the same as the remedy applying to an MVC shortfall under Section 6.5(a).

(d) In the event a Force Majeure Event of the Customer Group for which purchasing of Services was suspended or terminated does not prevent Customer Group from fulfilling the applicable MVC, the Customer Party shall use good faith efforts to recommence its purchasing of Services under the applicable Customer SOW to the extent that after the remediation of such Force Majeure Event the Customer Party requires such Services or substantially similar services.

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## ARTICLE VII PRODUCTIVITY

### 7.1 **Transferred SOWs.**

(a) Existing Commitments.

(i) There shall be no adjustments during the Term to Transferred SOWs for fixed-price Project work with respect to price or Transaction Productivity.

(ii) Subject to the 2005 Pricing Adjustment, for work other than fixed-price Project work, Provider will provide the Customer Group all Transaction Productivity payments or Fee adjustments agreed upon with respect to the Transferred SOWs.

(iii) Except as set forth in Section 9.1(a)(ii) (Fees) and this Section 7.1(a), pricing for the Transferred SOWs at the time of Effective Date shall be fixed at the prices in effect after application of the 2005 Pricing Reduction and shall not change during the MVC Term for those Transferred SOWs with a five (5) year term.

(b) Transaction Productivity Sharing.

(i) Notwithstanding Section 7.1(a), Provider and the Customer Group will share all Transaction Productivity gains with respect to Transferred SOWs on terms no less favorable to the Customer Group than those set forth in this Section 7.1(b). Beginning in the second year of the Term and thereafter:

(A) For any Transaction Productivity gains achieved under a Transferred SOW in any month of the Term that are of the type listed under clause (i) of the definition of Transaction Productivity, the Customer Party will pay Provider for such Transaction Productivity:

(1) [[\*\*]]

(2) [[\*\*]]

(B) For any Transaction Productivity gains achieved under a Transferred SOW in any month of the Term that are of the type listed under clause (ii) of the definition of Transaction Productivity, Provider will provide to the Customer Party for such Transaction Productivity:

(1) [[\*\*]]

(2) [[\*\*]]

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(ii) All Transaction Productivity payments and Fee adjustments will be cumulative, calculated monthly and paid no less than annually or, at the Customer Party's request, up to a quarterly basis.

(iii) For the avoidance of doubt, in the event that the Transaction Productivity is negative in any month, the Customer Group will not share in such Transaction Productivity pursuant to this Section 7.1(b).

(iv) Assumptions, methodology and examples (for illustrative purposes only) of the calculation of Transaction Productivity are provided in Exhibit F.

(c) Annual Review. On an annual basis, the Customer Group will have the right to discuss and negotiate with Provider more favorable Transaction Productivity for any Transferred SOW, subject to the agreement of the Parties.

(d) Affiliated Providers. Provider shall cause the Affiliated Providers to provide Transaction Productivity to the extent required under this Agreement. For Transferred SOWs, Provider shall ensure that one hundred percent (100%) of the Transaction Productivity gains that would be retained by Provider under this Agreement are passed on to the Affiliated Provider.

7.2 Future SOWs. The Productivity for each Future SOW will be as agreed upon by the Parties in such Future SOW. The Customer Group and Provider may (i) work together to develop a business plan for each Business to determine future opportunities, growth potential and additional Productivity for such Business and (ii) share, to the extent agreed upon by the parties, the achieved Business Productivity gains for Future SOWs.

## ARTICLE VIII RIGHT OF FIRST OPPORTUNITY

8.1 If, during the Term, GE or any of its Controlled Affiliates proposes to outsource to a third party (*i.e.*, other than a GE Affiliate) any Additional Service (other than an Additional Service originally acquired from Provider but terminated for Cause), then GE or such Controlled Affiliate will first issue to Provider a request for proposal with respect to such Additional Service. Notwithstanding the foregoing, in no event shall GE or any of its Controlled Affiliates have any obligation to make any offer with respect to its actual or proposed acquisition of services substantially similar to those provided to the Customer Group by any third party suppliers or vendors of the Customer Group prior to the Effective Date, from the supplier or vendor that supplied such services prior to the Effective Date.

8.2 Provider will have a period of ten (10) days following Provider's receipt of such request for proposal (the "Exclusive Tender Period") to deliver to, as applicable, GE or

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such Controlled Affiliate a proposed Statement of Work (which complies with the requirements of this Agreement and such request for proposal).

8.3 GE or such Controlled Affiliate will not solicit proposals from, or negotiate with, any third party with respect to the provision of the Additional Service prior to or during the Exclusive Tender Period.

8.4 If Provider delivers a proposed Statement of Work to, as applicable, GE or such Controlled Affiliate within the Exclusive Tender Period, then GE or such Controlled Affiliate will consider such proposed Statement of Work in good faith; provided, however, that this Article VIII will not operate so as to prevent GE or such Controlled Affiliate from soliciting proposals from, or negotiating with, third parties concerning the provision of any Additional Service after the Exclusive Tender Period.

8.5 If, at the end of the Exclusive Tender Period, GE or such Controlled Affiliate and Provider have not agreed on terms of Provider's Statement of Work for the Additional Services, GE or such Controlled Affiliate may solicit bids from other third party providers. GE or such Controlled Affiliate will not supply any information provided by Provider pursuant to its bid for Additional Services to any third party provider, and such information shall be Confidential Information of Provider.

## ARTICLE IX PAYMENT

9.1 Fees. For each Customer SOW, the Customer Group will pay the fees, costs and expenses to Provider ("Fees") set forth in this Section 9.1.

(a) Transferred SOWs.

(i) For each Transferred SOW, the Customer Group will pay the Fees set forth in such Transferred SOW. Transferred SOWs for fixed-price Project work are not subject to any of the price reductions described in this Agreement.

(ii) During the third year of the Initial Term and each year of the Initial Term thereafter, the prices in Transferred SOWs other than those for fixed-price Project work shall be adjusted by multiplying the prices by the Inflation Factor for the previous year. For example, if the Inflation Factor calculated as the change between 2006 and 2005 is an increase of two percent (2%), prices for 2007 shall be adjusted upward by two percent (2%).

(iii) Such adjustment shall take place within sixty (60) days after January 1 of each year, but shall be retroactive to January 1 with an adjustment payment or invoice made at the time of the adjustment to reflect any difference between any amounts actually

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paid or invoiced and those that should have been paid or invoiced at the retroactively adjusted rates.

(iv) To the extent not otherwise expressly set forth in a Transferred SOW or otherwise agreed upon by the parties that are signatories to a Transferred SOW, the Fees under a Transferred SOW will be reduced or increased on a *pro rata* basis for any reductions or increases in the volume of Services provided under such Transferred SOW.

(v) One hundred percent (100%) of the fees paid by the Customer Party under this Agreement with respect to each Transferred SOW shall be paid by Provider to the Affiliated Provider performing services under that Transferred SOW.

(b) **Future SOWs.** For each Future SOW, the Customer Party will pay Fees to Provider for the Services rendered by Provider under such Future SOW in accordance with such Future SOW.

(c) For the avoidance of doubt, no Customer Party shall be obligated to pay any Fees for Services not provided by reason of a Force Majeure Event.

9.2 **Payment.** All invoices will reference the applicable purchase order number generated by the Customer Party. Provider will invoice the Customer Party under each Customer SOW on a monthly basis in respect of Fees for the Services. All payments under this Agreement and the Customer SOWs will be made to Company by electronic funds transfer to an account established in accordance with Section 9.7 (Electronic Funds Transfer) or, if such account has not been established, at the address for Company set forth in Section 22.7.

9.3 **Invoices/Intercompany Billing System.** For Transferred SOWs invoiced by the Transferred BPO Business under GE's Intercompany Billing System ("IBS") prior to the Effective Date, invoicing (and payments) will continue to be processed through IBS consistent with the practices of the Transferred BPO Business prior to the Effective Date. For other Transferred SOWs, unless invoices are sent electronically in accordance with Section 9.8 (Electronic Invoicing), all invoices will be sent to the following address (or to such other address specified in a Customer SOW or agreed by the parties to a Customer SOW):

General Electric Company  
4211 Metro Parkway  
Ft. Myers, FL 33916-9406  
Attention: Financial Services Leader

Unless otherwise agreed in the applicable Customer SOW, all payments under Customer SOWs shall be in U.S. dollars.

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9.4 **Payment Terms.** For invoices processed through IBS as of the Effective Date, the Customer Party will pay all undisputed fees to Provider in full within [[[\*\*\*]]] from the date (a) of receipt of the invoice or (b), with respect to any disputed fees, such dispute is resolved (the "Due Date"). For all other invoices, the Customer Party will pay all undisputed Fees to Provider in full within [[[\*\*\*]]] from the date (a) of receipt of an invoice or (b), with respect to any disputed fees, such dispute is resolved (also, the "Due Date"). A Customer Party may dispute any invoiced amount in good faith in accordance with Section 22.5 (Dispute Resolution). Any such dispute shall not relieve the Customer Party from paying undisputed amounts on such invoice in accordance with the terms of this Section 9.3. No Customer Party will be responsible for any costs or expenses incurred by Provider (including Affiliated Providers) for changes to Services or new Services performed without the authorization of such Customer Party in accordance with the terms of this Agreement. Payments made after the Due Date will accrue interest at a rate of [[[\*\*\*]]] per annum.

9.5 **Taxes.** The charges for Services do not include applicable taxes. If Provider is required to pay any federal, state, county or local service or value added tax (VAT); or sales, use, gross receipts, excise, withholding, consumption, or any other Governmental Entity taxes assessed on the Services provided, such taxes (along with any applicable surcharge and education cess thereon), including any gross-up on withholding tax, will be billed to and paid by the Customer Party upon presentation of billing details that substantiate the amount of the taxes. Provider will be responsible for collecting and remitting all such value added taxes on behalf of the Customer Group. Provider will retain the right to collect any tax from the Customer Group if Provider fails to charge the correct withholding tax; or sales, use, gross receipts, excise, consumption or services tax in the initial invoice. Property taxes for all assets will be the responsibility of the party owning or leasing the assets. Each of Provider and the Customer Group (a) will bear sole responsibility for taxes based

on its own net income (including surcharge and education cess thereon); employment taxes of its own employees, agents or subcontractors; and for any taxes on any property it owns or acquires for the purpose of rendering the Services, (b) will undertake reasonable efforts in good faith to minimize taxes to the extent legally permissible, (c) shall cooperate in good faith to enable the other to accurately determine its own tax liability, and (d) shall provide and make available to the other any resale certificates; information regarding out-of-state or out-of-country sales or use of equipment, materials or services; and other exemption certificates or information reasonably requested by the other.

9.6 **Universal Standard Product and Service Codes.** The Customer Group will provide Provider with certain Universal Standard Product and Service Codes. Provider will use such Universal Standard Product and Service Codes to identify products and services rendered on all invoices and reports and other documentation.

9.7 **Electronic Funds Transfer.** Provider will complete the online registration form on the Global Supplier Network (GSN) for receipt of electronic funds from the Customer Group. The preferred method of electronic funds receipt is Electronic Funds Transfer

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(EFT) if Provider has a U.S.-based bank. Wire transfer is the alternate method if Provider has a non-U.S. based bank.

9.8 **Electronic Invoicing.** The Customer Group's process for receipt of non- IBS invoices may become electronic during the term of this Agreement. Subject to Article IV, upon notice to Provider of institution by the Customer Group of the electronic process, and within thirty (30) days of such notice, Provider will begin submitting invoices through the Customer Group's electronic processing system.

9.9 **Credit Card Payment.** Whenever Provider implements a credit card billing system, the Customer Group may decide to settle invoices not in excess of \$2,500 with Provider using a Mastercard procurement credit card. Should the Customer Group choose to settle payments with this method, Provider agrees to provide the Customer Group with level 3 billing details as defined by Mastercard standards.

## ARTICLE X BOOKS, RECORDS, AUDITS AND REPORTING

10.1 **Books and Records.** Provider will maintain in a central location (to the extent practicable) complete and accurate books and records, supporting data and other evidence relating to the provision of Services (including records that are received, generated or held by Provider or any Affiliated Provider in the course of providing the Services), in accordance with and for such period as is required by GAAP or applicable Law or the Customer Group's document retention policies, unless otherwise specified in a Customer SOW. Such books and records will include sufficient detail to verify (i) the Services provided to each Business, (ii) the costs and expenses included in the Inflation Factor and any MVC reduction pursuant to Section 6.3(b) (Reduction of MVCs) to Provider for providing each Service, (iii) the Fees for each Service, (iv) the annual purchase dollar volumes of the Customer Group, separately reflecting annual purchase dollar volumes for each Service and for each Business, (v) the Transaction Productivity achieved in connection with the provision of the Services, separately reflecting the Transaction Productivity provided under each Customer SOW and to each Business, (vi) compliance with the Performance Standards (including the Critical Performance Standards) for each Service and (vii) compliance with Provider's obligations under Articles XV and XVI.

### 10.2 **Audits.**

(a) At the Customer Group's sole expense, GE, its Representatives and Governmental Entities will have the right at any time during normal business hours, and upon at least seventy-two (72) hours' prior written notice, to inspect and audit the books and records maintained in accordance with Section 10.1 (Books and Records) (excluding any information solely related to Provider's business with third party customers) to investigate and assess compliance with any of Provider's representations, warranties or covenants under this

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Agreement and the Customer SOWs and, upon notice, will provide reasonable access to all those facilities, equipment and records in order to conduct such verification. Each Customer Party will have the foregoing right to audit and inspect, but only with respect to compliance with the provisions of the Customer SOW(s) to which such Customer Party is a party. At Provider's election, Provider may require that GE, any Customer Party or its Representatives having access to such books and records sign reasonable non-disclosure agreements to protect the Confidential Information of Provider and its third party customers prior to such access; provided, however, that Provider will provide such access in accordance with the foregoing time period if GE, such Customer Party or such Representatives, as applicable, sign such agreements.

(b) Provider will cooperate fully with GE, the Customer Group, its Representatives and Governmental Entities in connection with such audit. GE and each Customer Party will use reasonable efforts to conduct such inspections in a manner that will minimize the disruption to Provider's

business operations and the Services. Provider will be excused for its failure to comply with the terms of any Customer SOW, including any performance requirements and Performance Standards, for the period and to the extent such failure is caused by GE or the Customer Party's failure to use such reasonable efforts; provided, however, that Provider will continue to use reasonable efforts to comply with all such performance requirements.

(c) In the event that such audit reveals an underpayment of Fees by any Customer Party (or an underpayment of Transaction Productivity by Provider) under any Customer SOW or this Agreement, such Customer Party (or Provider) will promptly pay the amount of such underpayment to the applicable party under the Customer SOW or the Customer Party that should have received such Transaction Productivity. In the event that such audit reveals an overpayment of Fees by any Customer Party (or an overpayment of Transaction Productivity by Provider) under any Customer SOW or this Agreement, the applicable party under such Customer SOW or the applicable member receiving the Transaction Productivity will promptly return the amount of such overpayment to such Customer Party (or Provider).

10.3 **Customer Group Approvals.** The conduct of inspections and audits by Customer Group in accordance with Section 10.2 (Audits) will not operate to relieve Provider from its obligations and commitments under this Agreement or any Customer SOW, except as provided in Section 10.2(b) (Audits) or as expressly stated otherwise in writing by the Customer Group. In addition, the conducting of tests by, or the receipt of approvals or consents from, the Customer Group will not operate to relieve Provider from its obligations and commitments under this Agreement or any Customer SOW, except as not reasonably avoidable by Provider or its Affiliated Providers and where Provider has notified the Customer Party that the conducting of tests or receipt of approvals or consents will necessarily limit performance by Provider.

10.4 **Reporting.** At no additional cost, Provider will prepare and provide all data and reports reasonably required by the Customer Group at the frequency and in the format required by the Customer Group.

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## ARTICLE XI TERM AND TERMINATION

### 11.1 **Agreement Term.**

(a) The initial term (the "Initial Term") of this Agreement will commence on the Effective Date and continue until December 31, 2012, unless earlier terminated in accordance with this Agreement.

(b) The Agreement may be renewed for a single three (3) year term (the "Renewal Term") upon the mutual written agreement of the Parties at least twelve (12) months prior to the expiration of the Initial Term. The Initial Term and the Renewal Term, if any, will be collectively referred to herein as the "Term".

### 11.2 **Customer SOW Term.**

(a) Except for the Transferred SOWs set forth in Exhibit H that are identified as "Project Based", the initial term of each Transferred SOW will begin on the Effective Date and end on December 31, 2009. During the Term, the Customer Party will have the right to extend the term of Transferred SOWs to which it is a party, with identical terms and conditions as such Transferred SOW had prior to such extensions, except with respect to pricing (which shall be subject to the agreement of the Parties), after the expiration of the initial term of such Transferred SOW for successive one (1) year renewal terms upon providing written notice thereof to Provider at least thirty (30) days prior to the expiration of the then-current term.

(b) The term of each Future SOW will be as set forth in such Future SOW.

11.3 **Termination of Customer SOWs with Cause by Customer Group.** A Customer Party will have the right at any time to terminate the applicable Customer SOW in whole or in relevant part with respect to any portion of the Services provided under such Customer SOW:

(a) if Provider or any of its Affiliated Providers becomes subject to any voluntary or involuntary order of any Governmental Entity for reasons within Provider's or the Affiliated Provider's control prohibiting or materially impairing the performance of Services under such Transferred SOW and Provider or its designee does not develop a work-around for such prohibition or impairment within thirty (30) days from receiving notice of such order from such Governmental Entity;

(b) if (i) Provider breaches in any material respect any of the covenants under such Customer SOW, or if any of Provider's representations or warranties under such Customer SOW are materially inaccurate, (ii) such breach or inaccuracy prohibits or materially impairs the performance of the Services or prohibits or materially impairs the reasonably intended benefits

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the Customer Party is to receive from the Services based on the terms of this Agreement and (iii) upon receipt of written notice thereof from the Customer Party, Provider does not cure such breach or inaccuracy, in either case, within thirty (30) days of such notice;

(c) if Provider breaches its compliance obligations under Section 15.2 in a manner relating to the Services and does not cure, upon receipt of written notice from the Customer Group, such breach within thirty (30) days;

(d) if (i) Provider fails to meet any Critical Performance Standard for any three (3) consecutive months or four (4) nonconsecutive months in a rolling twelve (12) month period, and (ii) upon receipt of written notice of such failure from the Customer Party, Provider (A) does not provide the Customer Party a preliminary analysis of the root cause of such failure and an initial plan, which plan will cure such failure within ten (10) business days of such notice, (B) has not agreed with the Customer Party on a definitive plan acceptable to the Customer Party to cure such failure within thirty (30) days of such notice (which cure period may be extended by the parties to such Customer SOW in such definitive plan based on the complexity of the Services and the actions needed to cure such failure), (C) does not promptly undertake action to cure such failure, or (D) does not implement and satisfy such definitive plan. Notwithstanding the foregoing, the Customer Party shall not be entitled to terminate an applicable Customer SOW for Cause if the failure to meet the applicable Critical Performance Standard(s) is caused by the wrongful acts or omissions of any member of Customer Group or its agents, or the failure of the Customer Party to comply with its obligations under the applicable Customer SOW;

(e) if Provider or any Affiliated Provider or the Customer Party, due to the actions of Provider or any Affiliated Provider, is administratively cited by any Governmental Entity for materially violating, or is judicially found to have materially violated, any Law governing the performance of the Services;

(f) if a trustee or receiver or similar officer of any court is appointed for Provider or for a substantial part of the property of Provider, whether with or without consent; or bankruptcy, composition, reorganization, insolvency or liquidation proceedings are instituted by or against Provider without such proceedings being dismissed within ninety (90) days from the date of the institution thereof and

(g) as set forth in Sections 3.3 and 18.4(d).

(h) Notwithstanding the foregoing, no Customer Party may commence termination of any Transferred SOW under Section 11.3(b), (d), or (g) until the earlier of (i) twelve (12) months after agreement on the Critical Performance Standards for that Transferred SOW under Section 12.2 (Transferred SOWs) or (ii) June 30, 2006; in each case where performance is consistent with the conduct of the Transferred BPO Business immediately prior to the Effective Date. This limitation will not affect the ability of any Customer Party to terminate a Transferred SOW under any other provision of this Agreement.

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If such Customer Party fails to give notice of its intent to terminate such Customer SOW in accordance with Section 11.3 within [[[\*\*\*]]] of the date that such Customer Party first becomes aware of the breach giving rise to such right to terminate, such Customer Party will be deemed to have waived its right to terminate for such breach (but not deemed to have waived any claims it may have arising from such breach or any right to terminate for any similar breach in the future).

#### 11.4 **Termination upon a Provider Change of Control by the Customer Group.**

(a) Within sixty (60) days after a Change of Control of Provider, the Customer Group may terminate this Agreement or any or all Customer SOWs in whole or in part by sending written notice to Provider. Within sixty (60) days after a Change of Control of any Subsidiary of Company or an Affiliated Provider, the Customer Group may terminate any or all Customer SOWs with such Subsidiary or under which such Affiliated Provider was providing Services by sending written notice to Provider. If the Customer Group fails to notify Provider within such sixty (60) day written notice period, then the Customer Group waives its right to terminate under this Section 11.4. Customer Group and Provider must provide a minimum transition period of at a minimum ninety (90) days in connection with any terminated Services. To enable Customer Group's rights under this Section 11.4(a), Provider shall notify GE upon the signing of a definitive agreement that, if consummated, would result in such a Change of Control.

(b) The rights of Customer Group to terminate this Agreement in the event of a Change of Control of Provider under this Section 11.4 shall no longer apply upon an initial public offering of Provider.

(c) A Change of Control pursuant to a transaction (or series of related transactions) whereby GE has compelled the Change of Control through exercise of its compulsory sale right pursuant to Section 3.06 of the Stockholders Agreement shall not constitute a Change of Control of Provider for the purposes of this Section 11.4.

11.5 **Termination of Customer SOWs with Cause by Provider.** Provider may terminate a Customer SOW upon thirty (30) days' prior written notice if:

(a) the Customer Party fails to make any payment under such Customer SOW of an undisputed amount when due, and such failure continues uncured for a period of ninety (90) days from notice by Provider to such Customer Party of such failure;

(b) the Customer Party becomes subject to any voluntary or involuntary order of any Governmental Entity for reasons within such Customer Party's control prohibiting or materially impairing the performance of any of the Services;

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(c) Provider, due to the actions of the Customer Party, is administratively cited by any Governmental Entity for materially violating, or is judicially found to have materially violated, any Law governing the performance of the Services;

(d) a trustee or receiver or similar officer of any court is appointed for the Customer Party or for a substantial part of the property of the Customer Party, whether with or without consent; or bankruptcy, composition, reorganization, insolvency or liquidation proceedings are instituted by or against the Customer Party without such proceedings being dismissed within ninety (90) days from the date of the institution thereof;

provided, however, that if Provider fails to give notice of its intent to terminate such Customer SOW in accordance with the foregoing clauses (a) through (d) within [[[\*\*\*]]] from the date that Provider first becomes aware of the breach giving rise to such right to terminate, Provider will be deemed to have waived its right to terminate for such breach (but not be deemed to have waived any claims it may have arising from such breach or any right to terminate for any similar breach in the future).

11.6 **Notification of Termination for Convenience for Transferred SOWs.** In addition to as provided in Section 11.4 (Termination upon a Provider Change of Control by the Customer Group), the Customer Party may terminate without cause any Transferred SOW in whole or in part at any time, but only (i) upon [[[\*\*\*]]] prior written notice to Provider (or, for any Services being provided by Provider under any Transferred SOW to any third party customer of the Customer Group on behalf of the Customer Group, any shorter notice period required by such third party customer) and (ii) in accordance with and subject to one of Section 11.8 (Pulled Back Termination), Section 11.9 (Volume Fluctuation), or Section 11.10 (Transaction Productivity). For the avoidance of doubt, any Customer Party providing written notice of its intent to terminate any Transferred SOW in whole or in part under this Section 11.6 will continue to pay Fees for the terminated Services in accordance with such Transferred SOW and this Agreement for such [[[\*\*\*]]] (or such shorter period as specified above), and to the extent, if any, that such Services are provided upon agreement of the parties after the termination of such Transferred SOW.

11.7 **Termination for Convenience of Future SOWs.** The Customer Party may terminate without cause any Future SOW in whole or in part at any time upon two hundred and seventy (270) days' prior written notice to Provider (or, for any Services being provided by Provider under any Future SOW to any third party customer of the Customer Group on behalf of the Customer Group, any shorter notice period required by such third party customer). For the avoidance of doubt, any Customer Party providing written notice of its intent to terminate any Future SOW in whole or in part under this Section 11.7 will continue to pay Fees for the terminated Services in accordance with such Future SOW and this Agreement for such two hundred and seventy (270) day period (or such shorter period as specified above), and to the extent, if any, that such Services are provided upon agreement of the parties after the termination of such Future SOW.

11.8 **Pulled Back Termination.**

(a) "Pulled Back Termination" will mean any termination of a Transferred SOW where the Services performed under that Transferred SOW either (i) are subsequently performed by a Customer Party or (ii) are awarded to a third party. During any year of the Minimum Volume Commitment Term, if the annual purchase dollar volume of Pulled Back Terminations in that year in aggregate exceeds the following amounts (the amount of such excess being the "Annual Excess"): [[[\*\*\*]]]; then the Customer Group will purchase additional Services of like price per FTE and for a period of time that reflects a duration on a weighted average equivalent to all Pulled Back Terminations terminated in that year with annual purchase dollar volume in aggregate no less than the Annual Excess.

(b) Section 11.8(a) shall not apply to any terminations resulting from, in whole or in part:

(i) a termination of a Transferred SOW in accordance with Section 11.3 (Termination of Customer SOWS for Cause by Customer Group);

(ii) Provider or any Affiliated Provider becoming subject to any voluntary or involuntary order of any Governmental Entity, for reasons other than those within Provider's control, prohibiting or materially impairing the performance of Services under such Transferred SOW, for which Provider does not develop a work-around within thirty (30) days;

(iii) a termination of a Transferred SOW in accordance with Section 11.4 (Termination upon a Provider Change of Control by the Customer Group).

(iv) a termination of a Transferred SOW in accordance with Section 22.8 (Force Majeure);

(v) a termination of a Transferred SOW with the IT Services Business Component in connection with reacquisition of substantially similar services on substantially the same terms from Provider;

(vi) a termination of a Transferred SOW due to changes in applicable Law; or

(vii) a termination directly resulting from a material change in the requirements of any of the Services being provided by Provider under any Transferred SOW to any third party customers of the Customer Group.

(c) GE shall, upon request, provide Provider with reasonable information related to the disposition of Services terminated pursuant to Pulled Back Terminations.

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#### 11.9 **Volume Fluctuations.**

(a) If, in any year of the Minimum Volume Commitment Term, the aggregate purchasing under Transferred SOWs ((netting volume ramp-ups against volume ramp-downs) other than Pulled Back Terminations but excluding reductions resulting from one of the reasons set forth in Section 11.8(b) and reductions resulting from the expiration of Project Transferred SOWs) declines from the purchase dollar volume of the prior year by more than the Volume Trigger, GE shall meet with Provider to work together in good faith to consider new business opportunities to put Provider in a position similar to that it would have been in had the Volume Trigger not been exceeded.

(b) The "Volume Trigger" will mean annual purchase dollar volume declines in aggregate exceeding the sum of (i): [[[\*\*\*]]] and (ii) [[[\*\*\*]]].

11.10 **Productivity Reductions.** Sections 11.8 (Pulled Back Termination) and Section 11.9 (Volume Fluctuations) will not apply to any reduction in required FTEs under a Transferred SOW due to Transaction Productivity gains.

11.11 **Termination by Either Party.** This Agreement may be terminated by either Party upon thirty (30) days' prior written notice to the other Party if there are no outstanding Customer SOWs or other Services being provided pursuant to this Agreement. Provider will have no obligation to accept any Future SOW after the date of such termination.

11.12 **Survival.** Articles VI (Business Volume Commitment) (as the MVCs may be adjusted as provided hereunder), IX (Payment) with respect to amounts accrued prior to expiration or termination, XV (Compliance with Laws), XVI (Personal Data Processing), XVII (Ownership; Intellectual Property), XX (Limitations of Liability), XXI (Confidentiality) and XXII (Miscellaneous Provisions), and Section 11.12, (Survival), 11.13 (Return of Materials) and 11.14 (Termination Services) will survive the expiration or other termination of this Agreement and remain in full force and effect. The following Articles and Sections will survive the expiration or other termination of this Agreement and remain in full force and effect during the following periods: (i) Article 10 (Books, Records, Audits and Reporting) will survive for three (3) years (or such longer period as may be required by Law) and (ii) Articles XVIII (Indemnity) and XIX (Insurance) will survive for three (3) years.

11.13 **Return of Materials.** Upon termination or expiration of this Agreement, a Customer SOW or any Services for whatever reason, Provider and the Customer Group will each return (or, at the election of the other, destroy) all Information, materials and documents of the other (including full documentation for all Services) relating to the terminated Services promptly upon such termination or expiration (but in any event within ninety (90) days from such termination or expiration). Such return will be for no additional charge if such Information, materials and documents are provided (subject to Section 13.2 (Data Feeds)) in their then-current

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format, and at the Customer Group's expense for any other format requested by the Customer Group.

11.14 **Termination Services.** Upon termination or expiration of this Agreement, a Customer SOW or any Services for whatever reason, each Customer Party may elect to purchase termination services from Provider to assist the Customer Party in the orderly transition of the terminated Services from Provider to the Customer Party or the Customer Party's designee. The Customer Party may elect to purchase, and Provider will provide to the Customer Party if so purchased, termination services for up to two hundred seventy (270) days (unless otherwise agreed to in writing by the parties) from such date of termination or expiration.

(a) Each Customer Party electing to purchase termination services and Provider will agree on the terms of a ramp-down plan governing such termination (which may also establish Performance Standards applicable to the Services during the ramp-down). In the event either party breaches such plan and such breach causes damage to the other, the breaching party will compensate the other party.

(b) During the provision of termination services under a Customer SOW terminated for Cause, (i) the Customer Party shall not again terminate that Customer SOW for the same Cause so as to reduce the period over which termination services will be provided, and (ii) Productivity not previously applied to the Fees under such Customer SOW will not be applied. The underlying Services under the Customer SOW being continued as part of the termination services shall continue to be provided under the Customer SOW at the rates specified in the Customer SOW with adjustments as specified in the ramp-down plan and adjustments in Fees downward as appropriate for ramp-down in volume.

(c) The Customer Group will pay Fees for such termination services equal to Provider's actual cost (including the Affiliated Providers' actual cost calculated so as not to include any cost twice and without any markup between Affiliated Providers and Provider) incurred of providing such termination services (for clarification, not including any mark-ups or margins on such cost or any mark-ups or margins which may be included in the price per FTE specified in the applicable Customer SOW). If termination services are being provided as a result of a breach of Section 9.3 (Payment Terms) by a Customer Party, such Customer Party shall, upon request by Provider, pay the Fees for such termination services in advance.

(d) All termination services provided hereunder will be deemed included in the definition of "Services," and all representations, warranties and covenants relating to the Services will survive such expiration or termination with respect to such termination services, to the extent such Services are not affected by the process of their termination, except that any standards in the ramp-down plan will supersede the Performance Standards in the Customer SOW. If the Customer Group elects not to purchase termination services, Provider will not, through any acts or omissions, in any manner knowingly impede the transition process.

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(e) In the event of a bona fide dispute between the Customer Group and Provider regarding the provision of any such termination services, and provided that the Customer Group continues to pay Provider Fees in accordance with the foregoing for such termination services, Provider will provide termination services in accordance with the foregoing during the pendency of such dispute, and the Customer Group and Provider will resolve such dispute in accordance with Section 22.5 (Dispute Resolution).

11.15 **Evidentiary Admissions.** The undertaking of any mitigation by a party to this Agreement in respect of an alleged breach of this Agreement or a Customer SOW shall not be construed against such party in any Dispute.

11.16 **Enumerated Breaches.** The enumeration of any particular defaults under this Agreement or a Customer SOW as giving rise to a material breach of this Agreement or the Customer SOW shall not be an indication that any other breaches are not material (*i.e.*, the principle of *ejusdem generis* shall not apply with respect to the identification of acts or omissions giving rise to material breach).

## ARTICLE XII PERFORMANCE STANDARDS AND SERVICE WARRANTIES

12.1 **General.** Subject to Section 12.2 (Transferred SOWs), Provider will deliver to the Customer Group all Services set forth in a Customer SOW in accordance with the applicable Performance Standards set forth therein with promptness and diligence and in a professional and workmanlike manner by qualified personnel in accordance with the generally accepted practices and professional standards used by internationally recognized organizations performing services similar to the Services. Notwithstanding the foregoing, Provider shall not be liable for any failure to meet or exceed any Performance Standards if such failure is due to the wrongful acts or omissions of the Customer Party or its agents or the failure of the Customer Party to comply with its obligations under the applicable Customer SOW.

12.2 **Transferred SOWs.** During the six (6) month period beginning on the Effective Date, Provider and the Customer Party will review each Transferred SOW to identify Performance Standards and associated metrics that will be considered "critical" which will then become the Critical Performance Standards for that Transferred SOW. If Provider and the Customer Party fail to agree on Critical Performance Standards, Customer Group may choose at its reasonable discretion up to six (6) metrics of those processes being measured immediately before the Effective Date, unless the complexity of the process or the regulatory requirements associated with such process reasonably requires establishing a greater number of metrics, and the Critical Performance Standards will be set at the average of Provider's performance of such metrics during the twelve (12) months prior to the Effective Date (which average will exclude the two (2) highest and two (2) lowest monthly measures); provided, however, that for any such process (i) that has not existed for at least twelve (12) months prior to the Effective Date or (ii) for which performance data is not available as of the Effective Date, the Critical Performance

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Standards will be established as the Performance Standards actually being achieved in respect of such process as of the Effective Date.

12.3 **Deliverables Warranty.**

(a) Subject to Section 12.2 (Transferred SOWs) with respect to any Deliverable provided hereunder, Provider warrants the following until [\*\*\*] following the date such Deliverable is accepted by the Customer Party (the “Warranty Period”):

(i) such Deliverable will conform to any applicable requirements set forth in the applicable Customer SOW; and

(ii) such Deliverable at the time of delivery will contain no elements which are designed to, capable of, or permit (A) unauthorized access to or intrusion upon, (B) disabling of, (C) erasure of, or (D) interference with, any hardware, Software, data or peripheral equipment, including any “computer viruses,” “worms” or “time bombs” as those terms are commonly understood within the technology industry.

(b) In the event that any Deliverable fails to conform to the warranties set forth in this Section 12.3 in any material respect, Provider will have the right and obligation to cure or correct such failure as soon as reasonably practical at Provider’s expense. If Provider is unable to cure or correct such failure within a commercially reasonable period of time of no less than ninety (90) days, then the Customer Group may pursue its remedies at law to recover direct damages resulting from the breach of such warranties. The foregoing provisions are expressly conditioned upon the Customer Group providing Provider with prompt written notice of any claim thereunder prior to the expiration thereof, which notice must identify with particularity the non-conformity. The foregoing warranties will not apply if the alleged breach of warranty has not been caused by Provider’s breach of its obligations herein or is due to instructions or specifications of the Customer Group or services or goods supplied by the Customer Group or its agents not conforming to their respective technical, functional and performance specifications and criteria, and Provider will have no liability or obligation as a result thereof.

### ARTICLE XIII DATA; BUSINESS CONTINUITY PLAN; POLICIES

13.1 **Data.** All Customer Group data received or produced during the performance of the Services hereunder will be contained in a database and will, upon the Customer Group’s request and in accordance with the applicable Customer SOW, be delivered to the Customer Party within a reasonable period of time in either the format in which it was kept by Provider or an Affiliated Provider or a commercially standard format specified by such Customer Party.

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13.2 **Data Feeds.** The Customer Group and Provider will, at their own expense and at their respective locations, maintain equipment and supplies necessary for the transfer of data, both by computer tape and via an electronic communication line. The Parties have jointly reviewed all of the procedures necessary for the daily processing flow of data, records, forms and media. The Customer Group and Provider agree to provide and accept data feeds in a format that is mutually agreed upon by the Customer Group and Provider.

13.3 **Data Backup and Storage.** In the event any or all of the Customer Group data is destroyed or damaged in any way, Provider will, at its cost, use commercially reasonable efforts and such additional efforts specified in the BCP described in Section 13.4 (Business Continuity Plan), to restore such Customer Group data. If the cost of Provider’s efforts (including the Affiliated Providers’ efforts calculated so as not to include any cost twice and without any markup between Affiliated Providers and Provider) to restore such destroyed or damaged data exceeds [\*\*\*], and if the destruction or damage to the data was due to a Customer Party, the Customer Party shall bear all of the cost above [\*\*\*]. If the destruction or damage to the data was due to Provider, Provider shall bear all of the cost above [\*\*\*] (it being understood that for purposes of this Section 13.3, all hardware owned by and software licensed to a party (except from the other party) shall be that party’s responsibility, as are that party’s facilities). Provider will take reasonable precautions to prevent the loss of or alteration of the Customer Group data in Provider’s possession. Provider will perform regular backups of the Customer Group data.

13.4 **Business Continuity Plan.** At no additional cost to the Customer Group, Provider will (i) for each Transferred SOW, maintain and comply with the disaster recovery, crisis management and business continuity plans and procedures (a “BCP”), if any, in existence under such Transferred SOW as of the Effective Date and (ii) for Future SOWs, prepare, maintain and comply with a reasonable BCP designed to help ensure that it can continue to provide the Services in accordance with this Agreement and the applicable Customer SOWs in the event of a disaster or other BCP-triggering event (as such events are defined in the applicable BCP). Provider’s BCPs for Future SOWs will include, at a minimum, those items contained in Exhibit I. Such BCPs will also address all operations identified by the Customer Group as “mission critical,” will meet the substantive requirements specified by the Customer Group, and will be agreed upon by the Customer Group and Provider. Provider will regularly update, and, when necessary in accordance with the terms of the BCPs, activate, the BCPs. The BCPs and all updates thereto will be approved by GE. Provider will provide a copy of the BCPs to the Customer Group within thirty (30) days after the Effective Date. Provider will permit the Customer Group to participate in testing and assessment of the BCPs.

#### 13.5 **Customer Group Policies.**

(a) Provider acknowledges that it has received a copy of, and has caused its Executive and Service Delivery Leaders (and will cause any replacements of such Executive and

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Service Delivery Leaders) to become familiar with, the following Customer Group policies (“Customer Group Policies”):

- (i) the document “Integrity, The Spirit and the Letter of our Commitment” attached hereto as Exhibit J (“Integrity Policy”);
- (ii) the Employment Data Protection Standards attached hereto as Exhibit K;
- (iii) the Background Checking Requirements contained in Exhibit L; and
- (iv) any other policies of the Customer Group which the Customer Group provides Provider notice.

(b) Provider agrees, and will cause any of its subcontractors permitted in accordance with Section 22.2 (Assignment; Binding Effect), to comply with the Customer Group Policies to the extent applicable to the performance of its obligations under this Agreement and the Customer SOWs, and to report to the Customer Group violations of such policies. Any changes to the Customer Group Policies will be subject to Section 13.7 (Changes to Policies and Security Standards). Provider further agrees that it will review the Customer Group Policies with its personnel who will be providing Services to the Customer Group. Upon execution of this Agreement, and thereafter upon the Customer Group’s request with no less than thirty (30) days’ advance notice, Provider will require its Executive and each of its Service Delivery Leaders to execute a statement acknowledging that he/she has read, understands and will comply with the Customer Group Policies in connection with his/her duties to be performed for the Customer Group.

13.6 **Security Standards.** Provider will maintain the security standards in accordance with the Customer Group’s security guidelines, as may be amended from time to time, including:

(a) *Physical Security Standards.* Provider will limit access to routers, servers, and network devices used in providing the Services to the Customer Group. Provider will provide for monitored environments of such routers, servers, and network devices, such as air conditioning, clean and uninterrupted power source, and fire suppression.

(b) *Access to Provider Network.* Provider will have firewall technology in place to protect Provider from unauthorized outside access to Provider’s network. Dial-in access to Provider’s network must be outside such firewall. Provider’s Internet web server(s) must be inside the firewall. Provider’s server hosting non-confidential Customer Group data may have Internet access with adequate security as defined herein, but Provider’s server hosting Customer Confidential Information may not have Internet access unless the member of the Customer Group that is the Information Owner of such Customer Confidential Information consents.

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(c) *Internet Security.* Provider will encrypt all data transmitted through the Internet. Documents, business records and other data made available via the Internet will be available only to authorized users and will be protected by Provider from improper use in accordance with generally accepted Internet security practices used in the information technology industry. Only authorized Provider personnel will have access to access codes and electronic identification codes.

(d) *Personal Data Security.* Provider will implement technical and organizational measures to ensure the security and confidentiality of Personal Data in order to prevent, among other things: (i) accidental, unauthorized or unlawful destruction, alteration, modification or loss of Personal Data, (ii) accidental, unauthorized or unlawful disclosure or access to Personal Data, and (iii) unlawful forms of processing. The security measures taken will be in compliance with applicable data protection Laws and will be adapted to the risks represented by the Processing and the nature of the Personal Data to be processed.

(e) *Other Security Standards.* Subject to Article 4 (Change Order Procedures) and Section 13.7 (Changes to Policies and Security Standards), the Customer Group and Provider will jointly agree in good faith to other security requirements that may be necessary to make the Customer Group and Provider network and Internet environments secure. Provider will immediately, after discovering any material breach of the Customer Group’s security guidelines, inform the Customer Group of such breach.

13.7 **Changes to Policies and Security Standards.** Provider will implement all changes to the Customer Group Policies and the Customer Group’s security guidelines requested by the Customer Group. If Provider’s costs and expenses (including the Affiliated Providers’ costs and expenses calculated so as not to include any cost or expense twice and without any markup between Affiliated Providers and Provider) to implement any such change would exceed [[[\*\*\*]]] for any Customer SOW per year, Provider and GE will agree upon an allocation of such costs and expenses.

#### ARTICLE XIV COOPERATION; TRAINING AND SUPPORT

14.1 **Cooperation by Parties.** Provider and the Customer Group will timely, diligently and on a commercially reasonable basis cooperate, facilitate the performance of their respective contractual duties and obligations, and reach agreement with respect to matters left for future review, consideration and/or negotiation and agreement by Provider and the Customer Group, as specifically set forth in a Customer SOW. Provider and the Customer Group will deal and negotiate with each other in good faith in the execution and implementation of their duties and obligations under this Agreement and the Customer SOWs.

14.2 **Cooperation Regarding Service Mix.** Each year of the Term, the Parties will review the Provider’s business plans and the types of Services being provided. If such

Services substantially depart from the Services provided in the prior year, the Parties will cooperate to identify future Service offerings within the Sweet Spot Services that may be offered by the Customer Group to Provider.

14.3 **Training and Support Obligations.** With respect to Transferred SOWs, the training and support commitments of Provider and the Customer Group will continue (i) as specified in the Transferred SOWs or (ii) if not specified in a particular Transferred SOW, in a manner consistent with the practices of the Transferred BPO Business and the Customer Group with respect to such Transferred SOW prior to the Effective Date. With respect to Future SOWs, any training and support commitments will be specified in such Future SOWs.

14.4 **Customer Support.** The Customer Group will provide Provider (i) access to complete and accurate information and data consistent with the past practices of the Customer Group prior to the Effective Date as is necessary for the performance by Provider of any Services and (ii) support and cooperation as expressly set forth under this Agreement and the applicable Customer SOWs. If any such access and support is not provided, or provided in such a manner that Provider is unable to perform the Services as required, then Provider will provide written notice thereof to the Customer Group (which notice will include the relevant specifics and details of such failure to perform such obligations) as soon as Provider is aware of such failure to perform, and Provider will be excused for its failure to comply with any performance requirements for the period and to the extent such failure is caused by the Customer Group's failure to perform such obligations; provided, however, that Provider will continue to use commercially reasonable efforts to comply with all such performance requirements.

#### ARTICLE XV COMPLIANCE WITH LAWS

15.1 Provider covenants, represents and warrants that (i) it has the legal right to provide the Services from the jurisdictions from which the Services are provided and (ii) it is in compliance with all applicable Laws in connection with its obligations under this Agreement, including privacy and data protection Laws.

15.2 Provider agrees that:

(a) Provider will, and will cause all of its subcontractors permitted in accordance with Section 22.2 (Assignment; Binding Effect) to: (i) use no forced, indentured or prison labor, or labor which violates any applicable minimum working age, working condition, wage or overtime Laws in the performance of this Agreement and the Customer SOWs; (ii) comply with the tax, immigration, and employment Laws of all jurisdictions in which its employees perform work under this Agreement and the Customer SOWs; (iii) comply with all Laws and regulations governing environmental protection and the health and safety of its employees; and (iv) comply with all applicable privacy or data protection Laws of any country where work relating to this Agreement and the Customer SOWs is performed.

(b) Provider will provide all data, documents and reports as reasonably requested by the Customer Group from time to time upon reasonable notice, as evidence of the Provider's compliance with Law.

(c) Provider will be solely responsible for procuring and maintaining all necessary permits and licenses of Governmental Entities required in connection with Provider's performance of the Services, including, where applicable, processing and procuring all necessary visas, work permits, and passport documents for its employees in advance of their assignment in connection with provision of any Services. Provider will use commercially reasonable efforts to obtain all such permits, licenses and visas in a timely manner to avoid any unnecessary delay. Provider will ensure that all of its personnel providing Services are in compliance with all visas, passports, and work permits being used by them.

(d) At the Customer Group's reasonable request, but no more than once per calendar year, Provider will furnish to the Customer Group SAS 70 (type I and II) reports and evidence of compliance with ISO 17799.

(e) Provider will furnish to the Customer Group such reports or other data as will be required of Provider under applicable Law. If Provider receives a request by any Governmental Entity to submit any report or data related to the Services, Provider will, upon receipt of any such request and prior to the submission of any such reports or data to such Governmental Entity, notify the Customer Group's designated Service Delivery Leader(s), and provide such Service Delivery Leader(s) with copies of such submissions, unless restricted by Law from doing so.

#### ARTICLE XVI PERSONAL DATA PROCESSING

16.1 **Personal Data.** In performance of this Agreement and the Customer SOWs, Provider may have access to, or otherwise Process, Customer Personal Data on the Customer Group's behalf. Customer Personal Data will be accessed and otherwise Processed only to the extent strictly necessary to perform this Agreement and the Customer SOWs, or upon the Customer Group's written instructions and in strict compliance thereof. Subject to Provider's compliance with Section 16.2 (Data Protection), the Customer Group hereby represents and warrants that it is entitled under applicable Laws to transfer the Customer Personal Data to Provider for the purposes of this Agreement and the Customer SOWs.

16.2 **Data Protection.**

(a) Notwithstanding anything in Article 21 (Confidentiality) to the contrary, Provider agrees to keep the Customer Personal Data confidential, and agrees to not disclose the Customer Personal Data to third parties without having first received express written approval from the applicable Customer Party and, if required by applicable Law, the applicable Data

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Subject. Provider's personnel will Process Customer Personal Data only on a need-to-know basis in connection with the performance of this Agreement and the Customer SOWs.

(b) Provider will implement the technical and organizational measures set forth in Section 13.6(d).

(c) Provider will, and will cause its subcontractors to, implement all reasonable measures necessary to ensure compliance by its personnel with the obligations relating to Customer Personal Data, and will require its personnel (and will cause its subcontractors), as a condition of having access to Customer Personal Data, to sign individual confidentiality agreements in which they each agree individually to comply with the obligations of this Article XVI (Personal Data Processing). The Customer Group may also require Provider's personnel (and such subcontractors), as a condition of participating in specific assignments, to sign individual confidentiality agreements that are tailored for such specific assignments. Provider will comply with all applicable Laws pertaining to Personal Data protection, and will process "Employment Data" consistent with the "GE Employment Data Protection Standards" attached hereto as Exhibit K. In particular, where, in performing any Services, Personal Data is collected by Provider from a Data Subject directly, Provider will, as required by applicable Laws or Exhibit K: (i) provide the Data Subject with required notices; (ii) permit access by the Data Subject to the Personal Data collected about him/her, and (iii) when necessary, obtain the consent of Data Subjects. Provider must, however, seek and obtain prior written approval from the Customer Group regarding the scope of Personal Data to be collected and the consent language to be used.

(d) Failure by Provider to comply with the obligations set forth in this Agreement relating to Personal Data will be considered a material breach of this Agreement.

(e) Upon the expiration or termination of this Agreement for whatever reason, Provider will stop any Processing of Customer Personal Data and will return to the Customer Group all copies of Customer Personal Data along with all notes, analyses, compilations, forecasts, data, translations, studies, memoranda, copies, extracts, reproductions or other documents that contain such Customer Personal Data.

(f) *Health Information & HIPAA.* If Provider Processes any Customer Personal Data that is "protected health information, including any medical, demographic, visual or descriptive information that can be used to identify a particular patient/individual" subject to the U.S. "Health Insurance Portability & Accountability Act of 1996" and regulations promulgated under such Act (collectively "HIPAA"), Provider agrees to the terms and conditions on the subcontractor Business Associates Agreement (BAA) set forth on Exhibit M.

(g) *Gramm-Leach-Bliley Financial Services Modernization Act.* If Provider Processes any Customer Personal Data or other information of the Customer Group's customers ("Customer Information") that is subject to Title V of the Gramm-Leach-Bliley Financial

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Services Modernization Act of 1999 and regulations promulgated under that Act (collectively, the "GLB") or other federal, state, and local Laws governing the privacy and security of Customer Information (collectively "Customer Information Privacy Laws"), Provider agrees to comply with the GLB and other Customer Information Privacy Laws, and to protect and maintain the privacy of such Customer Information accordingly. Such compliance will include Provider (i) not disclosing any Customer Information to any third party except as expressly provided in this Agreement or otherwise directed or authorized in writing by the Customer Group; (ii) ensuring that its employees and permitted subcontractors who obtain or have access to Customer Information comply at all times with the Customer Information Privacy Laws and the provisions of this Agreement regarding the use and protection of Customer Information; and (iii) protecting and maintaining the security of all Customer Information in Provider's custody or under Provider's control. Provider will immediately report to the Customer Group any unauthorized disclosure or use of or any unauthorized access to any Customer Information in Provider's custody or under Provider's control.



(h) *European Union.* If, in the course of Provider's and the Customer Group's performance of this Agreement and the Customer SOWs, any Personal Data will be transferred from a member state of the European Union ("EU") to a jurisdiction outside the EU that has not been declared "adequate" for personal data protection by the European Commission, the party becoming aware of this situation will inform the other, and the Customer Party and Provider (or other Processor, if approved by the Customer Group) will enter into the Standard Contractual Clauses for Controller-to-Processor Transfers set forth in Exhibit N or an alternate agreement if mutually agreed upon by such parties.

(i) Provider understands and agrees that the Customer Group may use any "Contact Information" (such as name, address, telephone number, e-mail address) provided by Provider or any of its Representatives for purposes reasonably related to the performance of this Agreement and the Customer SOWs, including supplier administration and payment administration, and that such Contact Information may be transferred to and stored in a global database located in the United States of America and maintained by the Customer Group. Provider agrees that it will comply with all requirements of Law (such as obtaining consent of the Data Subject where required) prior to the transfer of any Contact Information or other Personal Data to the Customer Group. The Contact Information will not be shared beyond the Customer Group and its Representatives, who will be contractually bound to use the information only as reasonably necessary for purposes related to the Services. The Customer Group will take appropriate measures to ensure that Contact Information is stored securely and in conformity with applicable data protection Laws.

(j) Provider will immediately inform the Customer Group of any material breach of Provider's obligations under this Article XVI.

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## ARTICLE XVII OWNERSHIP; INTELLECTUAL PROPERTY

### 17.1 Independently Developed Technology and Intellectual Property.

(a) As between the Customer Group and Provider, Provider will retain all right, title and interest in and to (i) all Technology and Intellectual Property transferred to Provider and its Affiliates that constitutes a portion of the Transferred BPO Business and (ii) all Technology and Intellectual Property owned, licensed or otherwise procured by Provider and created or acquired independently of the Services, other than the Cross License Customer IP.

(b) As between the Customer Group and Provider, the Customer Group will retain all right, title and interest in and to all Technology and Intellectual Property owned, licensed or otherwise procured by the Customer Group and existing prior to the Effective Date or created or acquired independently of the Services, other than such Technology or Intellectual Property that is transferred to Provider and its Affiliates that constitutes a portion of the Transferred BPO Business or licensed to the Customer Group by Gecis International Holdings under the Cross License Agreement.

### 17.2 Ownership of Technology and Intellectual Property Developed under Customer SOWs.

(a) Subject to Section 17.1, as between the Customer Group and Provider, the Customer Group will own all Technology and Intellectual Property developed, licensed or purchased by Provider (or by any third parties or Affiliated Providers on behalf of Provider) pursuant to the Customer SOWs (other than improvements to the Cross License Customer IP made by Provider independently of the Services ("Cross License Improvements"), which shall be deemed Provider Solutions). Except as provided in Section 17.2(b)(ii), all such Technology and Intellectual Property developed, licensed or purchased pursuant to the Customer SOWs other than the Cross License Improvements will be deemed "Customer Solutions". To the extent applicable, the Customer Solutions will be deemed a work made for hire under the United States Copyright Law (17 U.S.C. § 101 *et seq.*) (or any equivalent foreign Laws). If any Customer Solutions are not deemed to be works made for hire for any reason, Provider hereby assigns and agrees to assign to the Customer Group without further consideration all right, title and interest in and to the Customer Solutions. Any and all such assignments include all rights, however denominated, of paternity, integrity, disclosure, attribution and withdrawal and any other rights, present or future, of any country, including rights that may be known as or referred to as "moral rights" or "unfair competition rights" (collectively, "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent allowed by the laws in the various countries where Moral Rights exist, Provider hereby waives such Moral Rights and consents to any action of the Customer Group and its licensees that would violate such Moral Rights in the absence of such consent.

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(b) Notwithstanding the foregoing:

(i) the Technology and Intellectual Property set forth on the attachment to Paragraph 5 of Section 1.1 and Section 3.09(b) of the Disclosure Schedule to the Securities Purchase Agreement will be deemed "Provider Solutions," not "Customer Solutions," and

(ii) the parties may agree in a particular Future SOW that any Technology and Intellectual Property developed, licensed or purchased by Provider (or by any third parties or Affiliated Providers on behalf of Provider) under such Future SOW will be owned by Provider and licensed to the Customer Group, in which case such Technology or Intellectual Property will be deemed "Provider Solutions," not "Customer Solutions".

**17.3 License to the Customer Group.**

(a) If any Technology or Intellectual Property owned, licensed or otherwise procured by Provider or its designee is incorporated into any Deliverables provided by Provider to the Customer Group under the Customer SOWs (whether such Deliverables are owned by or licensed to the Customer Group), Provider hereby grants to the Customer Group a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, with the unrestricted right to sublicense to Affiliates, customers, suppliers, distributors, contractors and consultants, to such Technology and Intellectual Property to use, reproduce, access, practice, embody, enhance, make and have made, sell, offer to sell and import such Deliverables and to develop improvements, derivative works, compilations and modifications thereof. No such Technology or Intellectual Property of a third party will be incorporated into such Deliverables without the prior written consent of the Customer Party unless such incorporated Technology or Intellectual Property is de minimis and is licensed to the Customer Group on the same terms as the license set forth in the foregoing sentence.

(b) Provider will deliver copies of all Provider Solutions (including source code and object code versions of any Software contained therein) licensed under this Section 17.3 promptly upon the reasonable request of the Customer Group.

(c) If any Technology or Intellectual Property owned by Provider or its designee is used in the provision of Services but not incorporated into any Deliverable, Provider agrees upon the expiration or termination of this Agreement to grant the Customer Group a license to such Technology and Intellectual Property on reasonable and non-discriminatory terms.

**17.4 License to Provider.**

(a) The Customer Group hereby grants to Provider a revocable, worldwide, royalty-free, non-exclusive license to use, reproduce, access, practice, embody, enhance, create

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derivative works, make and have made the Customer Solutions and any other Technology or Intellectual Property provided to Provider by the Customer Group, subject to the following:

(i) Provider must use such Customer Solutions and other Technology and Intellectual Property solely for the purpose of providing Services to the Customer Group (or for any Cross License Customer IP included in such Customer Solutions or other Technology or Intellectual Property, as otherwise allowed pursuant to the terms and conditions of the Cross License Agreement),

(ii) Provider's license to use any Customer Solutions will expire automatically when such Customer Solutions are no longer necessary for Provider's use in connection with the Services; and

(iii) such license granted to Provider pursuant to this Section 17.4 will be limited to Provider and any subcontractors permitted in accordance with Section 22.2.

(b) At the request of Provider, the parties to a Customer SOW may assess whether in a particular Future SOW the Customer Group will grant to Provider a non-exclusive license under any Customer Solutions for purposes other than providing Services to the Customer Group. If the parties agree to grant such a license, such license will be set forth in the applicable Future SOW along with such consideration as Customer and Provider may agree to in writing.

(c) All right, title and interest in and to any improvements, modifications, corrections, compilations, derivative works, derivations, or other revisions ("Improvements") of the Customer Solutions or any other Technology or Intellectual Property or components thereof provided to Provider by a Customer Party developed by Provider (or by any third parties or Affiliated Providers on behalf of Provider), other than Cross License Improvements, and all Intellectual Property therein will be owned by such Customer Party. All such Improvements will be deemed included in the definition of "Customer Solutions" and subject to the work made for hire and assignment provisions of Section 17.2(a).

**17.5 Residuals.** During the course of performing or receiving the Services, the Customer Group and Provider (including the Affiliated Providers) may further develop their knowledge, skills, and experience. The mere subsequent use by either the Customer Group or Provider (including the Affiliated Providers) of such knowledge, skills and experience will not constitute a breach of this Agreement or any Customer SOW, so long as such use is consistent with the confidentiality obligations under this Agreement and the applicable Customer SOWs.

**17.6 Customer Third Party Resources.**

(a) Subject to the terms and conditions of the Transition Services Agreement, to the extent that any Technology or Intellectual Property provided to Provider by the Customer

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Group is licensed or procured from third parties (“Customer Third Party Resources”), the Customer Group and Provider will cooperate to obtain any consents (each a “Required Consent”) from the applicable third parties permitting the use of such Customer Third Party Resources by Provider as required under this Agreement. Subject to the terms and conditions of the Transition Services Agreement, any cost, charges or fees that must be paid to any such third party in respect of a Required Consent shall be paid by the Customer Group. Provider will not charge Fees to the Customer Group for the services of its or its designees’ personnel associated with obtaining such Required Consents. Subject to the foregoing sentence, the Customer Group will reimburse Provider for its reasonable, pre-approved, documented costs and expenses associated with assisting the Customer Group in obtaining the Required Consents.

(b) Provider agrees to comply with such terms and conditions of all licenses and other agreements relating to the Customer Third Party Resources to the extent and as of the date that Customer Group conveys such terms and conditions to Provider or Provider otherwise obtains knowledge of such terms and conditions.

(c) In the event that Customer Group and Provider are unable to obtain any Required Consent, (i) Customer Group and Provider will work together to develop a suitable workaround, and (ii) Provider will not be liable to Customer Group for Provider’s failure to perform any Services to the extent such failure results from such inability to obtain such Required Consent, and the Customer Group shall not be obligated to pay for such Services.

17.7 **Authorization, Representations and Warranties.** The Customer Group represents and warrants to Provider that, subject to obtaining the Required Consents pursuant to Section 17.6 above, the Customer Group has the authority and rights necessary to grant to Provider the licenses contemplated by this Article 17 (Ownership; Intellectual Property). Provider represents and warrants to the Customer Group that Provider has the authority and rights necessary to grant to the Customer Group the licenses granted by Provider contemplated by this Article 17 (Ownership; Intellectual Property). Notwithstanding the foregoing, this Section 17.7 will not apply to any Intellectual Property subject to the Cross License Agreement.

17.8 **Additional Acts.** Provider agrees to execute, and cause its employees, agents and subcontractors permitted in accordance with Section 22.2 (Assignment; Binding Effect) to execute, any documents at no additional cost, or take any other actions as may be reasonably necessary or as requested by the Customer Group, to perfect the Customer Group’s respective ownership rights as set forth above and to register, maintain and enforce the Customer Solutions. The Customer Group will reimburse Provider for its reasonable, documented costs and expenses associated with the foregoing actions.

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## ARTICLE XVIII INDEMNITY

18.1 **Provider Indemnity.** Provider will indemnify, defend and hold each Customer Party and its Representatives (collectively, the “Customer Indemnified Parties”) harmless against any losses, damages, liabilities, costs (including reasonable attorneys’ fees and expenses) relating to a Customer SOW (collectively, “Losses”) resulting from or arising out of any third party claims or actions resulting from or arising out of:

(a) failure by Provider to comply with its obligations with respect to compliance with Laws in Article XV (Compliance with Laws) and data processing in Article XVI (Personal Data Processing) in the applicable Customer SOW, [[[\*\*\*]]]

(b) subject to Section 20.2 (Liability Cap), material breach of the applicable Customer SOW, [[[\*\*\*]]]

18.2 **Customer Indemnity.** Subject to Provider’s obligations under Articles XV (Compliance with Laws) and XVI (Personal Data Processing), each Customer Party individually (and not jointly) indemnify, defend and hold Provider and its Representatives (collectively, the “Provider Indemnified Parties”) harmless against any Losses resulting from or arising out of any third party claims or actions resulting from or arising out of (i) the failure of such Customer Party to comply with any applicable Law, or (ii) subject to Section 20.2 (Liability Cap), the third party’s receipt or use of Services not in contravention of the Customer Group’s instructions, but only to the extent the member itself would have been liable if it had itself performed the acts giving rise to liability and the liability does not arise from a breach by Provider of the applicable Customer SOW.

18.3 **Mutual Indemnity.**

(a) Provider agrees to indemnify, defend and hold harmless the Customer Indemnified Parties from and against Losses resulting from or arising out of any third party claims or actions resulting from or arising out of: (i) death or bodily injury to a third party (or its legal representatives or successors) or physical damage to real or tangible personal property of such third party to the extent caused directly and proximately by the negligent misconduct of Provider, (ii) fraudulent, criminal, or dishonest acts or fraudulent, criminal or dishonest omissions of Provider, and (iii) any breach by Provider of the confidentiality provisions in Article XXI (Confidentiality).

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(b) Each Customer Party will individually (and not jointly) indemnify, defend and hold harmless the Provider Indemnified Parties from and against Losses resulting from or arising out of any third party claims or actions resulting from or arising out of (i) death or bodily injury to a third party (or its legal representatives or successors) or physical damage to real or tangible personal property of such third party to the extent caused directly and proximately by the negligent misconduct of such Customer Party, (ii) fraudulent, criminal, or dishonest acts or fraudulent, criminal or dishonest omissions of such Customer Party, and (iii) any breach by such Customer Party of the confidentiality provisions in Article XXI (Confidentiality).

#### 18.4 **Infringement Indemnity.**

(a) Provider will indemnify, defend and hold each applicable member of the Customer Indemnified Parties harmless from and against Losses incurred as a result of any claim of, or action for, infringement, violation or misappropriation of any Intellectual Property right related to such Customer Indemnified Party's possession or anticipated use of any Software, documentation, information, data or other property ("Material") furnished by Provider or its designee (including the Provider Solutions, but not including any such infringements, violations or misappropriations existing prior to the Effective Date) for use by such Customer Indemnified Party in connection with the Services; provided, however, that the Customer Solutions and Deliverables will be deemed property furnished by Provider or its designee for the purposes of the foregoing.

(b) Each Customer Party will individually (and not jointly) indemnify, defend and hold each applicable Provider Indemnified Party harmless from and against Losses incurred as a result of any claim of, or action for, infringement, violation or misappropriation of any Intellectual Property right related to such Provider Indemnified Party's possession or anticipated use of any Materials furnished by such Customer Party (except for Customer Third Party Resources and any infringements, violations or misappropriations existing prior to the Effective Date). With respect to any Customer Third Party Resources that a Customer Party furnishes to a Provider Indemnified Party, such Customer Party will individually (and not jointly) provide to such Provider Indemnified Party any indemnification, defense, and hold harmless benefits that such Customer Party receives from the applicable third party with respect to such Customer Third Party Resources.

(c) No party providing indemnification under this Section 18.4 ("Indemnifying Party") will have any obligation under this Section 18.4 or other liability to any party being indemnified under this Section 18.4 ("Indemnified Party") for any infringement or misappropriation claim or action resulting or alleged to result from: (i) use of the allegedly infringing Material or any part thereof in (A) combination with any equipment, Software or data with which such Material was not intended to be combined and not otherwise approved by the Indemnifying Party, (B) use in any manner for which such Material was not intended, or (C) modification or alteration of such Material by a Person other than the Indemnifying Party in any manner for which such Material was not intended; (ii) any claim or action arising from any

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instruction, information, design or other materials furnished by the Indemnified Party to the Indemnifying Party hereunder; or (iii) the Indemnified Party's continuing the allegedly infringing activity after being informed and provided for no additional charge with modifications that would have avoided the alleged infringement.

(d) In the event that some or all of the Material furnished by Provider or the Customer Group is held or is in the reasonable opinion of the other likely to infringe, violate or misappropriate any Intellectual Property right of a third party, the furnishing party will have the option, at its expense, (i) to modify the Material to remedy such infringement, violation or misappropriation while maintaining the same quality and function; (ii) to replace the Material with other Material that does not infringe, violate or misappropriate any Intellectual Property right while maintaining the same quality and function in all material respects; (iii) to obtain a license to allow the other and its Affiliates (or, in the case of Provider, the Affiliated Providers) to continue using the Material without any additional cost to the other or its Affiliates (or in the case of Provider, the Affiliated Providers); (iv) to require return of the Material and all rights thereto from the other, or (v) if the furnishing party is a Customer Party, to renegotiate the applicable Customer SOW(s) to eliminate any obligation by such Customer Party to furnish such Material. If any such return materially affects Provider's ability to meet its obligations under this Agreement or any Customer SOW, then the Customer Group may, at its sole option, terminate any affected Customer SOW in accordance with Section 11.3 (Termination of Customer SOWs with Cause by Customer Group) without prejudice to the Customer Group's right to recover any permitted damages under this Agreement and such Customer SOW.

18.5 **Limitation on Indemnity Obligation.** The obligations to indemnify, defend and hold harmless set forth above in this Article XVIII (Indemnity) will not apply, to the extent the Indemnified Party was responsible for giving rise to the matter upon which the claim or action for indemnification is based and will not apply to the extent to which the Indemnified Party fails to (i) promptly notify the Indemnifying Party of any matters in respect of which the indemnity may apply and of which the Indemnified Party has knowledge; provided, however, that any delay in providing such notice will not relieve the Indemnifying Party of its obligations under this Article XVIII to the extent such delay does not materially prejudice the Indemnifying Party's defense of any such claim or action; (ii) gives the Indemnifying Party the full opportunity to control the response thereto and the defense thereof, including any agreement relating to the settlement thereof; provided, however, that the Indemnifying Party will not settle any such claim or action without the prior written consent of the Indemnified Party (which will not be unreasonably withheld or delayed); and (iii) cooperates with the Indemnifying Party, at the Indemnifying Party's cost and expense, in the defense or settlement thereof. The Indemnified Party may participate, at its own expense, in such defense and in any settlement discussions directly or through counsel of its choice on a monitoring, non-controlling basis.

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18.6 **Indemnification Obligations Net of Insurance Proceeds and on an After-Tax Basis.**

(a) Any liability subject to indemnification under this Agreement (hereinafter referred to as “Liability” for the purposes of this Section 18.6) will be net of Insurance Proceeds that actually reduce the amount of the Liability and will be determined on an After-Tax Basis. Accordingly, the amount which any Indemnifying Party is required to pay to the Indemnified Party will be reduced by any Insurance Proceeds theretofore actually recovered by or on behalf of the Indemnified Party in respect of the related Liability. If an Indemnified Party receives a payment (“Indemnity Payment”) required by this Agreement from an Indemnifying Party in respect of any Liability and subsequently receives Insurance Proceeds, then the Indemnified Party will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Indemnity Payment that would have been due if the Insurance Proceeds had been received, realized or recovered before the Indemnity Payment was made.

(b) An insurer who would otherwise be obligated to pay any claim will not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto. The Indemnified Party will use its commercially reasonable efforts to seek to collect or recover any third-party (which will not include any captive insurance subsidiary) Insurance Proceeds (other than Insurance Proceeds under an arrangement where future premiums are adjusted to reflect prior claims in excess of prior premiums) to which the Indemnified Party is entitled in connection with any Liability for which the Indemnified Party seeks indemnification pursuant to this Article XVIII (Indemnity); provided that the Indemnified Party’s inability to collect or recover any such Insurance Proceeds will not limit the Indemnifying Party’s obligations hereunder.

(c) The term “After-Tax Basis” as used in this Section 18.6 requires that, in determining the amount of any indemnification payment hereunder, the amount of the payment shall be (i) increased to take into account any additional Tax cost incurred by the Indemnified Party arising from the receipt of indemnification payments hereunder (“Tax Costs”) and (ii) decreased to take into account any deduction, credit or other tax benefit actually realized by the Indemnified Party with respect to such Liabilities (“Tax Benefits”). In computing the amount of any such Tax Cost or Tax Benefit, the Indemnified Party shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any item arising from the receipt of any indemnification payment hereunder or the incurrence or payment of any indemnified Liabilities; provided, however, that if a Tax Cost or Tax Benefit is not realized in the taxable period during which an Indemnifying Party makes an indemnification payment or the Indemnified Party incurs or pays the amounts giving rise to indemnification, the parties hereto shall thereafter make payments to one another at the end of each subsequent taxable period to reflect the net Tax Costs and Tax Benefits realized by the parties hereto in each such subsequent taxable period.

**ARTICLE XIX  
INSURANCE**

19.1 **Required Policies.** During the Term (and as otherwise noted), Provider (including the Affiliated Providers) will maintain all insurance and/or bonds required by Law or as may be reasonably required by the Customer Group including, in the aggregate, the following (or any local equivalents of the following) except that Provider (including the Affiliated Providers) shall not be obligated to provide coverage for any pre-existing claims or occurrences, wrongly acts or errors or omissions that arose before the Effective Date:

- (a) Workers’ Compensation and Employers Liability Insurance as required by the jurisdiction in which the Services are to be performed;
- (b) (i) Commercial General Liability Insurance, on an occurrence basis (including premises-operations, broad form property damage, contractual liability, and independent contractors) and (ii) Automobile Liability Insurance covering bodily injury and property damage to third parties, with limits of at least \$20 million per occurrence and in aggregate;
- (c) Professional and Technology Errors and Omissions Liability Insurance and Internet and Network Liability Insurance providing protection against liability for (i) systems attacks, (ii) denial of service, (iii) introduction, implementation, or spread of malicious software code, (iv) unauthorized access and use, with combined limits of \$20 million per occurrence and in annual aggregate. Such policy or policies shall be maintained during the Term and for two (2) years following the expiration of the Term;
- (d) Comprehensive Crime Policy on an occurrence basis, with limits of at least \$5 million per occurrence;
- (e) Directors and Officer Liability insurance with a limit of not less than \$3 million per claim; and
- (f) All-Risk Property and Business Interruption Insurance covering the replacement cost of Provider’s property and extra expense coverage for reasonable extra expense costs to continue operations after a loss.

19.2 **Other Requirements.** All insurance policies required to be carried by Provider hereunder will (i) be placed with insurance companies holding a General Policyholders rating of “A—” and a Financial Rating of “VII” or better, as set forth in the most current issue of Best’s Insurance Guide; (ii) be licensed to provide insurance in the jurisdiction where the Services are provided or approved by the Customer Group; and (iii) contain a provision that the insurance provided hereunder will be primary and non-contributing with any other insurance. The Customer Group will be named as an additional insured on the Commercial General

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Liability Insurance required under this Agreement. The Professional Technology Errors and Omissions and Internet Network Liability policy or policies will waive the Insured v Insured exclusion for the Customer Group. Each such insurance policy carried by Provider will grant waiver of subrogation on all policies referenced above, except for the Professional and Technology Errors and Omissions Liability, the Internet and Network Liability and the Comprehensive Crime Policy. Provider will, within ten (10) days after the Effective Date, furnish certificates or adequate proof of the foregoing insurance to the Customer Group. Provider will also require any subcontractors permitted in accordance with Section 22.2 (Assignment; Binding Effect) to maintain appropriate insurance and to agree to furnish the Customer Group, if required, certificates or adequate proof of such insurance. Certificates of insurance furnished by Provider or its subcontractors will contain a clause stating that “General Electric Company is to be notified in writing at least thirty (30) days prior to cancellation of, or any material change in, the Policy.”

## ARTICLE XX LIMITATIONS OF LIABILITY

20.1 **REPRESENTATIONS AND WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN ANY CUSTOMER SOW, NEITHER PROVIDER NOR THE CUSTOMER GROUP MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR ANY WARRANTY FROM COURSE OF DEALING OR USAGE OF TRADE.

20.2 **LIABILITY CAP.** THE LIABILITY OF PROVIDER AND THE CUSTOMER PARTY TO EACH OTHER FOR ANY AND ALL CAUSE(S) OF ACTION, REGARDLESS OF THE FORM OF ACTION (INCLUDING CONTRACT, TORT, NEGLIGENCE OR ANY OTHER), ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR ANY CUSTOMER SOW WILL IN NO EVENT EXCEED IN THE AGGREGATE (I) [[[\*\*\*]]] OF FEES DUE TO PROVIDER DURING THE [[[\*\*\*]]] PRIOR TO THE DATE SUCH CAUSE OF ACTION AROSE, OR (II) IF THE RELEVANT SERVICES HAVE BEEN PROVIDED TO THE CUSTOMER GROUP FOR LESS THAN [[[\*\*\*]]], THEN THE [[[\*\*\*]]] FEES DUE TO PROVIDER FOR SUCH SERVICES CONVERTED TO [[[\*\*\*]]] BASIS. IN ADDITION, IN NO EVENT SHALL PROVIDER BE LIABLE TO THE CUSTOMER GROUP IN THE AGGREGATE IN ANY YEAR IN RESPECT OF ANY AND ALL CUSTOMER SOWS FOR MORE THAN [[[\*\*\*]]] IF A TRANSFERRED SOW DOES NOT SPECIFY A LIMITATION ON LIABILITY OR IF A TRANSFERRED SOW INCLUDES A LIMITATION ON LIABILITY THAT IS GREATER THAN THE LIMITATION PROVIDED IN THIS SECTION 20.2, THEN THE LIMITATION PROVIDED IN THIS SECTION 20.2 WILL APPLY IN LIEU OF THAT IN THE TRANSFERRED SOW. THE LIABILITY CAPS SET FORTH IN THIS

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SECTION 20.2 WILL APPLY TO ANY AMOUNTS PAID OR OWED PURSUANT TO SECTION 18.1(b) OR 18.2(ii).

20.3 **EXCLUSION OF INDIRECT DAMAGES.** NEITHER PROVIDER NOR THE CUSTOMER GROUP WILL BE LIABLE TO THE OTHER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY CUSTOMER SOW, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY SUCH PARTY.

20.4 **EXCEPTIONS.** NOTWITHSTANDING THE FOREGOING, SECTION 20.2 (LIABILITY CAP) AND SECTION 20.3 (EXCLUSION OF INDIRECT DAMAGES) WILL NOT APPLY TO (I) CLAIMS FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD, OR CRIMINAL ACTS OR OMISSIONS, (II) BREACH OF CONFIDENTIALITY, (III) ANY THIRD PARTY CLAIMS SUBJECT TO THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT (OTHER THAN THOSE UNDER SECTIONS 18.1(B) OR 18.2(II), WHICH WILL BE SUBJECT TO THE CAP), AND (IV) FEES PAYABLE BY THE CUSTOMER GROUP UNDER THE APPLICABLE CUSTOMER SOW AND THIS AGREEMENT (INCLUDING THE MVCs).

20.5 **FURTHER LIMITATIONS.** GE’S SOLE OBLIGATIONS UNDER THIS AGREEMENT AND THE CUSTOMER SOWS WILL BE THOSE OBLIGATIONS EXPRESSLY SET FORTH AS OBLIGATIONS OF GE IN THIS AGREEMENT OR ANY CUSTOMER SOW TO WHICH GE IS A PARTY. THE PARTIES SPECIFICALLY AGREE THAT (I) NO MEMBER OF THE CUSTOMER GROUP WILL BE LIABLE FOR

(NOR INCUR ANY OBLIGATION OR RESPONSIBILITY FOR) ANY ACTIONS OR OMISSIONS OF ANY OTHER MEMBER OF THE CUSTOMER GROUP UNDER THIS AGREEMENT OR ANY CUSTOMER SOW (INCLUDING WITH RESPECT TO PAYMENT OF FEES OR INDEMNIFICATION) AND (II) PROVIDER (INCLUDING THE AFFILIATED PROVIDERS) WILL NOT BE LIABLE TO ANY MEMBER OF CUSTOMER GROUP FOR (NOR INCUR ANY OBLIGATION OR RESPONSIBILITY FOR) ANY ACTIONS OR OMISSIONS OF PROVIDER WITH RESPECT TO ANY CUSTOMER SOW TO WHICH SUCH MEMBER OF THE CUSTOMER GROUP IS NOT A SIGNATORY (INCLUDING WITH RESPECT TO INDEMNIFICATION).

## ARTICLE XXI CONFIDENTIALITY

21.1 **Confidential Information.** In connection with this Agreement and the Customer SOWs, the Customer Group and Provider will each have access to certain Confidential Information belonging to, or in which the supplier of the information has any rights or interest

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(the “Information Owner”). The term “Information Owner” includes the directors, officers, employees, and agents of the Information Owner. In this Article XXI, the term “Accessing Party” will mean the party gaining access to the Confidential Information of the Information Owner hereunder or under the Customer SOWs.

21.2 **Exclusions.** The confidentiality obligations in this Article XXI will not apply to any Confidential Information which:

(a) is or becomes generally available to and known by the public (other than as a result of a non-permitted disclosure or other wrongful act directly or indirectly by the Accessing Party or its Representatives);

(b) is or becomes available to the Accessing Party on a non-confidential basis from a source other than the Information Owner or its Representatives; provided, however, that the Accessing Party has no knowledge that such source was at the time of disclosure to Accessing Party bound by a confidentiality agreement with or other obligation of secrecy which was breached by the disclosure; and provided, further, that if the Accessing Party later becomes aware that the source did not have the right to disclose such information, it will use commercially reasonable efforts to restrict its future use and disclosure of the Confidential Information to be consistent with this Article XXI;

(c) has been or is hereafter independently acquired or developed by the Accessing Party or its Representatives without reference to such Confidential Information and without otherwise violating any confidentiality agreement with, or other obligation of secrecy to, the Information Owner;

(d) was in the possession of the Accessing Party or its Affiliates at the time of disclosure by the Information Owner without restriction as to confidentiality; or

(e) is required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to be disclosed by any Governmental Entity or pursuant to applicable Law; provided, however, that the Accessing Party (i) uses all reasonable efforts to provide the Information Owner with written notice of such request or demand as promptly as practicable under the circumstances so that the Information Owner will have an opportunity to seek an appropriate protective order or other appropriate remedy, or waive compliance with the provisions of this Agreement, (ii) furnishes only that portion of the Confidential Information which is, in the opinion of Accessing Party’s counsel, legally required and (iii) takes, and causes its Representatives to take, all other reasonable steps necessary to obtain confidential treatment for any such Confidential Information required to be furnished.

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21.3 **Confidentiality Obligations.**

(a) The Accessing Party will use the Confidential Information of the Information Owner solely for the purpose of performing its obligations or enforcing its rights under this Agreement or the Customer SOWs, and not for any other purpose, including the purpose of competing with the Information Owner. The Accessing Party will keep such Confidential Information confidential and will not disclose any Confidential Information to any third party without the prior written consent of the Information Owner. The Accessing Party will exercise at least the same degree of care to safeguard the confidentiality of such Confidential Information as it does to safeguard its own proprietary confidential information of equal importance, but not less than a reasonable degree of care.

(b) The Accessing Party will disclose such Confidential Information only to such of the Accessing Party’s Representatives who have a need to know the Confidential Information for the purpose of performing its obligations or enforcing its rights under this Agreement or the Customer SOWs.

The Accessing Party will ensure, by instruction, Contract, or otherwise with its Representatives that such Representatives comply with the provisions of this Article XXI. The Accessing Party will be responsible in the event of any breach of the Accessing Party's Representatives of such agreements. The Accessing Party will promptly notify the Information Owner in the event that the Accessing Party or its Representatives learn of any unauthorized use or disclosure of such Confidential Information, and will promptly take all reasonable actions necessary to correct and prevent such use or disclosure. The Accessing Party will, if required, establish "Chinese walls" to ensure that individuals working on other matters do not have access to the Information Owner's Confidential Information.

(c) Upon the request of Information Owner at any time during the Term or within ninety (90) days after the expiration or termination of this Agreement (or such longer period during which termination services are being provided), the Accessing Party for no additional charge will return to the Information Owner all of the Information Owner's Confidential Information in the format in which it was provided by the Information Owner or in its then-current format, at the discretion of the Information Owner; or with the written permission of the Information Owner, destroy such Confidential Information, with such destruction to be certified in writing to the Information Owner by an authorized officer supervising such destruction, and not retained by the Accessing Party or the Accessing Party's Representatives in any form or for any reason.

21.4 **Additional Obligations.** The Customer Group from time to time may acquire Confidential Information from third parties under obligations of confidentiality more restrictive than those provided hereunder. If a Customer Party acquires such Confidential Information and provides it to Provider or any Affiliated Provider under this Agreement, it may notify Provider and any relevant Affiliated Provider of the obligations of confidentiality, in which case Provider and each relevant Affiliated Provider as a condition of receiving such Confidential Information agrees to comply with those obligations of confidentiality in addition to the other obligations of this Article XXI.

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## ARTICLE XXII MISCELLANEOUS PROVISIONS

22.1 **Governing Law.** This Agreement will be governed by and construed and enforced in accordance with, the Laws of the State of New York, without regard to conflict of laws principles thereof; provided, however, that Provider and a Customer Party may expressly agree in a Customer SOW that other Law will apply to the governance, construction and enforcement of such Customer SOW. Transferred SOWs will be governed by and construed in accordance with the Laws under which they would have been governed and construed immediately prior to the Effective Date.

22.2 **Assignment; Binding Effect.**

(a) Neither Party may assign, delegate or subcontract any or all of its rights or responsibilities under this Agreement, in whole or in part, to any third party or entity (including its Affiliates), and this Agreement may not be involuntarily assigned or assigned by operation of law, without the express written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment in contravention of the foregoing will be void. Notwithstanding the foregoing:

(i) Provider may, without notice to the Customer Group, (a) subcontract certain ministerial and non-core responsibilities, including mailing and copying, and (b) subcontract its responsibilities to any subcontractors in use by the Provider prior to the Effective Date; provided, however, that Provider in each case remains fully responsible under this Agreement for the performance of the subcontractor as if Provider had itself performed the subcontracted services;

(ii) Provider shall, with respect to each Transferred SOW, subcontract all of its responsibilities regarding performance of Services under such Transferred SOW to the entity within the Transferred BPO Business that was a party to such Transferred SOW immediately prior to the date hereof pursuant to an agreement substantially in the form set forth in Exhibit Q, shall maintain such agreement in all force and effect with respect to that Transferred SOW until expiration or termination of that Transferred SOW, and shall exercise its rights of direction and election under the agreement and provide information to the subcontractor (including, but not limited to, those specified in Sections 2.6(ii), 3.1 (third sentence), 4.1(b), 5 (last sentence), 9.5, 10.2(a) (first sentence), 10.3, 11.6(a) (last sentence), 11.6(b), 13.1, 13.2 (last sentence), 13.3 (first sentence), 14.1, 15.2(b), 15.2(d), 15.2(e) (first sentence), 16.2(c) (second sentence), 17.1 (regarding Provider's designation of an entity to own resulting Technology and Intellectual Property), 22.1 (regarding designation of Law governing a Transferred SOW) thereof) to the extent required to satisfy Provider's obligations under this Agreement. In any such arrangement, (x) where elements of this Agreement are measured by the cost of Provider, those elements shall mean the cost of the subcontractor instead of Provider; and (y)

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Provider in each case shall remain fully responsible under this Agreement for the performance of the subcontractor as if Provider had itself performed the subcontracted services;



(iii) Any Customer Party may, upon notice, assign or delegate any or all of its rights or responsibilities under any Customer SOW to its Affiliates; provided, however, that (A) Provider will be entitled to conduct a creditworthiness check of any such Affiliate, and (B) the Customer Party bears any and all reasonable pre-approved incremental costs of any such assignment or delegation that are incurred by Provider (including the Affiliated Providers).

(b) The covenants and agreements contained in this Agreement will be binding on the Parties hereto and their respective successors and permitted assigns.

(c) In the event of a claim by a Customer Party relating to a breach of the obligation of Provider that has been subcontracted to an Affiliated Provider, Provider shall enforce such obligation under the subcontract with the applicable Affiliated Provider, including commencing and prosecuting legal proceedings against the Affiliated Provider so as to cure any default as expeditiously as possible.

22.3 **Entire Agreement.** This Agreement and the Exhibits attached hereto represent the entire and integrated agreement of the Parties and supersede prior negotiations, representations and agreements, either written or oral, between the parties hereto with respect to the subject matter hereto, and there are no oral or other agreements or understandings between the parties affecting this Agreement or related to the Services to be provided by Provider or duties undertaken by Provider hereunder.

22.4 **Non-Competition.** Nothing in Article XVII (Ownership; Intellectual Property) will in any way limit the parties' obligations regarding non-competition agreed upon by GE and Provider with regard to the Transferred BPO Business.

22.5 **Dispute Resolution.**

(a) Any dispute, claim or controversy between the Provider and any Customer Party arising out of or relating to (including any breach of) this Agreement or any Customer SOW ("Dispute") will be resolved in accordance with the dispute resolution procedures set forth in this Section 22.5, except where another dispute resolution process is required by a Governmental Entity as a condition of allowing such Customer Party to acquire Services.

(b) In the event of a Dispute relating to a Customer SOW, any party to the Dispute may provide written notice to the other party thereto that it desires to submit such Dispute to the applicable Service Delivery Leader for resolution, which notice will set forth the subject of the Dispute and the relief requested. Within a reasonable period (but in no event more

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than thirty (30) days from the date such notice is received by the other party), the Service Delivery Leaders will meet and negotiate in good faith to resolve the Dispute. If the Service Delivery Leaders are unable to resolve such Dispute within such period, the dispute shall be submitted to the Executives.

(c) In the event of any other Dispute relating to this Agreement or any Dispute that the Service Delivery Leaders are unable to resolve within such thirty (30) day period, any party to the Dispute may provide written notice to the other party thereto that it desires to submit such Dispute to the Executives for resolution, which notice will set forth the subject of the Dispute and the relief requested. Within a reasonable period (but in no event more than thirty (30) days from the date such notice is received by the other party), the Executives will meet and negotiate in good faith to resolve the Dispute. If the Executives are unable to resolve such Dispute within such period, they may agree to submit a Dispute to non-binding arbitration.

(d) If the Executives are unable to resolve such Dispute within the thirty (30) day period, or upon the conclusion of any non-binding arbitration, either party may within ten (10) days of such meeting submit such Dispute to the American Arbitration Association ("AAA") for binding arbitration in accordance with its Commercial Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Disputes) then in effect. The arbitration will be conducted by the Designated Arbitrator. The parties will cooperate in good faith with the AAA and with one another in selecting the Designated Arbitrator, and in scheduling the arbitration. The Designated Arbitrator shall render a decision within ninety (90) days of the matter being submitted to arbitration in accordance with this paragraph. The parties further agree that they will participate in the arbitration in good faith, and that they will share equally in the costs of utilizing the AAA and the Designated Arbitrator, but bear their own costs (including attorney's fees). The arbitration will be governed by the United States Arbitration Act, 9 U.S.C. Sections 1-16, final and binding, and judgment upon the award rendered by the Designated Arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration will be New York, New York. Unless otherwise agreed to by the parties, the mediator will be disqualified from serving as the Designated Arbitrator in the Dispute.

(e) Notwithstanding any other provision of this Agreement or a Customer SOW, during the resolution of any commercial Dispute arising under this Agreement or any Customer SOW, and until such time, if any, as a final arbitral decision is rendered giving such right, Provider will not terminate, diminish, or in any way impair or erode the Services it is obligated to provide and the Customer Group will continue to pay any and all undisputed invoices and otherwise meet its obligations as required under this Agreement. In the event of a breach or threatened breach of this provision by the Provider or the Customer Group, the other will be entitled to specific performance or a temporary or permanent injunction prohibiting and enjoining such breach.

(f) All communications, correspondence, proposals and recommendations exchanged between the parties to a Dispute are confidential, privileged and inadmissible for any

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purpose, including impeachment, in any arbitration or other proceeding involving such parties; provided, however, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in such Dispute.

(g) With respect to a dispute, claim or controversy between Provider and any Customer Party relating to Intellectual Property or Confidential Information under this Agreement or a Customer SOW, either party may elect to seek injunctive relief from the courts as an alternative to the procedures set forth in this Section 22.5.

22.6 **Jurisdiction and Venue.** Any action or proceeding between Provider and the Customer Group to enforce any award of the Designated Arbitrator pursuant to, or the provisions set forth in, Section 22.5 (Dispute Resolution), and any action for injunctive relief, will be brought exclusively in any state or federal court having subject matter jurisdiction in the County of New York, State of New York. Provider and the Customer Group consent specifically to the personal jurisdiction of such courts and irrevocably waive their right to contest venue in any such courts. The party seeking enforcement will be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the party against whom an order of enforcement is obtained.

22.7 **Notices.** All notices, requests, claims, demands and other communications required or permitted under this Agreement will be in writing and (i) if delivered personally or by internationally-recognized overnight courier, be deemed given upon delivery; (ii) if delivered by confirmed facsimile transmission, be deemed given when electronically confirmed; and (iii) if sent by registered or certified mail, be deemed given when received. Such notices, requests, claims, demands and other communications will be sent to the Parties at the following addresses:

If to Provider, to:

GECIS International Holdings, Luxembourg, Swiss Branch Zug  
Baarerstrasse 21  
6304 Zug  
Switzerland  
Facsimile Number: 0041 41 760 61 30  
Attention: Dr. Peter Rüfenacht

If to Customer or any Customer Party, to:

General Electric Company  
3135 Easton Turnpike  
Fairfield, CT 06431  
Facsimile Number: [-]  
Attention: Manager, Corporate Sourcing

[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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Any Party from time to time may change its address for the purpose of notices to that Party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the Party sought to be charged with the contents thereof.

22.8 **Force Majeure.** Neither Provider nor the Customer Group (or any Person acting on their behalf) will have any liability or responsibility for failure to fulfill any obligation (other than a payment obligation) under this Agreement or any Customer SOW so long as and to the extent to which the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of a Force Majeure Event, and if a Customer Party (or its customer on behalf of which Services are provided) becomes subject to a Force Majeure event rendering its receipt of Services impractical, the Customer Party may suspend purchasing of such Services, subject to Section 6.5 (MVC Shortfall and Excess Adjustment). If either Provider or the Customer Group claims the benefit of this Section 22.8, such party will, promptly after such party's first knowledge of a Force Majeure Event: (i) notify the other of the nature and extent of such Force Majeure Event and (ii) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement or the Customer SOW, as applicable, as soon as feasible. If Provider's or, except as provided for in Sections 6.5(c) and (d), the Customer Group's performance continues to be interrupted for a period greater than ten (10) days or such longer period as the parties may agree upon in writing (including in the relevant BCP), the other will be entitled to terminate the affected Customer SOW(s), as applicable, in whole or in part by giving seven (7) days' prior written notice to the other before performance has resumed. Nothing in this Section 22.8 excuses any obligation Provider has to maintain and implement the BCP or GE from fulfilling its obligations with respect to the applicable MVCs as set forth in Article VI (Business Volume Commitment).

22.9 **Cooperation by Parties.** Provider and the Customer Group will fully cooperate and assist the other in the initiation or defense of any third party litigation arising out of or in connection with this Agreement and the Services, including any litigation in which Provider and a Customer Party are co-parties, and until such time as Provider or such Customer Party determines in good faith that their interests appear to be divergent.

22.10 **Rights of Entry.** If Provider or its permitted subcontractors are required to enter any of the Customer Group premises in connection with activities related to this Agreement or the Customer SOWS, their rights of entry will be subject to prior approval of the Customer Group and

applicable security Laws and the Customer Group's safety and security standards and procedures. Provider further agrees that it will use commercially reasonable efforts to ensure that such activities by Provider or its permitted subcontractors will be performed in such manner that they will have minimal interference with the normal business operations of the Customer Group.

22.11 **No Third Party Beneficiaries.** Nothing expressed by or mentioned in this Agreement is intended or will be construed to give any Person other than the Parties hereto and their Affiliates and their respective permitted successors and permitted assigns any legal or

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equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained, this Agreement and all conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Parties hereto and their Affiliates and their respective permitted successors and permitted assigns and for the benefit of no other Person.

22.12 **Severability.** If any provision of this Agreement is or becomes invalid or unenforceable in whole or in part because the provision is contrary to Law or against public policy or for any other reason, then such provision will be enforced to the extent valid and enforceable, and the validity and enforceability of the remaining provisions of this Agreement will be unaffected.

22.13 **Amendments.** This Agreement will not be amended, altered or modified except by an instrument in writing expressly referring to this Agreement and signed by the authorized agents of the Parties.

22.14 **Publicity.** Except as may be agreed upon in advance in writing by the parties or as required by Law or the rules of any securities exchange or self-regulatory organization, neither party will advertise, market or, except as required by Law, otherwise disclose to others any information relating to the making of this Agreement. Neither party will use any of the other party's names, photographs, logos, trademarks, service marks, or other identifying characteristics in commerce (including in marketing brochures or press releases) without prior written consent.

22.15 **Non-Waiver.** The Parties' failure at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, will in no way be construed to be a waiver of such provisions, rights, remedies or options or any other term, condition or covenant of this Agreement, or in any way to affect the validity of this Agreement, except where such party consents to such waiver in writing. The exercise by the Customer Group or Provider of any rights, remedies or options provided hereunder or at law or equity will not preclude or prejudice the exercising hereunder of the same or any other rights, remedies or options.

22.16 **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same instrument, and each fully executed counterpart will be deemed an original.

22.17 **Non-Solicitation.**

(a) For the duration of this Agreement, (i) no business function of a Customer Party may solicit the employment of the chief executive officer of the Provider and his direct reports, and any direct reports thereto, i.e., any employee of the Provider in a Reporting Level 3 position or higher (excluding current or future employees in the GE Energy India Management Center or currently training at the Welch Center for placement in such Center) who is providing

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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Services directly to and is in direct contact with such business function (collectively, "Covered Personnel") while such employee is providing such Services and for a six (6) month period thereafter, and (ii) Provider may not solicit the employment of any employee of the Customer Group at the senior professional band level or higher with which Provider interacts in the course of providing Services (also "Covered Personnel") for the period of time that such interaction continues and for a six (6) month period thereafter. For purposes hereof, the term "solicit the employment" shall not be deemed to include generalized solicitation or advertising, including the use of an independent employment agency or search firm whose efforts are not specifically directed at such Covered Personnel. Notwithstanding the foregoing, the term "Covered Personnel" shall not include any individual (i) whose employment with the relevant party has been involuntarily terminated or (ii) whose employment or solicitation therefor has been previously agreed to in writing or email by the Senior Vice President-Human Resources of the Company (or the equivalent) and the Human Resources Director of GE Finance, in accordance with such policies as they may establish from time to time.

(b) In the event there is any limitation or restriction on the Customer Group or the Provider with respect to the solicitation for employment of, inducement to terminate employment by or hiring of employees of the other, in addition to the limitations and restrictions set forth in this Agreement, the limitations or restrictions which provide the current employer with the greatest protection under the circumstances shall be controlling in case

of any conflict and the limitations or restrictions that are not controlling under such circumstances shall nonetheless continue in effect in accordance with their terms.

22.18 **Remedies Cumulative.** Except as set forth herein, no right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under applicable Law, whether now or hereafter existing.

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IN WITNESS WHEREOF, the Parties hereto have set and subscribed their hands through their respective duly authorized representatives as of the date first above written.

**GENERAL ELECTRIC COMPANY**

By: /s/ Robert J. Duffy  
Name: Robert J. Duffy  
Title: Authorized Representative

[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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IN WITNESS WHEREOF, the Parties hereto have set and subscribed their hands through their respective duly authorized representatives as of the date first above written.

**GECIS INTERNATIONAL HOLDINGS  
LUXEMBOURG, SWISS BRANCH ZUG**

By: /s/ Peter Rüfenacht  
Name: Peter Rüfenacht  
Title: Branch Manager

By: \_\_\_\_\_  
Name: Vivek Gour  
Title: Chief Financial Officer, Gecis  
International Holdings

[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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Signature Page to the MSA

[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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IN WITNESS WHEREOF, the Parties hereto have set and subscribed their hands through their respective duly authorized representatives as of the date first above written.

**GECIS INTERNATIONAL HOLDINGS  
LUXEMBOURG, SWISS BRANCH ZUG**

By: /s/ Peter Rüfenacht  
Name: Peter Rüfenacht  
Title: Branch Manager

By: /s/ Vivek Gour  
Name: Vivek Gour  
Title: Chief Financial Officer, Gecis  
International Holdings

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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Signature Page to the MSA

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**MASTER SERVICES AGREEMENT****1<sup>ST</sup> AMENDMENT**

This 1<sup>st</sup> Amendment to the Master Services Agreement dated December 30, 2004 by and between GENERAL ELECTRIC COMPANY, a New York corporation, having a principal place of business at 3135 Easton Turnpike, Fairfield, Connecticut 06431 and GECIS INTERNATIONAL HOLDINGS, Luxembourg, Swiss Branch Zug, a Luxembourg S.A.R.L., having a principal place of business at Baarerstrasse 21, 6304 Zug, Switzerland, is made as of January 1, 2005 with reference to the following:

**WITNESSETH:**

WHEREAS, GENERAL ELECTRIC COMPANY (“GE”) and GECIS INTERNATIONAL HOLDING, Luxembourg, Swiss Branch Zug, a Luxembourg S.A.R.L. (“Company”), entered into a Master Services Agreement dated December 30, 2004 (this “Agreement”).

WHEREAS, Company agreed to provide or cause to be provided certain services, deliverables and work product and GE agreed to purchase such certain services, deliverables and work product.

WHEREAS, the parties to this 1<sup>st</sup> Amendment wish to amend the Agreement to modify certain provisions all as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties to this 1<sup>st</sup> Amendment agree as follows:

1. Amendment.
  - a. Section 6.4 (b) (ii) is modified by adding a new section 6.4 (b) (ii) (c) following the phrase “assigned to Provider” to read as follows:
 

“and (c) from GECIS GLOBAL HOLDINGS, a Luxembourg S.A.R.L. having an office at 7, Val Sainte-Croix in L - 1371 Luxembourg, and any of its Subsidiaries or Affiliates, whether under this Agreement or another agreement”
  - b. Section 1.1. “Additional Services” is modified by adding the following phrase in section (i) after the phrase “under a Customer SOW”:
 

“or any Statement of Work executed pursuant to any agreement between GECIS GLOBAL HOLDINGS, its Subsidiaries or Affiliates and Customer Group”
2. Ratification. The Agreement as amended is ratified by each of the parties and shall remain in full force and effect in accordance with its terms as so amended. The Amendment set forth above is not a consent to any waiver or modification of

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any other terms or conditions of the Agreement and shall not prejudice any rights which any of the parties may now or hereafter have in connection with the Agreement.

3. Counterparts. This 1<sup>st</sup> Amendment may be executed in one or more counter parts, and by the different parties to each such agreement in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this 1<sup>st</sup> Amendment by facsimile shall be as effective as delivery of a manually executed counterpart.

IN WITNESS WHEREOF, each of the parties hereto has caused this 1<sup>st</sup> Amendment to the Master Services Agreement to be executed by its duly authorized officer or representative effective as of January 1, 2005.

**GENERAL ELECTRIC COMPANY**

\_\_\_\_\_  
By (Signature)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**GECIS INTERNATIONAL HOLDINGS,**  
Luxembourg, Swiss Branch Zug

\_\_\_\_\_  
By (Signature)

\_\_\_\_\_  
Printed Name





**SECOND AMENDMENT**

This second amendment (this "Amendment") is entered into as of December 16, 2005, by and between GENERAL ELECTRIC COMPANY, a New York corporation with a principal place of business at 3135 Easton Turnpike, Fairfield, Connecticut 06431 ("GE"), and GENPACT INTERNATIONAL, a Luxembourg société à responsabilité limitée with a principal place of business at 65, Boulevard Grande Duchesse Charlotte, L-1331 Luxembourg ("Company") (GE and Company being collectively referred to herein as the "Parties").

**WITNESSETH:**

WHEREAS, GE and its Affiliates entered into a Master Services Agreement (the "MSA") as of December 30, 2004 with Company;

WHEREAS, GE and the Company amended the MSA to address purchasing by GE and its Affiliates from certain Affiliates of the Company,

WHEREAS, the Parties agree that the Services to be performed by Company under the MSA shall be performed by Company acting through its Hungarian Branch from and after the date of the registration of the Hungarian Branch in Hungary;

WHEREAS, GE is entering into a transaction to sell shares in Genpact Global Holdings SICAR S.a.r.l. to a third party; and

WHEREAS, in connection therewith GE and Company wish to further amend the MSA to extend its term by one year.

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I  
DEFINED TERMS**

1.1 **Defined Terms.** Capitalized terms not otherwise defined in this Amendment shall have the meaning specified in the MSA.

**ARTICLE II  
AMENDMENT TO TERMS**

2.1 **Extension of MVC.** Section 6.1 of the MSA is hereby amended to replace "five (5)-calendar year period" with "six (6)-calendar year period." In Section 6.2 of the MSA, references to the "sixth," "seventh" and "eighth" years of the Term are hereby adjusted to refer to the "seventh," "eighth" and "ninth" years, respectively.

2.2 **Extension of Initial Term.** Section 11.1(a) of the MSA is hereby amended so that the Initial Term shall expire on December 31, 2013 instead of December 31, 2012.

2.3 **Option to Extend Customer SOWs.** The following language is hereby added at the end of Section 11.2 of the MSA: ", provided that notwithstanding the foregoing, the pricing in effect prior to any such extension shall remain in effect through December 31, 2010, but subject to adjustment as provided in Sections 7.1 and 9.1."

2.4 **Locations.** Section 2.6 is hereby amended to replace "India, China, Hungary or Mexico" with "India, China, Hungary, Mexico, Romania or the Philippines, provided that work under Transferred SOWs may not be moved from one country in which it has been performed to another country unless Provider sends the affected Customer Party prior written notice."

2.5 **Notices.** Section 22.7 is hereby amended to replace Provider's address with:

"If to Provider, to:

Genpact International  
65, Boulevard Grande Duchesse Charlotte  
L-1331 Luxembourg  
Facsimile Number: 352 26 383 509  
Attention: Board of Directors

With a copy to:

DLF City—Phase V  
Sector 53, Gurgaon—122002  
Haryana State, India  
Facsimile Number: 91 124 235 6970  
Attention: Raghuram Raju"

2.6 **Publicity.** The last sentence of Section 22.14 is hereby amended to read as follows: "Except as set forth in the Transitional Trademark License Agreement between GE Capital Registry, Inc. and Company, dated as of December 30, 2004, as the same may be amended from time to time, neither party will use any of the other party's names, photographs, logos, trademarks, service marks, or other identifying characteristics in commerce (including in marketing brochures or press releases) without prior written consent."

**ARTICLE III  
GENERAL**

3.1 **Governing Law.** This Amendment will be governed by and construed and enforced in accordance with, the Laws of the State of New York, without regard to conflict of laws principles thereof

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3.2 **General Provisions.** The provisions of Sections 22.5, 22.6, 22.7, 22.8, 22.12, 22.13, 22.14, 22.15, 22.16 and 22.18 of the MSA shall apply to this Amendment and all references to the MSA in such sections shall be read as applying to the agreement as amended by this Amendment.

**[The remainder of this page has been intentionally left blank.]**

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**IN WITNESS WHEREOF**, the Parties hereto have set and subscribed their hands through their respective duly authorized representatives as of the date first above written.

**GENPACT INTERNATIONAL**

By:  
Name: Eileen S. Silvers  
Title: Senior Vice President, Taxes & Corporate Affairs

**GENERAL ELECTRIC COMPANY**

By:  
Name: D.R. Seymour  
Title: General Manager Global Employee Services

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**IN WITNESS WHEREOF**, the Parties hereto have set and subscribed their hands through their respective duly authorized representatives as of the date first above written.

**GENPACT INTERNATIONAL**

By:  
Name: Eileen S. Silvers  
Title: Senior Vice President, Taxes & Corporate Affairs

**GENERAL ELECTRIC COMPANY**

By:  
Name: D.R. Seymour  
Title: General Manager Global Employee Services

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**MASTER SERVICES AGREEMENT**  
**THIRD AMENDMENT**

THIS THIRD AMENDMENT (“Amendment” or “Information Technology Services Agreement”) is made on September 7, 2006

**Between:**

GENERAL ELECTRIC COMPANY, a New York corporation with a principal place of business at 3135 Easton Turnpike, Fairfield, Connecticut 06431 (“Company”)

**And:**

Genpact International, S.A.R.L., a Luxembourg société à responsabilité limitée, existing and organized under the laws of Luxembourg with a principal place of business at 65, Boulevard Grande Duchesse Charlotte, L-1331 Luxembourg, acting through its Hungarian Branch having its principal places of business at Duna Plaza Offices, 4th Floor, H-1138, Budapest Vacı ut 178 Hungary

(The Company and Contractor being individually referred to herein as the “Party” and collectively referred to herein as the “Parties”)

**WHEREAS:**

- A. The Company and its Affiliates entered into a Master Services Agreement (“MSA”) as of December 30, 2004 with the Contractor;
- B. The Parties have now agreed to amend the MSA whereby the Contractor is to perform certain software related development services in accordance with this Amendment on such terms and conditions set out hereinafter,
- B. The Parties understand that the work to be undertaken by the Contractor under this Amendment will be performed in part by the employees of the Contractor and its Subsidiaries or Affiliates, and
- C. The Contractor has the requisite skills, personnel and legal right to perform such software related services.

**NOW, THEREFORE**, the parties agree as follows:

**1. APPOINTMENT AND PURPOSE**

- 1.1 The overall purpose of this Amendment is the continuing development and maintenance of centers, owned and operated by the Contractor (“Global Development Center” or “GDC”), which provides the Company with high quality and cost effective Deliverables through various operational models, including providing Services at GE, Certified GDC locations (“Low cost countries”), at Company locations (“Onshore”), and at Certified GDC Locations in countries neighboring and adjacent to Company’s locations (“Near-shore”) and more specifically to provide software design and architecting, software development implementation, maintenance, support, monitoring, RTS (ready to serve) and all such other information technology services (together “GDC Services”). Nothing in this Amendment affects Statement of Works, Service Agreements or Task Orders that were executed, or conduct that occurred prior to, the effective date of this Amendment i.e. January 1, 2007. “Services”, as used in this Amendment, shall mean “GDC Services” provided to the Customer Group under this Agreement.

[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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- 1.2 This Amendment is effective for the period starting January 1, 2007 and shall terminate on December 31, 2009 unless otherwise extended upon mutual agreement of the Parties.
- 1.3 For the purposes of this Amendment, all Task Orders referred to under this Amendment shall be deemed to be Future SOWs as defined in the MSA. This Amendment shall apply to only such Task Orders that contain GDC Services. Services which are in the nature of business process outsourcing or projects and are not GDC Services, including Finance & Accounting, Customer Care, Collections, and Marketing and Risk Analytics, shall continue to be governed by the terms and conditions of the MSA and not this Addendum.

**2. PROCUREMENT OF SERVICES**

*Task Orders*

- 2.1 The Company may from time to time request that the Contractor perform Services by submitting, pursuant to this Amendment, a request to the Contractor that specifies the Deliverables, (as defined below) to be provided by the Contractor (a “Task Order”). All Task Order shall be deemed to be a Future SOW in terms of the MSA and shall be additionally governed by the terms and conditions of the MSA that govern Future SOWs. The Contractor is not obligated to sign and accept the Company’s Task Orders. However, the Contractor will use its best efforts to accept and fulfill the requirements of such Task Orders. Within two Business Days of receiving the Task Order, the Contractor shall notify the Company of either its interest in pursuing the Task Order or its intention to decline the Task Order. Repeated non-participation or delay in response for a constant period of six months may result in termination of this Amendment, pursuant to Section 12 of this Amendment. The Contractor is expected to only participate in such Task Orders that requires Services that are in the nature of business in which the Contractor usually operates.

Once the Contractor accepts a Task Order, the Contractor is obligated to perform the Services specified in such Task Order. In performing such work, and subject to this Amendment or Task Order, the Contractor shall be free to exercise its discretion as to the method and means of performance of the Services. Task Orders may specify a fixed price engagement or a time and materials engagement or a combination/variation of these two basic models.

Each Task Order shall specify critical performance standards and performance standards as agreed between the Parties.

#### *Fixed Price Task Order*

- 2.2 The Contractor and Company will agree on a fixed price for Task Orders issued to engage Contractor for a fixed scope of Deliverables within a defined timeframe (“Fixed Price Task Order(s)”). The number and details of resources to be applied to the Deliverables will be at the Contractor’s discretion. The Company will specify certain norms to ensure quality and consistency in the Task Order, which, once issued, will not be changed, except after mutual discussions. Norms may include but are not limited, to target service levels and associated rewards and penalties, acceptable personnel attrition, value, volume or early payment discounts, or other requirements the Parties mutually agree to include.

#### *Time and Materials Task Order*

- 2.3 The Company may also issue Task Orders to engage Contractor for the availability of resources at an agreed rate, to provide specific Deliverables (“Time and Materials Task Orders”).

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#### *Norms*

- 2.4 Task Orders shall specify certain norms to ensure quality and consistency of Deliverable. Norms may include, but are not limited to any of the following: project delivery processes (SDLC); Project Management practices such as effort estimation; target service levels and associated rewards and penalties; acceptable personnel retention period; knowledge retention requirements; business continuity requirements; value, volume or early payment discounts; and any other requirements the Parties mutually agree to include.

#### *Communication*

- 2.5 All communications with and Deliverables to the Company, including, without limitation, software, documentation, manuals, training materials, reports, screens, progress reports and invoices, shall be in English or such other language as may be mutually agreed in a Task Order.

#### *Deliverable*

- 2.6 All Services, software, documentation, manuals, training materials, test plans and results, risk management documents, manuals, and any and all other Intellectual Property developed, delivered, or enhanced pursuant to this Amendment or a Task Order shall collectively be referred to as Deliverables.

#### *Purchase Orders*

In addition to any Task Order, the Company must also issue, and the Contractor must receive, a Company Purchase Order (“PO”) prior to initiating work under the Task Order in terms of the MSA.

#### *Benefits of the Amendment*

- 2.7 Task Orders may be issued by the Company and its Subsidiaries and Affiliates. Task Orders may also be issued by the Company or its Affiliate on behalf of the divested entities in terms of the MSA.
- 2.8 The Contractor agrees, at the Company’s request, to incorporate the provisions of this Amendment into a Task Order issued by the Company which may require the Contractor to provide Deliverables directly for another entity named by, and who is performing Services for, the Company. The Contractor further agrees to make the terms of this Amendment available to the Company’s suppliers (including software and system integrator suppliers), partners and customers, when mutually identified and agreed by the Company and the Contractor. The Contractor will cooperate with the Company to identify opportunities for the Company’s suppliers and customers to reduce technology costs. If, as a result of this cooperative relationship the Contractor benefits by receiving Task Orders from or and contracting services directly with the Company’s suppliers and/or customers, then these associated volumes shall be credited to any Company volumes referenced in this Amendment, except to the extent that the Company’s supplier and/or customer was a pre-existing customer of the Contractor.

#### *Incorporation of terms*

- 2.9 Any Task Order, submitted by an Affiliate of the Company to the Contractor, that refers to this Amendment and specifically incorporates the provision of this Amendment (such that all references to the Company shall be read as references to such Affiliate of the Company that submitted the Task Order), unless such Task Order explicitly provides that such Task Order or any
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part thereof does not so incorporate this Amendment or any part hereof. Should a Task Order submitted by the Company or its Affiliate, make no reference whatsoever to this Amendment, then this Amendment and its provisions shall nonetheless be deemed to have attached to such Task Order, with all references to the Company in the Amendment being read as a reference to the Company's Affiliate that submitted the Task Order.

*Hierarchy*

- 2.10 In the event of any conflict between the terms of this Amendment and the terms of any Task Order or PO, the terms of this Amendment shall prevail. In the event of any conflict between the terms of a Task Order and the terms of a PO, the terms of the Task Order shall prevail. Under no circumstances shall any terms of a PO be construed as imposing any additional financial or other obligations on the Contractor. Notwithstanding the foregoing, a Task Order may amend the terms of this Amendment solely with respect to such Task Order by expressly referencing the provisions of this Amendment that are being amended and by stating that in the event of a conflict between the amended provisions of the Task Order and the provisions of this Amendment, the provisions of the Task Order shall prevail.

*Technical Clarification*

- 2.11 The Company may notify the Contractor of technical clarifications to any Task Order at any time provided such clarification is within the general scope of either this Amendment or the relevant Task Order.
- 2.12 If the Contractor receives a technical clarification that may affect cost, completion schedule or any other provision of this Amendment or the relevant Task Order, then the Contractor will provide the Company with a proposed amendment to the Task Order incorporating the proposed changes and will not implement the technical clarification unless and until the Contractor has received from the Company written confirmation through both an amendment to the Task Order and an amendment to the PO or a new PO of such clarification and acceptance of the proposed amendment to the Task Order.
- 2.13 No cost that the Contractor incurs as a result of implementing a technical clarification may be the basis for an adjustment of the fees to be paid under a Task Order unless the Company had agreed in writing to such price adjustment prior to the Contractor incurring the additional costs.

*Service Level Agreements*

- 2.14 The terms of this Amendment shall not supersede any Service Level Agreements separately negotiated and agreed to between the Company and the Contractor under any Task Order.

*Transition between Time and Materials and Fixed Price*

- 2.15 At the request of the Company, the Contractor will cooperate with the Company in good faith to convert existing Time and Materials Task Orders to Fixed Price Task Orders on terms and conditions to be mutually agreed between the parties.

*Express Services and Policies*

- 2.16 If requested in a specific Task Order, the Contractor will provide Workers (defined below), computing and telecommunications resources seven days per week, twenty- four hours per day, 365 days per year to support the Company's designated critical software and Deliverables ("Critical Software"). Such Critical Software shall be so designated in specific Task Orders

and shall contain specific Service Level Agreements, response times and acknowledgment, business continuity, and disaster recovery requirement.

- 2.17 The Contractor shall commit to re-use of code/artifacts, carrying out root cause analysis and applying permanent proactive fixes, as appropriate, even when not explicitly specified in a Task Order.
- 2.18 The Contractor shall undertake responsibility for ensuring that Company specific design and coding standards are adhered to in all its work carried out on Task Orders.

**3. CONTRACTOR PERSONNEL**

*General*

- 3.1 The Contractor is responsible for providing personnel to perform its obligations under this Amendment and all Task Orders. Such personnel of Contractor, including employees of Contractor and its Affiliates and any employees of Contractors' non-Affiliate sub-contractors, where subcontracting is permitted, shall individually and collectively be called "Worker(s)". The Contractor will enter into written agreements with all such Workers, obligating them in a manner that will enable the Contractor to fully discharge all of its obligations under this Amendment and all Task Orders, including, without limitation, all obligations under Sections 8 and 11 of this Amendment.
- 3.2 The number of Workers and staffing levels of each GDC will be based on the combined project requirements of the Company as supplemented by annual forecasts of the Company's needs and will be mutually agreed from time to time. The accuracy and updates to the forecast are the responsibility of the Contractor through its relationship with the various Affiliates of the Company. The Contractor will be entirely responsible for staff and Worker selection and hiring to meet the forecasts, including, without limitation, determining and hiring the appropriate mix of skill types and expertise levels. However, for Time and Materials Task Orders, the Company may, at its sole discretion, review sample resumes and capabilities and interview key Workers (identified in the relevant Task Order) assigned to Task, and advise the Contractor as appropriate. The Company may, at its sole discretion, audit Contractor's staffing on Time and Materials Task Orders and advise the Contractor as appropriate. The Contractor shall be solely responsible for all matters in connection with its Workers (including, without limitation, provision of salary, benefits, training, promotions and provision of visas, work permits, housing and related matters while on-site).
- 3.3 The Contractor will make available additional resources (with the required functional and technical competencies inclusive of the engagement-specific requirements) to staff unexpected, even temporary, increases in the forecasts on Time and Materials Task Orders. These additional resources will be committed to the GDC once the Contractor has accepted Task Orders.
- 3.4 The Contractor will be solely responsible for maintaining satisfactory standards of Worker competency, conduct and integrity and for taking such disciplinary action with respect to Workers as may be required under the circumstances. Where the Contractor removes a Worker from offshore locations, under such circumstances. The Contractor shall provide competent replacements within five working days of the Contractor receiving the information about the need for disciplinary action, at no additional cost to the Company, or impact to any Task Orders. In case of on-site/near-shore locations, the Contractor shall provide competent replacements within a timeframe that is mutually agreed by the Company and the Contractor.

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- 3.5 The Company may require the Contractor to immediately remove any Worker from the performance of a Task Order whose continued work on a Task Order is, in the sole discretion of the Company, contrary to the Company's interest. If, during the first four weeks of performance pursuant to a Task Order, the Company requests the Contractor to remove Workers from such performance, then the Contractor will promptly reimburse the Company for the charges for the period such Workers worked on such Task Order. The Company reserves the right to remove Workers from any engagement, including Fixed Price Task Orders, in the event that such Workers act contrary to Company interests.
- 3.6 If any Worker provided by the Contractor becomes unavailable for whatever reason during performance of a Task Order, including without limitation, illness, death and incapacitation, the Contractor will provide a fully trained replacement Worker. The Contractor shall provide such replacement Worker within five Business Days (for offshore locations) of the Contractor receiving the information about the non-availability of the replaced Worker, at no additional cost to the Company or impact to any Task Orders. In case of Onshore/Near-shore locations, the Contractor shall provide competent replacements within a timeframe that is mutually agreed by the Company and the Contractor.

#### *Training*

- 3.7 The Contractor will ensure that prior to their deployment, Workers are provided training that is adequate to ensure that they are proficient and able to discharge their duties, as defined by the Task Order. The Company reserves the right to require, at the Company's discretion, that the Contractor provide training specific to the execution of Task Orders [[[\*\*\*]]] if Workers are either inadequately trained or need specialized training for the execution of Task Orders.
- 3.8 It is the sole responsibility of the Contractor to ensure that Workers are equipped with the functional and technical competencies required to perform all Services and meet fill commitments under specific Task Orders.

#### *Model of Operation*

- 3.9 The Contractor shall be flexible at all times to work on the most appropriate model of operation, which may be Near-shore, Offshore, Onshore, or a combination thereof.

#### *Retention*

- 3.10 The Contractor agrees that the total overall retention level of Workers will be a minimum of \*\*\*, so as to ensure that the Company's critical business applications and infrastructure maintain the level of continuity and skill that is required for their development and maintenance. The Retention Level Percentage ("RLP") shall be measured at a project level on a monthly basis on the last day of every month and added to the Year-to-date percentages on the project. The consolidated project retention data shall be aggregated to determine the Contractor's Company RLP. The RLP will be calculated as:

[[[\*\*\*]]]

In addition to any of the remedies that are available under this Amendment, the Company may establish non-monetary penalties from time to time if RLPs are found to be consistently in material breach of this provision.

- 3.11 Specific Task Orders may define retention levels that are greater than the 85% level defined above, if such increased levels reflect a need for continuity of specific business applications and

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infrastructure. The Company may define and impose penalties, in the event that the Contractor fails to achieve such retention levels if specifically agreed to in any Task Order.

*Independent Contractor*

- 3.12 The status of Contractor shall be that of independent contractor, and neither Contractor nor its Workers or agents shall, at any time or for any purpose, be deemed an employee, or agent of Company. Except were specifically provided herein, neither Party shall act or represent or hold itself out as having authority to act as an agent or partner of the other Party or in any way bind or commit the other Party to any obligations. The rights, duties, obligations and liabilities of the Parties shall be several and not joint or collective, and nothing contained in this Amendment shall be construed as creating a partnership, joint venture, agency, trust or other association of any kind, each party being individually responsible only for its obligations and actions as set forth in this Amendment.

Nothing in this Amendment shall be interpreted or construed as creating or establishing the relationship of employer and employee between Company and either Contractor or any Worker or agent of Contractor. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as federal and state income tax withholding, Social Security taxes, and unemployment insurance applicable to such personnel as employees of the applicable party. Each Party shall bear sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits (if any) to which such Party's employees may be entitled. The Contractor is not eligible for nor may the Contractor participate in any employment benefits or benefit plans of the Company or any of its Affiliates. The Contractor will not assert a claim of employment against the Company or its Affiliates nor claim any entitlement to participation in their benefit programs. If, however, the Contractor is deemed to be eligible for participation in such benefits or plans, the Contractor hereby waives and releases any such rights.

The Parties shall cooperate fully with each other to identify and execute any measures required to mitigate any of the Company's potential co-employment risks associated with the continued presence of a Worker at a Company site.

*Non-Solicitation*

- 3.13 The Company covenants that for the term of this Amendment and for a period of [[[\*\*\*]]] after its termination, the Company will not directly or indirectly:
- (a) recruit, hire, engage or attempt to recruit, hire or engage or discuss employment with any Worker of the Contractor or its Affiliates within twelve months of such Worker providing Services to the Company under any Task Order issued pursuant to this Amendment; or
  - (b) induce any Worker to terminate his relationship with the Contractor or its Affiliate or introduce such Worker to any potential employer.

For the purpose of this Section 3.13 only, the terms the "Company" and the "Contractor" respectively shall include their respective Subsidiaries and Affiliates, collectively referred to as the "Controlled Entities".

- 3.14 The Contractor, for the term of this Amendment and for a period of [[[\*\*\*]]] after its termination, will not recruit, hire, engage, or attempt to recruit, hire, engage or discuss employment with any person who is an employee or agent of the Company and involved in the Services provided by the Contractor, unless by explicit approval of an authorized representative of the Company.

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- 3.15 Any associates hired by the Contractor from other suppliers of the Company, working on Information Technology Services projects of the Company, will not be allocated in the Company GDC program for twelve months after their recruitment.

*Work far competitors*

- 3.16 Where the Company lists or provides details of its competitors in writing, the Contractor undertakes that it will not assign its Workers who have worked on a Task Order to work on a similar project for the named competitor of the Company for a period of twelve months following completion of the work on such Task Order. Similarly, where Contractor utilizes approved Subcontractor Workers or contractor affiliate Workers on a Task

Order, Contractor shall cause this Section 3.16 to apply to such Workers in the same manner as such section would apply to Contractor's employees. Nothing in this Section 3.16 precludes the Contractor's Affiliates who are not involved in performance of Services on any particular Task Order from accepting employment from or engaging in work or business for competitors of the Company, provided that such Affiliates have not received or had access to Confidential Information. Nothing in this Section 3.16 relieves the Contractor from any obligations it may have under this Amendment or any Task Order to maintain the confidentiality of the Company's information.

*Background checks for Contractor Personnel located at GDC*

3.17 The Contractor shall comply with all of the conditions set out in Exhibit I. to the MSA for services to be rendered under this Amendment.

3.18 All Workers will obtain a passport, to establish their credentials and ensure facilitation of travel overseas as and when it is required.

**4. INFRASTRUCTURE**

*General*

4.1 The Contractor is responsible for providing the base facility infrastructure of the GDC including, without limitation, secure floor space, information/communications technology hardware, software and associated support services, such as telephones, amenities, communication facilities like video-conferencing and adequate telephone lines and failure backup facilities. The Contractor undertakes to maintain facilities, services and other standards that the Company deems adequate for the conduct of work under this Amendment and as specified by the Company from time to time.

4.2 Unless a Task Order explicitly states otherwise, the Contractor shall be responsible for providing any hardware, software and any other assets that may be required for the delivery of Services outlined in Task Orders.

4.3 In the event that the Contractor requires the use of business-specific hardware or software to perform Services under a Task Order, such Task Order shall explicitly state such requirement and the Company shall provide to the Contractor such business-specific hardware or software at no cost to the Contractor. The Contractor shall be solely responsible for tracking and monitoring the use of such Company assets and ensuring that they are properly managed until such time as the assets are returned to the Company.

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4.4 The Contractor is responsible for providing adequate discussion and conference rooms within the GDC Site to enable the Workers to facilitate communication/discussions that may be required for the performance of Services.

4.5 Major infrastructure needs will be identified and agreed upon by the Company ninety days in advance to ensure adequate resources will be set aside by the Contractor to implement infrastructure improvements in a timely manner. Implementation of major infrastructure adjustments requires adequate notification (a minimum of ninety days prior notice) to the Company prior to commencement of the adjustments to ensure that there are no disruptions to service levels. Such adjustments, including expansion of existing approved GDC facilities, establishment of new GDC facilities or commencement of work in a non-GDC facility, from which the Company's Task Orders are so be executed, will only be undertaken by the Contractor upon receiving explicit approval from the Company's authorized official.

*Company-provided equipment*

4.6 If the Company provides any asset (including, without limitation, hardware and software) to the Contractor for TEMPORARY USE on delivering Services pursuant to a Task Order, the Contractor shall keep such asset as a bailee and use such asset only to complete Task Orders placed pursuant to the terms hereof. Such property, while in the Contractor's custody or control, shall be held at the Contractor's risk and shall be subject to removal at the Company's written request. Further, the Contractor recognizes and consents that it is responsible for:

- (a) ensuring that the asset is received along with appropriate documentation of the approval from the Company, along with TERMS of USE and SURRENDER;
- (b) tracking and monitoring the Company-supplied assets for its intended use at intended location and reporting, taking the necessary actions in case of asset damage/loss/in-appropriate use;
- (c) surrendering the assets to the company at the end of the Approved period of use;
- (d) auditing the usage of the assets and reporting back to the Company on actions taken; and
- (e) providing semi-annual load forecasts to the Company.

The Contractor recognizes and consents that it is liable for any unauthorized use of Company computing resources by any Workers, whether or not with the Contractor's knowledge and approval, and that any such unauthorized use amounts to a material breach of this Amendment.

4.7 Where Workers are operating out of Company sites and providing 24x7 support to the Company, the Company shall issue "Company Configured Laptop Computers" (with secure access capability) either on a "Pool" basis or to individual Workers. The Contractor shall be responsible for providing the appropriate communication equipments inclusive of Pagers/Blackberry/Cell phones, as appropriate.



Any assets allocated to Workers by the Company will be on a “TEMPORARY USE” basis and will remain under the ownership and control of the Company. It is expected that the asset is always available for use at the Company site during normal working hours. Workers must at all times respect the asset as belonging to the Company and must do nothing that is contrary to Company security/use of equipment policies. Workers shall be responsible for ensuring that adequate documentation and approval for USE of the Company asset is available along with the

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asset at all times, especially when the asset is carried out of Company Site. Once Workers complete their engagement/rotation, the asset must be returned to the Company.

*Company-provided Third Party Software*

4.8 The Company may from time to time secure large global licensing arrangements which allow the Company to provide such Third Party Software to the Contractor. If the Company provides any such Third Party Software to the Contractor for TEMPORARY USE on delivering Services pursuant to a Task Order, the Contractor shall keep such Third Party Software as a bailee and use such Third Party Software only to complete Task Orders placed pursuant to the terms hereof. Such Third Party Software, while in the Contractor’s custody or control, shall be held at the Contractor’s risk and shall be subject to removal at the Company’s written request. Further, the Contractor recognizes and consents that the Contractor is responsible for:

- (a) ensuring that the Third Party Software is received along with appropriate documentation of the approval from the Company, along with TERMS of USE and SURRENDER;
- (b) tracking and monitoring the Third Party Software to ensure such Third Party Software is being used solely for its intended use at the intended location and reporting, taking the necessary actions in case of Third Party Software damage/loss/in-appropriate use;
- (c) reporting to the Company, upon written request by the Company, the current aggregate use of Third Party Software by the Contractor and the Task Orders for which such Third Party Software is being used;
- (d) surrendering the Third Party Software to the company at the end of the approved period of use; and
- (e) auditing the usage of the Third Party Software and reporting back to the Company on actions taken.

The Contractor recognizes and consents that it is liable for any unauthorized use of Third Party Software by any Workers, whether or not with the Contractor’s knowledge and approval, and that any such unauthorized use amounts to a material breach of this Amendment. The Contractor further agrees that upon advance written notice by the Company, the Contractor shall allow the Company to audit all use of Third Party Software by the Contractor during the regular working hours of the Contractor, with each party paying its own costs and expenses associated with the audit.

*Security*

4.9 The Contractor is responsible for providing network and physical security for all of its facilities. The Contractor will ensure that Company specified security policies and guidelines are adhered to at all times. Such policies include but are not limited to adequate site security, electronic access control, password protection on infrastructure allowing access to Company information, virus protection on networks. Company provided asset management and Worker background checks. The Contractor is responsible for designating a senior member of the Contractor’s organization with responsibility and accountability for ensuring that security practices are adhered to consistently and proactively, across all the sites of operation. The Contractor further commits to maintaining a 100% Secure environment across the GDC.

4.10 It is the responsibility of the Contractor to ensure that items that are not explicitly covered under the purview of the “Company-specified Security Guidelines” are brought to the notice of the

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appropriate authorities within the Company and explicit approval is obtained for their use. The Contractor will be responsible for compromise of the Company’s security that results from unauthorized uses of such items from unauthorized uses of such items.

4.11 The Contractor shall incorporate application security guidelines and validate their implementation across all its engagements, even when not explicitly specified in a Task Order.

- 4.12 The parties shall discuss and agree to the process and timelines for the Contractor to ensure that only GE, GDC members, GE GDC Support staff and Company personnel are allowed access to the GE GDC work location. Such access including "Conducted Tours" of GE; GDC facilities for potential clients of Contractor will only be undertaken by the Contractor upon receiving explicit approval from the Company's authorized official, in the event such approval is granted, the Contractor shall bear sole responsibility for ensuring that all security requirements are maintained.
- 4.13 In the course of performing Task Orders issued pursuant to this Amendment, the Contractor may have access to the Company's computer resources. In such event, the Contractor shall use such resources exclusively for performing Services on specific Task Orders or other efforts authorized by the Company such as disaster recovery testing and infrastructure maintenance. Unauthorized access to or use of Company's computer resources is prohibited. Unauthorized use of the Company's computing resources includes, without limitation, the following:
- (a) failing to reasonably safeguard computer resources from damage, misuse or theft;
  - (b) circumventing or attempting to compromise, for any reason, computer security regulations such as security software, virus protection, remote dial-in controls and administrative or operational procedures;
  - (c) tampering with a computer system in a manner that may cause harm to computer information or lead to the unavailability of the computer resource; and
  - (d) performing work of a personal or business nature not directly related to the work being performed under the relevant Task Order,

*Communications*

[[[\*\*\*]]]

4.14 [[[\*\*\*]]]

4.15 [[[\*\*\*]]]

4.16 [[[\*\*\*]]]

4.17 [[[\*\*\*]]]

4.18 [[[\*\*\*]]]

4.19 [[[\*\*\*]]]

4.20 [[[\*\*\*]]]

4.21 [[[\*\*\*]]]

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4.22 [[[\*\*\*]]]

4.23 The Contractor will meet service levels on network performance, as agreed with the Company in operational procedures set from time to time. Operational procedures and service level requirements may vary from site to site as required by the Company.

*Communications Security*

4.24 Workers assigned to work for or perform duties for the Company shall sign a Network Access Security Agreement prior to receiving an account and password that provides access to Company materials. The format to be used for such Agreement is specified in the GDC Security Guidelines. Each Worker performing work on-site must present a copy of an executed Network Access Security Agreement to Company's on-site contact prior to beginning work.

In addition, the Contractor will undertake to:

- (a) prohibit and prevent unauthorized dial-in access to the Contractor LAN;
- (b) ensure all connections to the Company network are done on isolated lines on which Internet access is not allowed;
- (c) control and audit physical access to any GDC building as well as to the wiring closets of any GDC building;
- (d) ensure data encryption is performed in conformance with applicable laws and GE's Data Classification Guidelines (part of GE Security Guidelines);

- (e) orient every Worker on the Company security requirements before they are assigned to work on a Company Task Order (or) provided access to company's resources;
- (f) ensure that any exceptions around usage of USB drives (USB drives are not approved for data storage/transfer within GDC/Company sites) are approved by the appropriate authorized official (the Security Leader associated with the Entity) along with a clear business case explaining the need;
- (g) ensure the security of Company Data that exists, in any form, whether electronic (access controls, safeboot encryption for mobile devices) or printed (lock & key). The Company may set guidelines from time to time for ensuring that Company data is secure;
- (h) implement application security as per GE guidelines and monitor/test adherence to the same as a part of its delivery on every Task Order;
- (i) Implement data classification as per GE guidelines and monitor/test adherence to the same as a part of the internal audits;
- (j) Ensure that backup and archival of Company data (inclusive of deliverables) is as per business-specific requirements; control and audit compliance to backup and archival as per requirements and classification guidelines;
- (k) Implement adequate controls to ensure that no resources (inclusive of data storage devices, backup devices, network devices, servers, printers and the like) allocated on the Company engagement are shared on assignments/engagements that are not specific to the Company;

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- (l) Ensure that Network scans are carried out every week; reduce the patching cycle time to 7 calendar days;
- (m) ensure that any and all equipment installed by the Contractor with the agreement of the Company adheres to the Company's standards; ensure monthly review and compliance to Company-wide end point and network security program (emergency patches, monthly security metrics, security initiatives such as disk encryption, personal firewall and antivirus);
- (n) Adhere to the GDC Security Guidelines maintained by the Company, a copy of which will be made available to the Contractor and updated by the Company from time to time; and
- (o) Implement, monitor and enforce prudent security measures and allow the Company to audit such security measures.

Upon advance written notice by the Company, the Contractor shall allow the Company to audit all security methods and measures undertaken by the Contractor during the regular working hours of the Contractor, with each party paying its own costs and expenses associated with the audit. All such methods and measures are subject to the approval of the Company. The Contractor shall be responsible for ensuring consistency of its security operations, proactive monitoring and mitigation of all vulnerabilities across all its GDC Sites.

*BCP/DRP*

- 4.25 The Contractor shall have an actionable Business Continuity Plan ("BCP") and Disaster Recovery Plan ("DRP") place for each GDC location, and the Contractor shall ensure that such plans are in compliance with the BCP and DRP Requirements stated in the GE GDC Guidelines. The Contractor shall designate a Crisis Management Leader (as defined in Company's standards on BCP and DRP) and also ensure that BCPs and DRPs are updated at least monthly. The Contractor shall also ensure that the BCPs and DRPs are tested for completeness, applicability and robustness once every quarter (at a minimum) or as specified in the Task Order. If (i) Contractor is in full compliance with this Section 4.24; (ii) an act or event beyond the reasonable control of and not the fault of Contractor nevertheless prevents Contractor from performing its obligations under this Amendment, and (iii) Contractor within ten (10) business days after becoming aware of the occurrence of such event, gives Company written notice describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of Contractor's obligations, and thereafter continues to furnish timely regular reports with respect thereto during the continuation of the event and the effects thereof; then Contractor's performance of obligations affected by the event are suspended, provided that such suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the event.
- 4.26 The Contractor shall ensure that periodic backup of all data related to conduct of work under this Amendment are maintained to enable business continuity and disaster recovery. Data retention beyond the duration of the engagement must be in compliance with Company procedure (12 months) unless otherwise stated explicitly in a Task Order. Such backup data shall be taken and stored securely with the required data classification and access control norms established in collaboration with the appropriate authorized personnel from the Entity responsible for the Task Order. In case of Termination of Engagements, the backup data thus stored securely must be delivered to the Company.
- 4.27 In addition to the site specific BCP and DRP, the Contractor shall also undertake responsibility for defining (in collaboration with Company) and maintaining application / project / resource level

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continuity and recovery plans based on task-order specific requirements. The Contractor shall be responsible to ensure that the scope and level of continuity and recovery applicable to each Task Order is well defined. As in the case of the Site BCP/DRP, the Contractor shall be responsible for maintaining the current applicability of the plan and testing the completeness, robustness and applicability/viability of the plans for 100% of the critical work executed from the GDC location. Specific Task Orders may also require the Contractors to focus on resource level backup plans to mitigate resource contingency scenarios.

The Contractor will ensure that the BCP/DRP and test results (location-specific and application-specific) are available for verification and audit by the Company. The Contractor further undertakes responsibility for orienting all its Workers (100% Coverage) on the BC/DR procedures to be followed in the case of a crisis.

## 5. OTHER CONTRACTOR RESPONSIBILITIES

### *Use of Subcontractors*

- 5.1 The Contractor is permitted to use its Controlled Entities as the sub-contractors under this Amendment. In all other cases, the Contractor will explicitly declare and seek approval from the Company for use of subcontractors.
- 5.2 The Contractor will ensure that the Workers who are employees or agents of the sub-contractors, are bound by all terms and conditions of this Amendment, including, without limitation, those contained in Sections 3.16, 8 and 11. The Contractor holds the Company free of liability arising out of the Contractor's relationship with its subcontractors or its Workers.
- 5.3 The Contractor shall ensure that no Company asset shall be moved to any Sub-contractor facility, unless such move or transfer is explicitly approved in the Task Order.

### *Contractor's quality certification*

- 5.4 The Contractor shall produce all Deliverables in strict accordance with this Amendment and any Task Order. All Deliverables shall be produced promptly, with a high degree of care, skill, diligence, professional knowledge, judgment, and expertise according to sound work practices and professional and international industry standards, in a well-managed, organized, responsive, workmanlike and efficient manner. All Deliverable provided by the Contractor shall be subject to the acceptance test / approval of the Company.
- 5.5 The Contractor is responsible for ensuring that its Workers are fully trained in Industry Quality Practices and are aware of the Contractor's implementation of the same. The Company shall assess the Contractor's Quality Level based on the quality of the Workers, Deliverable and the maturity of the process used by the Contractor to provide Services and Deliverables to the Company.
- 5.6 The Contractor undertakes to integrate its Lean Six Sigma practices into its core delivery and support processes so as to provide the Company with measurable productivity in performance of work in connection with this Amendment. The Company may choose to specify requirements around Green-Belt/Black-Belt Certification as a part of a Task Order.
- 5.7 The Contractor shall be responsible for imposing applicable quality assurance requirements on Subcontractors.

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- 5.8 The Contractor acknowledges and agrees that its compliance with the terms and conditions of this Amendment is critical to the Company and the Contractor undertakes, as the Company may request from time to time, to provide in a timely and consistent manner to the Company the following:
- (a) Accurate data and metrics regarding the Contractor's performance around its Workers (on Time and Materials Task Orders and other engagements where explicitly required by the business) — including (but not limited to) Billable Headcount non-billable Headcount, Relevant work experience Data, Rotation Plans, Training Plans, Unplanned Attrition;
  - (b) Accurate data and metrics regarding Contractor's performance on Project Engagements - including (but not limited to) Effort Estimates, Actual efforts being expended, project risk mitigations, productivity planned vs actual, quality, delivery timelines (planned vs actual), defects prevented, requirements met;
  - (c) Accurate data and metrics related to Contractor's performance on Operational aspects of the engagement - including but not limited to Company Customer Satisfaction scores, Security Metrics, Network Performance & Availability, BCP/DRP Performance, Background Checks, Co-employment Risks, Company-provided Asset Management, Audit Performance and any other compliance requirements that may be included by the Company;
  - (d) Audited annual financial statements of the Contractor;

- (e) Subject to the approval of the Contractor's external customer and Contractor confidentiality obligations to such external customer, the Contractor will provide data/measures from internal (to Contractor) Audit Reports, external Customer satisfaction surveys carried out by the Contractor and any other such measures that may be identified by the Company from time to time; and
- (f) any other data or metrics that may be reasonably required by the Company.

The Company may specify common set of metrics and a minimum target level for each of the metrics. Businesses may choose to monitor additional metrics and/or may change the minimum targets around the metrics specified by the Company with the consent of the Contractor and incorporated through means of a Change Order. The Contractor would be monitored for compliance on timelines, completeness and accuracy of the reporting, which could be carried out either manually or through digitization or, a combination of these efforts.

#### *Digitization*

- 5.10 The Contractor undertakes to provide such data and metrics through the use of automated tools and technology that the Company may require to be used, presenting such data in a style, format, manner or frequency as desired by the Company. Wherever the Company mandates the use of digitized tools for managing the GDC Program, the Contractor shall consider the same and after mutual agreement commits to purchase and use such tools. The Parties shall mutually decide which of the Parties shall bear such related costs. In order to encourage use of tools, wherever possible in its discretion, the Company will support and facilitate the purchase and development of such tools.

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#### *Leverage*

- 5.11 The Contractor will support in good faith the Company's initiative to increase the ratio of work executed out of GDC location at Low Cost Countries. Unless otherwise agreed in a Task Order, at least [[[\*\*\*]]] of all effort provided on a Task Order shall be executed from the GDC Location at Low Cost Country.

#### *Labor permits and licenses*

- 5.12 The Contractor acknowledge and agrees that it is solely responsible for procuring and keeping effective all necessary permits and licenses required in connection with the Contractor's performance of this Amendment and any Task Orders, including, without limitation, processing and procuring all necessary visas and passport documents for its Workers in advance of their assignment in connection with a Task Order. The Contractor will obtain all such permits, licenses, and visas in a timely manner so as to avoid any undue delay.

#### *Compliance with Laws*

- 5.13 The provisions of Section 15 of the MSA shall govern the rights and obligations of each Party in regard to compliance of laws by Contractor in regard to Services.

#### *Material Non-Public Information*

- 5.14 In connection with its work for the Company, the Contractor or its sub-contractors and/or its Workers may be exposed to material non-public information ("MNPI"). The Contractor acknowledges and understands that improper use of MNPI may be a violation of law, including the laws concerning insider trading, and may subject it and its employees to prosecution, civil liability, fines and criminal penalties. If the performance of any Task Order requires or permits the Contractor or its Workers to have access to MNPI, the Contractor agrees to abide by the requirements of the Company and its Affiliate issuing such Task Order for the prevention of illegal or inappropriate disclosure of, or trading on, such MNPI. Preventive measures may include training for the Contractor and its Workers, restrictions on trading in certain securities by the Contractor and its Workers, or both. Any such restrictions shall be set out in the relevant Task Order.

#### *Disclosure*

- 5.15 As long as disclosure will not cause the Contractor to violate any Securities and Exchange Commission rules or regulations, or similar applicable laws, the Contractor shall notify Company of any actual change in its ownership or financial status during the term of this Amendment,

#### *Company Knowledge*

- 5.16 The Contractor shall be responsible to ensure that the Company specific project/application data/documentation/details are stored in the Company Knowledge Management repository, or where such a repository is unavailable, in the GE GDC Knowledge Management Portal; the same shall not be transferred to the Contractor's Knowledge Repository without prior approval from the appropriate Company official.
- 5.17 If the Company terminates a Task Order pursuant to Section 1.2.4 of this Amendment, the Contractor will complete the necessary knowledge transfers to the Company or to a party designated by the Company. Such a knowledge transfer shall be executed as per the terms of this Amendment at costs negotiated with the Company and shall be deemed 'complete' once the

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transition has been signed-off by the appropriate Company authority. Nothing contained in this section shall reduce the Contractor's obligations under this Amendment.

## 6. AUDIT RIGHTS

6.1 The provisions of Section 10.2 of the MSA shall govern the rights of obligations of each Party in regard to Audit of the Contractor.

## 7. OTHER COMPANY RESPONSIBILITIES

The Company will:

- 7.1 Provide consistency between overall strategy and the plans and operational requirements associated with the projects entered into with the Contractor.
- 7.2 Work with the Contractor to ensure that operational requirements are consistent with the Contractor's capabilities and resources.
- 7.3 Cooperate with the Contractor to perform Services and create an environment where success can be achieved. Support training the Contractor team in the Company technical areas, standards and processes.
- 7.4 Ensure appropriate facilities and infrastructure at the Company sites to support the Contractor's Company on-site personnel, consistent with and subject to Sections 3.17, 4.0, 8, 11 and all other provisions of this Amendment.
- 7.5 Where appropriate, provide the Contractor with access to the Company's host environments to support projects, including providing access to Company's environment/equipment required for training, consistent with and subject to Sections 3.17, 4.0, 8, 11 and all other provisions of this Amendment.
- 7.6 Where appropriate, consider opportunities to sub-license, or loan, for the term of this Amendment at no cost to the Contractor any hardware, software, case tools etc. that the Company uses to enhance productivity (to the extent permitted by the relevant product licenses) so as to assist usage of common "best practices" in the development of personnel of the Company and the Contractor, consistent with and subject to Sections 3.16, 4.0, 8, 11 and all other provisions of this Amendment.
- 7.7 Where appropriate, make available staff resources, with specific identified expertise as needed, and on a timely basis, to support the Contractor.
- 7.8 Specify performance responsibilities of the Company, which are not part of the Contractor's Services.
- 7.9 Deliver necessary data, forms and documents to support work under this Amendment, consistent with and subject to Sections 3.16, 4.0, 8, 11 and all other provisions of this Amendment.
- 7.10 Define acceptance criteria, test and certify work under Task Orders for acceptance.

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7.11 Facilitate, cooperate and support the Contractor as may be reasonable, including conducting, reviews audits and meetings,

7.12 Procure such software and licenses and keep current the same, which are agreed under a Task Order to be provided by the Company.

## 8. INTELLECTUAL PROPERTY

8.1 The provisions of Section 13 of the MSA shall govern the rights and obligations of each Party in regard to Intellectual Property.

8.2 Additionally the Contractor will cause Subcontractors and Workers to sign a Secrecy and Inventions Agreement using the form specified by the Company in the GDC Security Guidelines, attached as Addendum C to this Amendment, which form may be updated by the Company from time to time. Upon the earlier of Company's request, with reasonable notice, or at the time the first Deliverable is due under a Task Order, Contractor will present to Company signed Secrecy and Inventions Agreements from all Subcontractors and Workers providing or to be providing Services under the Task Order.

8.3 The Contractor agrees to assign, and shall cause its Workers and subcontractors to assign to the Company, pursuant to the form of Assignment attached as Addendum C-1 to this Amendment (the "Post Development Assignment"), all rights, if any, that any of them may have in any Deliverable or other item of Intellectual Property. The Contractor shall deliver executed copies of the Post Development Assignment as required by

this Section 8.1 upon the earlier of the Company's request or at the completion of the Task Order to which the Deliverable or other Intellectual Property relates.

- 8.4 The Contractor may not transfer from one Company Affiliate to another or expand the use of any software application of a Company Affiliate to another Company Affiliate without the written approval of the Company Affiliate that provided the software application to the Contractor.
- 8.5 The Contractor agrees to obtain (a) an agreement in writing from each of its subcontractors containing all commitments required by this Section 8, and (b) signed Secrecy and Inventions Agreements and Post Development Assignments from all the Workers, for the benefit of the Company, its subsidiaries and affiliates and their respective licensees and assignees.

*Use of Third Party Copyrighted Material and Intellectual Property*

- 8.5 (a) The Contractor warrants and represents that no Deliverable or other item of Intellectual Property shall contain or use any article, equipment, material, invention, mark, name, diagram, drawing, design, apparatus, process, or work of authorship (including computer programs and documentation), or any other component that is subject to a patent, copyright, trademark, proprietary interest, or other intellectual property of a Third Party ("Third Party IP") unless Contractor:
- (i) Notifies the Company sufficiently in advance of any use of such Third Party IP in connection with a Deliverable so that the Company may object to such use if it so desires;
  - (ii) has acquired a perpetual, worldwide and irrevocable license to use, execute, reproduce, display, perform, distribute, modify and prepare derivative works of, transfer, license

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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to third parties and otherwise fully exploit the Third Party IP as a part of the Deliverable, and further has the right to license or assign such rights to the Company with no restrictions on sublicensing or assignment by the Company;

- (iii) agrees to license or assign its license to such rights to the Company, and executes and delivers such license or assignment to the Company; and
  - (iv) represents that the Company's use or exploitation of the Deliverable is in no way limited by the incorporation or use of such Third Party IP in connection with such Deliverable.
- (b) The defined term "Third Party IP" shall not include any software or source or object code that is "open source" including but not limited to software or source or object code that is subject to the GNU General Public License, the BSD license or other similar "public", "open" or "free" software license ("Open Source IP"). No Open Source IP shall be used as a component of or in relation to any Deliverable without the prior written instruction of the Company specifically directing that such Open Source IP be used.
- (c) The Contractor represents and warrants that no Deliverable or component thereof nor the use of any Deliverable by the Company as contemplated in this Amendment or any applicable Task Order will infringe upon any patent, copyright, trade secret or other intellectual property right of any third party.
- (d) For the purposes of this Section 8.5, the term Third Party IP shall include Deliverables or other items of Intellectual Property developed for and owned by the Company that the Contractor seeks to incorporate into the Services or Deliverable of a Company Affiliate. Where such Company-owned Third Party IP is to be used in the Services or Deliverables, the Contractor shall adhere to the terms of this Section 8.5.

## 9. WARRANTIES

9.1 The Contractor represents, warrants and covenants that:

- (a) Any and all Deliverables shall at the time of delivery and acceptance conform to the applicable specifications; shall be free from any error, malfunction, or defect; shall be fit for any particular purpose for which the Deliverable is developed and of which the Company advises the Contractor; and, if intended to serve as one or more components of an associated system, program, device, network or data, such Deliverable shall comply with the warranties and other requirements of this Amendment (including, without limitation, this Section 9.1(a)) when integrated or used with such associated system, program, device, network or data, which it shall not adversely impact.
- (b) Other than any disabling code or lock required as part of the specifications, no security device, program routine, device, code or instructions (including any code or instructions provided by third parties) or other undisclosed feature, including, without limitation, a time bomb, virus, software lock, drop-dead device, digital rights management tool (including without limitation so-called DRM root kits), malicious logic, worm, Trojan horse, trap door, or other routine, device, code or instructions with similar effect or intent, that is capable of accessing, modifying, deleting, damaging, disabling, deactivating, interfering with, shutting down, or otherwise harming any software, computer, network, Deliverable, data or other electronically stored information, or computer programs or systems (collectively, "Harmful

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Procedures”) is or shall be incorporated into any Deliverable or otherwise introduced by or through the Contractor into any Company software, computer, network, data or other electronically stored information or computer program or system (any of them, a “Harmful Event”). Such representation and warranty does not apply if such Harmful Procedures or Harmful Events are authorized by the Company in writing by its CIO to be included in the Deliverable.

Without limiting any other of the Company’s remedies, the Contractor agrees to notify the Company immediately upon discovery of any Harmful Procedure or Harmful Event that has occurred or is reasonably suspected, and, after consultation with the Company, the Contractor agrees to take action immediately, at its own expense, to identify and eradicate (or to equip the Company to identify and eradicate) such Harmful Procedures and carry out any recovery necessary to remedy any impact of any Harmful Procedures. The Contractor hereby expressly waives and disclaims any right or remedy it may have at law or in equity to, and agrees that in any event it shall not, de-install, disable or repossess any Deliverable by means of any Harmful Procedure for any reason including, without limitation, in the event the Company fails to perform any of its obligations under this or any other Agreement.

- (c) No Contractor proprietary materials will be included with any of the Deliverables, except to the extent provided in Section 8 of this Amendment.
- (d) The Company shall have good title to all Deliverables and other Intellectual Property free of the claim of any third person, including, without limitation, by way of infringement or misappropriation. No person holds a claim to or interest in any Deliverable that could interfere with the Company’s use or enjoyment of its title to and interest in any Deliverables.

The Contractor’s performance under any and all Task Orders shall be deemed to constitute a confirmation that each of the above representations, warranties and covenants is true and correct in all material respects.

- 9.2 The Contractor will provide warranty support at no cost to the Company for a period of [[[\*\*\*]]] from acceptance of the Deliverable. However, if a specific warranty period is mentioned in any Task Order, that period will be the applicable warranty period.
- 9.3 Warranty work will be performed on mutual agreement, either on site or off site, depending on the nature of the work being conducted. Contractor’s obligations under this Section 9.3 may be waived only by written instruction of the Company.
- 9.4 Subject to the limitation of liability set forth in Section 10.2 below, the Contractor’s liability for breach of or failure to conform to the warranty contained in Section 9.1(a) is limited to the remedies below, which are cumulative and are at the Company’s option:
  - (i) If such breach or failure occurs within the warranty period, and the Company notifies the Contractor of such defect or failure to conform, the Contractor shall, at the Company’s option, either promptly correct any non-conformity or defect, or promptly replace the defective item with an item free from defect or nonconformity, in each case at the Contractor’s expense. As appropriate, defect and non-conformity may be further defined in specific Task Orders.
  - (ii) if in Company’s judgment the Contractor may be unable to provide the Company with conforming and non-defective Deliverables within a time period suitable to the Company, then, upon notice from the Company, the Contractor will pay to the

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Company the cost of repairing or replacing (at the Company’s option) such Deliverables and Services.

- (iii) the Contractor shall pay to Company the Company’s direct damages resulting from the breach of Section 9.1(a) to the extent not otherwise compensated or mitigated in paragraphs (i) and (ii) of this Section 9.4.

The warranty provided in Section 9.1(a) of this Amendment shall not apply to the extent, but only to the extent, that the Contractor’s breach of Section 9.1(a) is due to:

- (a) use by the Company of a superseded or altered release of some or all of the Deliverable where the Contractor has notified the Company in writing that the Deliverable contains infringement issues and that such infringement issues would be avoided by the Company using the current or modified release of the Deliverable to the extent that the alleged infringement results from such use or features;
- (b) the combination, operation, or use of some or all of the Deliverables or any modification thereof furnished under this Amendment with information, software, specifications, instructions, data, or materials not approved by Contractor in writing or contemplated and/or authorized by relevant specifications, Task Orders, or documentation;



- (c) the Deliverables having been tampered with, altered or modified by the Company or anybody on its behalf without the permission or authorization of Contractor or as contemplated and/or authorized by relevant specifications, Task Orders, or documentation; or
- (d) use of the Deliverables otherwise than in accordance with the relevant documentation and otherwise than for the purposes for which they have been developed or supplied, or as contemplated and/or authorized by relevant specifications, Task Orders, or documentation.

The warranties expressly and specifically provided in this Amendment by the Contractor are in lieu of warranty of merchantability and/or warranty of fitness for intended purpose.

- 9.5 The Contractor shall be liable for any and all damages caused by breach of the warranties contained in Sections 9.1(b), (c) and (d). The Contractor shall not be liable for exemplary, punitive, consequential, indirect or incidental damages arising out of or in connection with any breach of Section 9.1(a) of this Amendment. This exclusion shall apply only to damages resulting solely from the Contractor's breach of Section 9.1(a) and not to damages resulting from any other breach by the Contractor.

## 10. INDEMNITY AND INSURANCE

The provisions of Section 18 and 19 of the MSA shall govern the rights of obligations of each Party. However, provisions of Section 18.6 of the MSA shall not apply to this Amendment.

### *Work on Premises*

- 10.1 Workers who work on the premises of the Company or a customer of the Company will comply with all applicable site rules and regulations, and the Contractor will take all necessary precautions to prevent injury to persons or property during the performance of Services and work under this Amendment. The Contractor specifically and expressly agrees to defend, indemnify and hold harmless and reimburse, at its own expense, the Company, its directors, officers, employees,

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agents, representatives, successors and assigns (each an "Indemnified Party") against any and all loss, damage, suits, liability, claims, demands, costs, judgments, fines, penalties, expenses, and attorneys' fees and disbursements ("Liabilities") resulting from injury or harm to persons or property, including claims of the Contractor's own Workers, arising out of or in any way related to the Contractor's performance under this Amendment, and the Contractor shall indemnify, hold harmless, and reimburse the Company with respect to such Liabilities as such Liabilities are incurred. The Contractor's activities shall be deemed to include those of its Workers, officers, agents and Subcontractors. In claims made by a Workers of the Contractor or a Subcontractor (or anyone directly or indirectly employed by Contractor or Subcontractor or for whose acts Contractor or Subcontractor may be liable) against any Indemnified Party under this section, the Contractor's indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefits acts, or other employee benefit acts. The purchase of insurance by the Contractor with respect to its performance hereunder shall in no event be construed as fulfillment or discharge of its indemnification obligations under this Amendment. None of the foregoing provisions shall deprive the Company of any action, right, or remedy otherwise available to it at law or in equity.

### *Limitation on Liability*

- 10.2 Subject to the liability cap set forth in Section 20.2 of the MSA, the liability of the Contractor and the Company to each other for any claims under this Amendment, however, characterized, shall be limited to an amount equivalent to [[[\*\*\*]]] the fees billed under the Task Order from which the damages arose. This limit does not apply to any claims or breaches that arise or are alleged to arise under Section 8, 10, and/or 11, or the fees payable by the Company under this Amendment or Task Orders or claims for personal injury or death or damage to real estate or personal property for which the Contractor or the Company, as the case may be, is or may be legally responsible. Further, this limit does not apply where a Party, its employees, directors or officers, incur a claim or liability by reason of any statutory or regulatory non-compliance by the other Party.

## 11. CONFIDENTIALITY

- 11.1 The provisions of Section 21 of the MSA shall govern the rights and obligations of each Party in regard to confidentiality.
- 11.2 The provisions of Section 16 of the MSA shall govern the rights and obligations of each Party in regard to processing of Personal Data.

## 12. TERMINATION

- 12.1 Either Party may terminate this Amendment on ninety days prior written notice to the other Party except that any such termination shall be effective as to an ongoing assignment specified in a Task Order only when the minimum term for such ongoing assignment is completed. Sections 3.12, 3.15, 8, 10 and 11 of this Amendment shall survive any expiration or termination of this Amendment. If either Party terminates this Amendment pursuant to this Section, the Contractor shall, at the Company's discretion, continue to provide the Services to the Company for a period of up to six months subject to the terms of this Amendment. Both the Parties will use their best efforts to ensure smooth and efficient transition of all work to the Company or any new contractor or contractors designated by the Company.

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The Contractor hereby waives any and all claims for additional compensation or charges (including any claim for lost profits), as a result of any termination and the Contractor hereby agrees that its sole remedy hereunder shall be to receive compensation in accordance with this Section.

- 12.2 If either Party terminates this Amendment pursuant to Section 12.1, then promptly upon the expiration of the ninety days notice period and at such reasonable time as may be necessary for orderly transition, the Contractor will deliver to the Company all documents, document drafts, work papers, notes, and charts of any description, including electronic media, furnished or made available by the Company or produced by the Contractor in the course of work effort pursuant to this Amendment and retain no copy and shall certify same to the Company. The Contractor shall also return to the Company any equipment it may have received from the Company under the terms of Section 4.5 of this Amendment. Notwithstanding anything contained herein, the Parties may separately provide in a Task Order for termination of such Task Order in accordance with terms specifically agreed upon by the parties for that Task Order.
- 12.3 Except for termination based on Sections 5.13 of this Amendment, upon termination, all amounts payable by the Company to the Contractor for Services rendered (including parts thereof) up to the effective date of termination, shall be paid by the Company.
- 12.4 The Company may terminate any Task Order on ninety days prior written notice to the Contractor. Notwithstanding the foregoing, the Company may terminate a Task Order on thirty days prior written notice to the Contractor where such Task Order's duration is less than twelve months.

### 13. GOVERNING LAW

- 13.1 This Amendment, its validity, performance, construction and effect shall be governed by the laws of the State of New York, United States of America, excluding its conflict of laws rules. The laws of the United States of America shall govern issues involving the creation, protection, or exercise of rights in Intellectual Property.

### 14. DISPUTE RESOLUTION

- 14.1 The provisions of Sections 22.5 and 22.6 of the MSA shall apply to in relation to resolution of disputes between the Parties.

### 15. PENALTIES

- 15.1 The Company reserves the right to define and manage Task Order specific service levels, including, but not limited to, provisions on network security, among other service requirements. The Task Orders may explicitly state service levels and penalties for failure to meet such service levels. Failure to meet the service levels in a Task Order, may at the Company's sole discretion, result in the penalties outlined under such Task Orders.

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### 16. GENERAL

#### *Assignment*

- 16.1 The provisions of Section 22 of the MSA shall apply to the rights and obligations of both Parties under this Amendment.

#### *Authority for Amendment*

- 16.2 The execution, delivery and performance of this Amendment has been duly authorized by all requisite corporate action on the part of the Company and Contractor and upon execution by all the Parties, will constitute a legal, binding obligation thereof.

#### *Effect of Amendment*

- 16.3 All the terms and conditions of the MSA specifically referred to in this Amendment shall apply to the Parties. Except as specifically amended hereby, the MSA, and all terms contained therein, remains in full force and effect, The MSA, as amended by this Amendment, constitutes the entire understanding of the Parties with respect to the subject matter hereof. It is further clarified that in the event of any conflict or inconsistency between the terms and conditions of this Amendment and the terms and conditions of the MSA, the terms and conditions of this Amendment shall prevail.

- 16.4 *Binding Effect; Severability*

Each reference herein to a Party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this Amendment and in whose favor the provisions of this Amendment shall inure. In case any one or more of the provisions contained in this Amendment shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties have executed this Amendment.

**GENERAL ELECTRIC COMPANY**

**Genpact International, Luxembourg,  
Hungarian Branch**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

In the presence of: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

In the presence of: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**ADDENDUM A**

**Fees and Payment**

All fees, pricing, rates and payment details are contained in this Addendum A to the Amendment.

A.1 The Contractor should predominantly engage with the Company through Fixed Price engagements as defined in Section 2.2 of this Amendment. On a quarterly basis, Contractor should share with Company their plans of achieving a target of [[[\*\*\*]]] of Contractor and Company engagements being Fixed Price.

The Company shall bid those few engagements that need to be on Time and Materials on a project-by-project basis. Unless otherwise agreed in advance by the Company, the terms of bids submitted by Contractor for Time and Materials engagements are inclusive of all overhead costs (including, without limitation, communication and networked desktop PCs with standard software (such as MS-DOS, Windows and Terminal emulation software)), all payroll taxes, employee benefits, training, travel and living, supplies, administration, insurance and other expenses or costs of any nature and all the Contractor equipment. The Company shall bid those few engagements that need to be on Time and Materials on a project-by-project basis. Unless otherwise agreed in advance by the Company, the terms of bids submitted by Contractor for Time and Materials engagements are inclusive of all overhead costs (including, without limitation, communication and networked desktop PCs with standard software (such as MS-DOS, Windows and Terminal emulation software)), all payroll taxes, employee benefits, training, travel and living, supplies, administration, insurance and other expenses or costs of any nature and all the Contractor equipment. Prices are exclusive of all taxes that may be levied or assessed on these services outside of the home jurisdiction of the GDC (such as sales, use, excise, value added or taxes based on the Company's income) that shall be the responsibility of the Company to pay. Any taxes on these services that may be levied or assessed in the home jurisdiction of the GDC shall be the responsibility of the Contractor to pay.

*Task Orders*

- A.2 Each Task Order will specify the payment terms applicable to that Task Order.
- A.3 Task Orders issued pursuant to this Amendment shall set out a fixed price or an appropriate estimate of person years to complete projects. If the Contractor takes less than the estimated person years on a fixed price project because of efficiency or productivity gains, no credit accrues directly to the Company on that project.
- A.4 If the Contractor takes more than the estimated person years on a fixed price project because of poor estimation or loss of productivity through the Contractor's inefficiency, or for any other reason, the Contractor is solely responsible for the extra resources applied to complete the project.
- A.5 If the delay in completion of project is due to the Company, then the incremental charge beyond scoped timeframe would be at the T&M rate defined in the Task Order for such a situation.

*Purchase Order*

A.6 All Task Orders must be associated with a Purchase Order, at the time the Company places such Task Order with the Contractor. The Contractor agrees that the Company is not obligated to make any payment for services rendered before or without the placement of a Purchase Order, unless she parties have expressly agreed otherwise.

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- A.7 The Company and the Contractor shall hold meetings once or twice a year (timing consistent with other meetings) to specifically review the pricing and Productivity Improvements (defined below) the Contractor has implemented to ensure the Contractor's competitive position in the marketplace and to ensure that the Company's contract with the Contractor reflects the Contractor's competitiveness. Productivity Improvements include:
- a transaction improvements, measured during any month as: (i) the increase in the volume of Services performed per full-time Worker as compared to the prior month and (ii) the performance of a fixed amount of Services utilizing fewer full-time Workers as compared to the prior month; and
  - b cost improvements, measured during any year as the sum of the reductions in each of the following as compared to the prior year: (i) direct and indirect material prices, (ii) overhead costs, (iii) the number of management working hour, per Service and (iv) direct labor rates.

*Invoices*

- A.9 Company may, in each Task Order, designate the form of invoice to be used by Contractor under that Task Order. The Contractor agrees that any invoices submitted for payment to the Company will include the following details, without which the Company is not obligated to make payment of such invoices. Details required include but are not limited to associated Company Purchase Order number, associated Task Order number, detailed breakup of amount to be paid, date by which payment is due, details of service provided, name of Company official placing Task Order, details of applicable discount, if any, the Company entity that shall pay under the PO and whether payment shall be made through the GE Accelerated Payment Program.

*Currency*

- A.10 To the extent permitted by applicable law, Company may designate in any Task Order that payment will be made in the currency of the jurisdiction from which the Task Order is issued. In such cases, Contractor will bill Company monthly, converting the US Dollar contract rate to local currency at the rate published in Financial Times of London on the last Tuesday of the month in which work is performed. In all other cases, Contractor will bill and Company will remit payment in US Dollars.

The Company can negotiate a Fixed Price Contract with the Contractor in such currency as stated in the Task Order.

- A.11 All Contractor invoices shall be delivered to Company within 15 days of the Invoice Date, and must clearly identify the Task Order, Purchase Order, or other Company authorization to which it applies. The Company will not pay invoices older than 180 days unless a documented dispute proceeding is ongoing.
- A.12 All quotations in response to requests for proposals to perform Task Orders issued pursuant to this Amendment shall specify whether and which taxes, if any, are excluded from the quoted price, and the amount of such taxes as to the knowledge of the Contractor.

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**ADDENDUM B**

The provisions of Exhibit N of the MSA shall apply to this Amendment.

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**ADDENDUM C**

**To be Signed by All Workers At Initiation of Task Order**

## Secrecy and Inventions Agreement

All Contractor and Subcontractor personnel who are assigned to perform work, services or tasks for the Company are required to sign the following Agreement.

Dear \_\_\_\_\_ :

You have been assigned by \_\_\_\_\_ (“Contractor”) to perform contract services for General Electric Company, General Electric International, Inc, or an affiliate or subsidiary of the foregoing (individually and collectively, the “Company”). As a condition of Contractor’s engagement by Company, it is a requirement that you agree (i) to hold in confidence information that you learn about the Company as a result of your work, and (ii) that the results of your work will be owned by the Company.

This Agreement is for the benefit of the Company.

1. Conflict of Interest. You warrant that your work with the Company will not in any way conflict with any obligations you may have in favor of prior or other employers or in favor of other persons or entities. You further warrant that, during the time you are providing services to the Company, you will refrain from any other activities that would present a conflict of interest with your work on behalf of the Company.
2. Secrecy. You agree to hold in confidence all proprietary and confidential information that you obtain from, or as a result of your work for the Company, or that you develop for the Company, and you agree not to use for your own benefit or for the benefit of others, or disclose to others, at any time during or after termination of your work for the Company, such information without the prior written consent of the Company. You also agree that you will not knowingly disclose to the Company any information that is the secret, confidential, or proprietary information of any other person or entity. Confidential information includes, but is not limited to, all non-public information furnished or made available to you orally or in writing in connection with your work for the Company or developed by you, such as data, ideas, concepts, procedures, agreements, deliverables, notes, summaries, reports, analyses, compilations, studies, lists, charts, surveys and other materials, both written and oral, in whatever form maintained concerning the business of the Company or the Company’s customers and/or vendors. Confidential information also includes any personal data you may be furnished with or exposed to in the performance of your work for the Company. Confidential information excludes all information and materials that are or become publicly available through means other than through the violation of an obligation of confidentiality to the Company or any other party. Your obligation of confidentiality shall continue in effect (a) for seven years following the date you last provided services to the Company with respect to all confidential information that is not a trade secret, (b) for as long as such confidential information remains a trade secret under applicable law, with respect to confidential information that is a trade secret, and (c) in perpetuity with respect to all personal or customer data.
3. Inventions. You agree that any work product that you produce in providing services to the Company and any inventions, developments, suggestions, ideas, innovations, concepts or reports conceived, created, developed or discovered by you as a part or a result of your to the Company (a “Development”) shall be the sole property of, the

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Company. You agree to promptly notify the Company of any Development, and, if deemed necessary or desirable by the Company, you agree to execute any documents provided by the Company to convey or perfect ownership in any such Development in the Company or its designee, including an assignment in the form attached to this agreement or as otherwise provided. You agree to cooperate with the Company, at the Company’s expense, in obtaining, maintaining or sustaining patents or other intellectual property protection anywhere in the world with respect to any such Developments. Should any such Developments be the result of combined efforts with, or the invention of, any person or persons, other than yourself, you will so inform the Company of this at the time you notify the Company of the Development. Your obligations under this letter will survive any termination of your agreement with the Company and any expiration or termination of any Task Order or other agreement with the Company under which you are performing services.

4. Copyrights. You agree that all copyrightable material that results from services performed by you for the Company shall belong exclusively to the Company. If by operation of law any such copyrightable materials are deemed not to be works made for hire, then you hereby assign, and agree to assign in the future, to the Company the ownership of such materials and the copyrights for the same. The Company may obtain and hold in its own name copyrights, registrations, and other protection that may be available with respect to such copyrightable material, and you agree to provide the Company any assistance required to perfect such protection. **You also agree to waive any “artist’s rights”, “moral rights” or other similar rights you might otherwise have in any copyrightable materials you develop during the term of this Agreement. To the extent you cannot effectively waive such rights, you agree not to seek to enforce such rights against the Company or any purchaser or licensee of such materials from the Company.**
5. Employer-employee Relationship. In furnishing services to the Company under any Task Order or other agreement between the Company and Contractor, you will not be an employee of the Company and will not by reason of this agreement or the performance of your services be entitled to participate in or receive any benefit or right under any of it’s the Company’s employee benefit or welfare plans, including, without limitation, employee insurance, pension, savings and stock bonus, and savings and security plans.
6. Governing Law. This agreement, its validity, performance, construction and effect shall be governed by the laws of the State of New York, United States of America, excluding its conflict of laws rules. The laws of the United States of America shall govern issues involving the creation, protection, or exercise of rights in Intellectual Property.

If the foregoing terms are acceptable to you as a condition for performing services for the Company, please indicate your acceptance by signing one copy of this letter and returning it to us. You may retain the other copy for your information and file.

Very truly yours,

Company

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

Date: \_\_\_\_\_

\_\_\_\_\_  
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**Addendum C-1**

**For Execution By Contractors, Subcontractors and Workers Upon Completion of a Task Order**

**Assignment of Rights**

This is an Assignment made on \_\_\_\_\_, 200\_\_\_\_, between \_\_\_\_\_ (“Assignor” or “you”) and \_\_\_\_\_ (“Company”, “us” or “we”).

This Assignment relates to any work product, invention, development, suggestion, idea, innovation, concept or report conceived, created, developed or discovered by Assignor in connection with services provided by Assignor to the Company under Task Order \_\_\_\_\_ (the “Work Product”), which Work Product may be more specifically described in Annex A to this Assignment.

You represent that you are the sole creator (or have noted other contributors below) of the Work Product and that the Work Product is original and exclusive to the Company, has not been previously sold in any form, is not in the public domain and does not infringe upon any statutory copyright or upon any common law right, proprietary right or any other right of any third party; that you have not previously assigned, pledged or otherwise encumbered the same; and that you have full power to enter into this Assignment and to make the transfer provided for in this Assignment.

You hereby transfer and assign to us any and all rights you might have in the Work Product, including any right, title, and interest in and to the physical embodiment of the Work Product and to any copyright or other intellectual property right in the Work Product. You acknowledge that this transfer is in furtherance of your [and your employer’s obligations] to the Company under prior agreements.

You hereby agree to waive or in any case to not enforce any “moral rights”, “artist’s rights”, or other similar rights, you might have in relation to the Work Product.

You acknowledge that this Assignment transfers complete ownership in the Work Product, the copyright and any other intellectual property right in the Work Product to the Company, and therefore forecloses your use, sale, authorizing the sale by any third party of, reproducing, licensing or otherwise exploiting the Work Product. This Assignment imposes no obligation on the Company to use the Work Product.

This Agreement, its validity, performance, construction and effect shall be governed by the laws of the State of New York, United States of America and by the laws of the United States, excluding its conflict of laws rules.

In Witness Whereof, the parties have executed this Assignment on the day and year first above written.

List of Other Contributors, if any: \_\_\_\_\_

\_\_\_\_\_  
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ASSIGNOR:

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
GE:  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF )  
 ) SS  
COUNTY OF )

The foregoing Assignment was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

STATE OF )  
 ) SS  
COUNTY OF )

The foregoing Assignment was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
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**ADDENDUM D**

The provisions of Exhibit L of the MSA shall apply to this Amendment.

\_\_\_\_\_  
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**MASTER PROFESSIONAL SERVICES AGREEMENT**

**BY AND BETWEEN**

**MACRO\*WORLD RESEARCH CORPORATION**

**AND**

**GENPACT INTERNATIONAL**

**DATED: NOVEMBER 30, 2005**

\_\_\_\_\_  
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- Exhibit 1: Form of Non-Disclosure Agreement  
Exhibit 2: **[RESERVED]**  
Exhibit 3: Form of Genpact Personnel Agreement

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Wachovia and Genpact

## MASTER PROFESSIONAL SERVICES AGREEMENT

This Master Professional Services Agreement (this “**Agreement**”) is entered into effective November 30, 2005 (the “**Effective Date**”) by and between Macro\*World Research Corporation, a North Carolina corporation having a principal place of business at 301 S. College Street, Charlotte, NC 28288 (“**Wachovia**”), and Genpact International, a Luxembourg entity having a principal place of business at 65, Boulevard Grande Duchesse Charlotte, L-1331 Luxembourg (“**Genpact**”).

WHEREAS, Wachovia and Genpact have engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Agreement;

WHEREAS, Wachovia desires to procure from Genpact, and Genpact desires to provide to Wachovia and the Eligible Recipients, certain business process services and products described in Statements of Work entered into under this Agreement, on the terms and conditions specified herein;

WHEREAS, the parties acknowledge and agree that the services to be performed by Genpact under this Agreement shall be performed by Genpact acting through its Hungarian Branch from and after the date of the registration of the Hungarian Branch in Hungary;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and of other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, Wachovia and Genpact (collectively, the “**Parties**” and each, a “**Party**”) hereby agree as follows:

### 1. BACKGROUND AND OBJECTIVES

#### 1.1 Performance and Management by Genpact.

Wachovia desires that certain business process services presently performed and managed by or for Wachovia and the Eligible Recipients, as described in Statements of Work entered into under this Agreement, be performed and managed by Genpact.

#### 1.2 Master Agreement.

This Agreement is a master agreement, the terms of which shall be incorporated by reference into all Statements of Work.

#### 1.3 Goals and Objectives.

The Parties acknowledge and agree that the general goals and objectives of the Parties in entering into this Agreement are to:

- (a) Continue the provision of leading edge processes and systems to Wachovia and provide integrated, efficient and effective delivery of in-scope business process services to the Wachovia lines of business;
  - (b) Offer a highly-integrated delivery mechanism for in-scope business process services;
  - (c) Maintain and improve high levels of service delivery to the Wachovia lines of business, including high levels of service delivery for in-scope business process services delivered to Wachovia;
  - (d) Maintain the ability to react quickly and effectively to the changing needs of Wachovia;
-

- (e) Foster a high level of cooperation and maintain the confidence and trust of Wachovia;
- (f) Reduce the cost of service delivery to Wachovia without compromising the quality or efficacy of the Services;
- (g) Maintain a well-understood, consistent mechanism for understanding the cost of back-office and mid-office services, for both standard and non-standard services, thereby enhancing Wachovia's ability to accurately establish cost-benefit models and customization;
- (h) Establish a mutually beneficial relationship between Wachovia and Genpact, which focuses on ensuring high levels of customer satisfaction and on continuous improvement in that satisfaction;
- (i) Develop a relationship whereby Genpact proactively identifies opportunities to enhance the quality and level of Services provided to Wachovia;
- (j) Develop a relationship whereby Genpact provides strategic consultation related to back-office and mid-office management;
- (k) Establish strong relationships with existing and future third party suppliers;
- (l) Provide opportunities for Wachovia to leverage relationships that Genpact has with other third parties to the mutual advantage of the Parties; and
- (m) Manage operational risk and comply with applicable Laws.

#### 1.4 Interpretation.

The provisions of this **Article 1** are intended to be a general introduction to this Agreement and are not intended to (a) expand the scope of the Parties' obligations, (b) alter the plain meaning of this Agreement's terms and conditions, as set forth hereinafter, or (c) impose obligations on either Party that are not otherwise described in this Agreement or any of the Statements of Work. However, to the extent the terms and conditions of this Agreement or any of the Statements of Work are unclear or unambiguous, such terms and conditions shall be construed so as to be consistent with the background and objectives set forth in this **Article 1**.

## 2. DEFINITIONS AND DOCUMENTS

### 2.1 Definitions.

Except as otherwise expressly provided in this Agreement, all capitalized terms used in this Agreement shall have the meanings set forth in **Schedule A** and in the other Schedules or Exhibits to this Agreement.

### 2.2 Other Terms.

The terms defined in **Schedule A**, in the Schedules or Exhibits to this Agreement or in Statements of Work entered into under this Agreement include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. Article, Section, Schedule and Exhibit references refer to articles and sections of, and attachments to, this Agreement. The words "include" and "including" shall not be construed as terms of limitation. Unless expressly stated otherwise, the words "day," "month," and "year" mean, respectively,

calendar day, calendar month and calendar year. As stated in **Section 27.3**, the word "notice" and "notification" and their derivatives shall mean notice or notification in writing.

### 2.3 Associated Contract Documents.

This Agreement includes (a) each Statement of Work executed by the Parties pursuant to **Section 4.2** and (b) each of the Schedules and Exhibits listed in the Table of Schedules and Exhibits and attached to this Agreement, all of which are incorporated into this Agreement by this reference.

## 3. TERM



### 3.1 Initial Term.

The initial term of this Agreement shall commence as of 12:00:01 a.m., Eastern Time, on the Effective Date and, unless this Agreement is earlier terminated as provided herein, shall continue until 11:59:59 p.m., Eastern Time, on the seventh anniversary of the Effective Date (the “**Initial Term**”) or the date to which this Agreement is extended pursuant to Section 3.2.

### 3.2 Renewal.

Genpact shall give Wachovia notice of the expiration of the Initial Term at least seven (7) months prior to the expiration date of the Initial Term. By giving notice to Genpact no less than six (6) months prior to the expiration date of the Initial Term, Wachovia shall have the right to extend the Term for one (1) renewal period of two (2) years (the “**Renewal Term**”), on the terms and conditions set forth in this Agreement. As used in this Agreement, “**Term**” means the Initial Term and, if extended pursuant to this Section 3.2, the Renewal Term. If Wachovia does not give such notice to Genpact, the Term will expire at the end of the Initial Term.

### 3.3 SOW Term.

- (a) **SOW Initial Term.** Each Statement of Work shall commence on the applicable SOW Commencement Date as of 12:00:01 a.m., Eastern Time, on such date and, unless such Statement of Work or this Agreement is earlier terminated as provided herein, shall continue until 11:59:59 p.m., Eastern Time, on the expiration date set forth in such Statement of Work (the “**SOW Initial Term**”) unless such Statement of Work is extended as provided in Section 3.3(b); provided, however, that except for project-based Statements of Work each Statement of Work entered into (i) during the second, third and fourth Contract Years and, if Wachovia extends the Initial Term of this Agreement for the Renewal Term pursuant to Section 3.2, during the fifth and sixth Contract Years, shall have a SOW Initial Term of at least three (3) years and (ii) if Wachovia does not extend the Initial Term of this Agreement for the Renewal Term pursuant to Section 3.2, during the fifth and sixth Contract Years, shall have a SOW Initial Term through the remainder of such Initial Term.
- (b) **SOW Renewal Term.** Genpact shall give Wachovia notice of the expiration of each SOW Initial Term at least one hundred twenty (120) days prior to the expiration date of such SOW Initial Term. At least ninety (90) days prior to the expiration of the SOW Initial Term, Wachovia may extend the SOW Initial Term for one (1) extension period of up to two (2) years (the “**SOW Renewal Term**”), on the terms and conditions set forth in the applicable Statement of Work. As used in this Agreement, “**SOW Term**” means the SOW Initial Term and, if extended pursuant to this Section 3.3(b), the SOW Renewal Term. If Wachovia does not give such notice to Genpact, the SOW Term will expire at the end of the SOW Initial Term.

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- (c) **Coterminous.** Although the SOW Term may be shorter than the Term of this Agreement, in no event will the term of a Statement of Work extend beyond the Term of this Agreement.

### 3.4 No Stranded Costs or Termination Charge on Expiration.

Genpact shall not be entitled to recover any Stranded Costs or Termination Charge in connection with the expiration of this Agreement or any Statement of Work.

## 4. SERVICES

### 4.1 Overview.

- (a) **Services.** Genpact shall pursuant to this Agreement and Statements of Work provide the Services to Wachovia and, upon Wachovia’s request, to the Eligible Recipients designated by Wachovia. Wachovia shall remain liable for all obligations of such Eligible Recipients, including any payment obligations under this Agreement and under Statements of Work. The Services shall consist of the following, as they may evolve during the Term or be supplemented, enhanced, modified or replaced, in each case, in accordance with the terms of this Agreement:
- (i) The applicable services, functions and responsibilities described in this Agreement and Statements of Work;
  - (ii) To the extent applicable, the services, functions and responsibilities performed by Wachovia personnel who were displaced or whose functions were displaced as a result of a Statement of Work, even if the service, function, or responsibility is not specifically described in such Statement of Work, that are identified during the first Contract Year of such Statement of Work; and
  - (iii) If a Wachovia Base Case has been prepared in connection with a Statement of Work and has been incorporated by reference in such Statement of Work, the related services, functions, responsibilities and tasks reflected in those categories of the Wachovia Base Case which Genpact is assuming pursuant to such Statement of Work;
- (collectively, the “**Services**”).
- (b) **Included Services.** If any services, functions or responsibilities not specifically described in a Statement of Work are an inherent or necessary part of the Services or are required for proper performance or provision of the Services in accordance with this Agreement and

such Statement of Work, they shall be deemed to be included within the scope of the Services to be delivered for the Charges, as if such services, functions or responsibilities were specifically described in such Statement of Work.

- (c) **Required Resources.** Except as otherwise expressly provided in this Agreement or the applicable Statement of Work, Genpact shall be responsible for providing the facilities, personnel, Equipment, Software, technical knowledge, expertise, telecommunications lines and other resources necessary to provide the Services.

#### 4.2 Statements of Work.

- (a) **Statements of Work.** The process to be followed with respect to new Statements of Work and amendments to existing Statements of Work requested by Wachovia is described below. The Parties intend that Statements of Work shall be used as a means to bring work under this Agreement and to further describe the Services to be provided by Genpact in accordance with this

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Agreement and the Schedules. Statements of Work are not intended, and shall not be used by Genpact or Wachovia, to re-negotiate or otherwise change terms and conditions that have been negotiated and set forth in this Agreement and the Schedules, except in very limited or special circumstances where facts exist that are not specifically addressed in this Agreement or the Schedules or where this Agreement has expressly reserved such matters to the Statement of Work.

- (b) **Statement of Work/Pricing.** The pricing methodology, including FTE rates for personnel performing Services, for Statements of Work is specified in **Schedule O**. Genpact may propose lower FTE rates in respect of any Statement of Work. Genpact may also propose transactional pricing or fixed pricing for new Statements of Work or amendments to Statements of Work. At Wachovia's request at any time from or after twelve (12) months (or, if specified in the applicable Statement of Work, eighteen (18) months) after the Full Production Date, Genpact shall propose transactional pricing in respect of any Statement of Work. In all such instances, the transaction pricing or fixed price proposed by Genpact shall be no less favorable to Wachovia than the price obtained by applying the pricing methodology specified in **Schedule O** to such Statement of Work. Wachovia also may request Services using the FTE rates specified in **Schedule O** for ad hoc time and materials projects from time to time. Each such ad hoc project shall be set forth in a Statement of Work.
- (c) **Statement of Work Proposals.** Genpact shall scope, price and perform Services under a Statement of Work in accordance with the following Statement of Work formation process and implementation methodology. Before beginning work under any Statement of Work, the Parties must follow the Statement of Work formation process set forth in this **Section 4.2(c)**. Services performed without a Statement of Work signed by the Parties shall be at Genpact's sole expense. The Statement of Work formation process (including formation of amendments to existing Statements of Work) shall be as follows:
- (i) **Due Diligence.** Wachovia shall reasonably cooperate with Genpact's requests for relevant information and access in connection with Genpact's reasonable due diligence activities relating to each Statement of Work. To the extent such due diligence requests are granted by Wachovia, Genpact shall carefully review Wachovia's requirements and perform all due diligence it deems necessary prior to execution of each Statement of Work.
  - (ii) **Joint Activity.** Formation of Statements of Work shall be a joint activity, led by the Wachovia manager responsible for the process or service that is the subject of the proposed Statement of Work.
  - (iii) **Content.** Each Statement of Work shall be substantially in the form set forth in **Schedule B** (except to the extent any elements of **Schedule B** are excluded from the scope of that Statement of Work) and shall include a Transition Plan if applicable.
  - (iv) **Statement of Work and Transition Plan.** Genpact shall develop a draft Statement of Work (or an amendment to an existing Statement of Work), including, if applicable, a Transition Plan, for Wachovia's review, as soon as possible after Wachovia's request therefor. Genpact shall make any amendments requested by Wachovia and agreed to by the Parties. The Statement of Work or amendment to existing Statement of Work shall become effective only when signed by the Parties.
  - (v) **Performance.** After the Statement of Work or amendment has been signed by the Parties, Genpact shall begin to perform the Services in accordance with the Statement of Work or amended Statement of Work on the SOW Commencement Date.

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- (d) **Statement of Work Proposal Costs.** The hours expended by Genpact in performing the due diligence contemplated by **Section 4.2(c)(i)** and preparing Statements of Work, Statement of Work amendments, or other proposals or plans or reporting on the status of the

development of such Statements of Work shall not be charged to Wachovia unless otherwise agreed by the Parties.

(e) **Additional Work or Reprioritization.**

- (i) In addition to the foregoing, the Wachovia Project Executive or his or her designee may identify new or additional work activities to be performed by Genpact Personnel or reprioritize or reset the schedule for existing work activities to be performed by Genpact Personnel. Unless otherwise agreed, Wachovia shall incur no additional charges for the performance of such work activities performed by Genpact Personnel to the extent such work activities can be performed with the same level of FTE support as set forth in the applicable Statement of Work. If and to the extent such work activities cannot be performed with the same level of FTE support as set forth in the applicable Statement of Work, Genpact shall notify Wachovia thereof and Wachovia may either (A) forego such new or additional work activities or (B) address the cost of the additional FTE support required.
- (ii) Genpact shall use commercially reasonable efforts to perform such work activities without impacting (A) the established schedule for other tasks or (B) the performance of the Services in accordance with the Service Levels. If any such request is likely to have any such impact, Genpact shall notify Wachovia of the anticipated impact and obtain its consent prior to proceeding with such work activities. If Genpact so notifies Wachovia of such impact, Wachovia may, in its sole discretion, either (1) forego or delay such new or additional work activities or (2) adjust the work to be performed by Genpact, the schedules associated therewith or the Service Levels in order to permit Genpact to perform such new or additional work activities without impacting the established schedule for other tasks or the performance of the Services in accordance with the Service Levels. Genpact shall not make changes to any such Statement of Work that may affect the projected cost to Wachovia or the schedule for completion of the activities and deliverables under such Statement of Work without obtaining Wachovia's prior approval.

4.3 [RESERVED].

4.4 **Transition Services.**

- (a) **Methodology.** Except to the extent otherwise agreed in any Statement of Work, the Parties shall use Genpact's transition methodology described in Schedule C, supplemented by Wachovia's then-current Corporate Readiness Assessment Program, for Transition Services required under a Statement of Work and the Charges for Transition Services shall conform to the pricing methodology for Transition Services set forth in Schedule O. In the event that the Parties agree in a Statement of Work that Genpact's transition methodology shall not be used for Transition Services under such Statement of Work, the Parties shall still use Wachovia's then-current Corporate Readiness Assessment Program for such Transition Services.
- (b) **Transition.** During the Transition Period set forth in any Statement of Work, Genpact shall perform the Transition Services and provide the deliverables described in the Transition Plan set forth in such Statement of Work. During the Transition Period, Wachovia shall perform those tasks which are designated to be Wachovia's responsibility in the Transition Plan. Unless otherwise agreed, Wachovia shall not incur any charges, fees or expenses payable to Genpact or third parties in connection with the Transition Services, other than those charges, fees and expenses specified in this Agreement, Schedule O or the applicable Statement of Work and those

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incurred by Wachovia in connection with its performance of tasks designated in the Transition Plan as Wachovia's responsibility.

- (c) **Performance.** Genpact shall perform the Transition Services described in the Transition Plan pursuant to a Statement of Work in accordance with the schedule and Transition Milestones set forth therein. Genpact shall provide all cooperation and assistance reasonably required or requested by Wachovia in connection with Wachovia's evaluation or testing of the deliverables set forth in the Transition Plan. Genpact shall perform the Transition Services in a manner that will not, except as may be otherwise provided in the Transition Plan, materially (i) disrupt or have an adverse impact on the business or operations of Wachovia or the Eligible Recipients, (ii) degrade the Services then being received by Wachovia or the Eligible Recipients, or (iii) interfere with the ability of Wachovia or the Eligible Recipients to obtain the full benefit of the Services. Prior to performing any Transition Services, Genpact shall discuss with Wachovia all known process-specific material risks and shall not proceed with such activity until Wachovia is reasonably satisfied with the plans with regard to such risks. Genpact shall identify and resolve, with Wachovia's reasonable assistance, any problems that may impede or delay the timely completion of each task in the Transition Plan that is Genpact's responsibility or in Genpact's control and shall use commercially reasonable efforts to assist Wachovia with the resolution of any problems that may impede or delay the timely completion of each task in the Transition Plan that is Wachovia's responsibility or in Wachovia's control.
- (d) **Reports.** Genpact shall meet at least weekly (or at such other intervals as may be set forth in a Statement of Work) with Wachovia to report on its progress in performing its responsibilities and meeting the timetable set forth in the Transition Plan for the applicable Statement of Work. Genpact also shall provide written reports to Wachovia at least weekly (or at such other intervals as may be set forth in a Statement of Work) regarding such matters, and shall provide oral reports more frequently if reasonably requested by Wachovia. Genpact shall promptly notify Wachovia of material delays affecting the timetable set forth in the Transition Plan and shall identify for Wachovia's consideration and approval specific measures to address such delay and mitigate the risks associated therewith.
- (e) **Suspension or Delay of Transition Activities.** Wachovia reserves the right, in its sole discretion and subject to Change Control Procedures (except that the cost shall be allocated as set forth in this Section 4.4(e)), to suspend or delay the performance of any Transition Services. If Wachovia elects to exercise this right and Wachovia's decision is based, at least in material part, on reasonable concerns about Genpact's ability to perform the Services under the applicable Statement of Work or Genpact's failure to perform its obligations under this Agreement,

Wachovia shall not incur any additional Charges or reimbursable expenses in connection with such decision. If Wachovia's decision is not based in material part on reasonable concerns about Genpact's ability to perform the Services under the applicable Statement of Work or Genpact's failure to perform its obligations under this Agreement, Wachovia shall reimburse Genpact for any additional costs reasonably incurred by Genpact as a result of such decision, but only to the extent Genpact notifies Wachovia in advance of such costs that are reasonably foreseeable, obtains Wachovia's approval prior to incurring any additional costs and uses commercially reasonable efforts to minimize such costs.

(f) **Failure to Meet Transition Milestones.**

- (i) The Parties acknowledge and agree that each Transition Plan shall specify various Transition Milestones by which material transition activities and/or deliverables must be completed. If Genpact fails to meet a Transition Milestone, which failure is not excused as described in **Section 7.1(e)(ii)**, Genpact shall pay Wachovia the Deliverable Credit(s), if any, specified in the Transition Plan for such Transition Milestone.

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- (ii) Neither the Transition Services nor the activities and deliverables associated with individual Transition Milestones shall be deemed complete until Wachovia's acceptance of such activities and deliverables in accordance with the acceptance criteria set forth in the Transition Plan.
- (iii) In addition to any Deliverable Credit provided pursuant to this **Section 4.4(f)**, if Genpact fails to meet the date specified for any Transition Milestone (subject to **Section 7.1(e)(ii)**), Genpact shall not be entitled to any incremental compensation for work associated with such Transition Milestone beyond that which Genpact would have received if it had met such date.

**4.5 Eligible Recipient Services.**

- (a) **Eligible Recipients.** Genpact shall provide the Services to Eligible Recipients designated by Wachovia. To the extent a designated Eligible Recipient will receive less than all of the Services, Wachovia shall identify the categories of Services to be provided by Genpact to such Eligible Recipient in the applicable Statement of Work.
- (b) **New Eligible Recipients.** From time to time Wachovia may request that Genpact provide Services to Eligible Recipients not previously receiving such Services under a Statement of Work. Such Services shall be performed in accordance with the terms, conditions and prices (excluding any non-recurring transition or start-up activities specific to such Eligible Recipients) then applicable to the provision of the same Services to existing Eligible Recipients under the applicable Statement of Work. The Parties shall agree upon the cost of any such non-recurring transition or start-up activities pursuant to the Change Control Procedures.
- (c) **Merger or Acquisition.** If Wachovia signs a definitive agreement to execute a merger or acquisition, Genpact shall provide commercially reasonable support for such merger or acquisition subject to and in accordance with the following provisions:
- (i) Wachovia shall give Genpact notice of a merger or acquisition for which Wachovia desires support from Genpact as soon as practicable after the announcement of such merger or acquisition.
- (ii) If Wachovia requests Genpact's support for a merger or acquisition, Genpact shall comply with the requirements of Wachovia's merger and acquisitions project management office, including the timeline for all merger and acquisition related activities and projects.

In the event that Wachovia or a Wachovia Affiliate merges with or acquires an Entity that has an existing agreement with Genpact or a Genpact Affiliate, Wachovia may, at its option upon notice to Genpact, require Genpact to (A) continue to provide the services then being provided to such Entity under such existing agreement under the terms and conditions of such existing agreement or (B) provide such services under the terms and conditions of this Agreement. In addition, Wachovia may designate such Entity as a Eligible Recipient under this Agreement for other Services. If Wachovia requires Genpact to provide the services then being provided to such Entity under such existing agreement under the terms and conditions of this Agreement and such existing agreement contemplates the payment of costs or fees in connection with an early termination of such existing agreement, then Wachovia shall pay Genpact all actual, unrecoverable Stranded Costs under such existing agreement (as such term is defined in such agreement) plus all actual transition costs incurred by Genpact in connection with the transition of the services being performed under such existing services to this Agreement and Genpact shall waive any portion of termination fees payable under such existing agreement relating to lost profits. In addition, in no

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event shall the term of any executory statement of work under the existing contract be reduced as a result of such transition and the Executive Committee shall resolve any issues concerning any pricing differential between such existing agreement and this Agreement.

- (d) **Divestiture.** In the event Wachovia divests an Eligible Recipient, Wachovia may elect, on behalf of the Eligible Recipient in question, that for a period (i) no greater than twelve (12) months, such Eligible Recipient shall continue to obtain the Services, or a portion of the Services specified by Wachovia, subject to and in accordance with the terms and conditions of this Agreement and the applicable Statement of Work or (ii) to be agreed upon by Genpact and the Entity executing such separate agreement, such Eligible Recipient shall obtain some or all of the Services under a separate agreement between Genpact and an Entity containing substantially similar terms and conditions as this Agreement. Alternatively, Wachovia may remove such Eligible Recipient from the Eligible Recipients receiving Services under the applicable Statement of Work as of a date specified by Wachovia and, at Wachovia's option, request Termination Assistance Services pursuant to Section 26.1 for such Eligible Recipient. If the Services are provided under a separate agreement, the Entity executing such agreement shall be financially responsible for Charges for such Services if on the date of execution such Entity would be deemed "creditworthy" under the Genpact rating system for new customers as consistently applied and Wachovia shall have no obligation to pay any fees in relation to the Services provided to such Entity. If the Entity would not be deemed creditworthy under such rating system and Wachovia is unwilling to remain financially responsible for Charges for Services to be provided under a separate agreement, Genpact may decline to enter into such an agreement with such Entity. Services provided under such separate agreement shall be included in the calculation of Service volumes, if any, under this Agreement, but shall be excluded when determining any Termination Charges that may be payable under this Agreement as a result of termination for convenience of the applicable Statement of Work.

#### 4.6 Use of Third Parties.

(a) **Right of Use.**

- (i) As of the Effective Date Wachovia intends to largely use Genpact for its offshore business process outsourcing during the Term. However, nothing in this Agreement shall be construed as a requirements or "take-or-pay" contract, and Wachovia makes [[\*\*\*]] under this Agreement. During the Term, Wachovia shall provide Genpact an opportunity to bid on any business processes considered by Wachovia for offshore outsourcing after the Effective Date.
- (ii) Nothing in this Agreement shall be construed or interpreted as limiting Wachovia's right or ability to add or delete Eligible Recipients or to increase or decrease its demand for Services. Notwithstanding anything to the contrary contained herein, but subject to Section 25.3, this Agreement shall not be interpreted to prevent Wachovia or any Eligible Recipient from obtaining from third parties ("**Wachovia Third Party Contractors**"), or providing to itself, any or all of the Services described in this Agreement or any Statement of Work or any other services. To the extent Wachovia or an Eligible Recipient obtains from Wachovia Third Party Contractors, or provides to itself, any of the Services, the amount to be paid to Genpact by Wachovia shall be equitably adjusted downward based on the resource Charges set forth in Schedule O and in the applicable Statement of Work. Similarly, to the extent Wachovia adds or deletes Eligible Recipients or increases or decreases its demand for Services, the amount to be paid to Genpact by Wachovia shall be adjusted in accordance with Schedule O and the rates specified therein.

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- (b) **Genpact Cooperation.** Genpact shall fully cooperate with and work in good faith with Wachovia or Wachovia Third Party Contractors as requested by Wachovia. In connection with such cooperation, (i) Wachovia personnel and Wachovia Third Party Contractors shall comply with Genpact's reasonable security requirements and (ii) Wachovia shall cause any Wachovia Third Party Competitor who will have access to Proprietary Information of Genpact to sign a confidentiality agreement in the form contained in Exhibit 1. Genpact shall not be required to disclose Genpact's Proprietary Information to any Wachovia Third Party Contractor that is a Genpact Competitor but only if Genpact proposes, in a timely manner, an alternative arrangement (at no cost to Wachovia or such Wachovia Third Party Contractor) that will not disrupt the provision of Services to Wachovia or the provision of services by such Wachovia Third Party Contractor to Wachovia (such as by replacing a proprietary Genpact tool with a third party tool, at no charge to Wachovia or such Wachovia Third Party Contractor).

#### 4.7 Notice of Adverse Impact.

- (a) **Genpact Failures.** If Genpact becomes aware of any situation (including any act or omission of Genpact, Wachovia, the Eligible Recipients or Wachovia Third Party Contractors) (i) that has negatively impacted or reasonably could negatively impact the maintenance of Wachovia's or any Eligible Recipient's financial integrity or internal controls, the accuracy of Wachovia's or any Eligible Recipient's financial, accounting, production quality or human resources records and reports or compliance with Wachovia Rules, Wachovia Standards or applicable Laws, or (ii) that has had or reasonably could have any other material adverse impact on the Services, then Genpact shall promptly notify Wachovia of such situation and the impact or expected impact and, if appropriate, Genpact and Wachovia shall meet to formulate and implement an action plan to minimize or eliminate the impact of such situation.
- (b) **Wachovia Failures.** If Wachovia or any Eligible Recipient becomes aware of any act or omission of Wachovia, the Eligible Recipients or Wachovia Third Party Contractors that (i) that has negatively impacted or reasonably could negatively impact Genpact's ability to perform the Services, or (ii) that has had or reasonably could have any other material adverse impact on Genpact's ability to perform the Services, then Wachovia shall promptly notify Genpact of such act or omission.

#### 4.8 Key Wachovia Competitors.

During the Term, Genpact shall not provide any services to any Key Wachovia Competitor unless approved by Wachovia in advance in its sole discretion. The foregoing sentence shall not apply to finance and accounting services, human resource outsourcing services, information technology or software services, or collection services or any data analysis associated with such services, in each case provided by Genpact on a shared service basis during the Term. Genpact represents to Wachovia that as of the Effective Date Genpact does not provide any services to any Key Wachovia Competitor other than as permitted by the second sentence of this Section 4.8.

## 5. CONSENTS

### 5.1 Genpact Consents.

Genpact shall, at its own expense, (a) obtain and maintain the Genpact Consents and (b) comply with the Wachovia Consents, the terms of which Wachovia has given Genpact notice.

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### 5.2 Wachovia Consents.

Wachovia shall, at its own expense, (a) obtain and maintain the Wachovia Consents and (b) comply with the Genpact Consents, the terms of which Genpact has given Wachovia notice of in connection with the negotiation or amendment of the applicable Statement of Work.

### 5.3 Contingent Arrangements.

- (a) **Wachovia-licensed Third Party Software.** If, despite using commercially reasonable efforts, Wachovia is unable to obtain a Wachovia Consent with respect to Wachovia-licensed Third Party Software, the Parties shall, at Wachovia's option and expense and with Wachovia's consent, (i) replace the Wachovia license for such Third Party Software with a Genpact license, (ii) replace such Third Party Software with other Software offering equivalent features and functionality, or (iii) secure the right for Genpact to manage the Wachovia-licensed Third Party Software on behalf of Wachovia.
- (b) **Other Third Party Contracts of Wachovia.** If, despite using commercially reasonable efforts, Wachovia is unable to obtain a Wachovia Consent with respect to any other Third Party Contract of Wachovia, then, unless and until such Wachovia Consent is obtained and subject to any restrictions in such Third Party Contract, Genpact shall manage such Third Party Contract on Wachovia's behalf and at Wachovia's expense and perform all obligations and enforce all rights under such Third Party Contract as if Genpact were a party to such Third Party Contract in Wachovia's place. If, despite using commercially reasonable efforts, management of such Third Party Contract is not legally or contractually possible, the Parties shall use commercially reasonable efforts to determine and adopt such alternative approaches as are necessary and sufficient to provide the Services without such Wachovia Consent. If such alternative approaches are required for a period longer than sixty (60) days following the applicable SOW Commencement Date and no reasonable workaround is available, the Parties shall equitably adjust the applicable terms in the applicable Statement of Work accordingly.
- (c) **Other Consents.** If, despite using commercially reasonable efforts, either Party is unable to obtain any other Consent for which it is responsible (other than those described in Sections 5.3(a) and (b)), the Parties shall use commercially reasonable efforts to determine and adopt such alternative approaches as are necessary and sufficient to provide the Services without such Consent. If such alternative approaches are required for a period longer than sixty (60) days following the applicable SOW Commencement Date and no reasonable workaround is available, the Parties will equitably adjust the applicable terms, including the Charges, in the applicable Statement of Work accordingly.
- (d) **Genpact Consents.** In addition, if Genpact fails to obtain any Genpact Consent within sixty (60) days after the SOW Commencement Date and such failure has a material adverse impact on the use of the Services by Wachovia or the Eligible Recipients, and no reasonable workaround is available, then within six (6) months after the SOW Commencement Date Wachovia may terminate, pursuant to Section 25.2(a)(ii), any affected portions of the relevant Statement of Work without payment of any Stranded Costs or Termination Charges.
- (e) **Genpact Obligation to Perform.** Except as otherwise expressly provided herein, the failure to obtain any Genpact Consent shall not relieve Genpact of its obligations under this Agreement and Genpact shall not be entitled to any additional compensation or reimbursement amounts in connection with obtaining or failing to obtain any Genpact Consent or implementing any alternative approach.

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## 6. INFRASTRUCTURE FOR THE PROVISION OF THE SERVICES

## 6.1 Service Facilities.

Genpact and its Subcontractors shall provide the Services at or from (a) the Wachovia Sites or the Wachovia Facilities described in the applicable Statement of Work, (b) the Genpact Facilities described in the applicable Statement of Work, or (c) any other service location agreed upon by the Parties. Genpact shall obtain Wachovia's prior approval for any proposed relocation by Genpact or its Subcontractors of the performance of the Services or any part thereof to a new or different Genpact Facility or among Genpact Facilities. Genpact shall be financially responsible for all additional costs, taxes or expenses related to or resulting from any Genpact-initiated relocation to a new or different Genpact Facility, including any costs or expenses incurred or experienced by Wachovia or any Eligible Recipient as a result of such relocation unless the Parties agree that Wachovia shall have an identified benefit due to such relocation that offsets such costs and expenses.

## 6.2 Physically Segregated Facilities.

Genpact shall provide Services to Wachovia either from dedicated, access-controlled floors, or dedicated, access-controlled areas of a floor, of a Genpact Facility or from one or more separate buildings dedicated to Wachovia, except in the event of a force majeure event implementation of the applicable Genpact Internal Enabling Functions Plan or Disaster Recovery Plan requires Services to be provided from non-dedicated facilities approved by Wachovia in advance.

- (a) **First Dedicated Genpact Facilities.** Genpact shall provide Services to Wachovia from a separate building dedicated to Wachovia by the point in time that there are five hundred (500) FTEs on the Wachovia account. Pending due diligence and review by the Parties, the Parties intend that such building shall be located either in Gurgaon, India or in Hyderabad, India.
- (b) **Second Dedicated Genpact Facility.** By the point in time that there are one thousand (1,000) FTEs on the Wachovia account, Genpact shall provide Services to Wachovia from a second separate building dedicated to Wachovia. The site of the second dedicated building will be mutually agreed upon by the Parties.

## 6.3 Wachovia Infrastructure Standards.

All Genpact Facilities, and the technology in such Genpact Facilities and security at such Genpact Facilities, shall comply with Wachovia Standards in accordance with the following provisions:

- (a) **Shared Genpact Facilities.** To the extent that Genpact provides Services from a Genpact Facility from which it provides services to other customers or which it shares with a third party, Genpact shall engineer premises individual floors or access-controlled areas of a floor dedicated for the provision of Services to Wachovia that meet Wachovia Standards (but not including structural engineering changes to the existing building). The technology in, and the security applicable to, such dedicated premises floors or areas of a floor within such shared Genpact Facility shall comply with Wachovia Standards and Wachovia shall bear the actual, documented and approved incremental expenses for such compliance.
- (b) **Newly Constructed Genpact Facilities.** In the event Genpact builds any newly-constructed Genpact Facility that will be dedicated for the provision of Services to Wachovia, such Genpact Facility shall be built in accordance with Wachovia Standards or, if higher, applicable Law. If Genpact believes that compliance to Wachovia Standards will result in incremental costs above those that Genpact would incur using Genpact's normal standards or, if higher than Genpact's normal standards, applicable Law, then prior to incurring such costs Genpact shall notify Wachovia and document and report to Wachovia the incremental costs above the higher of Genpact's normal standards or applicable Law. For each such incremental cost, Wachovia shall either waive the requirement for Genpact to comply with Wachovia Standards or instruct Genpact

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to comply with Wachovia Standards and Wachovia shall bear the actual, documented and approved incremental expenses for such compliance.

## 6.4 Equipment.

- (a) **Allocation of Responsibility.** Exhibit C to Schedule D sets forth the allocation of responsibility (including financial responsibility) for the design, ownership, installation, maintenance, oversight, monitoring and management of all Equipment used to provide Services. Wachovia retains the right to change the allocation of responsibility set forth in Exhibit C to Schedule D. In the event Wachovia exercises such right, the Parties shall make appropriate adjustments to Exhibit C to Schedule D and the applicable Genpact Internal Enabling Functions Plan and Disaster Recovery Plans and, unless such modifications are required by applicable Law, the Parties shall agree upon the cost of any such changes pursuant to the Change Control Procedures.
- (b) **Compliance with Wachovia Standards.**
  - (i) Genpact shall use Wachovia's then-current "Common Operating Environment Image" for all Equipment used by Genpact to provide Services hereunder.
  - (ii) Any Equipment (and all Software installed thereon) provided or used by Genpact or Genpact Personnel (including Equipment connected directly to the network(s) of Wachovia or any Eligible Recipient or to transport Services to Wachovia or any Eligible

Recipient) shall be (A) subject to review and approval in advance by Wachovia (Genpact shall cooperate with Wachovia in the testing, evaluation and approval of such Equipment), (B) in compliance with Wachovia's security policies, architectures, standards, rules and procedures (including the security requirements set forth in **Schedule F**) in effect as of the applicable SOW Commencement Date and as modified by Wachovia thereafter and (C) in compliance with Wachovia's hardware and software specifications in effect as of the applicable SOW Commencement Date and as modified by Wachovia thereafter. Subject to **Section 19.5**, the Parties shall address any incremental costs incurred by Genpact complying with such modifications in accordance with the Change Control Procedures. Genpact shall not install or permit the installation of any other Software on such Equipment without Wachovia's prior approval.

- (c) **Equipment Implementation, Maintenance and Refresh.** Genpact shall implement Equipment located at Genpact Facilities required to support Services under each new Statement of Work. Genpact shall maintain Equipment located at Genpact Facilities in good operating condition, subject to normal wear and tear. Genpact shall refresh all Equipment located at Genpact Facilities as set forth in **Exhibit B to Schedule D**.
- (d) **Acquired Assets.** If a Statement of Work contemplates that Wachovia shall convey to Genpact, and Genpact shall accept Wachovia's conveyance of, Acquired Assets, the Parties shall include the terms and conditions of such conveyance or assignment or both, as applicable, in such Statement of Work.
- (e) **Wachovia Provided Equipment.** If and to the extent contemplated by this Agreement or the applicable Statement of Work, Wachovia shall provide Genpact with the use of the Wachovia owned and/or leased Equipment (collectively, the "**Wachovia Provided Equipment**") for the periods specified in such Statement of Work solely for, and in connection with, the provision of the Services. Wachovia shall be responsible for the fees or expenses associated with such Wachovia Provided Equipment unless and to the extent otherwise set forth in such Statement of Work. Upon the expiration of the period specified in the applicable Statement of Work, for each item of Wachovia Provided Equipment (or when such Wachovia Provided Equipment is no longer

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required by Genpact for the performance of the Services), Genpact shall promptly return such Wachovia Provided Equipment to Wachovia in substantially the same condition (as it may have been modified or improved by Genpact as required by the applicable Statement of Work or with Wachovia's approval) as when such Wachovia Provided Equipment was first provided to Genpact, subject to reasonable wear and tear.

## 6.5 Network and Telephony Solution.

- (a) **Network.** **Exhibit A to Schedule D** sets forth the high-level architecture of the networks that Genpact will use to provide Services to Wachovia. Wachovia retains the right to change the architecture of the networks that Genpact will use to provide the Services. In the event Wachovia exercises such right, the Parties shall make appropriate adjustments to **Exhibit A to Schedule D** and the applicable Genpact Internal Enabling Functions Plan and Disaster Recovery Plans and, subject to **Section 19.5**, the Parties shall agree upon the cost of any such changes pursuant to the Change Control Procedures.
- (b) **Telephony Solution.** Genpact shall provide telephony solutions in compliance with Wachovia's business and security requirements. Genpact shall enable proper options for controlling call logging as approved by Wachovia.
- (c) **Security Breaches.** Genpact shall promptly investigate any security breach of Wachovia's networks or Systems associated with Genpact Personnel or the performance of the Services. Genpact shall notify Wachovia and permit Wachovia to participate in any audit or investigation of any such security breach. Genpact shall promptly report the findings of any such audit or investigation to Wachovia and shall provide Wachovia with a copy of any written report prepared in connection therewith.

## 6.6 Software.

- (a) **Software Implementation and Refresh.** Genpact shall implement new or changed Software, tools and methodologies on Equipment located at Genpact Facilities as required to support Services under each new Statement of Work. Genpact shall refresh such Software as set forth in **Exhibit C to Schedule D**.
- (b) **Currency of Genpact Owned Software.** Subject to, and in accordance with **Sections 6.6(d), 9.5 and 9.6**, Genpact shall maintain reasonable currency for Genpact Owned Software and shall provide maintenance and support for new releases and versions of such Software. At Wachovia's direction, Genpact shall operate multiple releases or versions of Genpact Owned Software and shall continue to maintain and support each such release or version and the Parties shall address any incremental costs incurred by Genpact complying with such direction in accordance with the Change Control Procedures. For purposes of this **Section 6.6(b)**, "**reasonable currency**" shall mean that, unless otherwise directed by Wachovia, (i) Genpact shall maintain Genpact Owned Software within one Major Release of the then current Major Release, and (ii) Genpact shall install Minor Releases promptly.
- (c) **Currency of Third Party Software.** Subject to and in accordance with **Sections 6.6(d), 9.5 and 9.6**, Genpact shall maintain reasonable currency for Third Party Software for which it is financially responsible under this Agreement and provide maintenance and support for new releases and versions of Third Party Software for which it is operationally responsible. At Wachovia's direction, Genpact shall operate multiple releases or versions of Third Party Software and the Parties shall address any incremental costs incurred by Genpact complying



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the appropriate third party vendor. For purposes of this **Section 6.6(c)**, “reasonable currency” shall mean that, unless otherwise directed by Wachovia, (i) Genpact shall maintain Third Party Software within one Major Release of the then current Major Release, and (ii) Genpact shall install Minor Releases promptly, and the Parties shall address any incremental costs incurred by Genpact complying with such direction in accordance with the Change Control Procedures. To the extent Third Party Software for which Genpact is operationally responsible under any Statement of Work is no longer supported by the applicable licensor or manufacturer, Genpact shall use commercially reasonable efforts to perform maintenance for such Software as required.

- (d) **Evaluation and Testing.** Prior to implementing any new Software or installing a new Major Release or Minor Release, Genpact shall evaluate and test such Software or release to verify that it will perform in accordance with this Agreement, the Wachovia Standards and Strategic Plans and the applicable Statement of Work and that it will not (i) increase Wachovia’s total cost of receiving the Services, (ii) have an adverse impact on the Services, or (iii) violate or be inconsistent with Wachovia Standards, Strategic Plans, the applicable Technology and Business Process Plan or applicable Laws. The evaluation and testing performed by Genpact shall be at least consistent with the reasonable and accepted industry norms applicable to the performance of such Services and shall be at least as rigorous and comprehensive as the evaluation and testing usually performed by highly-qualified service providers under such circumstances.
- (e) **Approval by Wachovia.** Notwithstanding **Section 6.6(b)** or **(c)**, Genpact shall confer with Wachovia prior to implementing any new Software or installing any Major Release or Minor Release, shall provide Wachovia with the results of its testing and evaluation of such Release and a detailed implementation plan and shall not install such Release if directed not to do so by Wachovia. Where specified by Wachovia, Genpact shall not implement any new Software, install any Software releases or make other Software changes until Wachovia has completed and provided formal signoff on successful user acceptance testing. Genpact shall not implement new Software, install new Software releases or make other Software changes if doing so would require Wachovia or the Eligible Recipients to implement new Software or install new releases of, replace, or make other changes to Applications Software or other Software for which Wachovia is financially responsible unless Wachovia consents to such change.
- (f) **Updates by Wachovia.** Wachovia and the Eligible Recipients shall have the right, but not the obligation, to install new releases of, replace, or make other changes to Applications Software or other Software for which Wachovia is financially responsible under this Agreement and the Parties shall address any incremental costs incurred by Genpact complying with such direction in accordance with the Change Control Procedures.

## 6.7 Wachovia Processes.

In connection with the management of the infrastructure used by Genpact to provide the Services and problem analysis pursuant to **Section 7.3**, Genpact shall adopt, comply with and support (a) the Wachovia Change Management policies, (b) the Wachovia Problem Management policies, (c) the Wachovia Incident Management policies, (d) the Wachovia Service Level Management policy and (e) the Wachovia Corporate Information Standards, as modified from time to time by Wachovia’s IT Standards Board and provided to Genpact. Subject to **Section 19.5**, the Parties shall address any incremental costs incurred by Genpact complying with changes in such processes and standards after the applicable SOW Commencement Date direction in accordance with the Change Control Procedures.

## 6.8 Use of Genpact Facilities.

- (a) **Access.** For the conduct of Wachovia’s business in connection with the Services, Genpact shall provide to Wachovia at no charge (i) reasonable access to and use of Genpact Facilities and (ii)

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access to reasonable work/conference space at Genpact Facilities. At Wachovia’s request and subject to Genpact’s reasonable security requirements and, in respect of Wachovia Third Party Contractors, Genpact’s reasonable confidentiality requirements, Genpact shall provide reasonable access to and use of such Genpact Facilities by Wachovia or Wachovia Third Party Contractors to install and manage third party software and equipment in connection with the Services.

- (b) **Co-location of Wachovia Employees.** Subject to Genpact’s reasonable security requirements, Wachovia shall have the right to co-locate employees of Wachovia or a Wachovia Affiliate at any Genpact Facility used in connection with the Services; provided that the Parties shall agree on any facility charge in connection with such location. Genpact shall provide all country- and site-specific administrative services to

support such co-located employees. If requested by Wachovia, Genpact shall provide dedicated space to such employees performing Wachovia-managed processes.

## 6.9 Use of Wachovia Facilities.

If a Statement of Work contemplates that employees of Wachovia shall provide Genpact with the use of and access to the Wachovia Facilities, Wachovia's then-standard terms and conditions for third party supplier use of such facilities shall apply. When using the Wachovia Facilities and when at other Wachovia Sites, Genpact shall observe and comply with all Wachovia policies, rules, and regulations applicable to such Wachovia Sites that have been communicated to Genpact or Genpact Personnel in advance by such means as are generally used by Wachovia to disseminate such information to its employees or contractors, including those set forth on **Schedule G** and those applicable to specific Wachovia Sites (collectively, "**Wachovia Rules**"), including those with respect to safety, health, security, and the environment.

## 6.10 Assignment of Licenses, Leases and Related Agreements.

If a Statement of Work contemplates that Wachovia shall assign to Genpact, and Genpact shall assume assignment of, particular Software licenses, Equipment leases or Third Party Contracts, or both, the Parties shall include the terms and conditions of such conveyance or assignment or both, as applicable, in such Statement of Work.

## 6.11 Notice of Defaults.

Wachovia and Genpact shall promptly notify the other Party of any breach of, or misuse or fraud in connection with, any Third Party Contract, Equipment lease or Third Party Software license used in connection with the Services of which it becomes aware and shall cooperate with the other Party to prevent or stay any such breach, misuse or fraud.

## 6.12 Wachovia-Specific Policies and Other Requirements.

The obligation of Genpact to adhere to, or otherwise comply with, the policies, procedures, standards, plans and other specific requirements of Wachovia or any Eligible Recipient set forth in **Sections 4.4(a), 6.4(b), 6.5(b), 6.6(d), 6.7, 9.1(c), (d) and (e), 9.4(a), 9.5(b), 9.9(a), 9.10(a), 10.1(b), 13.1(b), 15.2(a) and (c), and 15.3(a)** or in any Statement of Work, shall be contingent on the timely receipt of such information including any training, updates or modifications. Except to the extent that the applicable Section provides a specific time, Genpact shall adhere to, or otherwise comply with, such policies, procedures, standards, plans or other specific requirements within a reasonable time after receipt of such information.

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## 7. SERVICE LEVELS

### 7.1 General.

- (a) **General Performance Standards.** Beginning on the SOW Commencement Date (or, if later, the date on which Genpact assumes responsibility for the Services in question in accordance with the applicable Transition Plan), Genpact shall perform each Service under a Statement of Work [[[\*\*\*]]] In each case, Genpact shall do so subject to, and as and to the extent permitted by, the limitations of the agreed upon service delivery solution. To the extent the Parties have established a Service Level for a specific Service in the applicable Statement of Work, the obligations described in this **Section 7.1(a)** shall not be construed to alter, expand or supersede such Service Level.
- (b) **Service Level Performance Standards.** Beginning on the SOW Commencement Date (or, if later, the date on which Genpact assumes responsibility for the Services in question in accordance with the applicable Transition Plan), Genpact shall perform the Services so as to meet or exceed the Service Levels set forth in **Exhibit F to Schedule B** (Service Levels Matrix) of the applicable Statement of Work. Unless otherwise set forth in **Exhibit F to Schedule B** to the applicable Statement of Work, each Service Level shall consist of an expected level (an "**Expected Service Level**") and a minimum level (a "**Minimum Service Level**"). The Parties agree that the expected level for each Service Level [[[\*\*\*]]] If such levels are not documented and other suitable metrics (such as accepted industry standards of leading providers of such business process outsourcing services) do not exist and the Parties cannot agree on such metrics, the Parties shall utilize a mutually agreeable service level determination methodology to establish such metrics, during which period of time no Service Level Credits shall apply. Each Service Level shall be either a Service Level for which Service Level Credits are specified (a "**Critical Service Level**") or a Service Level for which no Service Level Credits are specified (a "**Key Measurement**").
- (c) **Weighting and At Risk Amount.**
  - (i) Service Level Credits will be allocated among the Critical Service Levels using a multiplier of the At Risk Amount of [[[\*\*\*]]] ("**Pool Percentage Available for Allocation**"). Wachovia may from time to time, but no more frequently than twice in any Contract Year, reallocate the Service Level Credit percentages assigned to the Critical Service Levels by giving Genpact at least sixty (60) days' notice of such reallocation.
  - (ii) The aggregate monthly amount payable for Service Level Credits under any Statement of Work will not exceed [[[\*\*\*]]] of the monthly Charges payable to Genpact for that month ("**At Risk Amount**") and no individual Critical Service Level shall be weighted such that more than [[[\*\*\*]]] of such monthly Charges.

- (d) **Service Level Default.** Any failure to meet the minimum specified level of any Service Level shall be a Service Level Default. In addition, a number of failures (specified in the applicable Statement of Work or, if not specified in such Statement of Work, specified in the definition of Expected Service Level Default) to meet any Expected Service Level shall be considered a Service Level Default.
- (e) **Responsibility.**
- (i) Genpact shall be responsible for meeting or exceeding the applicable Service Levels even where doing so is dependent on the provision of Services by Subcontractors or Managed Third Parties, except as otherwise provided in the applicable Statement of Work.
- (ii) Genpact acknowledges and agrees that (A) the circumstances described in **Section 11.2(b)** or (B) a force majeure event are the only circumstances in which its

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failure to perform its responsibilities under this Agreement or any Statement of Work or to meet the Service Levels will be excused.

## 7.2 Service Level Credits, Earnback and Deliverable Credits.

- (a) **Service Level Credits.** Genpact recognizes that Wachovia is paying Genpact to deliver the Services at specified Service Levels. For each Service Level Default, in addition to other remedies available to Wachovia, Genpact shall pay or credit to Wachovia the performance credits specified in the applicable Statement of Work ("**Service Level Credits**") in recognition of the diminished value of the Services resulting from Genpact's failure to meet the agreed upon level of performance, and not as a penalty, calculated as follows:
- (i) **Exhibit F** to **Schedule B** to each Statement of Work sets forth the information required to calculate the Service Level Credits Genpact shall pay to Wachovia (or apply against the Charges) in the event of a Service Level Default. For each Service Level Default, Genpact shall pay to Wachovia a Service Level Credit that will be computed in accordance with the following formula:
- [[[\*\*\*]]]
- (ii) If more than one Service Level Default has occurred in a single month, the sum of the corresponding Service Level Credits shall be credited to Wachovia.
- (iii) In no event shall the aggregate amount of Service Level Credits credited to Wachovia with respect to all Service Level Defaults occurring in a single month exceed, in total, the At Risk Amount for such month.
- (iv) Genpact shall notify Wachovia if Wachovia becomes entitled to a Service Level Credit, which notice shall be included in the standard monthly reporting for Critical Service Levels and Key Measurements and shall describe the Service Level Defaults for the month that is the subject of the monthly Critical Service Level report. The monthly reports shall also describe any failure to meet Key Measurements for the month being reported on.
- (v) The total amount of Service Level Credits that Genpact will be obligated to pay to Wachovia with respect to Service Level Defaults occurring each month (subject to Genpact's earnback rights), shall be reflected on an invoice and credited to Wachovia in accordance with this Agreement.

Under no circumstances shall the imposition of Service Level Credits be construed as Wachovia's sole or exclusive remedy for any failure to meet the Service Levels. However, if Wachovia recovers monetary damages from Genpact as a result of Genpact's failure to meet a Service Level, Genpact shall be entitled to set-off against such damages any Service Level Credits paid for the failure giving rise to such recovery. The express acknowledgment that a certain amount of Service Level Credits or number of Service Level defaults constitutes grounds for termination under **Section 25.1(a)** or **25.2(a)** does not imply that a lesser amount or number cannot constitute a material breach of this Agreement and therefore grounds for termination under other subsections.

- (b) **Earnback.** Genpact shall have Earnback opportunities with respect to each Service Level Credit as follows:
- (i) Within thirty (30) days after the end of each Contract Year, Genpact shall provide a report to Wachovia that will include, with respect to each Critical Service Level for

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which there was a Service Level Default during the preceding Contract Year, the following:

- (A) Statistics on Genpact's average monthly performance in that Critical Service Level during the preceding Contract Year.
  - (B) The total amount of Service Level Credits imposed for Service Level Defaults in that Critical Service Level.
- (ii) If, during the preceding Contract Year, Genpact achieved a Yearly Performance Average in a Critical Service Level that was equal to or greater than the Expected Service Level in effect for such Critical Service Level during the preceding year, Genpact shall be entitled to receive an earnback credit ("**Earnback Credit**") equal to all Service Level Credits assessed during the preceding Contract Year for such Critical Service Level. In no event will:
- (A) the total amount of Earnback Credits for any Contract Year exceed the total amount of Service Level Credits assessed for Service Level Defaults in the applicable Critical Service Levels for that Contract Year; or
  - (B) any Earnback Credit carry forward to subsequent Contract Years or back to previous Contract Years.
- (iii) If the Critical Service Level was in effect for less than the entire Contract Year, the foregoing process shall be undertaken only with respect to the portion of the Contract Year during which the Critical Service Level was in effect. If the Agreement (or any portion thereof) is terminated prior to the end of the Term, the foregoing process shall be undertaken only with respect to the portion of the Contract Year during which the Agreement (or applicable portion thereof) was in effect.
- (iv) The provision for Earnback shall only affect Genpact's right to receive return of Service Level Credits provided to Wachovia and shall have no effect on any other rights or remedies of Wachovia under the Agreement, including rights of termination.
- (c) **Single Incident/Multiple Defaults.** If a single incident results in the failure of Genpact to meet more than one Minimum Service Level, Wachovia shall have the right to select any one of such multiple Minimum Service Level Defaults for which it will be entitled to receive a Service Level Credit. Wachovia shall not be entitled to a Service Level Credit for each of such Minimum Service Level Defaults.
- (d) **Presumptive Service Levels.**
- (i) Certain Service Levels may be identified on **Exhibit F** to **Schedule B** to each Statement of Work as Presumptive Service Levels. Genpact shall begin measuring its performance against such Presumptive Service Levels on the SOW Commencement Date (or, if later, the date on which Genpact assumes responsibility for the Services in question in accordance with the Transition Plan). Genpact shall continue such service measurements for six (6) months. Genpact shall use commercially reasonable efforts to meet the Presumptive Service Levels during the measurement period, but Service Level Credits shall not be assessed for any failure to meet such Presumptive Service Levels during such period.

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- (ii) Notwithstanding the foregoing, if, prior to the SOW Commencement Date (or, if later, the date on which Genpact assumes responsibility for the Services in question in accordance with the Transition Plan), Wachovia provides Genpact with historical measurement data sufficient to verify a requested Service Level, such Service Level shall be final and shall no longer be treated as a Presumptive Service Level.
- (iii) After the level of service has been measured for the specified number of months, Wachovia and Genpact shall review the measurement trends and the levels of service quality that were attained or demonstrated to be attainable during the measurement period and shall set the final Service Level as follows:
  - (A) If the service measurements demonstrate that Genpact has consistently met or is capable of consistently meeting a particular Presumptive Service Level, such Presumptive Service Level shall be established as the final Service Level for such Service.
  - (B) If the service measurements demonstrate that Genpact has consistently exceeded or is capable of consistently exceeding a particular Presumptive Service Level, the Parties shall increase the Service Level accordingly in establishing the final Service Level for such Service.
  - (C) If the service measurements demonstrate that Genpact has consistently and materially failed to meet a particular Presumptive Service Level, the Parties shall review any available service measurements for the twelve (12) months preceding the SOW Commencement Date. If service measurements exist for at least six (6) consecutive months and the available service measurements confirm that Wachovia met or exceeded the Presumptive Service Level, such Presumptive Service Level shall be established as the final Service Level for such Service. Genpact shall then expeditiously take all remedial action necessary to begin meeting the final Service Level.
  - (D) In all other circumstances, if the service measurements demonstrate that Genpact has consistently and materially failed to meet a particular Presumptive Service Level, Genpact shall conduct an analysis to determine: (1) the cause(s) of

Genpact's failure to meet the Presumptive Service Levels; (2) whether it is possible for Genpact, using commercially reasonable efforts, to meet the Presumptive Service Level without making material changes in the Agreement; (3) the Service Level Genpact could meet using commercially reasonable efforts, but without making material changes in the Agreement; and (4) the changes that would have to be made to permit Genpact to meet the higher Presumptive Service Level. If the Parties agree that the analysis demonstrates that the Presumptive Service Level is capable of being met, that Presumptive Service Level shall be established as the final Service Level for such Service. Genpact shall then expeditiously take any remedial action necessary to begin meeting the final Service Level. If the Parties agree that the analysis demonstrates that the failure to meet the Presumptive Service Level is not attributable to Genpact's failure to competently perform its obligations under the Agreement and that it is not possible for Genpact using commercially reasonable efforts, to meet such Presumptive Service Level, Wachovia may, at its option, (aa) set the applicable Service Level for such Service at the highest level the Parties agree that Genpact could meet using commercially reasonable efforts, or (bb) authorize Genpact to make some or all of the changes identified as necessary to meet a higher Service Level.

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- (e) **Deliverable Credits.** Genpact recognizes that Wachovia is paying Genpact to provide certain Critical Deliverables by the time and in the manner agreed by the Parties. If Genpact fails to meet its obligations with respect to such Critical Deliverables, then, in addition to other remedies available to Wachovia, Genpact shall pay or credit to Wachovia the amounts (the "**Deliverable Credits**") specified in the applicable Statement of Work or established by Wachovia as part of the project approval process on a case by case basis in recognition of the diminished value of the Services resulting from Genpact's failure to meet the agreed upon level of performance, and not as penalty. If Wachovia recovers monetary damages from Genpact as a result of Genpact's failure to meet its obligations with respect to one (1) or more Critical Deliverables, Genpact shall be entitled to set-off against such damages any Deliverable Credits paid for the failures giving rise to such recovery.

### 7.3 Problem Analysis.

If Genpact fails to provide Services in accordance with the Service Levels and this Agreement, Genpact shall (after restoring service or otherwise resolving any immediate problem) (a) (i) promptly investigate and report on the causes of the problem; (ii) provide a Root Cause Analysis of such failure as soon as practicable after such failure; (iii) correct the problem as soon as practicable (regardless of cause or fault) or coordinate the correction of the problem if Genpact does not have responsibility for the cause of the problem; and (iv) advise Wachovia of the status of remedial efforts being undertaken with respect to such problem; and (b) if Genpact does have responsibility for the cause of the problem, (i) demonstrate to Wachovia's reasonable satisfaction that the causes of such problem have been or will be corrected on a permanent basis, and (ii) take commercially reasonable actions to prevent any recurrence of such problem. Genpact shall use commercially reasonable efforts to complete the Root Cause Analysis within thirty (30) days after the occurrence of the failure; provided that, if it is not capable of being completed within thirty (30) days using reasonable diligence, Genpact shall complete such Root Cause Analysis as quickly as possible and shall notify Wachovia prior to the end of the initial thirty (30) day period as to the status of the Root Cause Analysis and the estimated completion date. Genpact shall implement a process to execute Root Cause Analysis as specified in this **Section 7.3**. Genpact shall submit a description of such process to Wachovia for Wachovia's approval. Genpact shall modify such process as requested by Wachovia.

### 7.4 Continuous Improvement Reviews.

The Parties agree to the concept of continuous improvement in Service Levels and that the Critical Service Levels and Key Measurements should be modified during the Term to reflect continuous improvement. To accomplish this, Critical Service Levels and Key Measurements will be modified at the end of each Contract Year as described below and such modifications shall be documented pursuant to the Change Control Procedures:

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### 7.5 Measurement and Monitoring.

On or before the SOW Commencement Date, or such other date set forth in the Transition Plan for the applicable Statement of Work, Genpact shall implement measurement and monitoring tools and metrics as well as standard reporting procedures, all acceptable to Wachovia, to measure and report Genpact's performance of the Services at a level of detail sufficient to verify Genpact's compliance with the applicable Service Levels. If and to the extent that Wachovia makes any of its existing tools available to Genpact for such purpose, Genpact shall use such tools unless otherwise approved or directed by Wachovia in writing. Wachovia or its designee (other than a Genpact Competitor) shall have the right to audit all such measurement and reporting tools, performance metrics and reporting procedures. Genpact shall provide Wachovia with on-line access to up-to-date problem management data and other data regarding the status of service problems, service requests and user inquiries. Genpact also shall provide Wachovia with

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access to the data used by Genpact to calculate its performance against the Service Levels and the measurement and monitoring tools and procedures utilized by Genpact to generate such data for purposes of audit and verification. Wachovia shall not be required to pay any amount in addition to the Charges for such measurement and monitoring tools or the resource utilization associated with their use.

## 7.6 Satisfaction Surveys.

- (a) **Genpact Conducted Surveys.** Genpact (and/or independent third parties engaged by Genpact) shall conduct satisfaction surveys of the applicable management of Wachovia and the Eligible Recipients in accordance with the survey protocols and procedures specified in **Schedule H** and the applicable Statement of Work. Satisfaction as measured by such surveys shall be either a Critical Service Level or a Key Measurement as specified in the applicable Statement of Work. If Genpact engages an independent third party to perform all or any part of any satisfaction survey, such third party shall be approved in advance by Wachovia. Genpact shall be responsible for the cost of all such surveys conducted pursuant to this **Section 7.6(a)**, **Schedule H** or a Statement of Work.
- (b) **Wachovia Conducted Surveys.** In addition to the satisfaction surveys to be conducted pursuant to **Section 7.6(a)**, Wachovia may survey satisfaction with Genpact's performance in connection with, and as part of, broader satisfaction surveys periodically conducted by Wachovia. At Wachovia's request, Genpact shall cooperate and assist Wachovia with the formulation of the survey questions, protocols and procedures and the execution and review of such surveys. If Wachovia engages an independent third party to perform all or any part of any satisfaction survey, Wachovia shall be responsible for the cost of all such surveys conducted pursuant to this **Section 7.6(b)**.
- (c) **Survey Follow-up.** If the results of any satisfaction survey conducted pursuant to **Section 7.6(a)** or **(b)** indicate that the level of satisfaction with Genpact's performance of the Services is less than the target level specified in the applicable Statement of Work, Genpact shall promptly (consistent with the severity and materiality of the problem): (i) conduct a Root Cause Analysis as to the cause of such dissatisfaction; (ii) develop an action plan to address and improve the level of satisfaction, including the specific measures to be taken by Genpact; (iii) present such plan to Wachovia for its review, comment and approval; and (iv) take action in accordance with the approved plan and as necessary to improve the level of satisfaction. Within thirty (30) days after the completion of the measures described in such action plan, Genpact shall conduct follow-up surveys with the affected management to confirm that the cause of any dissatisfaction has been addressed and that the level of satisfaction has improved. Genpact shall pay to Wachovia any Deliverable Credit(s) specified in the approved action plan for Genpact's failure to attain the prescribed satisfaction levels or to take the actions set forth in such action plan by the agreed dates.

## 8. GENPACT PERSONNEL

### 8.1 Genpact Personnel Are Not Wachovia Employees.

Except as otherwise expressly set forth in this Agreement, the Parties intend to create an independent contractor relationship and nothing in this Agreement shall operate or be construed as making Wachovia (or the Eligible Recipients) and Genpact partners, joint venturers, principals, joint employers, agents or employees of or with the other. No officer, director, employee, agent, Affiliate, contractor or subcontractor retained by Genpact to perform work on Wachovia's behalf hereunder shall be deemed to be an officer, director, employee, agent, Affiliate, contractor or subcontractor of Wachovia or the Eligible Recipients for any purpose. Genpact, not Wachovia or the Eligible Recipients, has the right, power, authority and duty to supervise and direct the activities of the Genpact Personnel and to compensate such Genpact Personnel for any work performed by them on the behalf of Wachovia or the Eligible Recipients pursuant to this

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Agreement. Genpact, and not Wachovia or the Eligible Recipients, shall be responsible and therefore solely liable for all acts and omissions of Genpact Personnel, including acts and omissions constituting negligence, gross negligence, willful misconduct and/or fraud.

### 8.2 Global Operations Leader.

Genpact shall designate a "**Global Operations Leader**" for the Wachovia engagement. The Parties agree that the initial Global Operations Leader shall be Anju Talwar. The Global Operations Leader shall (a) be one of the Key Employees; (b) be a full-time employee of Genpact; (c) devote his or her full time and effort to managing the Services; (d) remain in this position for a minimum period of three (3) years from the initial assignment (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or death); (e) serve as the single point of accountability for the Services; (f) be the single point of contact to whom all Wachovia communications concerning the Services under this Agreement may be addressed; (g) have authority to act on behalf of Genpact in all day-to-day matters pertaining to this Agreement; and (h) have overall responsibility for overseeing the provision of the Services, billing and relationship management.

### 8.3 Key Employees.

- (a) **Selection of Key Employees.**
  - (i) Genpact shall actively involve Wachovia in the selection process for Key Employees. Key Employees shall be chosen from the top performers among Genpact's employees based on the last full year's performance review, unless Wachovia approves the hiring of a new employee for a Key Employee's position in order to obtain an individual with specific skill sets and experience required in connection with the Services. Without limiting the generality of the foregoing two sentences, before assigning an individual to

act as one of the Key Employees whether as an initial assignment or a subsequent assignment and whether under this Agreement or any Statement of Work, Genpact shall discuss the proposed assignment with Wachovia, introduce the individual to appropriate Wachovia representatives (including by telephone), provide a reasonable opportunity for Wachovia representatives to interview the individual, and provide Wachovia with a resume and such other information about the individual as may be reasonably requested by Wachovia. Genpact shall only assign an individual to a Key Employees position who has been approved by Wachovia.

- (ii) The Global Operations Leader and his or her direct reports (the “**Executive Management Team**”) shall be Key Employees. The Key Employees on the Executive Management Team that have been selected and approved as of the Effective Date are listed in **Schedule J**.
  - (iii) Genpact shall identify and obtain Wachovia’s approval of all Key Employees under a Statement of Work prior to the completion of any Transition Services as set forth in a Statement of Work or, if no Transition Services are specified, then prior to the SOW Commencement Date. Unless the Parties agree otherwise, there shall be at least one (1) individual designated as a Key Employee for each Statement of Work.
  - (iv) Wachovia may from time to time change the positions designated as Key Employees under this Agreement or any Statement of Work with Genpact’s approval.
- (b) **Continuity of Key Employees.** Genpact shall cause each of the Key Employees to devote full time and effort for at least two (2) years from the date he or she assumes the position in question to the provision of Services under this Agreement. Genpact shall not transfer, reassign or remove

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any of the Key Employees (except as a result of voluntary resignation, involuntary termination for cause, illness, disability or death) or announce its intention to do so during such period without the prior approval of both the Executive Committee and Wachovia. In the event of the voluntary resignation, involuntary termination for cause, illness, disability or death of one of its Key Employees during or after the specified period, Genpact shall (i) give Wachovia as much notice as reasonably possible of such development, and (ii) expeditiously identify and obtain Wachovia’s approval of a suitable replacement. In addition, even after the period specified above, Genpact shall transfer, reassign to another account or remove any of its Key Employees only after (i) giving Wachovia at least forty-five (45) days’ prior notice of such action, (ii) identifying and obtaining Wachovia’s approval of a suitable replacement at least thirty (30) days prior to the effective date of such transfer, reassignment or removal, and (iii) completing any and all necessary knowledge transfer between the departing Key Employees and his or her Wachovia-approved replacement. Under no circumstances shall Genpact transfer, assign, reassign to another account or remove more than twenty percent (20%) of the Key Employees in any six (6) month period except as may result from a voluntary resignation, involuntary termination for cause, illness, disability or death of any Key Employee.

- (c) **Incentive Compensation.** To the extent permitted by Law, Genpact shall consult Wachovia on the performance reviews for the Global Operations Leader and the other Key Employees and shall provide Wachovia a meaningful opportunity to provide information to Genpact with respect to Wachovia’s evaluation of such Genpact Personnel’s performance. Such information shall be considered and accorded substantial weight by Genpact in its evaluation of, and in establishing compensation for, such Genpact Personnel. Such input may be based upon (i) the level of customer satisfaction reflected in the periodic customer satisfaction surveys and (ii) the extent to which Genpact has met or exceeded the Service Levels and Genpact’s other responsibilities and obligations under this Agreement.
- (d) **Retention and Succession.** Genpact shall implement and maintain a retention strategy designed to retain Key Employees on the Wachovia account for the prescribed period. Genpact shall also maintain active succession plans for each of the Key Employees positions.
- (e) **Visas.** All Key Employees shall have a valid visa for travel to the United States at any time while he or she is designated as a Key Employee.

#### 8.4 Selection, Qualifications, Retention and Replacement of Genpact Personnel.

- (a) **Sufficiency and Suitability of Genpact Personnel.** Genpact shall assign (or cause to be assigned) sufficient Genpact Personnel possessing suitable competence, ability, training and qualifications to provide the Services in accordance with this Agreement.
  - (b) **Screening and Disqualification of Genpact Personnel.**
    - (i) Genpact shall use commercially reasonable efforts to ensure that Genpact Personnel have not been convicted of a felony, do not use illegal drugs and are not otherwise disqualified from performing the assigned work under applicable Laws.
    - (ii) To the extent allowed by applicable Laws, Genpact shall perform a background check and a Wachovia-approved drug test on, and at Wachovia’s request, fingerprint, each individual prior to his or her assignment as Genpact Personnel.
    - (iii) Genpact shall implement any additional requirements imposed on Wachovia for screening of Genpact Personnel at Wachovia’s expense.
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- (iv) Individuals who do not meet criteria acceptable to Wachovia shall not be assigned as Genpact Personnel.
- (c) **Authority to Work.** Genpact shall ensure that each member of the Genpact Personnel is authorized to work in the country in which he or she is assigned to perform Services (including holding valid passports and/or visas, as applicable).
- (d) **Passports.** Within nine (9) months after his or her assignment to the Genpact Personnel, each member of the Genpact Personnel shall have a valid passport issued by his or her country of origin. If any member of the Genpact Personnel is not able to obtain a passport within such period for reasons other than procedural issues, Genpact shall remove such individual from the Genpact Personnel unless otherwise approved by Wachovia.
- (e) **Training and Orientation.** Genpact shall provide new-hire orientation and generic, non-business process specific training to Genpact Personnel. Genpact shall not invoice Wachovia any Charges for newly-hired Genpact Personnel for the period of time after hiring during which Genpact provides such orientation and training. Such generic orientation and training shall include training on Wachovia Rules and Wachovia Standards (except process-specific Wachovia Standards). Genpact shall also provide process-specific training (including training on process-specific Wachovia Standards) for each Statement of Work as set forth in such Statement of Work. Genpact's costs for process-specific training for such newly-hired Genpact Personnel shall be reimbursed by Wachovia.
- (f) **Resource Pool.** Genpact shall maintain a resource pool of Genpact Personnel in addition to those Genpact Personnel dedicated to performing Services and shall train such resource pool in Wachovia Rules, Wachovia Standards and the tools, methodologies and other necessary areas to provide support to Wachovia. Where appropriate, resources in such resource pool may perform productive work (i.e., job-shadowing) for Wachovia. The size of such resource pool shall be determined by the Operating Council from time to time based on Wachovia's three-month forecast of projected needs under Statements of Work and then-current attrition rates, including the anticipated higher attrition rate during the initial sixty (60) day period for each in-scope business process.
- (g) **Selection of Supervisory and Management Personnel.** Genpact shall actively involve Wachovia in the selection process for Genpact Personnel in supervisory and/or management positions. Without limiting the generality of the foregoing sentence, before assigning an individual to a supervisory and/or management position, whether as an initial assignment or a subsequent assignment and whether under this Agreement or any Statement of Work, Genpact shall discuss the proposed assignment with Wachovia, introduce the individual to appropriate Wachovia representatives (including by telephone), and provide Wachovia with a resume and such other information about the individual as may be reasonably requested by Wachovia.
- (h) **Performance Reviews of Supervisory and Management Personnel.** To the extent permitted by Law, Genpact shall consult Wachovia on the performance reviews for Genpact Personnel in supervisory and/or management positions and shall provide Wachovia a meaningful opportunity to provide information to Genpact with respect to Wachovia's evaluation of such Genpact Personnel's performance. Such information shall be considered and accorded substantial weight by Genpact in its evaluation of, and in establishing compensation for, such Genpact Personnel. Such input may be based upon (i) the level of customer satisfaction reflected in the periodic customer satisfaction surveys and (ii) the extent to which Genpact has met or exceeded the Service Levels and Genpact's other responsibilities and obligations under this Agreement.

- (i) **Bonus Pool.** Genpact Personnel shall be eligible at all times to participate in Genpact's standard annual bonus pool as part of their compensation. Genpact shall consult Wachovia during the establishment of its standard bonus pool program on an annual basis and shall provide Wachovia a meaningful opportunity to provide input to Genpact with respect to Wachovia's evaluation of the Genpact Personnel's performance. Such input shall be considered and accorded substantial weight by Genpact in its evaluation of Genpact Personnel and their participation in the annual bonus pool. If after the annual bonus pool program has been established Wachovia desires to increase such bonus pool for the Genpact Personnel, Genpact shall accommodate Wachovia's request and Wachovia shall reimburse Genpact for any incremental amounts paid to the Genpact Personnel as a result of such request.
- (j) **Continuity of Genpact Personnel.** Genpact shall cause each of the Genpact Personnel (other than Key Employees) to devote full time and effort for at least two (2) years from the date he or she assumes the position in question to the provision of Services under this Agreement. Genpact shall not transfer, reassign or remove any of the Genpact Personnel (except as a result of voluntary resignation, involuntary termination for cause, illness, disability or death) during such period without the prior approval of Wachovia.
- (k) **Requested Replacement.** In the event that Wachovia determines that the continued assignment to Wachovia of any individual Genpact Personnel (including Key Employees) is not in the best interests of Wachovia or the Eligible Recipients, then Wachovia shall give Genpact notice to that effect requesting that such Genpact Personnel be replaced. Genpact shall (i) within four weeks after such notice (or within a



reasonable period of time in respect of the removal of Key Employees so that the Parties may comply with **Section 8.3(a)**), remove such Genpact Personnel and (ii) as soon as practical after such notice, replace such Genpact Personnel with an individual of suitable ability and qualifications, without cost to Wachovia. If Wachovia requires the immediate removal or replacement of any individual Genpact Personnel (other than for breach of confidentiality or security obligations under this Agreement or a Statement of Work, violation of Wachovia Rules, or pursuant to **Section 8.6(a)**), Genpact shall remove and replace such Genpact Personnel immediately and Wachovia shall pay Genpact an amount equal to the compensation of such Genpact Personnel for four (4) weeks. However, Genpact shall immediately remove such Genpact Personnel if Wachovia's request is based upon breach of confidentiality or security obligations under this Agreement or a Statement of Work, violation of Wachovia Rules or pursuant to **Section 8.6(a)** without cost to Wachovia and shall replace such Genpact Personnel as soon as practicable. Nothing in this provision shall operate or be construed to limit Genpact's responsibility for the acts or omission of the Genpact Personnel, or be construed as joint employment.

#### 8.5 Turnover Rate and Data.

- (a) Genpact acknowledges that Wachovia desires to keep the turnover rate of Genpact Personnel as low as possible in order, among other things, to maintain the continuity of management and key skills. Wachovia shall consider in good faith paying premium billing rates for members of the Genpact Personnel after they have been in their position for [[[\*\*\*]]] and, for select employees, prior to the end of such period as approved by Wachovia.
- (b) Genpact shall monitor and provide a report to Wachovia on the turnover rate within the Genpact Personnel on a monthly basis. Genpact shall take commercially reasonable necessary steps to keep the turnover rate of Genpact Personnel to a level reasonably satisfactory to Wachovia.
- (c) In connection with entering into a Statement of Work, Wachovia and Genpact shall jointly establish a monthly "expected" level of turnover and a "maximum acceptable" level of turnover based upon the requirements of the business process covered by such Statement of Work and the

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Service Levels set forth in such Statement of Work. Such levels shall take into account transaction volume fluctuations. The Parties shall reconsider these levels of turnover at the beginning of each Contract Year of the SOW Term and make any mutually agreeable adjustment.

- (i) If during any month the turnover rate is above the "expected" level but below the "maximum acceptable" level, then Genpact shall prepare, and the Parties shall discuss and jointly agree upon, an action plan to reduce such turnover rate and Genpact shall implement the agreed-upon plan.
- (ii) If during any month the turnover rate is above the "maximum acceptable" level, then the Operating Council shall act immediately to reduce, and Genpact shall invest [[[\*\*\*]]] of the monthly Charges paid under the affected Statement(s) of Work into measures to reduce, the turnover rate below the "maximum acceptable" level and Genpact shall continue to do so until the turnover rate falls below such level.
- (d) Notwithstanding any turnover of Genpact Personnel, Genpact shall remain obligated to perform the Services without degradation and in accordance with the Service Levels.

#### 8.6 Conduct of Genpact Personnel.

- (a) **Conduct and Compliance.** While at Wachovia Sites or Wachovia Facilities, Genpact Personnel shall, in addition to the requirements under **Section 6.9**, (i) comply with requests of Wachovia or the Eligible Recipients pertaining to personal and professional conduct, (ii) attend workplace training offered by Wachovia and/or the Eligible Recipients at Wachovia's request, and (iii) otherwise conduct themselves in a businesslike manner.
- (b) **Identification of Genpact Personnel.** Except as expressly authorized by Wachovia, all Genpact Personnel shall clearly identify themselves as Genpact Personnel and not as employees of Wachovia and/or the Eligible Recipients. This shall include any and all communications, whether oral, written or electronic. Each Genpact Personnel shall wear a badge indicating that he or she is a "contractor" when at a Wachovia Facility or Wachovia Site.
- (c) **Restriction on Marketing Activity.** Except for marketing representatives designated in writing by Genpact to Wachovia, none of the Genpact Personnel shall conduct any marketing activities to Wachovia or Eligible Recipient employees at Wachovia Facilities or Wachovia Sites, other than reporting potential marketing opportunities to Genpact's designated marketing representatives.

#### 8.7 Substance Abuse.

- (a) **Removal.** To the extent permitted by applicable Laws, Genpact shall immediately remove (or cause to be removed) any Genpact Personnel who is known to be or reasonably suspected of engaging in substance abuse while at a Wachovia Facility or Wachovia Site, in a Wachovia vehicle or while performing the Services. In the case of reasonable suspicion, such removal shall be pending completion of the applicable investigation. Substance abuse includes the sale, attempted sale, possession or use of illegal drugs, drug paraphernalia, or alcohol, or the misuse of prescription or non-prescription drugs.

- (b) **Substance Abuse Policy.** Genpact maintains, and during the Term shall maintain, substance abuse policies, in each case in conformance with applicable Laws, and Genpact Personnel will be subject to such policies. Genpact shall require its Affiliate Subcontractors, and shall use commercially reasonable efforts to causes its Non-affiliate Subcontractors providing Services, to have and maintain such policies in conformance with applicable Law and to adhere to this provision.

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## 8.8 Wachovia Employees.

- (a) **Placement of Wachovia Employees in Genpact's Operation.** Wachovia shall have the right to assign Wachovia employees to positions within Genpact's operations providing Services to Wachovia (including Wachovia subject matter experts with process knowledge) during the transition and start-up phases under a Statement of Work.
- (b) **Offers to Genpact Personnel.** Notwithstanding Section 27.17, Wachovia may, at its option and upon at least two (2) weeks' prior notice to Genpact, offer employment to high-performing Genpact Personnel interested in relocating to the United States, subject to applicable Law.

## 9. GENPACT RESPONSIBILITIES

### 9.1 Procedures Manuals.

- (a) **Management Procedures Manual.** As part of the Services, and at no additional cost to Wachovia, Genpact shall deliver to Wachovia for its review, comment and approval (i) a reasonably complete draft of a Management Procedures Manual within sixty (60) days after the Effective Date and (ii) a final draft of the Management Procedures Manual within ninety (90) days after the Effective Date.
- (b) **Policy and Procedures Manuals.** As part of the Services, and at no additional cost to Wachovia, Genpact shall deliver to Wachovia for its review, comment and approval, a Policy and Procedures Manual for each Statement of Work in accordance with Schedule K (each, a "Policy and Procedures Manual"). At a minimum, each Policy and Procedures Manual shall include the following:
- (i) a detailed description of the Services and the manner in which each will be performed by Genpact, including (A) the Equipment, Software, and Systems to be procured, operated, supported or used to provide the Services; (B) documentation (including operations manuals, user guides, specifications, policies and procedures and disaster recovery and business continuity plans) provider further details regarding such Services; (C) the specific activities to be undertaken by Genpact in connection with each Service, including, where appropriate, monitoring, staffing, reporting, planning and oversight activities to be performed by Genpact under the applicable Statement of Work; (D) the checkpoint reviews, testing, acceptance, controls and other procedures to be implemented and used to assure service quality; and (E) the processes, methodologies and controls to be implemented and used by Genpact to ensure compliance with Genpact Laws and, subject to Article 19, Wachovia Laws under such Statement of Work; and
- (ii) the procedures for Wachovia and Genpact interaction and communication, including (A) call lists; (B) procedures for and limits on direct communication by Genpact with Wachovia personnel; (C) problem management and escalation procedures; (D) priority and project procedures; (E) Acceptance procedures; (F) Acceptance testing; (G) Quality Assurance procedures, internal controls and checkpoint reviews; and (H) interaction and communication regarding annual and quarterly financial objectives, budgets, and performance goals.

Genpact shall incorporate Wachovia's then current policies and procedures by reference into the Policy and Procedures Manual to the extent it is directed to do so by Wachovia.

- (c) **Revision and Maintenance.** Genpact shall incorporate any comments or suggestions of Wachovia into the Policy and Procedures Manual and shall deliver a final revised version to

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Wachovia within thirty (30) days after its receipt of such comments and suggestions for Wachovia's approval. The Policy and Procedures Manual will be delivered and maintained by Genpact in hard copy and electronic formats and will be accessible electronically to Wachovia management via a secure web site in a manner consistent with Wachovia's security policies.

- (d) **Compliance.** Genpact shall perform the Services under a Statement of Work in accordance with applicable Laws and Wachovia's then-current policies and procedures until the Policy and Procedures Manual is finalized and agreed upon by the Parties. Thereafter, Genpact

shall perform the Services under such Statement of Work in accordance with the provisions of the Policies and Procedures Manual and this Agreement. In the event of a conflict between the provisions of this Agreement and the Policy and Procedures Manual, the provisions of this Agreement shall control.

- (e) **Modification and Updating.** Genpact shall promptly modify and update the Policy and Procedures Manual quarterly to reflect changes in the operations or procedures described therein and to comply with Wachovia Standards and Strategic Plans as described in Section 9.5. Genpact shall provide the proposed changes in the manual to Wachovia for review, comment and approval. To the extent any such change could (i) increase Wachovia's total costs of receiving the Services; (ii) have an adverse impact or require changes described in Section 9.6; or (iii) violate or be inconsistent with the Wachovia Standards or Strategic Plans, Genpact shall not implement such change without first obtaining Wachovia's approval, which Wachovia may withhold in its sole discretion.
- (f) **Annual Review.** In addition to the foregoing, the Parties shall meet to perform a formal annual review of the Policy and Procedures Manual on each anniversary of the applicable SOW Commencement Date.

## 9.2 Reports.

- (a) **Reports.** Genpact shall provide Wachovia with reports ("**Reports**") pertaining to the performance of the Services sufficient to permit Wachovia to monitor and manage Genpact's performance of the Services. The Reports shall include those described in Schedule B or as determined by the Operating Council in the format and at the frequencies provided therein, and those set forth in any Statement of Work. In addition, from time to time, Wachovia may request additional Reports, including, to the extent consistent with industry standards, Reports on Genpact's compliance with other obligations under this Agreement, to be generated by Genpact and delivered to Wachovia on an ad hoc or periodic basis. All Reports shall be provided to Wachovia as part of the Services and at no additional charge to Wachovia. The Reports described in Schedule B or as determined by the Operating Council and, to the extent reasonably possible, all other Reports shall be provided to Wachovia (i) by secure on-line connection in an electronic format capable of being accessed by Microsoft Office components and downloadable by Wachovia, with the information contained therein capable of being displayed graphically and accessible from a web browser, and/or (ii) in traditional printed form.
- (b) **Back-Up Documentation.** As part of the Services, Genpact shall provide Wachovia with such documentation and other information available to Genpact as may be reasonably requested by Wachovia from time to time in order to verify the accuracy of the Reports provided by Genpact.
- (c) **Correction of Errors.** As part of the Services and at no additional charge to Wachovia, Genpact shall promptly correct any errors or inaccuracies in the Reports or the information or data contained in such Reports.

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## 9.3 Governance and Meetings.

- (a) **Governance Model.** The Parties shall manage and coordinate their relationship under this Agreement using the governance procedures and processes set forth in Schedule K, as the same may be amended from time to time.
- (b) **Meetings.** During the Term, representatives of the Parties shall meet periodically or as requested by Wachovia to discuss matters arising under this Agreement or any Statement of Work, including any such meetings provided for in this Agreement or any Statement of Work, the Management Procedures Manual, the applicable Policy and Procedures Manual or Schedule K. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings.
- (c) **Agenda and Minutes.** For each such meeting, upon Wachovia request, Genpact shall prepare and distribute an agenda, which will incorporate the topics designated by Wachovia. Genpact shall distribute such agenda in advance of each meeting so that the meeting participants may prepare for the meeting. In addition, upon Wachovia's request, Genpact shall record and promptly distribute minutes for every such meeting for review and approval by Wachovia.
- (d) **Forecasts.** In connection with each Statement of Work, Wachovia shall on a mutually agreed periodic basis provide volume projections to Genpact for Services under such Statement of Work. In addition, in order to assist Genpact with infrastructure planning, Wachovia shall on a mutually agreed periodic basis provide volume projections to Genpact for Services under this Agreement. Genpact may use volume projections provided by Wachovia under this Section 9.3(d) as a planning tool, but acknowledges that such projections do not constitute a commitment by Wachovia.
- (e) **Eligible Recipient Meetings.** Genpact shall notify the Wachovia Project Executive in advance of scheduled meetings with Eligible Recipients in respect of new or additional services proposed to be provided by Genpact and shall invite the Wachovia Project Executive to attend such meetings or to designate a representative to do so.

## 9.4 Operational Risk Management, Quality Assurance and Internal Controls.

- (a) **Operational Risk Management, Quality Assurance and Internal Controls.** Genpact shall develop and implement operational risk management, Quality Assurance and internal controls (e.g., financial and accounting controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and processes and procedures (including implementing tools and methodologies) designed to ensure that the Services are performed in an accurate and timely manner and in

accordance with (i) the Service Levels and other requirements of this Agreement, (ii) generally accepted accounting principles, (iii) the best practices of leading providers of in-scope business process outsourcing services, (iv) industry standards (e.g., SEI CMM Level 5, QS 9000, ISO 9001/2000, ISO 14000, applicable data security practices identified in ISO 17799) applicable to Wachovia and the Eligible Recipients or the performance of the Services, and (v) the Laws applicable to Wachovia and the Eligible Recipients. On a quarterly basis, Genpact shall in writing (i) report to Wachovia on the status of such internal controls developed and implemented by Genpact pursuant to, and associated activities described in, this **Section 9.4(a)**, and (ii) certify Genpact's compliance with the internal controls contained in Wachovia Rules and Wachovia Standards or prescribed by any Statement of Work. Without limiting the generality of the foregoing, Genpact shall with respect to its environment and the Services:

- (A) Maintain a strong control environment in day-to-day operations to assure that the following fundamental control objectives are met: (1) financial and operational information is valid, complete and accurate; (2) the Services are performed efficiently

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and achieve effective results, consistent with the requirements of this Agreement; (3) assets are safeguarded; (4) actions and decisions of Genpact are in compliance with applicable Laws; (5) financial transactions processed on behalf of Wachovia or the Eligible Recipients are executed only in accordance with management authorization; (6) controls exist to prevent or timely detect the unauthorized acquisition, use or disposition of assets of Wachovia or of the Eligible Recipients; and (7) records are maintained to reflect the transactions and dispositions of the assets of Wachovia and the Eligible Recipients;

- (B) Build the following basic control activities into work processes: (1) accountability clearly defined and understood; (2) access properly controlled; (3) adequate supervision; (4) transactions properly authorized; (5) transactions accurately recorded; (6) transactions recorded in proper accounting period; (7) policies, procedures, and responsibilities documented; (8) adequate training and education; (9) adequate separation of duties; and (10) recorded assets compared with existing assets;
- (C) Assist Wachovia with all risk management-related policies, functions and processes. Wachovia will establish an in-country risk management function to oversee all operational risk-related matters with Genpact;
- (D) Develop and execute a process to ensure periodic control self-assessments are performed, and periodic certifications and attestations are made, with respect to applicable Services (such self-assessments to be performed and such certifications and attestations to be made at least quarterly unless and until Wachovia approves less frequent self-assessments);
- (E) Maintain an internal audit function to sufficiently monitor the processes and Systems used to provide the Services (i.e., perform audits, track control measures, communicate status to management, drive corrective action, etc.). As part of such internal audit function, Genpact shall:
- (1) Develop and execute an annual risk assessment process to evaluate risk in the Services. This assessment shall become the basis to create an annual risk-based audit plan of Services. The plan shall be provided to Wachovia for its review and approval in sufficient time to permit Wachovia to comply with its obligations and requirements;
  - (2) Adopt a qualitative methodology (e.g. high, medium, low effectiveness) of reporting the level of controls and internal audit results; and
  - (3) Provide to Wachovia a summary of planned audit activity, audit activity performed, associated significant findings, and status or follow-up activity, and a summary of control incidents (i.e., frauds, conflict of interest situations, etc.) and related corrective action at least quarterly;
- (F) Conduct investigations of suspected fraudulent activities within Genpact's organization that impact or could impact Wachovia or the Eligible Recipients. Genpact shall promptly notify Wachovia of any such suspected fraudulent activity and the results of any such investigation as they relate to Wachovia or the Eligible Recipients. At Genpact's request, Wachovia shall provide reasonable assistance to Genpact in connection with any such investigation;
- (G) Comply with all applicable requirements and guidelines established by Wachovia in order to assist Wachovia to meet the requirements of the Sarbanes-Oxley Act of 2002 and

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implementing regulations promulgated by the United States Securities and Exchange Commission and Public Company Accounting Oversight Board and the Basel II Accord and implementing regulations;

(H) Comply with the Wachovia Code of Ethics; and

(I) Inform Wachovia of compliance measures Genpact is taking to satisfy Sarbanes-Oxley requirements, including certification as to internal controls and, with Wachovia's prior approval, implement such compliance measures for in-scope business processes.

(b) **Wachovia Approval.** Genpact shall submit such processes, procedures and controls to Wachovia for its review, comment and approval in a draft Policy and Procedures Manual in accordance with **Section 9.1(b)** and in any event prior to the start of production under any Statement of Work. Upon Wachovia's approval, such processes, procedures and controls shall be included in the final Policy and Procedures Manual. Prior to the approval of such processes and procedures by Wachovia, Genpact shall adhere to Wachovia's then-current policies, procedures and controls. No failure or inability of the quality assurance procedures to disclose any errors or problems with the Services shall excuse Genpact's failure to comply with the Service Levels and other terms of this Agreement and the Statements of Work.

(c) **Industry Standards – Certifications and Compliance.** Genpact has achieved and, to the extent relevant, will maintain compliance with Six Sigma methodologies in connection with the delivery of the Services. Genpact shall employ Six Sigma methodologies and tools to continuously improve the process, procedures and controls associated with the Services.

## 9.5 Processes, Procedures, Architecture, Standards and Information Technology Planning.

(a) **Wachovia Standards.** Wachovia shall have the right to establish and modify from time to time the standards, policies, practices, processes, procedures and controls to be adhered to and enforced by Genpact in the performance of the Services, and the associated IT technologies, architectures, standards, products and systems to be provided, operated, managed, supported and/or used by Genpact in connection therewith (collectively, the "**Wachovia Standards**"), including those set forth in **Schedule F**. Wachovia shall notify Genpact of the Wachovia Standards, including modifications thereto. As requested by Wachovia, Genpact shall assist Wachovia on an on-going basis in reviewing the Wachovia Standards. Subject to **Section 19.5**, the Parties shall address any incremental costs incurred by Genpact complying with changes in such Wachovia Standards after the applicable SOW Commencement Date in accordance with the Change Control Procedures.

(b) **Genpact Compliance with Wachovia Standards.** Genpact shall (i) except as otherwise provided herein, comply in all material respects with the Wachovia Standards and Strategic Plans in providing the Services, (ii) modify the Services as and to the extent necessary to comply with such Wachovia Standards and Strategic Plans (and use commercially reasonable efforts to do so in accordance with the milestone dates specified in such Strategic Plans or otherwise prescribed by Wachovia), (iii) cause that all Software or Systems installed and operated in Genpact Facilities and used by Genpact to provide the Services comply with the Wachovia Standards and Strategic Plans, and (iv) obtain Wachovia's prior approval for any deviations from such Wachovia Standards and Strategic Plans. Wachovia shall have final authority to promulgate Wachovia Standards and Strategic Plans and to modify or grant waivers from such Wachovia Standards and Strategic Plans. Subject to **Section 19.5**, the Parties shall address any incremental costs incurred by Genpact in modifying the Services as and to the extent necessary to comply with changes in such Wachovia Standards and Strategic Plans after the applicable SOW Commencement Date in accordance with the Change Control Procedures.

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(c) **Financial, Forecasting and Budgeting Support.** To support Wachovia's forecasting and budgeting processes, Genpact shall provide the following information regarding the costs to be incurred by Wachovia and/or the Eligible Recipients in connection with the Services: (i) actual and forecasted utilization of FTEs; (ii) actual and forecasted changes in the total cost or resource utilization of Wachovia and the Eligible Recipients associated with changes to the environment; and (iii) opportunities to modify or improve the Services and to reduce the Charges and/or total cost to Wachovia of receiving the Services, Pass-Through Expenses or retained expenses incurred by Wachovia. Such information shall be provided in accordance with the schedule established by Wachovia and Genpact.

## 9.6 Change Control.

In making any change in the standards, processes, policies, procedures and controls of the in-scope business processes or, subject to **Section 6.7**, in the associated IT technologies, architectures, standards, products, Software, Equipment, Systems, Services or Materials provided, operated, managed, supported or used in connection with the in-scope business processes, Genpact shall comply with the change control procedures specified in **Schedule L** (the "**Change Control Procedures**"). Genpact shall make no such change without first obtaining Wachovia's approval.

## 9.7 Agency and Disbursements.

If a Statement of Work contemplates that Genpact shall make payments to certain lessors, licensors and suppliers as paying agent of Wachovia or the Eligible Recipients, or reimburse Wachovia for payments made by Wachovia or the Eligible Recipients to such lessors, licensors and suppliers, if and to the extent such payments relate to Third Party Contracts, Equipment leases or Third Party Software licenses as to which Genpact is financially responsible, but which have not been formally transferred to Genpact, the Parties shall include the terms and conditions of such payments in such Statement of Work.

## 9.8 Subcontractors.

- (a) **Use of Subcontractors.** Genpact may subcontract any of its responsibilities under this Agreement or any Statement of Work for the provision of Services to any of its Affiliates (each, an “**Affiliate Subcontractor**”) without Wachovia’s approval. Genpact shall not subcontract any of its responsibilities under this Agreement or any Statement of Work for the provision of Services to any Entity or person that is not an Affiliate of Genpact (each, a “**Non-affiliate Subcontractor**”) without Wachovia’s prior approval. If an Affiliate Subcontractor ceases to be an Affiliate of Genpact, then Genpact must obtain Wachovia’s prior approval if Genpact desires to continue to subcontract any of its responsibilities to such Entity. Prior to entering into a subcontract with respect to the Services with a Non-affiliate Subcontractor, Genpact shall (i) at Wachovia’s request, forward to Wachovia a copy of the proposed subcontract, or (in Wachovia’s reasonable discretion) a detailed description of the scope and material terms (other than pricing terms) of the proposed subcontract; (ii) give Wachovia reasonable prior notice of the subcontract specifying the components of the Services and the Statements of Work affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor and the reasons for subcontracting the work in question, the location of the Subcontractor facilities from which the Services will be provided, the extent to which the subcontract will be dedicated, and the Subcontractor’s willingness to grant the rights described in **Section 26.2** upon expiration or termination; and (iii) subject to **Section 9.8(b)**, obtain Wachovia’s prior approval of such Non-affiliate Subcontractor. If a Governmental Entity having jurisdiction over Wachovia or an Eligible Recipient requests any information described in the foregoing sentence in respect of an Affiliate Subcontractor, Genpact shall promptly provide such information to Wachovia.

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- (b) **Right to Revoke Approval.** Wachovia shall have the right during the applicable SOW Term to revoke its prior approval of a Non-affiliate Subcontractor for any reason and direct Genpact to replace such Non-affiliate Subcontractor, in which case Genpact shall immediately replace such Subcontractor at no additional cost to Wachovia.
- (c) **Identified Subcontractors.** Wachovia reserves the right to specify in a Statement of Work that Genpact use an identified Subcontractor for the provision of any Services under such Statement of Work in cases where such selection is necessary to preserve an existing contract or business relationship.
- (d) **Genpact Responsibility.** Genpact shall be and remain responsible and liable for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Genpact under this Agreement to the same extent as if such failure to perform or comply was committed by Genpact or Genpact employees. Genpact shall be responsible for the performance of all such Subcontractors and Subcontractor personnel providing any of the Services hereunder. Genpact shall be Wachovia’s sole point of contact regarding the Services, including with respect to payment. Genpact shall use a common methodology and tool set to manage all of the Subcontractors effectively and efficiently.

#### 9.9 Technology and Business Process Evolution.

- (a) **Obligation to Propose Technology and Business Process Evolutions.** Genpact shall identify, communicate to Wachovia on an ongoing basis, and propose the implementation of Technology and Business Process Evolutions that are likely to: (i) improve the efficiency and effectiveness of the Services (including cost savings); (ii) improve the efficiency and effectiveness of the in-scope business process functions performed by or for Wachovia and the Eligible Recipients; (iii) result in cost savings or revenue increases to Wachovia and the Eligible Recipients in areas of their business outside the Services; (iv) enhance the ability of Wachovia and the Eligible Recipients to conduct their business and serve their customers; and (v) achieve the Strategic Plans faster and/or more efficiently. At least semi-annually, Genpact shall meet with Wachovia to formally brief Wachovia regarding such Technology and Business Process Evolutions. Such briefing shall include Genpact’s assessment of the business impact, performance improvements and cost savings associated with such Technology and Business Process Evolutions. Where requested by Wachovia, Genpact shall develop and present to Wachovia proposals for implementing Technology and Business Process Evolutions.
- (b) **Genpact Developed Advances.** Subject to any applicable non-disclosure obligations, if Genpact develops or implements technological advances or changes Genpact’s systems and technologies used to provide the same or substantially similar services to the Services or Genpact develops or implements new or enhanced processes, services, software, tools, products or methodologies (collectively, “**New Advances**”), Genpact shall (i) offer Wachovia the opportunity to serve as a pilot customer in connection with the implementation of such New Advances; and (ii) if Wachovia declines such opportunity, offer Wachovia preferred access to such New Advances and the opportunity to be among the first of the Genpact customer base to implement and receive the benefits of any New Advances.

#### 9.10 Genpact Technology and Business Process Plan.

- (a) **Plan.** The Parties may designate in a Statement of Work that Genpact shall develop a technology and business process plan in respect of the Services to be provided under such Statement of Work (each, a “**Technology and Business Process Plan**”). Each Technology and Business Process Plan shall be consistent with the Wachovia Standards and Strategic Plan and, if applicable, demonstrate how Genpact shall provide the Services to enable Wachovia to achieve the Strategic Plan

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objectives and to implement and support Wachovia's business and information technology objectives and strategies as provided by Wachovia to Genpact.

- (b) **Process.** The process for developing and approving each Technology and Business Process Plan shall be as follows. Genpact shall provide a draft Technology and Business Process Plan each Contract Year that includes multi-year implementation plans to achieve multi-year objectives. Wachovia shall review the draft Technology and Business Process Plan and provide requested amendments. Genpact shall incorporate any such amendments, unless it reasonably believes that any requested amendment would not assist Wachovia to achieve its objectives and strategies. Wachovia and Genpact shall escalate any disagreements about requested amendments to the draft Technology and Business Process Plan in accordance with the dispute resolution procedure in **Article 24**. Following approval by Wachovia, the draft Technology and Business Process Plan will replace the previous plan. Approval of the Technology and Business Process Plan by Wachovia shall not relieve Genpact of any obligation under the applicable Statement of Work or this Agreement in relation to its provision of the Services under such Statement of Work.
- (c) **Contents.** In the Technology and Business Process Plan, Genpact shall, among other things, include plans for: (i) refreshing Equipment and Software (consistent with the refresh cycles defined in **Section 6.6**); (ii) adopting new technologies and business processes as part of the Technology and Business Process Evolution of the Services, as defined in this Agreement; and (iii) employing technologies and business process strategies that are flexible enough to allow integration with new technologies or business processes. In the Technology and Business Process Plan, Genpact shall also present implementation plans for the achievement of the Strategic Plan.
- (d) **Compliance and Reporting.** Genpact shall implement the Technology and Business Process Plan at all times, unless Wachovia agrees to depart from the Technology and Business Process Plan. Any such agreement to depart from the Technology and Business Process Plan from the date on which it is signed by Wachovia shall not relieve Genpact of its responsibilities under the previous plan prior to the date of such agreement.

#### 9.11 Unauthorized Use.

Wachovia and Genpact shall cooperate fully in efforts to prevent and cure unauthorized use of the Services and/or Wachovia Facilities (including its network and transport services) by expeditiously informing each other of suspected abuse and, when known, the identity of the responsible individuals. Genpact shall advise Wachovia regarding methods to minimize Wachovia's and the Eligible Recipients' exposure to misuse and abuse of Wachovia's and the Eligible Recipients' service that results from the operation of Wachovia or Eligible Recipient-provided systems, equipment, facilities or services interconnected with Genpact's Services. Genpact shall provide assistance to Wachovia and/or the Eligible Recipients' upon Wachovia's request in Genpact's efforts to minimize ongoing misuse or abuse. Appropriate representatives of Genpact, Wachovia and Eligible Recipient shall meet periodically (including by telephone conference) at the request of Wachovia to establish appropriate operational fraud control procedures. The Parties acknowledge and agree that each of the Party's performance of its obligations under this **Section 9.11** shall be subject to, and in accordance with, applicable Privacy Laws.

#### 9.12 Retained Systems and Business Processes.

- (a) **No Adverse Effect.** Except as expressly contemplated by any Statement of Work, Genpact shall not, by any act or omission, (i) adversely affect or alter the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of the Retained Systems and Business Processes without the prior consent of Wachovia or (ii) require changes to the Retained Systems and Business Processes, including associated business processes,

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applications, systems, software, utilities, tools or equipment, without the prior consent of Wachovia.

- (b) **Interface.** Genpact shall ensure that the processes, Systems, Software and Equipment used by Genpact to provide the Services will interface and integrate with the Retained Systems and Business Processes.
- (c) **Keep Informed.** Genpact shall inform itself and maintain up to date knowledge about all aspects of the existing and future Retained Systems and Business Processes.
- (d) **Assistance.** As part of the Services, Genpact shall provide Wachovia (upon Wachovia's request) with Services in relation to Retained Systems and Business Processes, including: (i) liaising with Wachovia or third parties regarding the impact of any alterations to the Retained Systems and Business Processes and of the impact of any alternation to the Services on the Retained Systems and Business Processes; and (ii) identifying favorable vendors in relation to the acquisition, support and development of Retained Systems and Business Processes.

#### 9.13 Network Configuration Data.

Genpact (a) shall provide Wachovia (and Wachovia Third Party Contractors) with network configuration data with respect to any network provided and used by Genpact to provide Services to Wachovia and/or the Eligible Recipients; and (b) hereby grants Wachovia (and Wachovia Third Party

Contractors) the right to use such data in connection with the performance of ancillary services (e.g., security reviews or audits).

## 10. CONTINUED PROVISION OF SERVICES

### 10.1 Disaster Recovery.

- (a) **Genpact Internal Enabling Functions Plan.** During the Term and any Termination Assistance Period, Genpact shall maintain in effect a business continuity and disaster recovery plan for the Genpact Facilities and all related Equipment, Software, people, communications equipment and other infrastructure components located at such Genpact Facilities (“**Genpact Internal Enabling Functions Plan**”).
- (b) **Genpact Development of Wachovia-specific Disaster Recovery Plan.** Within sixty (60) days after each SOW Commencement Date, Genpact shall, subject to Wachovia’s review and approval, develop and implement a business continuity and disaster recovery plan specifically for the applicable Services provided thereunder (each, a “**Disaster Recovery Plan**”). Each Disaster Recovery Plan shall be coordinated with the Genpact Internal Enabling Functions Plan and shall comply with the reasonable requirements of Wachovia’s overall disaster recovery and business continuity plans. Genpact shall have, at a minimum, a secured backup site at a location approved by Wachovia at least two hundred fifty (250) miles from the primary Genpact Facility containing all Equipment, Software, communications equipment, and current copies of data and files necessary to perform Genpact’s obligations hereunder. Transfer to the backup site shall occur within the period of time specified in the applicable Statement of Work after system failure or other event that prevents Genpact from operating as usual at its primary site. Genpact shall maintain sufficient geographically dispersed facilities and resources, including staff, equipment and data, to meet recovery and resumption objectives for critical processes as defined by Wachovia from time to time. By doing so, Genpact agrees to the appropriate management of risk related to the concentration of people, process and technology. At the point in time that there are five hundred (500) FTE’s on the Wachovia account, Genpact shall provide redundant capability, with adequate staffing and cross training, in an alternate location that is not in the same metropolitan area.

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- (c) **Updating and Testing of Plans.** In addition to the business continuity and disaster recovery Services described in the applicable Statement of Work, Genpact shall, at least on a quarterly basis, update and test the operability and effectiveness of the Genpact Internal Enabling Functions Plan and each Disaster Recovery Plan, promptly provide the results of testing to Wachovia and certify to Wachovia that such plans are fully operational. At Wachovia’s request, Genpact shall (i) permit Wachovia to participate in testing of the Genpact Internal Enabling Functions Plan and each Disaster Recovery Plan and (ii) at no additional cost to Wachovia, participate in an annual test of Wachovia’s business continuity, disaster recovery and backup plans.
- (d) **Implementation.** Upon the occurrence of a force majeure event, Genpact shall implement promptly, as appropriate, the Genpact Internal Enabling Functions Plan and the Disaster Recovery Plan and provide disaster recovery Services as described in the applicable Statement of Work. The occurrence of a force majeure event shall not relieve Genpact of its obligation to implement the Disaster Recovery Plan and provide disaster recovery Services, except to the extent a force majeure event impacts Genpact’s ability to implement such plan and provide such services.

### 10.2 Force Majeure.

- (a) **General.** Subject to Section 10.1, neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, strikes, lockouts or labor disputes or any other similar cause beyond the reasonable control of such Party, except to the extent such default or delay is caused by such Party’s failure to perform its obligations under this Agreement or the applicable Statement of Work and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternative sources, workaround plans or other means. A strike, lockout or labor dispute involving Genpact Personnel shall not excuse Genpact from its obligations hereunder. In addition, the refusal of a Genpact Personnel to enter a facility that is the subject of a labor dispute shall excuse Genpact from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of harm.
- (b) **Duration and Notification.** In such event the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so prevented, hindered or delayed in its performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (to be confirmed in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address such force majeure event, and the expected duration of such force majeure event.
- (c) **Substitute Services; Termination.** Each Statement of Work shall identify critical Wachovia or Eligible Recipient functions. If any event described in Section 10.2(a) has substantially prevented, hindered or delayed or is reasonably expected to substantially prevent, hinder or delay the performance by Genpact of Services necessary for the performance of critical Wachovia or Eligible Recipient functions for longer than the recovery period specified in the applicable Disaster Recovery Plan or, if there is no such recovery period specified in such Disaster Recovery Plan, three (3) days, Genpact shall, unless and until otherwise directed by Wachovia, use commercially reasonable efforts to procure such Services from an alternate source at Genpact’s expense for so long as the delay in performance shall continue, up to the Charges actually paid to Genpact for the Services with respect to the period of non-performance. If Genpact is unable to procure such



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expense. In addition, if any event described in Section 10.2(a) substantially prevents, hinders or delays the performance by Genpact, its Subcontractors or an alternate source paid by Genpact of Services necessary for the performance of critical Wachovia or Eligible Recipient functions for more than fifteen (15) days, Wachovia, at its option, may terminate any portion of a Statement of Work so affected immediately upon notice to Genpact without payment of any Stranded Costs or Termination Charges and the Charges payable hereunder shall be equitably adjusted to reflect those terminated Services. Genpact shall not be entitled to any additional payments or increased usage charges as a result of any force majeure event affecting Genpact's ability to perform (unless such ability to perform is affected solely because of the effect of such force majeure event on Wachovia).

### 10.3 Payment Obligation.

If Genpact fails to provide Services due to the occurrence of a force majeure event, the Charges payable to Genpact under the applicable Statement of Work shall be equitably adjusted in a manner such that Wachovia is not required to pay any amounts for Services that it is not receiving whether from Genpact or from an alternate source at Genpact's expense pursuant to **Section 10.2(c)**.

### 10.4 Allocation of Resources.

Without limiting Genpact's obligations under this Agreement or the applicable Statement of Work, whenever a force majeure event or disaster causes Genpact to allocate limited resources between or among Genpact's customers and Affiliates, Wachovia and the Eligible Recipients shall receive at least the same treatment as comparable Genpact customers. In no event will Genpact re-deploy or re-assign any Key Employees to another customer or account in the event of the occurrence of a force majeure event.

### 10.5 Step-In Rights.

- (a) **Step-In Events.** The Parties may specify in any Statement of Work an event or events upon the occurrence of which Wachovia may exercise step-in rights as set forth in such Statement of Work ("**Step-In Events**"), which shall be in the nature of significant, unresolved operational problems or to address regulatory concerns.
- (b) **Step-In Rights.** Upon the occurrence of any Step-In Event in respect of a Statement of Work in which the Parties have specified Step-In Events, Wachovia may, at its option, take control of the Services being performed under such Statement of Work as set forth in such Statement of Work and, in doing so, may take such other action as is reasonably necessary to ensure continuity of such Services as set forth in such Statement of Work.
- (c) **Cooperation.** Genpact shall fully cooperate with Wachovia (and the Wachovia personnel, Wachovia agents and Wachovia Third Party Contractors) as reasonably necessary to ensure continuity of the Services being performed at any Genpact Facility or at any Wachovia Facility at which Wachovia exercises its step-in rights set forth in the applicable Statement of Work, including giving Wachovia (and the Wachovia personnel, Wachovia agents and Wachovia Third Party Contractors) reasonable access to all relevant Genpact Personnel and resources, Equipment and Software located at such Genpact Facility or Wachovia Facility and following the reasonable instructions of Wachovia (and the Wachovia personnel, Wachovia agents and Wachovia Third Party Contractors).
- (d) **Resolution Plan.** Subject to **Section 10.5(e)**:
  - (i) If Wachovia's control over the Services under a Statement of Work providing for step-in rights is likely to exceed thirty (30) days, Genpact will work with Wachovia to develop a

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plan to rectify the Step-In Event, which if appropriate shall include the process set forth in **Section 7.3**. The plan shall describe the objective criteria upon the satisfaction of which Wachovia will transfer control over the Services back to Genpact.

- (ii) Once such a plan is approved by Wachovia, Genpact will implement the approved plan.
- (iii) Upon successful implementation of the approved plan and satisfaction of such objective criteria to Wachovia's reasonable satisfaction, Wachovia will transfer control over the Services back to Genpact.

(e) **Termination or Removal of Services.**

- (i) If Wachovia's control over the Services under a Statement of Work persists for a period in excess of the recovery period specified in the applicable Disaster Recovery Plan or, if there is no such recovery period, three (3) days with respect to any Wachovia or Eligible Recipient functions identified in such Statement of Work as critical, Wachovia, at its option, may terminate the applicable Statement of Work, or remove the affected portion of the Services under such Statement of Work, immediately upon notice to Genpact without payment of any Stranded Costs or Termination Charges, unless the Parties are complying with the plan agreed pursuant to **Section 10.5(d)** or the Parties otherwise agreed in writing, and **Article 26** shall apply to the terminated or removed Services.
- (ii) If Wachovia's control over the Services under a Statement of Work persists for one hundred eighty (180) days and Wachovia has not earlier exercised its rights to terminate such Statement of Work, Wachovia shall be deemed to have exercised its rights under **Section 25.2(a)** on the 180th day and **Article 26** shall apply; provided, however, that any such termination under this **Section 10.5(e)** shall not be construed as an admission by Genpact of a breach of this Agreement or of the applicable Statement of Work.
- (f) **No Charges for Services Performed by Wachovia.** If Wachovia exercises its step-in rights under a Statement of Work providing for such rights, Genpact shall not invoice Wachovia for Services that are performed by Wachovia, Wachovia Personnel or Wachovia Third Party Contractors.
- (g) **No Presumption of Responsibility.** Nothing in this **Section 10.5** shall be construed to either limit Wachovia's rights with respect to any default or non-performance by Genpact under this Agreement or waive Genpact's rights to raise defenses to any assertion of such claims by Wachovia.

**11. WACHOVIA RESPONSIBILITIES**

**11.1 Responsibilities.**

In addition to Wachovia's responsibilities as expressly set forth elsewhere in this Agreement, Wachovia shall be responsible for the following:

- (a) **Wachovia Project Executive.** Wachovia shall designate one (1) individual to whom all Genpact communications concerning this Agreement may be addressed (the "**Wachovia Project Executive**"), who shall have the authority to act on behalf of Wachovia and the Eligible Recipients in all day-to-day matters pertaining to this Agreement. Wachovia may change the designated Wachovia Project Executive from time to time by providing notice to Genpact. Additionally, Wachovia shall have the option, but will not be obligated, to designate additional

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representatives who will be authorized to make certain decisions (e.g., regarding emergency maintenance) if the Wachovia Project Executive is not available.

- (b) **Cooperation.** Wachovia shall cooperate with Genpact by, among other things, making available, as reasonably requested by Genpact, management decisions, information, approvals and acceptances so that Genpact may accomplish its obligations and responsibilities hereunder.
- (c) **Requirement of Writing.** To the extent Genpact is required under this Agreement to obtain Wachovia's approval, consent or agreement, such approval, consent or agreement must be in writing and must be signed by or directly transmitted by electronic mail from the Wachovia Project Executive or an authorized Wachovia representative. Notwithstanding the preceding sentence, the Wachovia Project Executive may agree in advance in writing that as to certain specific matters oral approval, consent or agreement will be sufficient.

**11.2 Management of Issues.**

- (a) **Proactive Management.** Notwithstanding anything contained in this **Article 11**, Genpact shall proactively manage issues in a manner such that all tasks required to be performed pursuant to this Agreement or a Statement of Work are performed in a timely manner. Each member of the Genpact Personnel is expected to immediately escalate an issue if the performance of any such Genpact Personnel's obligation is directly impacted by the failure of Wachovia to perform a preceding required task. Genpact will not have met its obligation with respect to the hindered task unless and until the Wachovia Project Executive (or other relevant Wachovia team member identified in **Schedule K**) has been notified of such failure to perform.
- (b) **Wachovia Failure.** Wachovia's failure to perform any of its stated operational responsibilities or provide any Wachovia resources will not constitute a breach of this Agreement or the applicable Statement of Work or give rise to any right to terminate this Agreement or the applicable Statement of Work. If Wachovia fails to perform any of its operations tasks set forth in the applicable Statement of Work or provide any Wachovia resources set forth in the applicable Statement of Work, Genpact will be excused from the performance of its obligations under this Agreement or such Statement of Work adversely affected by such failure to the extent and only for so long as Wachovia's failure is the direct cause of Genpact's non-performance, but only if:

- (i) Genpact promptly notifies the Wachovia Project Executive of Wachovia's failure and if, after notifying the Wachovia Project Executive, Wachovia fails to promptly rectify the failure; and
- (ii) there is no reasonable workaround for Wachovia's failure that would permit Genpact to perform such obligations.

## 12. CHARGES.

### 12.1 General.

- (a) **Payment of Charges.** In consideration of Genpact's performance of the Services, Wachovia agrees to pay Genpact the applicable Charges set forth in this **Article 12, Schedule O** or the applicable Statement of Work. Genpact shall continually seek to identify methods of reducing such Charges, including as part of its productivity commitment under the Agreement, and will notify Wachovia of such methods and the estimated potential savings associated with each such method.
- (b) **Currency.** All Charges will be denominated in United States dollars.

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- (c) **No Additional Charges.** Wachovia shall not pay any Charges for the Services in addition to those set forth in this **Article 12, or Schedule O**, or as may be expressly provided in a Statement of Work or this Agreement. Any costs incurred by Genpact prior to the Effective Date are included in the Charges set forth in **Schedule O** and are not to be separately paid or reimbursed by Wachovia.
- (d) **Incidental Expenses.** Genpact acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Genpact incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, desktop Equipment and other office Equipment required by Genpact Personnel, and long-distance telephone) are included in Genpact's charges and rates set forth in this Agreement. Accordingly, such Genpact expenses are not separately reimbursable by Wachovia unless Wachovia has agreed in advance to reimburse Genpact for the expense.
- (e) **No Charge for Reperformance.** At no additional expense to Wachovia, Genpact shall reperform (including any required backup or restoration of data from scheduled backups or, if not available on such backups, restoration by other means with Wachovia's reasonable cooperation) any Services that result in incorrect outputs to the extent due to an error or breach by Genpact, and the resources required for such reperformance shall not be counted in calculating the Charges payable or resources utilized by Wachovia hereunder.

### 12.2 Pass-Through Expenses.

If any Statement of Work contemplates Pass-Through Expenses, Genpact shall not (a) mark-up any such Pass-Through Expenses, or (b) add any management, administrative or other fees to any Pass-Through Expenses, including in connection with its processing or review of invoices for Pass-Through Expenses in accordance with such Statement of Work.

### 12.3 Taxes.

The Parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

- (a) **Income Taxes.** Each Party shall be responsible for its own Income Taxes.
- (b) **Sales, Use and Property Taxes.** Each Party shall be responsible for any sales, lease, use, personal property, value-added, gross receipts, stamp duty or other such taxes on Equipment, Software or personal property it owns or leases from a third party. If a Statement of Work contemplates that Wachovia shall convey to Genpact, and Genpact shall accept Wachovia's conveyance of, Acquired Assets, the Parties shall specify the responsibility for Transfer Taxes in such Statement of Work.
- (c) **Recoverable Taxes.** All sums payable under or in connection with this Agreement shall be exclusive of Recoverable Taxes, and each Party shall, in addition to such sums, pay such Recoverable Taxes properly chargeable thereon on receipt of a valid invoice.
- (d) **Taxes on Goods or Services Used by Genpact.** Genpact shall be responsible for all sales, service, value-added, gross receipts, lease, use, personal property, excise, consumption, and other taxes and duties (including Recoverable Taxes) payable by Genpact on any goods or services used or consumed by Genpact in providing the Services (including services obtained from Subcontractors) where the tax is imposed on Genpact's acquisition or use of such goods or services and the amount of tax is measured by Genpact's costs in acquiring such goods or services and not by Wachovia's cost of acquiring such goods or services from Genpact.

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(e) **Service Taxes.**

- (i) **US Service Taxes.** For purposes of this provision, “**US Service Taxes**” shall mean Service Taxes assessed by any Tax Authority in the United States against Wachovia or the Eligible Recipients on the receipt of the Services as a whole, or on any particular Service received by Wachovia or the Eligible Recipients from Genpact. Except as set forth in this **Section 12.3(e)(i)**, Wachovia shall be financially responsible for all US Service Taxes. If additional US Service Taxes become applicable to the Services as a result of Genpact moving all or part of its operations to a jurisdiction different from the jurisdiction in which it operates as of the Effective Date, other than at Wachovia’s request (e.g., Genpact relocating performance of Services to a shared service center or assigning this Agreement to an Affiliate), Genpact shall be financially responsible for the incremental US Service Taxes.
- (ii) **Other Service Taxes.** Except as set forth otherwise in the applicable Statement of Work in respect of value-added taxes, Genpact shall be financially responsible for all Service Taxes assessed by Tax Authorities outside the United States against either Party on the provision of the Services as a whole, or on any particular Service received by Wachovia or the Eligible Recipients from Genpact.
- (f) **Withholding.** The Parties do not intend to enter into an arrangement that will result in withholding taxes on cross-border payments being levied by any Tax Authority. Genpact may refuse to enter into any Statement of Work that would result in the levy of such withholding taxes. If Wachovia specifically requests that Genpact enter into a Statement of Work of Services that would result in the levy of withholding taxes by a Tax Authority, Genpact will do so only if Wachovia agrees to increase the sum payable to Genpact so that after Wachovia makes all required deductions Genpact receives an amount equal to the sum it would have received had no such deductions been made. Wachovia shall provide Genpact with appropriate documentation or certification of the taxes so withheld to enable Genpact to obtain a tax credit or deduction. Genpact shall use commercially reasonable efforts to obtain a credit or deduction for any withholding, and pay over to Wachovia the amount, after accounting for such credit or deduction, that Genpact received that exceeds the amount Genpact would have received had there been no withholding on Wachovia’s payment to Genpact. All such receipts and other evidence of withholding shall be forwarded to: Genpact US Holdings, Inc., 1251 Avenue of the Americas, New York, NY 10020, Attention: Eileen S. Silvers or such other address as Genpact may from time to time specify.
- (g) **Telecommunication Surcharges or User Fees.** To the extent Wachovia is responsible under **Schedule O** for telecommunication surcharges or user fees imposed by government authorities and associated with the Services and the allocation of such fees or surcharges is within Genpact’s or its Subcontractors’ discretion, Genpact and its Subcontractors shall act fairly and equitably in allocating such fees and surcharges to Wachovia, and Wachovia and the Eligible Recipients shall not receive more than a proportionate share of such fees and surcharges. In addition, in the event any such fee or surcharge for which Wachovia or an Eligible Recipient is responsible is subsequently reduced or vacated by the appropriate regulatory authority or court of competent jurisdiction, Genpact shall take commercially reasonable steps to seek on behalf of Wachovia a refund of any overpayment of such fee or surcharge by Wachovia or the Eligible Recipient.
- (h) **Notice of Additional Taxes and Charges.** Genpact shall promptly notify Wachovia when it becomes aware of any additional taxes or other charges (including changes to existing taxes or charges) to be passed through to and/or collected by Wachovia under this **Section 12.3**. Such notification (which may be separate from the first invoice reflecting such taxes or other

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charges) shall contain a detailed explanation of such taxes or charges, including the effective date of each additional tax or charge.

- (i) **Efforts to Minimize Taxes.** Each Party shall cooperate with the other Party to enable the other Party to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible. Genpact’s invoices shall separately state the Charges that are subject to taxation and the amount of taxes included therein. Each Party will provide and make available to the other Party any resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials, or services, and other exemption certificates or information reasonably requested by either Party. Each Party shall, upon the other Party’s request, provide a written confirmation that it has filed all required tax forms and returns required in connection with any Service Taxes and has collected and remitted all applicable Service Taxes.
- (j) **Tax Audits or Proceedings.** Each Party shall promptly notify the other Party of, and coordinate with the other Party, the response to and settlement of, any claim for taxes asserted by applicable Tax Authorities for which the other Party is financially responsible hereunder. With respect to any claim arising out of a form or return signed by a Party to this Agreement, such Party will have the right to elect to control the response to and settlement of the claim, but the other Party will have the right to participate in the responses and settlements to the extent of its potential responsibility or liability. Each Party also shall have the right to challenge the imposition of any tax liability for which it is financially responsible under this Agreement or, if necessary, to direct the other Party to challenge the imposition of any such tax liability. If either Party requests the other to challenge the imposition of any tax liability, such other Party shall do so (unless and to the extent it assumes financial responsibility for the tax liability in question), and the requesting Party shall reimburse the other for all fines, penalties, interest, additions to taxes or similar liabilities imposed in connection therewith, plus the reasonable legal, accounting and other professional fees and expenses it incurs. Each Party shall be entitled to any tax refunds or rebates obtained with respect to the taxes for which such Party is financially responsible under this Agreement.
- (k) **Tax Filings.** Each Party represents, warrants and covenants that it will file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in applicable jurisdictions. Each Party represents, warrants and covenants that it is

registered to and will collect and remit Service Taxes in all applicable jurisdictions.

#### 12.4 Extraordinary Events.

- (a) **Definition.** As used in this Agreement, an “**Extraordinary Event**” means a circumstance in which an event or discrete set of events has occurred or is planned with respect to the business of Wachovia or the Eligible Recipients that results or will result in a change in the scope, nature or volume of the Services that Wachovia or the Eligible Recipients will require from Genpact, and which is expected to cause the estimated average monthly usage of chargeable Resource Units to generally increase or decrease by twenty-five percent (25%) or more from the then-existing level of usage.
- (b) **Consequence.** If an Extraordinary Event occurs, Wachovia may, at its option, request more favorable pricing with respect to applicable Charges for any Statement of Work in accordance with this **Section 12.4(b)**. Genpact and Wachovia shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization reductions or increases, if any, resulting from such Extraordinary Event and, upon Wachovia’s approval, Genpact shall then proceed to implement such efficiencies, economies, savings and resource utilization reductions or increases as quickly as practicable and in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization reductions are realized, the Charges specified in the applicable Statement of Work and any affected Resource Baselines shall be

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promptly and equitably adjusted to pass through to Wachovia or compensate Genpact for such efficiencies.

- (c) **Termination.** If an Extraordinary Event results in Charges to Wachovia higher than such Charges would have been if the ARCs or RRCs specified in the applicable Statement(s) of Work for usage twenty-five percent (25%) or less had been applied, then Wachovia may terminate the affected Statement(s) of Work by giving Genpact notice of such termination.
- (i) If Wachovia terminates the affected Statement(s) of Work because the Extraordinary Event results in Charges to Wachovia higher than such Charges would have been if the ARCs specified in the applicable Statement(s) of Work for usage twenty-five percent (25%) or less had been applied, Wachovia shall pay Genpact its Stranded Costs, in accordance with the Stranded Cost calculation methodology set forth in **Schedule I** and subject to the cap(s) set forth in such Statement(s) of Work, but Genpact shall not be entitled to any Termination Charge in respect of such termination(s).
- (ii) If Wachovia terminates the affected Statement(s) of Work because the Extraordinary Event results in Charges to Wachovia higher than such Charges would have been if the RRCs specified in the applicable Statement(s) of Work for usage twenty-five percent (25%) or less had been applied, Wachovia shall pay Genpact its Stranded Costs, in accordance with the Stranded Cost calculation methodology set forth in **Schedule I** and subject to the cap(s) set forth in such Statement(s) of Work, plus a Termination Charge equal to [[[\*\*\*]]].
- (iii) In either event, any such termination under this **Section 12.4(c)** shall not be deemed a termination for convenience by Wachovia subject to **Section 25.3**.

#### 12.5 Unanticipated Changes.

If an Unanticipated Change occurs, and if Wachovia requests that the Services be modified to incorporate such Unanticipated Change, the Parties shall use the procedures in **Section 12.4(b)** to equitably adjust the Charges and other relevant provisions of this Agreement to take such Unanticipated Change into account. An “**Unanticipated Change**” shall consist of a material change in the technologies and/or business processes available to provide all or part of the Services that is unforeseen as of the applicable SOW Commencement Date, is outside the normal evolution of technology experienced by providers of in-scope business process outsourcing services, was not available as of the applicable SOW Commencement Date, and would materially reduce Genpact’s cost of providing the Services.

#### 12.6 Proration.

Any periodic charges under this Agreement shall be computed on a calendar month basis, and such monthly charges shall be prorated for any partial month on a calendar day basis.

#### 12.7 Refundable Items.

- (a) **Prepaid Amounts.** Where Wachovia and/or the Eligible Recipients have prepaid for a service or function for which Genpact is assuming financial responsibility under a Statement of Work, Genpact shall promptly refund to Wachovia or the Eligible Recipients, upon either Party identifying the prepayment, that portion of such prepaid expense which is attributable to periods on and after the applicable SOW Commencement Date.
- (b) **Refunds and Credits.** If Genpact should receive a refund, credit, discount or other rebate for goods or services paid for by Wachovia and/or the Eligible Recipients on a Pass-Through Expense,

a retained expense, a cost-plus or cost-reimbursement basis, then Genpact shall (i) notify Wachovia of such refund, credit, discount or rebate and (ii) promptly pay or credit the full amount of such refund, credit, discount or rebate to Wachovia or such Eligible Recipient.

## 12.8 Wachovia Benchmarking Reviews.

- (a) **Benchmarking Review.** At any time after the first anniversary of a SOW Commencement Date and no more frequently than once each Contract Year thereafter, Wachovia may, subject to this Section 12.8, engage the services of an independent third party (a “**Benchmarker**”) to compare the Charges, performance against Service Levels, level of turnover and customer satisfaction in respect of all or any portion of the Services under such Statement of Work against the charges by other well-managed business process outsourcing service providers performing similar services (and, at Wachovia’s option, the fully-loaded cost of captive operations performing similar services) to ensure that the pricing, performance against Service Levels, turnover levels and customer satisfaction under such Statement of Work is competitive with market pricing, performance, turnover and customer satisfaction, given the nature, quality, volume, type and Service Levels of the Services provided by Genpact under such Statement of Work (“**Benchmarking**”). At Wachovia’s discretion, a benchmarking may be conducted with respect to (i) all of the Services under such Statement of Work in the aggregate; (ii) all of such Services provided from any country(ies) in which a Genpact Facility then providing Services to Wachovia or the Eligible Recipients is located provided that in such case the benchmarking shall be done only in relation to service providers or captive operators in such country(ies); or (iii) any Service under a Statement of Work. In making this comparison, the Benchmarker shall consider the following factors and other similar variables and adjust the prices as and to the extent appropriate: (i) whether and to what extent supplier transition charges are paid by the customer as incurred or amortized over the term of the agreement; (ii) the extent to which supplier pricing includes the purchase of the customer’s existing assets; (iii) the extent to which supplier pricing includes the cost of acquiring future assets; (iv) allocation of the Management Fee as necessary for comparison purposes; (v) the extent to which this Agreement calls for Genpact to provide and comply with unique Wachovia requirements; (vi) whether Service Taxes are included in such pricing or stated separately in supplier invoices; (vii) extent of financial engineering required under the Agreement; (viii) the countries in which the Services are required, and (ix) if captive operations performing similar services are used in the comparison, the profit margin of such captive operations. The Benchmarker shall identify any additional services provided by Genpact that are not specifically set forth in the Statement of Work and are not paid for by Wachovia (such as extra hours, extra services, management information systems services, training support and documentation support).
- (b) **General.** Wachovia shall retain, at Wachovia’s cost and expense, a Benchmarker for each Benchmarking from among those set forth in Schedule P or another mutually agreed company. The Benchmarker shall execute a non-disclosure agreement substantially in the form attached hereto as Exhibit 1. Genpact shall cooperate fully with Wachovia and the Benchmarker and will (i) provide the Benchmarker reasonable access to any premises, equipment, personnel or documents, and (ii) provide any assistance required by the Benchmarker to conduct the Benchmarking, all at Genpact’s cost and expense. The Benchmarking shall be conducted so as not to unreasonably disrupt Genpact’s operations under this Agreement.
- (c) **Result of Benchmarking.**
- (i) The Benchmarker shall determine the median cost for the Services or any service element under a Statement of Work based upon the prices charged by other well-managed information technology service providers or the cost of captive operations performing work of a similar nature, type, quality (as measured by the Service Levels) and volume as

the Services excluding in the calculation of the median the lowest and the highest price or cost comparison identified in the Benchmarking (the “**Benchmark Standard**”).

- (ii) If the Charges paid by Wachovia for such Services or any service element under a Statement of Work are more than [[[\*\*\*]]] higher than the Benchmark Standard, then, within [[[\*\*\*]]] following the end of the review period set forth in Section 12.8(d), Genpact shall decrease the Charges under such Statement of Work so that the decreased Charges are less than [[[\*\*\*]]] higher than the Benchmark Standard and, at Wachovia’s request, the Parties shall negotiate an action plan to reduce the Charges further to the Benchmark Standard. If the Parties are unable to agree upon an action plan, Wachovia may, at its option, terminate the Services in whole or in part pursuant to Section 25.3. If the Services are terminated in part, Genpact’s Charges shall be equitably adjusted to reflect the Services no longer performed by Genpact.
- (iii) If the Charges paid by Wachovia for such Services or any service element under a Statement of Work are less than the Benchmark Standard, then Genpact may review the results with Wachovia and request an increase to the Charges to equal the Benchmark Standard. Wachovia may choose to approve or disapprove such an increase at its discretion.

- (d) **Genpact Review and Dispute.** Wachovia shall provide Genpact with a copy of the Benchmarking report and Genpact shall have forty-five (45) days to review such report and contest the Benchmarking findings. If the Parties are unable to agree upon the validity of such findings, the matter shall be resolved pursuant to the dispute resolution procedures set forth in **Article 24**.
- (e) **Benchmarking Data.** All Benchmarking data shall be deemed confidential information and shall be solely for the use of Genpact and Wachovia.

## 12.9 Gainsharing.

The Parties anticipate that there will be opportunities for significant cost improvement and other financial benefits through process redesign and improvement of business processes outsourced to Genpact under this Agreement. Accordingly, the Parties will implement the following process for mutually agreed gain sharing opportunities in connection with the in-scope business processes:

- (a) **Direct Benefits.** Pursuant to the Change Control Procedures, Genpact may from time to time propose for Wachovia's consideration changes to the processes under an existing Statement of Work that are in production that Genpact believes would result in reduction in the cost of performing the Services under such Statement of Work for the remainder of the applicable SOW Term ("**Direct Benefits**").
  - (i) Each such proposal shall include an estimate of the process improvement costs associated with any process improvement.
  - (ii) As part of the approval process, the Parties shall agree upon how Direct Benefits shall be calculated.
  - (iii) If, pursuant and subject to the Change Control Procedures, Wachovia approves any change in process proposed by Genpact, Genpact will make any investments required for the process improvements and Wachovia will make any related investments in respect of the Retained Systems and Business Processes as required to facilitate such process improvement.

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- (iv) The Parties shall account for the Direct Benefits resulting from such approved process change as agreed pursuant to the Change Control Procedures. Actual Direct Benefits shall be first be applied to reimburse Wachovia for the cost of its related investments, then to reimburse Genpact for the cost of its investments.
- (v) After Wachovia and Genpact have each recouped such investments, the Parties shall each receive [[[\*\*\*]]] of the actual Direct Benefits from approved process changes.

- (b) **Indirect Benefits.** Pursuant to the Change Control Procedures and this **Section 12.9(b)**, in addition to Direct Benefits from any process improvement, Genpact may propose for Wachovia's consideration the sharing of other financial benefits to Wachovia other than Direct Benefits resulting from process improvements proposed pursuant to this **Section 12.9**. Sharing of any indirect financial benefits shall require approval of each of (i) the CFO of the affected Wachovia business line, (ii) the Wachovia Outsourcing Governance Director and (iii) the Executive Committee. Any agreement to share indirect financial benefits must include how such indirect financial benefits shall be calculated and a cap of the indirect financial benefits to be shared.

## 13. INVOICING AND PAYMENT

### 13.1 Invoicing.

- (a) **Invoice.** Within five (5) days after the beginning of each month, Genpact shall present Wachovia with preliminary billing details for any Charges due and owing for the preceding month, pursuant to all existing Statements of Work. Wachovia shall review such preliminary billing details and shall either accept or reject such billing details within twelve (12) days after receipt. If Wachovia accepts such billing details, Genpact shall issue an invoice for the Charges due and owing for the preceding month consistent with the preliminary billing details. At Wachovia's request, Genpact shall provide separate monthly invoices for each Eligible Recipient then receiving Services, with the Charges allocated among such Eligible Recipients based on the chargeback data generated by Genpact and/or the allocation formula provided by Wachovia. The invoice shall be delivered to Wachovia, at its request, at the address listed in **Section 27.3** and/or electronically. Unless otherwise required under a Statement of Work, Genpact shall not invoice Wachovia for any advance or concurrent charges or other amounts.
- (b) **Form and Data.** Each invoice shall (i) comply with all applicable legal, regulatory and accounting requirements, (ii) allow Wachovia to validate volumes and fees, (iii) comply with Wachovia's and the Eligible Recipient's accounting, management reporting and billing requirement, and (iv) permit Wachovia to allocate the Charges among the Eligible Recipients based on chargeback data generated by Genpact and/or allocation formulae provided by Wachovia. Each invoice shall include the pricing calculations and related data utilized to establish the Charges and sufficient information to validate the service volumes and associated Charges. The data underlying each invoice shall be delivered to Wachovia electronically (if requested by Wachovia) in a form and format compatible with Wachovia's accounting systems.
- (c) **Credits.** To the extent a credit may be due to Wachovia pursuant to this Agreement, Genpact shall provide Wachovia with an appropriate credit against amounts then due and owing; if no further payments are due to Genpact, Genpact shall pay such amounts to Wachovia within thirty (30) days after the date the credit has accrued.

- (d) **Time Limitation.** If Genpact fails to provide an invoice to Wachovia for any amount within ninety (90) days after the end of month in which the Services in question are rendered or the expense incurred, Genpact shall waive any right it may otherwise have to invoice for and collect such amount.

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**13.2 Payment Due Date.** Subject to the other provisions of this **Article 13**, each invoice provided for under **Section 13.1** shall be due and payable within forty-five (45) days after receipt by Wachovia of such invoice unless the amount in question is disputed in accordance with **Section 13.3**. Any undisputed amount due under this Agreement for which a time for payment is not otherwise specified also shall be due and payable within forty-five (45) days.

**13.3 Disputed Charges.**

Wachovia may withhold payment of particular Charges that Wachovia reasonably disputes in good faith subject to the following:

- (a) **Notice of Dispute.** If Genpact's invoice includes sufficient detail and supporting documentation to enable Wachovia to reasonably determine whether Genpact's Charges are in accordance with this Agreement, Wachovia shall notify Genpact as soon as possible (but in any event on or before the payment due date of such invoice) if it disputes any of the Charges in such invoice.
- (b) **Notice of Insufficient Detail, Documentation and Dispute.** If Genpact's invoice does not include sufficient detail and supporting documentation to enable Wachovia to reasonably determine whether Genpact's Charges are in accordance with this Agreement, Wachovia shall so notify Genpact as soon as possible (but in any event on or before the payment due date). Genpact shall promptly provide such reasonable detail and supporting documentation, and Wachovia shall notify Genpact within ten (10) business days after receipt thereof by the Wachovia Project Executive whether it disputes any of the Charges in Genpact's invoice.
- (c) **Continued Performance.** Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Agreement.
- (d) **No Waiver.** Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right Wachovia may otherwise have to dispute any Charge or amount or recover any amount previously paid.

**14. AUDIT RIGHTS**

**14.1 Contract Records.**

Genpact shall, and shall cause its Subcontractors to, maintain complete and accurate records of and supporting documentation for all Charges, all Wachovia Data and all transactions, authorizations, changes, implementations, soft document accesses, system access and log reports, filings, reports, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Genpact in the performance of its obligations under this Agreement (the "**Contract Records**"). Genpact shall maintain such Contract Records in accordance with applicable Laws. Genpact shall retain Contract Records in accordance with Wachovia's record retention policy (as such policy may be reasonably modified from time to time and provided to Genpact in writing) during the Term and any Termination Assistance Period and thereafter through the end of the second full calendar year after the calendar year in which Genpact stopped performing the applicable Services (including any Termination Assistance Services) (the "**Audit Period**"). Unless such changes are required by applicable Law, the Parties shall address any incremental costs incurred by Genpact complying with changes in Wachovia's record retention policy after the applicable SOW Commencement Date direction in accordance with the Change Control Procedures.

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**14.2 Operational Audits.**

During the Audit Period and subject to **Section 14.5**, Genpact shall, and shall cause its Subcontractors and suppliers to, provide to Wachovia (and internal and external auditors (provided that Wachovia shall not appoint any Genpact Competitor as an auditor)), inspectors, regulators and other representatives that Wachovia may designate from time to time, including customers, vendors, licensees and other third parties to the extent Wachovia or the Eligible Recipients are legally or contractually obligated to submit to audits by such entities in each case (each a "**Wachovia Auditor**") access to Genpact Personnel, to the facilities at or from which Services are then being provided and to Contract Records and other pertinent information, all to the extent relevant to the Services and Genpact's obligations under this Agreement; provided, however, that in no event shall Wachovia or any Wachovia Auditor be provided with access to, or permitted to review, any data or information of any customer of Genpact or



its Subcontractors (other than Wachovia and the Eligible Recipients). Such access shall be provided for the purpose of performing audits and inspections, to (a) verify the integrity of Wachovia Data, in accordance with the terms of this Agreement; (b) examine the systems that process, store, support and transmit that data; (c) examine the internal controls (e.g., financial and accounting controls, in-scope business process controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery and back-up practices and procedures; (d) examine Genpact's performance of the Services; (e) verify Genpact's reported performance against the applicable Service Levels; (f) examine Genpact's measurement, monitoring and management tools; (g) verify Genpact's compliance with physical and logical security requirements; (h) examine Genpact's audit systems, accounting and administrative processes and procedures for compliance with Wachovia Standards, applicable data security practices and government regulations; and (i) enable Wachovia and the Eligible Recipients to meet the requirements under applicable Laws (including those associated with the Sarbanes-Oxley Act of 2002 and the implementing regulations promulgated by the United States Securities and Exchange Commission and Public Company Accounting Oversight Board and the Basel II Accord and implementing regulations). Genpact shall (a) provide any assistance reasonably requested by Wachovia or its designee in conducting any such audit, including installing and operating audit software, (b) make requested personnel (to the extent still employed by Genpact or its Affiliates or Subcontractors), records and information reasonably available to Wachovia or its designee, and (c) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If an audit reveals a material breach of this Agreement and Genpact does not successfully dispute such finding in accordance with [Article 24](#), then any amount of damages recoverable as a result of such breach shall include the actual cost of such audit (including fees charged by any Wachovia Auditor).

### 14.3 Financial Audits.

During the Audit Period and subject to [Section 14.5](#), Genpact shall, and shall cause its Subcontractors to, provide to Wachovia (and a Wachovia Auditor) access to Genpact Personnel and to Contract Records and other pertinent information to conduct financial audits, all to the extent relevant to the performance of Genpact's obligations under this Agreement; provided, however, that in no event shall Wachovia or any Wachovia Auditor be provided with access to, or permitted to review, any data or information of any customer of Genpact or its Subcontractors (other than Wachovia and the Eligible Recipients). Such access shall be provided for the sole purpose of performing audits and inspections to (a) verify that the Charges are in accordance with this Agreement, (b) verify the accuracy of any Pass-Through Expenses and Out-of-Pocket Expenses, (c) examine the financial controls, processes and procedures utilized by Genpact in connection with the Services, (d) examine Genpact's performance of its other financial and accounting obligations to Wachovia under this Agreement, (e) review the costs of Genpact in performing the Services (but only to the extent such costs are the basis upon which Wachovia is charged (e.g., reimbursable expenses, Out-of-Pocket Expenses, Pass-Through Expenses or cost-plus Charges) and/or are necessary to calculate the applicable Charges), and (f) enable Wachovia and the Eligible Recipients to meet the requirements under applicable Law, in each case to the extent applicable to the Services and/or the Charges for such Services. Genpact shall (a) provide any assistance reasonably requested by Wachovia or a Wachovia Auditor in conducting any such audit, (b) make requested personnel (to the extent still employed by Genpact or its Affiliates or Subcontractors), records and information available to Wachovia or a

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Wachovia Auditor, and (c) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If any such audit reveals an overcharge by Genpact, and Genpact does not successfully dispute the amount questioned by such audit in accordance with [Article 24](#), Genpact shall promptly pay to Wachovia the amount of such overcharge. In addition, if any such audit reveals an overcharge of more than one percent (1%) of the audited Charges, Genpact shall promptly reimburse Wachovia for the actual cost of such audit (including fees charged by any Wachovia Auditor).

### 14.4 Audit Assistance.

Wachovia and certain Eligible Recipients may be subject to regulation and audit by governmental bodies, standards organizations, other regulatory authorities, customers or other parties to contracts with Wachovia or an Eligible Recipient under applicable Laws, standards and contract provisions. If a governmental body, standards organization, regulatory authority or customer or other third party to a contract with Wachovia or an Eligible Recipient exercises its right to examine or audit Wachovia's or an Eligible Recipient's books, records, documents or accounting practices and procedures pursuant to such Laws, standards or contract provisions, Genpact shall provide all assistance requested by Wachovia or the Eligible Recipient in responding to such audits or requests for information and shall do so in an expeditious manner to facilitate the prompt closure of such audit or request.

### 14.5 General Procedures.

- (a) Genpact shall (i) cause its Affiliate Subcontractors to comply with this [Article 14](#) and (ii) use commercially reasonable efforts to obtain, and extend to Wachovia, audit rights equivalent to those specified in this [Article 14](#) from all Non-affiliate Subcontractors.
- (b) Wachovia shall use commercially reasonable efforts to minimize the frequency of audits under this [Article 14](#) and to provide reasonable notice of the exercise of its audit rights hereunder, but Genpact acknowledges and agrees that audits by Wachovia's inspectors or regulators or security audits cannot be limited or any notice period prescribed. Similarly, Wachovia shall use commercially reasonable efforts to conduct audits (other than audits by Wachovia's inspectors or regulators or security audits) under this [Article 14](#) during normal business hours.
- (c) Wachovia shall use commercially reasonable efforts to cause each Wachovia Auditor (other than Wachovia internal auditors or Wachovia's inspectors or regulators) to execute a confidentiality agreement substantially in the form set forth in [Exhibit 1](#) prior to the commencement of an audit under this [Article 14](#).
- (d) Except as set forth in [Section 14.2](#) or [14.3](#), Wachovia shall be responsible for the fees and expenses charged by a Wachovia Auditor.

- (e) Notwithstanding the intended breadth of Wachovia's audit rights, Wachovia shall not be given access to (i) the proprietary information of other Genpact customers, (ii) Genpact locations that are not related to Wachovia, Eligible Recipients or the Services or (iii) Genpact's internal costs, except to the extent such costs are the basis upon which Wachovia is charged (e.g., reimbursable expenses, Out-of-Pocket Expenses, Pass-Through Expenses or cost-plus Charges) and/or are necessary to calculate the applicable Charges.
- (f) In performing audits, Wachovia shall use commercially reasonable efforts to avoid unnecessary disruption of Genpact's operations and unnecessary interference with Genpact's ability to perform the Services in accordance with the Service Levels. In the event (i) any audit performed by Wachovia or a Wachovia Auditor pursuant to Section 14.2 or 14.3 or (ii) Genpact's compliance with its obligations set forth in Section 14.2 or 14.3, in either case, adversely affects Genpact's

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performance of its obligations under this Agreement, then subject to Section 11.2 Wachovia shall relieve Genpact from such obligations, including liability for any Service Level Credits or Deliverable Credits that Genpact may incur.

- (g) Wachovia shall be given reasonable private workspace in which to perform an audit, plus access to photocopiers, telephone, facsimile machines, computer hook-ups and any other facilities or equipment reasonably required for the performance of the audit.
- (h) Prior to receiving access to Proprietary Information of Genpact, external Wachovia Auditors (other than Wachovia's inspectors or regulators) shall execute a non-disclosure agreement substantially in the form attached hereto as Exhibit 1.

#### 14.6 Genpact Internal Audit.

- (a) **Material Deficiencies.** If a review or audit conducted by Genpact or its Affiliates (including internal and external auditors) of any of its operations relating to the Services reveals any material deficiencies, Genpact shall promptly notify Wachovia of such findings.
- (b) **Overcharges.** If Genpact determines as a result of a review or audit conducted by Genpact or its Affiliates (including internal and external auditors) of its operations relating to the Services that it has overcharged Wachovia, then Genpact shall promptly pay or credit to Wachovia the amount of such overcharge, net of any undercharges.

#### 14.7 Genpact Response.

Following the completion of an audit conducted pursuant to this Article 14 or the issuance of an interim or final report to Genpact and Wachovia following any such audit, Wachovia shall conduct (in the case of an internal audit), or request its external auditors or examiners to conduct, an exit conference with Genpact to obtain factual concurrence with issues identified in the review. Genpact shall respond to each exit interview and/or audit report in writing within thirty (30) days, unless a shorter response time is specified in such report. Genpact and Wachovia shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations identified in such exit interview or audit report and Genpact, at its own expense, shall undertake remedial action in accordance with such action plan and the dates specified therein to the extent necessary to comply with Genpact's obligations under this Agreement.

#### 14.8 Genpact Response to External Audits.

If an audit by a governmental body, standards organization or regulatory authority having jurisdiction over Wachovia, an Eligible Recipient or Genpact results in a finding that Genpact is not in compliance with any applicable Law or standard, including any generally accepted accounting principle or other audit requirement relating to the performance of its obligations under this Agreement, then Genpact shall, at its own expense and within the time period specified by such auditor, address and resolve the deficiency(ies) identified by such governmental body, standards organization or regulatory authority, in a manner approved by Wachovia.

#### 14.9 SAS 70 Type II Audit.

- (a) In addition to its other obligations under this Article 14, Genpact shall cause a Type II Statement of Auditing Standards ("SAS") 70 audit (or equivalent audit) to be conducted at least annually for each business process which is subject to one or more Statement(s) of Work and related internal controls for each Genpact Facility at or from which the Services are provided to Wachovia or the Eligible Recipients. Genpact shall consider issues and concerns raised by Wachovia in the

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planning of each such audit, provide notice to Wachovia as to the scope and timing of each such audit and accommodate Wachovia's requirements and concerns to the extent practicable. Genpact shall provide Wachovia with a report from each SAS 70 audit to facilitate periodic compliance reporting by Wachovia and the Eligible Recipients under the Sarbanes-Oxley Act of 2002 (and implementing regulations promulgated by the United States Securities and Exchange Commission and Public Company Accounting Oversight Board) and comparable Laws in other jurisdictions. To the extent the resulting audit report is relevant to Wachovia or the Eligible Recipients, Genpact shall provide a copy of such report to Wachovia and its independent auditors for review and comment as soon as reasonably practicable and in all events within forty-five (45) days after the issuance of the report. Genpact shall respond to such report in accordance with this **Section 14.9(a)**.

- (b) If Genpact undertakes additional or different Type II SAS 70 audits (or equivalent audits) of Genpact Facilities at, from or through which Services are provided to Wachovia or the Eligible Recipients (other than customer-specific audits requested and paid for by other Genpact customers), Genpact shall accord Wachovia the rights described in **Section 14.9(a)** with respect to such audits.
- (c) To the extent Wachovia provides reasonable notice and requests that, in addition to the Type II SAS 70 audit described in this **Section 14.9(a)** or **(b)**, Genpact conduct a Wachovia-specific Type II SAS 70 audit, Genpact shall do so at Wachovia's expense (provided, Genpact notifies Wachovia of such expense, obtains Wachovia's approval, and uses commercially reasonable efforts to minimize such expense).

#### 14.10 Audit Costs.

Except as otherwise noted, Genpact and its Subcontractors shall comply with its obligations described in this **Article 14** at no additional charge to Wachovia.

### 15. WACHOVIA DATA AND OTHER PROPRIETARY INFORMATION

#### 15.1 Wachovia Ownership of Wachovia Data.

Wachovia Data is and shall remain the property of Wachovia (and/or the applicable Eligible Recipients). Genpact shall promptly deliver Wachovia Data (or the portion of such Wachovia Data specified by Wachovia) to Wachovia in the format, on the media and in the timing reasonably prescribed by Wachovia (a) at any time upon Wachovia's request, (b) at the end of the Term and at the completion of all requested Termination Assistance Services (except Contract Records, which shall be retained by Genpact for the Audit Period specified in **Section 14.1** unless and to the extent Genpact is directed by Wachovia to deliver such Contract Records to Wachovia prior to the expiration of such Audit Period), (c) with respect to particular Wachovia Data, at such earlier date that such data are no longer required by Genpact to perform the Services, or (d) if such Wachovia Data is Wachovia Personal Data, at the time such Wachovia Personal Data is required to be returned to Wachovia and/or an Eligible Recipient to satisfy its or their obligations under Privacy Laws. Genpact shall not withhold any Wachovia Data as a means of resolving any dispute. After any return of Wachovia Data pursuant to the second sentence of this **Section 15.1**, if requested by Wachovia, Genpact shall return or destroy, as directed by Wachovia, all copies of the Wachovia Data in Genpact's possession or under Genpact's control as soon as possible, but in any event within ten (10) business days, and deliver to Wachovia written certification of such return or destruction signed by an authorized representative of Genpact; provided, however, that Genpact may retain one copy of the Wachovia Data (other than Wachovia Personal Data) for the sole purpose of defending itself or its Affiliates in any legal proceedings that may be brought against Genpact or its Affiliates and that in respect of Wachovia Personal Data Wachovia shall give Genpact access to Wachovia Personal Data after such return or destruction for the sole purpose of defending Genpact or its Affiliates in any such legal

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proceedings. Wachovia Data shall not be utilized by Genpact for any purpose other than the performance of Services under this Agreement or as set forth in the in the immediately preceding sentence, and Genpact shall at all times comply with the Wachovia Privacy Policy, as modified by Wachovia and provided to Genpact from time to time. Except as required under a Statement of Work or this Agreement, Wachovia Data shall not be sold, assigned, leased, encumbered, commercially exploited or otherwise provided to third parties by or on behalf of Genpact or any Genpact Personnel.

#### 15.2 Safeguarding Wachovia Data.

- (a) **Safeguarding Procedures.** Genpact shall, subject to Wachovia's approval, establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, loss, unauthorized access or alteration of Wachovia Data in the possession of Genpact which are no less rigorous than (i)(A) those maintained by Wachovia as of the applicable SOW Commencement Date (or implemented thereafter by Wachovia to the extent deemed necessary by Wachovia), (B) those maintained by Genpact for its own information of a similar nature and (C) accepted security standards in the industry, and (ii) adequate to meet the requirements of the Wachovia Standards and applicable Laws. Subject to **Section 19.5**, the Parties shall address any incremental costs incurred by Genpact complying with such procedures or safeguards implemented by Wachovia after the applicable SOW Commencement Date in accordance with the Change Control Procedures. Genpact shall create backup copies of Wachovia Data in its possession and shall store such backup copies in a secure location, as further described in **Section 10.1(b)** and the applicable Statement of Work. Wachovia shall have the right to establish backup security for Wachovia Data and to keep backup copies of the Wachovia Data in Wachovia possession at Wachovia expense if Wachovia so chooses. Genpact shall provide Wachovia with downloads of Wachovia Data, as requested by Wachovia, to enable Wachovia to maintain such backup security or backup copies of Wachovia Data. Genpact shall remove all Wachovia Data from any media taken out of service and shall destroy or securely erase such media in accordance with the applicable Policy and Procedures Manual. No media on which Wachovia Data is stored may be used or re-used to store data of any other customer of Genpact or to deliver

data to a third party, including another Genpact customer, unless securely erased in accordance with the applicable Policy and Procedures Manual.

- (b) **Response to Security Breach.** In the event Genpact discovers or is notified of a breach or potential breach of security relating to Wachovia Data, Genpact shall expeditiously (i) notify Wachovia of such breach or potential breach, (ii) investigate such breach or potential breach and perform a risk assessment, Root Cause Analysis and corrective action plan thereon, (iii) provide a written report to Wachovia of such risk assessment, Root Cause Analysis and action plan, (iv) remedy the effects of such breach or potential breach of security, and (v) provide Wachovia with such assurances as Wachovia shall request that such breach or potential breach will not recur. Nothing in this Agreement will be construed as a limitation on Wachovia's right to use Wachovia Data for its own purposes.
- (c) **Reconstruction Procedures.** As part of the Services, Genpact shall be responsible for developing and maintaining procedures for the reconstruction of lost Wachovia Data which are no less rigorous than those maintained by (i) Wachovia as of the applicable SOW Commencement Date (or implemented thereafter by Wachovia to the extent reasonably deemed necessary by Wachovia), and (ii) Genpact for its own information of a similar nature. These procedures shall be included in the applicable Policy and Procedures Manual. Subject to **Section 19.5**, the Parties shall address any incremental costs incurred by Genpact complying with such procedures implemented by Wachovia after the applicable SOW Commencement Date in accordance with the Change Control Procedures.

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- (d) **Corrections.** The correction of any errors or inaccuracies in or with respect to Wachovia Data shall be performed by the Party that caused such errors or inaccuracies at such Party's cost, except that Genpact shall correct any Wachovia Personal Data in its possession or control if required by Wachovia to do so in order for Wachovia or an Eligible Recipient to satisfy its or their obligations under Privacy Laws. Genpact may request reimbursement from Wachovia for additional resources Genpact is required to expend to correct material, excessive or systemic errors caused by Wachovia's failure to submit data in accordance with the applicable Policy and Procedures Manual.
- (e) **Re-running of Corrected Data.** If the correction of errors or inaccuracies as described above necessitates the re-running of corrected Wachovia Data and thereby results in the usage of additional Resource Units, Wachovia shall pay the applicable Resource Unit charge as set forth in the applicable Statement of Work, unless the underlying errors or inaccuracies are attributable to the failure of Genpact or Genpact Personnel to comply with Genpact's obligations under this Agreement (including the failure of Genpact or Genpact Personnel to adhere to applicable processes and controls that, if adhered to, would have enabled Genpact or Genpact Personnel to identify and timely correct such errors or inaccuracies, even if caused by Wachovia), in which case Genpact shall be financially responsible for any additional Resource Units usage resulting from the re-running of corrected data.
- (f) **Restoration of Data.** The re-loading of any destroyed, lost or altered Wachovia Data shall be performed by the Party that has operational responsibility for maintaining the System on which such Wachovia Data resides and for creating and maintaining backup copies of such Wachovia Data. To the extent (i) Genpact is operationally responsible under the applicable Statement of Work for performing such restoration or (ii) such destruction, loss or alteration is attributable to the failure of Genpact or Genpact Personnel to comply with Genpact's obligations under this Agreement, Genpact shall be responsible for re-loading such data and/or otherwise re-performing the necessary Services without additional Charges.
- (g) **Electronic Incident Reporting.** For purposes hereof, "**Electronic Incident**" shall mean any unauthorized action by a known or unknown person which, if successfully completed, should reasonably be considered one of the following: an attack, penetration, denial of service, unauthorized electronic disclosure of Wachovia's Proprietary Information, misuse of system access, unauthorized access or intrusion (hacking), virus intrusion, scan of Wachovia's or Genpact's systems or networks, or any other activity that could adversely affect Wachovia's Proprietary Information. For purposes hereof, "**Genpact's systems or networks**" shall include the systems, networks, technology, content or web sites of third party vendors used by Genpact to provide the Services hereunder. Genpact shall report to Wachovia all known or suspected Electronic Incidents. If an Electronic Incident occurs, Genpact shall immediately notify Wachovia's Incident Management Center at (866) 922-4911 — Option 2, and provide the following information: nature and impact of the Electronic Incident; actions already taken by Genpact; Genpact's assessment of immediate risk; and corrective measures to be taken, evaluation of alternatives, and next steps. Genpact shall continue providing appropriate status reports to Wachovia regarding the resolution of the Electronic Incident and prevention of future such Electronic Incidents. Wachovia may require that Genpact's accessing, processing, or storing of Wachovia's Proprietary Information be suspended, connectivity with Genpact be terminated, or other appropriate action be taken pending such resolution. Should Genpact fail to report, or take reasonable measures to resolve, an Electronic Incident, Wachovia may terminate this Agreement pursuant to **Section 25.1(a)(i)(D)**.
- (h) **Information Security Review.** Genpact shall, with respect to all systems, applications, networks, or sites, used by Genpact in accessing, processing, or storing Wachovia Proprietary Information, comply with Wachovia's then-current Corporate Information Standards as set forth in **Schedule F**.

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Wachovia shall disclose modifications to its Corporate Information Standards to Genpact. Genpact shall, within thirty (30) days after notice thereof, comply with any change in Wachovia's Corporate Information Standards. Unless such change is required by applicable Law, the Parties shall address any incremental costs incurred by Genpact complying with any change in Wachovia's Corporate Information Standards implemented by Wachovia after the applicable SOW Commencement Date in accordance with the Change Control Procedures. Wachovia may perform information security reviews on any systems, applications, networks, or sites, used by Genpact in accessing, processing, or storing Wachovia Proprietary Information ("**Reviews**"). The Reviews shall include, but not be limited to, physical inspection, external scan, internal scan, code review, process reviews, and reviews of system configurations. The Reviews shall be conducted in Wachovia's discretion, by Wachovia or its designee (who will be a nationally known security firm and shall not be a Genpact Competitor), and at Wachovia's expense. Genpact hereby grants permission to Wachovia or its designee to perform the Reviews. Should any Review result in the discovery of material security risks to the systems, applications, networks, or sites, used by Genpact in accessing, processing, or storing Wachovia Proprietary Information, Wachovia shall immediately notify Genpact of such risks, and Genpact shall respond to Wachovia in writing within five (5) days with Genpact's plan to take reasonable measures to promptly correct, repair, or modify the applicable system, application, network, or site to effectively eliminate the risk. Should Genpact fail to take reasonable measures to remedy the identified risk, Wachovia may terminate this Agreement pursuant to **Section 25.1(a)(i)(E)**.

- (i) **Advice on Better Procedures.** Genpact shall regularly advise Wachovia of data security practices, procedures and safeguards of which Genpact is aware, if such practices, procedures and safeguards are of a higher standard than those contemplated under this Agreement.

### 15.3 Wachovia Personal Data.

- (a) **Compliance with Privacy Laws.** Genpact shall comply with the provisions of and the obligations imposed on Genpact and applicable to its performance of the Services under applicable Privacy Laws, including the implementing legislation and regulations of European Union member states under EU Directives 95/46/EC and 2002/58/EC. Genpact also shall comply with the data privacy policies of Wachovia as well as the global data privacy policies of any self-regulatory organizations to which Wachovia or the Eligible Recipients belong in accordance with **Article 19** and as set forth in the Policy and Procedures Manual, and which are applicable to Genpact in its role as a data processor and third party service provider to Wachovia and the Eligible Recipients in relation to Wachovia Personal Data.
- (b) **Return of Personal Data.** All Wachovia Personal Data provided to Genpact shall be returned or destroyed (at the option of Wachovia) by Genpact on request as and to the extent provided in **Section 15.1**, unless and to the extent such Wachovia Personal Data is required by Genpact to discharge its obligations hereunder or under applicable Privacy Laws. For the avoidance of doubt, nothing in this **Section 15.3(b)** shall entitle Genpact to retain any Wachovia Personal Data if such retention would cause Wachovia and/or an Eligible Recipient to violate applicable Privacy Laws.
- (c) **Genpact Responsible for Third Parties.** Genpact shall be responsible for the acts and omissions of any Subcontractor that processes (within the meaning of the applicable Privacy Laws) Wachovia Personal Data on Genpact's behalf in the same manner and to the same extent as it is responsible for its own acts and omissions with respect to such Wachovia Personal Data. Genpact shall not be responsible for the acts and omissions of any Managed Third Party that processes (within the meaning of the applicable Privacy Laws) Wachovia Personal Data except to the extent such acts or omissions are a direct result of Genpact's failure to comply with its obligation under a Statement of Work to manage such Managed Third Party.

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- (d) **Data Controller.** The Parties acknowledge and agree that unless applicable Privacy Laws require otherwise each Eligible Recipient located in the European Economic Area is the data controller of all Wachovia Personal Data processed by Genpact for such Eligible Recipient in providing the Services. Unless applicable Privacy Laws require otherwise, Genpact shall merely act in relation to such Wachovia Personal Data as the data processor on behalf of such data controller and shall act only in accordance with the reasonable instructions of the relevant Eligible Recipient in relation to such Wachovia Personal Data. Such reasonable instructions shall be consistent with the Services and shall not expand the scope of such Services.
- (e) **Wachovia Personal Data Security.** Without limiting Genpact's obligations under **Section 15.1** or **15.2** or otherwise with respect to data security, Genpact shall:
  - (i) take commercially reasonable steps to limit access to the Wachovia Personal Data to those Genpact Personnel who have a need to know such Wachovia Personal Data; and
  - (ii) provide Wachovia or the relevant Eligible Recipient with such information, assistance and cooperation (insofar as it relates to its processing activities) as Wachovia or such Eligible Recipient may reasonably require from time to time to establish Genpact's compliance with the obligations relating to security contained in the Privacy Laws, subject to **Article 19** and as set forth in the Policy and Procedures Manual.

Genpact shall satisfy its obligations under this **Section 15.3(e)** as and to the extent described in **Section 15.3(a)**.

- (f) **Transfers of Wachovia Personal Data outside the European Economic Area.**

- (i) In the event that Genpact processes Wachovia Personal Data outside the European Economic Area (EEA), Genpact shall enter into an agreement with Wachovia and/or the Eligible Recipient obligating both Parties to adhere to the requirements imposed by the standard contractual clauses for the transfer of Wachovia Personal Data to processors established in third countries issued by the European Commission pursuant to Article 26(2) and (4) of EU Directive 95/46/EC, unless the country in which Genpact processes Wachovia Personal Data is a country the European Commission has determined ensures an adequate level of privacy protection by reason of its domestic law, in accordance with Article 25(6) of EU Directive 95/46/EC or unless another form of standard contractual clauses is required under applicable Privacy Laws (in which case Genpact shall enter into such other standard contractual clauses with Wachovia and/or the Eligible Recipients).
- (ii) In the event Genpact is located in the EEA or a country the European Commission has determined ensures an adequate level of privacy protection under Article 25(6) of EU Directive 95/46/EC, Genpact shall, among other things, enter into contracts with such Subcontractors and third parties on terms reasonably acceptable to Wachovia that require implementation of adequate technical, administrative and physical safeguards to protect Wachovia Personal Data.
- (iii) Genpact shall not, and shall ensure that Subcontractors and other third parties with whom it contracts to process Wachovia Personal Data on its behalf shall not, (A) transfer Wachovia Personal Data to a territory outside the EEA, except on terms substantially in accordance with the standard contractual clauses issued by the European Commission pursuant to EU Directive 95/46/EC, and (B) operate in relation to such Wachovia Personal Data in any way that would be in breach of the applicable contract.

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- (g) **Further Data Processor Obligations.** Genpact shall promptly, and in any event not later than twenty (20) days after receipt, pass on to Wachovia or the relevant Eligible Recipient any inquiries or communication (including subject access requests) from an employee of Wachovia or an Eligible Recipient relating to their Wachovia Personal Data or its processing or by a Governmental Entity. If Genpact receives such a request from a Governmental Entity, after consultation with Wachovia or the relevant Eligible Recipient, Genpact shall respond to such Governmental Entity on or before the deadline imposed by such Governmental Entity. Genpact shall at all times act in a manner consistent with the requirements of any and all codes of practice and guidelines relating to personal data processing which are generally accepted within the finance, accounting and human resources outsourcing sectors in so far as they are relevant to the Services performed by Genpact and in so far as they are applicable to Genpact in its role as a data processor in relation to Wachovia Personal Data.

#### 15.4 Confidentiality.

- (a) **Proprietary Information.** Genpact and Wachovia each acknowledge that the other possesses and will continue to possess information that has been developed or received by it, has commercial value in its or its customers' business and is not generally available to the public. Except as otherwise specifically agreed by the Parties, "**Proprietary Information**" means (i) this Agreement and the terms hereof; (ii) all information marked confidential, restricted or proprietary by either Party; and (iii) any other information that is treated as confidential by the disclosing Party and would reasonably be understood to be confidential, whether or not so marked. In case of:
  - (i) Wachovia and the Eligible Recipients and regardless of whether Wachovia marks the information as confidential as provided above, Proprietary Information of Wachovia shall also include Software provided to Genpact by or through Wachovia or the Eligible Recipients or its or their agents (other than any Genpact Owned Materials), Developed Materials, Wachovia Data, Wachovia Personal Data, attorney-client privileged materials, attorney work product, customer lists, customer contracts, customer information, rates and pricing, information with respect to competitors, strategic plans, account information, rate case strategies, research information, chemical formulae, product formulations, plant and equipment design information, catalyst information, information that contains trade secrets, financial/accounting information (including assets, expenditures, mergers, acquisitions, divestitures, billings collections, revenues and finances), human resources and personnel information, marketing/sales information, information regarding businesses, plans, operations, third party contracts, licenses, internal or external audits, law suits, regulatory compliance or other information or data of Wachovia, the Eligible Recipients or its or their customers or suppliers obtained, received, transmitted, processed, stored, archived, or maintained by Genpact under this Agreement; and
  - (ii) Genpact and Genpact Affiliates and regardless of whether Genpact marks the information as confidential as provided above, Proprietary Information of Genpact shall also include Genpact Owned Materials, attorney-client privileged materials, attorney work product, customer lists, customer contracts, customer information, rates and pricing, information with respect to competitors, strategic plans, account information, rate case strategies, research information, information that contains trade secrets, financial/accounting information (including assets, expenditures, mergers, acquisitions, divestitures, billings collections, revenues and finances), human resources and personnel information, marketing/sales information, information regarding businesses, plans, operations, third party contracts, licenses, internal or external audits, law suits, regulatory compliance or other information or data of Genpact and Genpact Personnel obtained, received, transmitted, processed, stored, archived, or provided by or to Wachovia or any Eligible

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Recipient under this Agreement, including information in respect of systems, applications, networks, or sites of Genpact obtained by Wachovia during Reviews performed pursuant to Section 15.2(h).

In addition, Proprietary Information of a Party shall include plans for changes in facilities, business units and product lines, plans for business mergers, acquisitions or divestitures, rate information, plans for the development and marketing of new products, financial forecasts and budgets, technical proprietary information, employee lists and company telephone or e-mail directories.

(b) **Obligations.**

- (i) During the Term and at all times thereafter, Genpact and Wachovia shall not disclose any, and shall maintain the confidentiality of all, Proprietary Information of the other Party (and in the case of Genpact, the Eligible Recipients). Wachovia and Genpact shall each use at least the same degree of care to safeguard and to prevent disclosing to third parties the Proprietary Information of the other as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own like information (or information of its customers) of a similar nature, but not less than reasonable care. Genpact has required, or shall require, all Genpact Personnel having access to Wachovia Proprietary Information to execute a written confidentiality agreement substantially in the form attached hereto as Exhibit 3. Genpact Personnel shall not have access to Wachovia Proprietary Information without proper authorization. Upon receiving such authorization, authorized Genpact Personnel shall have access to Wachovia Proprietary Information only to the extent necessary for such person to perform his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's scope of responsibility, provided that such access is not in violation of Law.
- (ii) The Parties may disclose Proprietary Information to their respective Affiliates, auditors, attorneys, accountants, consultants, contractors and subcontractors, where (A) use by such person or entity is authorized under this Agreement, (B) such disclosure is necessary for the performance of such person's or entity's obligations under or with respect to this Agreement or otherwise naturally occurs in such person's or entity's scope of responsibility, and (C) the disclosing Party assumes full responsibility for the acts or omissions of such person or entity and takes all reasonable measures to prevent the Proprietary Information from being disclosed or used in contravention of this Agreement. Any disclosure to such person or entity shall be under the terms and conditions as provided herein. Each Party's Proprietary Information shall remain the property of such Party.
- (iii) Neither Party shall (A) make any use or copies of the Proprietary Information of the other Party except as contemplated by this Agreement, (B) acquire any right in or assert any lien against the Proprietary Information of the other Party, (C) sell, assign, transfer, lease, or otherwise dispose of Proprietary Information to third parties or commercially exploit such information, including through Derivative Works incorporating such Proprietary Information, or (D) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Proprietary Information (including copies thereof) to the other Party if requested to do so. Notwithstanding the foregoing, Wachovia may disclose Proprietary Information relating to the terms of this Agreement and/or Genpact's performance hereunder (e.g., applicable Service Levels and measurements of Genpact's performance with respect to such Service Levels, but not including the Charges or information in respect of Genpact's costs of such performance) in connection with a benchmarking under Section 12.8 or the solicitation of

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proposals for or the procurement of the same or similar services from Wachovia Third Party Contractors. Upon expiration or any termination of this Agreement and completion of each Party's obligations under this Agreement, each Party shall return or destroy, as the other Party may direct, all documentation in any medium that contains, refers to, or relates to the other Party's Proprietary Information within thirty (30) days (except Contract Records, which shall be retained by Genpact for the Audit Period specified in Section 14.1 unless and to the extent Genpact is directed by Wachovia to deliver such Contract Records to Wachovia prior to the expiration of such Audit Period). Each Party shall deliver to the other Party written certification of its compliance with the preceding sentence signed by an authorized representative of such Party. In addition, each Party shall take all necessary steps to ensure that its employees comply with these confidentiality provisions.

- (iv) Wachovia shall cause each of the Eligible Recipients to comply with the obligations set forth in this Section 15.4(b)(i) and (iii) as they apply to the Proprietary Information of Genpact.

- (c) **Exclusions.** Section 15.4(b) shall not apply to any particular information which the receiving Party can demonstrate (i) is, at the time of disclosure, generally available to the public other than through a breach of the receiving Party's or a third party's confidentiality obligations; (ii) after disclosure, is published by the disclosing Party or otherwise becomes generally available to the public other than through a breach of the receiving Party's or a third party's confidentiality obligations; (iii) is lawfully in the possession of the receiving Party at the time of disclosure; (iv) is received from a third party having a lawful right to disclose such information; or (v) is independently developed by the receiving Party without reference to Proprietary Information of the furnishing Party, provided however, that the exclusions in the foregoing subsections (i) and (ii) shall not be applicable to the extent that the disclosure or sharing of such information by one or both Parties is subject to any limitation, restriction, consent or notification requirement under any applicable federal or state information Privacy Laws or regulation then in effect. In addition, the receiving Party shall not be considered to have breached its obligations under this Section 15.4 to

the extent it discloses Proprietary Information of the other Party or causes Proprietary Information of the other Party to be disclosed (i) in a public disclosure or report required by applicable Law, (ii) in response to a subpoena or information request of a competent Governmental Entity, or (iii) as otherwise required to satisfy any legal or regulatory requirement of a competent Governmental Entity. In such circumstances, the receiving Party shall, to the extent it may legally do so, advise the other Party of the Proprietary Information to be disclosed and the identity of the third party requiring such disclosure promptly upon receiving a subpoena or request for information and/or prior to making any such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Proprietary Information, or take such other action as it deems appropriate to protect the Proprietary Information. The receiving Party shall use commercially reasonable efforts to cooperate with the disclosing Party in its efforts to seek a protective order or other appropriate remedy or in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment will be accorded such Proprietary Information. Notwithstanding the foregoing, Wachovia may delay advising Genpact of any public disclosure or report or withhold such information if and to the extent, in Wachovia's reasonable discretion, there are legal or business reasons to do so, such as protection of attorney-client privilege or attorney work product.

- (d) **Loss of Proprietary Information.** Each Party shall (and with respect to Proprietary Information of Genpact, Wachovia shall cause the Eligible Recipients to) (i) immediately notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Proprietary Information in contravention of this Agreement, (ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such

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possession, use, knowledge, disclosure, or loss, (iii) cooperate with the other Party in any investigation or litigation deemed necessary by such other Party to protect its rights, and (iv) promptly use commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Proprietary Information in contravention of this Agreement. Each Party shall bear any costs it incurs in complying with this **Section 15.4(d)**.

- (e) **No Implied Rights.** Nothing contained in this **Section 15.4** shall be construed as obligating a Party to disclose its Proprietary Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Proprietary Information of the other Party.

## 15.5 File Access.

Wachovia shall have unrestricted access to, and the right to review and retain the entirety of, all computer or other files containing Wachovia Data. At no time will any of such files or other materials or information be stored or held in a form or manner not immediately accessible to Wachovia. Genpact shall provide to the Wachovia Project Executive all passwords, codes, comments, keys, documentation and the locations of any such files promptly upon the request of Wachovia, including Equipment and Software keys and such information as to format, encryption (if any) and any other specifications or information necessary for Wachovia to retrieve, read, revise and/or maintain such files. Upon the request of the Wachovia Project Executive, Genpact shall certify in writing that, to the best of its knowledge, all such files and other information provided to Wachovia are complete and that no material element, amount, or other fraction of such files or other information to which Wachovia may request access or review has been deleted, withheld, disguised or encoded in a manner inconsistent with the purpose and intent of providing full and complete access to Wachovia as contemplated by this Agreement.

## 16. OWNERSHIP OF MATERIALS

### 16.1 Wachovia Owned Materials.

- (a) **Ownership of Wachovia Owned Materials.** Wachovia shall be the sole and exclusive owner of (i) all intellectual property, Software and other Materials owned by Wachovia or the Eligible Recipients as of the applicable SOW Commencement Date (including Wachovia Owned Software), (ii) all enhancements and Derivative Works of such intellectual property, Software and Materials (including all United States and foreign patent, copyright and other intellectual property rights), and (iii) certain Developed Materials, as provided in **Section 16.5** (collectively, "**Wachovia Owned Materials**"). As between Wachovia and Genpact, Wachovia Owned Materials shall include (i) all intellectual property, Software and Materials pertaining to Wachovia products or services created by or obtained from sellers, distributors, purchasers or users of such products or services, and (ii) all enhancements or Derivative Works of such intellectual property, Software and Materials.
- (b) **License to Wachovia Owned Materials.** As of the applicable SOW Commencement Date, Wachovia hereby grants to Genpact, Affiliate Subcontractors and Non-affiliate Subcontractors a non-exclusive, world-wide, non-transferable, fully paid-up, royalty-free limited right and license during the applicable SOW Term (and thereafter to the extent necessary to perform any Termination Assistance Services requested by Wachovia) to access, use, execute, reproduce, display, perform, modify, enhance and distribute the Wachovia Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto) for the express and sole purpose of providing the Services described in such Statement of Work. Genpact and its Subcontractors shall have no right to the Source Code to such Wachovia Owned Materials unless and only to the extent required under a Statement of Work or otherwise approved in advance by Wachovia. Wachovia Owned Materials

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shall remain the property of Wachovia. Genpact and its Subcontractors shall not, without the prior approval of Wachovia, which may be withheld at Wachovia's sole discretion, (i) use any Wachovia Owned Materials for the benefit of any person or Entity other than Wachovia or the Eligible Recipients, (ii) separate or uncouple any portions of the Wachovia Owned Materials, in whole or in part, from any other portions thereof, or (iii) reverse assemble, reverse engineer, translate, disassemble, decompile or otherwise attempt to create or discover any source or human readable code, underlying algorithms, ideas, file formats or programming interfaces of the Wachovia Owned Materials by any means whatsoever. Except as otherwise requested or approved by Wachovia, Genpact and its Subcontractors shall cease all use of Wachovia Owned Materials upon the end of the applicable SOW Term and the completion of any Termination Assistance Services requested thereunder by Wachovia pursuant to **Section 26.1** and shall certify such cessation to Wachovia in a notice signed by an officer of Genpact and each applicable Subcontractor.

### 16.2 License to Wachovia Third Party Materials.

Subject to Wachovia having obtained the applicable Wachovia Consents, Wachovia hereby grants to Genpact and to the extent necessary for Genpact to provide the Services, Genpact Affiliates, during the applicable SOW Term and the applicable Termination Assistance Period, for the sole purpose of performing the Services and solely to the extent of Wachovia's underlying rights, the same rights of access and use as Wachovia possesses under the applicable software licenses with respect to Wachovia licensed Third Party Materials. Wachovia shall provide Genpact notice of the license terms for such Third Party Materials and any restrictions with respect thereto. Wachovia also shall grant such rights to Subcontractors designated by Genpact if and only to the extent necessary for Genpact to provide the Services; provided that Genpact shall pay all fees, costs and expenses associated with the granting of such rights to such Subcontractors. Genpact and its Subcontractors shall comply with the duties, including use restrictions and nondisclosure obligations, imposed on Wachovia by such licenses. Except as otherwise requested or approved by Wachovia (or the relevant licensor), Genpact and its Subcontractors shall cease all use of such Third Party Materials upon the end of the applicable SOW Term and the completion of any Termination Assistance Services requested thereunder by Wachovia pursuant to **Section 26.1** and shall certify such cessation to Wachovia in a notice signed by an officer of Genpact and each applicable Subcontractor.

### 16.3 Genpact Owned Materials.

- (a) **Ownership of Genpact Owned Materials.** Genpact shall be the sole and exclusive owner of the (i) intellectual property, Software and Materials owned by Genpact or the Genpact Affiliates as of the applicable SOW Commencement Date, (ii) intellectual property, Software and Materials acquired by Genpact or the Genpact Affiliates on or after the applicable SOW Commencement Date (including any such Materials purchased from Wachovia pursuant to a Statement of Work) other than acquisitions for Wachovia or an Eligible Recipient in connection with the performance of the Services that constitute Wachovia Owned Materials, (iii) all enhancements and Derivative Works of such intellectual property, Software and Materials described in **Section 16.3(a)(i) or (ii)** that are created by or for Genpact or Genpact Affiliates in accordance with **Sections 16.5(e) and (f)**, (iv) Software or Materials developed by or on behalf of Genpact other than in the course of the performance of its obligations under this Agreement or in connection with the use of any Wachovia Data or Wachovia Owned Materials (including all United States and foreign patent, copyright and other intellectual property rights in such Materials described in clauses (i) through (iv) of this paragraph) (collectively, "**Genpact Owned Materials**").
- (b) **License to Genpact Owned Materials.** Genpact hereby grants to Wachovia, its successors and assigns, and the Eligible Recipients a world-wide, non-exclusive, non-transferable (except in connection with a permissible assignment under **Section 27.1**), fully paid-up, royalty-free limited right and license to access, use, execute, reproduce, display, perform, modify, enhance, distribute

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and create Derivative Work of the Genpact Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto), during the Term and any Termination Assistance Period, to (i) receive the full benefit of the Services provided by Genpact and (ii) perform ancillary services and functions, including related information technology services and functions. In addition, at no additional Charge, Genpact hereby grants to Wachovia Third Party Contractors a non-exclusive, royalty-free right and license to access and use such Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto), during the Term and any Termination Assistance Period, solely for the benefit of Wachovia and the Eligible Recipients to receive the Services and as and only to the extent reasonably necessary for such Wachovia Third Party Contractors to (i) monitor, access, interface with or use the Materials then being used by Genpact and (ii) perform ancillary services and functions for Wachovia and/or the Eligible Recipients, including related information technology services and functions. Genpact Owned Materials shall remain the property of Genpact. Wachovia shall cause each Wachovia Third Party Contractor receiving such right and license to execute a confidentiality agreement substantially in the form set forth in **Exhibit 1** prior to its exercise of such right and license under this **Section 16.3(b)**. The rights and obligations of Wachovia, the Eligible Recipients and Wachovia Third Party Contractors with respect to such Genpact Owned Materials following the expiration or termination of the Agreement or termination of any Service are set forth in **Section 26.2**.

- (c) **Embedded Materials.** To the extent that Genpact Owned Materials are embedded in any Developed Materials owned by Wachovia pursuant to **Section 16.5(a), (b) or (c)**, Genpact shall not be deemed to have assigned its intellectual property rights in such Genpact Owned

Materials to Wachovia, but Genpact hereby grants to Wachovia and its successors and Permitted Assigns a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up, royalty-free license, with the right to grant sublicenses, to use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of such Genpact Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto related thereto) for the benefit and use of Wachovia, Wachovia Affiliates and the Eligible Recipients for so long as such Genpact Owned Materials remain embedded in such Developed Materials and are not separately commercially exploited by Wachovia, Wachovia Affiliates and the Eligible Recipients. Following the expiration or termination of the Term and the termination of the Service(s) for which such Materials were used, Genpact shall offer to provide to Wachovia and the Eligible Recipients Upgrades, maintenance, support and other services for such embedded Genpact Owned Materials that are commercial off-the-shelf Materials in accordance with Section 26.2(c)(iii).

- (d) **Approval.** Wachovia shall have the right to approve the use of any Software constituting Genpact Owned Materials to provide the Services.

#### 16.4 License to Genpact Third Party Materials.

- (a) **License.** Subject to Genpact having obtained the applicable Genpact Consents, Genpact hereby grants to Wachovia, its successors and Permitted Assigns, and the Eligible Recipients a world-wide, non-exclusive, non-transferable (except in connection with a permissible assignment under Section 27.1), fully-paid-up, royalty-free limited right and license to access and/or use the Third Party Materials as to which Genpact, an Affiliate of Genpact or a Non-affiliate Subcontractor holds the license (including all modifications, substitutions, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto), during the Term and any Termination Assistance Period, to (i) receive the full benefit of the Services provided by Genpact and (ii) perform or have performed ancillary services and functions, including related information technology services and functions. In addition, at no additional Charge, Genpact

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hereby grants to Wachovia Third Party Contractor(s) a non-exclusive, royalty-free right and license to access and/or use such Materials (including all modifications, substitutions, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto), during the Term and any Termination Assistance Period, solely for the benefit of Wachovia and the Eligible Recipients to receive the Services, as and only to the extent reasonably necessary for such Wachovia Third Party Contractor(s) to (i) monitor, access, interface with or use the Materials then being used by Genpact and (ii) perform ancillary services and functions for Wachovia and/or the Eligible Recipients, including related information technology services and functions. Wachovia shall cause each Wachovia Third Party Contractor receiving such right and license to execute a confidentiality agreement substantially in the form set forth in Exhibit 1 prior to its exercise of such right and license under this Section 16.4(a). The rights and obligations of Wachovia, the Eligible Recipients and Wachovia Third Party Contractors with respect to such Third Party Materials following the expiration or termination of the Agreement or termination of any Service are set forth in Section 26.2.

- (b) **Approval.** Wachovia shall have the right to approve the use of any Software constituting Genpact Third Party Materials to provide the Services.

#### 16.5 Developed Materials.

- (a) **Wachovia Ownership of Derivative Works of Wachovia Owned Materials.** Unless the Parties agree otherwise in the applicable Statement of Work, Wachovia shall be the sole and exclusive owner of all Developed Materials that are Derivative Works of Wachovia Owned Materials, including all United States and foreign patent, copyright and other intellectual property rights in such Materials. Such Developed Materials shall be considered works made for hire (as that term is used in Section 101 of the United States Copyright Act, 17 U.S.C. § 101 or in an analogous provisions of other applicable Law) and owned by Wachovia. If any such Derivative Works may not be considered a work made for hire under applicable Law, Genpact hereby irrevocably assigns, and shall assign, to Wachovia without further consideration, all of Genpact's right, title and interest in and to such Developed Materials, including United States and foreign patent, copyright and other intellectual property rights. Genpact acknowledges that Wachovia and the successors and assigns of Wachovia shall have the right to obtain and hold in their own name any patent, copyright and other intellectual property rights in and to such Derivative Works. Genpact agrees to execute any documents and take any other actions reasonably requested by Wachovia to effectuate the purposes of this Section 16.5(a). Wachovia hereby grants Genpact certain license and other rights with respect to such Derivative Works, as described in Section 16.1(b). Wachovia may, in its sole discretion and upon such terms and at such financial arrangement as Wachovia and Genpact may agree, grant Genpact a license to use such Derivative Works for other purposes and to sublicense such Derivative Works.
- (b) **Wachovia Ownership of Derivative Works of Wachovia Licensed Materials.** Unless the Parties agree otherwise in the applicable Statement of Work, as between the Parties, Wachovia shall be considered the sole and exclusive owner of all Developed Materials that are Derivative Works of Third Party Materials licensed by Wachovia, a Wachovia Affiliate or an Eligible Recipient ("Wachovia Third Party Materials"), including all United States and foreign patent, copyright and other intellectual property rights in such Materials. Such Developed Materials shall be considered works made for hire (as that term is used in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable Laws) and owned by Wachovia. If any such Developed Materials may not be considered a work made for hire under applicable Law, Genpact hereby irrevocably assigns, and shall assign, to Wachovia without further consideration, all of Genpact's right, title and interest in and to such Developed Materials, including United States and foreign patent, copyright and other intellectual property rights. Genpact acknowledges that Wachovia and the successors and assigns of Wachovia shall have the

right to obtain and hold in their own name any patent, copyright and other intellectual property rights in and to such Developed Materials. Genpact agrees to execute any documents and take any other actions reasonably requested by Wachovia to effectuate the purposes of this **Section 16.5(b)**. Subject to Genpact obtaining any Genpact Consents, Wachovia hereby grants Genpact certain license and other rights with respect to such Developed Materials, as described in **Section 16.1(b)**. Wachovia may, in its sole discretion and upon such terms and at such financial arrangement as Wachovia and Genpact may agree, grant Genpact a license to use such Derivative Works for other purposes and to sublicense such Derivative Works, to the extent permitted under the applicable third party license agreement or agreed to by the applicable third party licensor.

- (c) **Wachovia Ownership of Wachovia-Specific Developed Materials.** Except as provided in **Sections 16.5(e) and (f)** or otherwise agreed by the Parties in the applicable Statement of Work, Wachovia shall be the sole and exclusive owner of the United States and foreign copyrights in all Developed Materials that are (i) created in accordance with the customized requirements of Wachovia or the Eligible Recipients, (ii) usable only by Wachovia or the Eligible Recipients or in conjunction with Wachovia Owned Materials, (iii) specific to the businesses of Wachovia or the Eligible Recipients or (iv) Deliverables. For purposes of this **Section 16.5(c)**, “Deliverables” shall mean Developed Materials (i) required to be delivered to Wachovia or the Eligible Recipients pursuant to this Agreement, (ii) developed at the specific request of and paid for by Wachovia, or (iii) associated specifically with the Application Software operated, maintained or supported exclusively for Wachovia or the Eligible Recipients. Such Developed Materials shall be considered “works made for hire” (as that term is used in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable Laws) owned by Wachovia. If any such Developed Materials may not be considered a work made for hire under applicable Law, Genpact hereby irrevocably assigns, and shall assign, to Wachovia without further consideration, all of Genpact’s right, title and interest in and to the copyrights in such Developed Materials. Genpact acknowledges that Wachovia and the successors and assigns of Wachovia shall have the right to obtain and hold in their own name any copyrights in and to such Developed Materials. Genpact agrees to execute any documents and take any other actions reasonably requested by Wachovia to effectuate the purposes of this **Section 16.5(c)**. Wachovia hereby grants Genpact certain license and other rights with respect to such Developed Materials, as described in **Section 16.1(b)**. Wachovia may, in its sole discretion and upon such terms and at such financial arrangement as Wachovia and Genpact may agree, grant Genpact a license to use such Developed Materials for other purposes and to sublicense such Developed Materials.
- (d) **Source Code and Documentation.** Genpact shall, promptly as it is developed by Genpact, provide Wachovia with the Source Code and Object Code and documentation for all Wachovia owned Developed Materials, as described in **Sections 16.5(a), (b) and (c)**. Such source code and technical documentation shall be sufficient to allow a reasonably knowledgeable and experienced programmer to maintain and support such Materials, and the user documentation for such Materials shall accurately describe in terms understandable by a typical Eligible Recipient the functions and features of such Materials and the procedures for exercising such functions and features.
- (e) **Genpact Owned Developed Materials.** Notwithstanding **Sections 16.5(a) and (c)**, unless the Parties agree otherwise in the applicable Statement of Work, Genpact shall be the sole and exclusive owner of all Developed Materials that are Derivative Works of Genpact Owned Materials (as defined in **Section 16.3(a)**), including all United States and foreign patent, copyright and other intellectual property rights in such Materials. In addition, except as provided in **Sections 16.5(b) and (c)** or otherwise agreed by the Parties in the applicable Statement of Work, Genpact shall be the sole and exclusive owner of all other Developed Materials that are not Derivative Works of Wachovia Owned Materials, including all United States and foreign patent, copyright and other intellectual property rights in such Materials. Wachovia acknowledges that

Genpact and the successors and assigns of Genpact shall have the right to obtain and hold in their own name any intellectual property rights in and to such Genpact owned Developed Materials. Wachovia agrees to execute any documents and take any other actions reasonably requested by Genpact to effectuate the purposes of this **Section 16.5(e)**. Genpact hereby grants Wachovia and the Eligible Recipients certain license and other rights with respect to such Developed Materials, as described in **Sections 16.3(b) and 26.2**.

- (f) **Genpact Ownership of Derivative Works of Genpact Licensed Materials.** Unless the Parties agree otherwise in the applicable Statement of Work, as between the Parties, Genpact shall be considered the sole and exclusive owner of all Developed Materials that are Derivative Works of Third Party Materials licensed by Genpact or a Genpact Affiliate or Subcontractor (“**Genpact Third Party Materials**”), including all United States and foreign patent, copyright and other intellectual property rights in such Materials. Wachovia acknowledges that Genpact and the successors and assigns of Genpact shall have the right to obtain and hold in their own name any intellectual property rights in and to such Genpact owned Developed Materials. Wachovia agrees to execute any documents and take any other actions reasonably requested by Genpact to effectuate the purposes of this **Section 16.5(f)**. Genpact hereby grants to Wachovia and the Eligible Recipients certain license and other rights with respect to such Developed Materials, as described in **Sections 16.3(b) and 26.2**.

- (g) **Financial Arrangement for Genpact Owned Developed Materials.** If Genpact markets any Genpact owned Developed Materials, as described in Sections 16.5(e) and (f), then Genpact and Wachovia shall agree upon an equitable financial arrangement, such as a royalty arrangement, pursuant to which Wachovia shall be entitled to share in the benefits of marketing such Genpact owned Developed Materials.
- (h) **Disclosure by Genpact of Developed Materials.** Genpact shall promptly disclose in writing to Wachovia each Developed Material that is developed in connection with the Services. With respect to each disclosure, Genpact shall indicate the features or concepts that it believes to be new or different.

## 16.6 Other Materials.

This Agreement shall not confer upon either Party intellectual property rights in Materials of the other Party (to the extent not covered by this Article 16) unless otherwise so provided elsewhere in this Agreement.

## 16.7 General Rights.

- (a) **Copyright Legends.** Each Party agrees to reproduce copyright legends which appear on any portion of the Materials which may be owned by the other Party or third parties.
- (b) **Residuals.** Nothing in this Agreement shall restrict any employee or representative of a Party from using general ideas, concepts, practices, learning or know-how relating to the processing of in-scope business process transactions that are retained in the unaided memory of such employee or representative after performing the obligations of such Party under this Agreement, except to the extent that such use infringes upon any patent, copyright or other intellectual property right of a Party or its Affiliates (or, in the case of Genpact, any Eligible Recipient); provided, however, that this Section 16.7(b) shall not (i) be deemed to limit either Party's obligations under this Agreement with respect to the disclosure or use of Proprietary Information, or (ii) operate or be construed as permitting an employee or representative of a Party to disclose, publish, disseminate or use (A) the source of any Proprietary Information of the other Party, (B) any financial, statistical or personnel information of a Party, or (C) the business plans of a Party. An

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individual's memory is unaided if the individual has not intentionally memorized the Proprietary Information for the purpose of retaining and subsequently using or disclosing it and does not identify the information as Proprietary Information upon recollection. For avoidance of doubt, the foregoing would not permit Genpact Personnel to use Proprietary Information of Wachovia or an Eligible Recipient (other than ideas, concepts, practices, learning and know-how relating generally to the processing of in-scope business process transactions) for any purpose other than the provision of Services under this Agreement.

- (c) **No Implied Licenses.** Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Materials owned by the other Party or any Affiliate of the other Party (or, in the case of Genpact, any Eligible Recipient).
- (d) **Incorporated Materials.** Should either Party incorporate into Developed Materials any intellectual property subject to third party patent, copyright or license rights, any ownership or license rights granted herein with respect to such Materials shall be limited by and subject to any such patents, copyrights or license rights; provided that, prior to incorporating any such intellectual property in any Materials, the Party incorporating such intellectual property in the Materials has disclosed this fact and obtained the prior approval of the other Party.
- (e) **Derivative Works.** Any rights granted herein with respect to any Developed Material that is a derivative work of any existing Material shall not limit or expand the rights, if any, of either Party in the underlying Material.

## 17. REPRESENTATIONS

### 17.1 Representations by Wachovia.

Wachovia represents that as of the Effective Date:

- (a) Wachovia is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of North Carolina;
- (b) Wachovia has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement by Wachovia and the consummation by Wachovia of the transactions contemplated by this Agreement:
- (i) have been duly authorized by Wachovia; and
  - (ii) do not conflict with, result in a breach of or constitute a default under any other agreement to which Wachovia is a party or by which Wachovia is bound;
- (d) Wachovia is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted

by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on Wachovia's ability to fulfill its obligations under this Agreement; and

- (e) except as set forth in **Schedule E**, there is no outstanding litigation, arbitrated matter or other dispute to which Wachovia is a party which, if decided unfavorably to Wachovia, would

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reasonably be expected to have a material adverse effect on Genpact's or Wachovia's ability to fulfill their respective obligations under this Agreement.

## 17.2 Representations by Genpact.

Genpact represents that as of the Effective Date:

- (a) Genpact is an entity duly organized, validly existing and in good standing under the Laws of Luxembourg;
- (b) Genpact has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement by Genpact and the consummation by Wachovia of the transactions contemplated by this Agreement:
  - (i) have been duly authorized by Genpact; and
  - (ii) do not conflict with, result in a breach of or constitute a default under any other agreement to which Genpact is a party or by which Genpact is bound;
- (d) Genpact is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on Genpact's ability to fulfill its obligations under this Agreement;
- (e) Genpact has not given, and to the best of its knowledge, no officer, director, employee, agent or representative of Genpact has given, commissions, payments, kickbacks, lavish or extensive entertainment, or other inducements of more than minimal value to any employee or agent of Wachovia in connection with this Agreement; and
- (f) there is no outstanding litigation, arbitrated matter or other dispute to which Genpact is a party which, if decided unfavorably to Genpact, would reasonably be expected to have a material adverse effect on Wachovia's or Genpact's ability to fulfill their respective obligations under this Agreement.

## 18. WARRANTIES AND ADDITIONAL COVENANTS

### 18.1 Work Standards.

Genpact warrants to and covenants with Wachovia that during the Term and any Termination Assistance Period, Genpact shall:

- (a) render the Services with promptness, due care, skill and diligence;
- (b) execute the Services in a manner consistent with the industry-recognized best practices of business process outsourcing service providers of similar size and scale;
- (c) use adequate numbers of qualified individuals with suitable training and skills to perform the Services and provide such individuals with training concerning new products and services prior to the implementation of such products and services in the Wachovia environment; and

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- (d) have the resources, capacity, expertise and ability in terms of Equipment, Software, know-how and personnel to provide the Services.

## 18.2 Efficiency and Cost Effectiveness.

Genpact warrants to and covenants with Wachovia that during the Term and any Termination Assistance Period Genpact shall use commercially reasonable efforts to provide the Services in the most cost-effective and efficient manner consistent with the required level of quality and performance if and only to the extent that the cost of providing the Services are the basis upon which Wachovia is charged (e.g., reimbursable expenses, Out-of-Pocket Expenses, Pass-Through Expenses or cost-plus Charges).

## 18.3 Software.

Genpact warrants to and covenants with Wachovia that during the Term and any Termination Assistance Period:

- (a) Genpact shall either be the owner of, or authorized to use, all Software provided by Genpact in connection with the Services;
- (b) any Genpact Owned Software made available to Wachovia shall perform in conformance with its specifications and will provide the functions and features and operate in the manner described in such specifications;
- (c) Developed Materials will be free from material errors in operation and performance and will comply with the applicable documentation and specifications in all material respects for a period of one (1) year from the Acceptance of the Developed Materials (the “**Warranty Period**”). During the Warranty Period, Genpact shall correct any such error or failure to comply at no additional charge to Wachovia and will use commercially reasonable efforts to do so as promptly as possible. In the event that Genpact is unable to repair or replace such nonconforming Developed Material, Wachovia shall, in addition to any and all other remedies available to it hereunder, be entitled to obtain from Genpact a copy of the source code and object code to such Developed Material; and
- (d) in the event that any Genpact Owned Software (excluding Genpact owned Developed Materials that are addressed in **Section 18.3(c)**) does not conform to the Specifications and criteria set forth in this Agreement or materially adversely affects the Services provided hereunder, Genpact shall expeditiously repair such Software or replace such Software with conforming Software.

## 18.4 Non-Infringement.

- (a) Genpact warrants to and covenants with Wachovia that during the Term and any Termination Assistance Period that, except as otherwise provided in this Agreement, the Developed Materials will not, and Genpact’s performance of its responsibilities under this Agreement and the Statements of Work do not, infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary or privacy rights of any third party; provided, however, that Genpact shall not have any obligation or liability to the extent any infringement or misappropriation is caused by:
  - (i) modifications made by Wachovia, the Eligible Recipients or Wachovia Third Party Contractors without the knowledge or approval of Genpact;

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- (ii) Wachovia’s combination of Genpact’s work product or Materials with items not furnished, specified or reasonably anticipated by Genpact or contemplated by this Agreement, the applicable Statement of Work or the applicable Specifications;
  - (iii) the failure of Wachovia to use corrections or modifications provided by Genpact offering equivalent features and functionality provided Genpact has notified Wachovia that the use of such corrections or modifications are necessary to avoid an infringement claim; or
  - (iv) in respect of infringement of patent rights of a third party only, Genpact’s compliance with detailed design specifications furnished by Wachovia to Genpact.
- (b) Wachovia warrants to and covenants with Genpact that during the Term and any Termination Assistance Period that, except as otherwise provided in this Agreement (including **Schedule E**) and to its knowledge, the Wachovia Data, the Wachovia Owned Materials and Wachovia Third Party Materials, Wachovia’s performance of its responsibilities under this Agreement and the Statements of Work do not, infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary or privacy rights of any third party; provided, however, that Wachovia shall not have any obligation or liability to the extent any infringement or misappropriation is caused by:
    - (i) modifications made by Genpact or Genpact Subcontractors without the approval of Wachovia;
    - (ii) Genpact’s combination of Wachovia’s work product or Materials with items not furnished, specified or reasonably anticipated by Wachovia or contemplated by this Agreement, the applicable Statement of Work or the applicable Specifications; or
    - (iii) the failure of Genpact to use corrections or modifications provided by Wachovia offering equivalent features and functionality provided Wachovia has notified Genpact that the use of such corrections or modifications are necessary to avoid an infringement claim.

- (c) Each Party warrants to and covenants with the other Party that during the Term and any Termination Assistance Period it will not use or create materials in connection with the Services which are libelous, defamatory or obscene.

#### 18.5 Malicious Code.

Each Party warrants to and covenants with the other Party that during the Term and any Termination Assistance Period it will cooperate with the other Party and will take commercially reasonable actions and precautions consistent with the applicable Statement of Work to prevent the introduction and proliferation of Malicious Code into Wachovia's environment or any System used by Genpact to provide the Services. Without limiting Genpact's other obligations under this Agreement or the applicable Statement of Work, in the event Malicious Code is found in Equipment, Software or Systems within Genpact's control or as to which Genpact is operationally responsible under this Agreement or the applicable Statement of Work, Genpact shall eliminate and reduce the effects of such Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, will mitigate such losses and restore such data with generally accepted data restoration techniques.

#### 18.6 Disabling Code.

Genpact warrants to and covenants with Wachovia that during the Term and any Termination Assistance Period:

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- (a) without the prior written consent of Wachovia, it will not intentionally insert into the Software, and will use commercially reasonable efforts to prevent the non-intentional insertion into the Software of, any code that could be invoked to disable or otherwise shut down all or any portion of the Software, Equipment or Systems;
- (b) with respect to any disabling code that may be part of the Software, Genpact shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or termination of this Agreement for any reason, without Wachovia's prior consent; and
- (c) it will use commercially reasonable efforts not to use Third Party Software which contains disabling code without the prior approval of Wachovia.

For purposes of this **Section 18.6**, code that relates to normal security routines (e.g., code that shuts out a user who fails to correctly input his or her password within a defined number of attempts) or that serves the function of ensuring software license compliance (including passwords) will not be deemed disabling code, provided that Genpact notifies Wachovia in advance of all such code and obtains Wachovia's approval prior to installing such code in any Software, Equipment or System used to provide the Services.

#### 18.7 Interoperability.

Genpact warrants to and covenants with Wachovia that (a) the Software, Equipment and Systems provided by Genpact, or used to provide the Services, will be fully interoperable as of the applicable SOW Commencement Date with the software, equipment and systems used by Wachovia to provide the same or similar services or to deliver records to, receive records from, or otherwise interact with the Software, Equipment and Systems to receive the Services and (b) during the Term and any Termination Assistance Period shall remain fully interoperable as of the applicable SOW Commencement Date with the software, equipment and systems used by Wachovia to provide the same or similar services or to deliver records to, receive records from, or otherwise interact with the Software, Equipment and Systems to receive the Services.

#### 18.8 Currencies.

Genpact warrants to and covenants with Wachovia that during the Term and any Termination Assistance Period the applicable Software, Equipment, Systems and Services provided by Genpact, or used to provide the Services, will be able to receive, transmit, process, store, archive, maintain and support the currencies of all countries as necessary under any applicable Statement of Work.

#### 18.9 Genpact Personnel.

Genpact warrants to and covenants with Wachovia that during the Term and any Termination Assistance Period:

- (a) the Genpact Personnel shall be authorized to work in each of the locations where such personnel are providing Services, and that Genpact has complied with, and will cause its Subcontractors to comply with, all obligations under applicable Laws regarding immigration; and
- (b) Genpact shall bear all financial responsibility for all matters relating to Genpact obtaining any visa, immigration, naturalization or other similar authorizations and requirements under the Laws applicable to visas, immigration, naturalization and other similar authorizations. Wachovia shall cooperate as requested by Genpact to the extent necessary for Genpact to obtain such authorizations and to meet such requirements.

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### 18.10 Other Warranties by Genpact.

Genpact warrants to and covenants with Wachovia that during the Term and any Termination Assistance Period:

- (a) the execution, delivery and performance of this Agreement and any Statement of Work by Genpact, and the consummation by Genpact of the transactions contemplated by this Agreement and each Statement of Work:
  - (i) will be duly authorized by Genpact; and
  - (ii) will not conflict with, result in a breach of or constitute a default under any other agreement to which Genpact is a party or by which Genpact is bound; and
- (b) except as otherwise provided in this Agreement or in the applicable Statement of Work, Genpact shall obtain all applicable permits and licenses, including the Genpact Consents, required of Wachovia in connection with the performance of its obligations under this Agreement and each Statement of Work and the consummation by Wachovia of the transactions contemplated by this Agreement and each Statement of Work;
- (c) Genpact shall not give commissions, payments, kickbacks, lavish or extensive entertainment, or other inducements of more than minimal value to any employee or agent of Wachovia in connection with this Agreement or any Statement of Work; and
- (d) as necessary from time to time and upon request by Wachovia, Genpact shall promptly take, as its expense, all necessary and appropriate actions to police compliance with and enforce its agreement with Genpact Personnel, Subcontractors and other third parties to the extent necessary to prevent or remedy breaches or potential breaches of Genpact's obligations under this Agreement or any Statement of Work.

### 18.11 Other Warranties by Wachovia.

Wachovia warrants to and covenants with Genpact that during the Term and any Termination Assistance Period:

- (a) Wachovia shall either be the owner of, or authorized to use, all Software provided by Wachovia in connection with the Services;
- (b) the execution, delivery and performance of this Agreement and any Statement of Work by Wachovia, and the consummation by Wachovia of the transactions contemplated by this Agreement and each Statement of Work:
  - (i) will be duly authorized by Wachovia; and
  - (ii) will not conflict with, result in a breach of or constitute a default under any other agreement to which Wachovia is a party or by which Wachovia is bound; and
- (c) except as otherwise provided in this Agreement or in the applicable Statement of Work, Wachovia shall obtain all applicable permits and licenses, including the Wachovia Consents, required of Wachovia in connection with the performance of its obligations under this Agreement and each Statement of Work and the consummation by Wachovia of the transactions contemplated by this Agreement and each Statement of Work.

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## 19. COMPLIANCE WITH LAW

### 19.1 Compliance by Wachovia.

Subject to Sections 19.3, 19.4, and 19.5, with respect to the performance by Wachovia of Wachovia's legal and contractual obligations under this Agreement and each Statement of Work, Wachovia shall comply in all material respects with all Laws applicable to (i) Wachovia's receipt and use of the Services hereunder (other than Genpact Laws) and (ii) Wachovia's business (collectively, "**Wachovia Laws**") during the Term and any Termination Assistance Period.

### 19.2 Compliance by Genpact.

Subject to Sections 19.3, 19.4 and 19.5, with respect to the provision of the Services and the performance of any of its other legal and contractual obligations under this Agreement and each Statement of Work, Genpact shall comply in all material respects with all Laws applicable to (a) Genpact as a provider of in-scope business process services generally, (ii) Genpact's performance of the Services hereunder, including the provision of Services from jurisdictions in which Genpact Facilities are located, and (iii) the employment of Genpact Personnel (collectively, "**Genpact Laws**") during the Term and any Termination Assistance Period. If Genpact is notified by any Governmental Entity of non-compliance by Genpact with any Genpact Laws, Genpact shall promptly notify Wachovia of such charge.



### 19.3 Notice of Laws.

- (a) Genpact shall notify Wachovia of any change in Genpact Laws that would be reasonably likely to (i) negatively impact Genpact's ability to perform the Services or (ii) have any other material adverse impact on Genpact's ability to perform the Services.
- (b) Wachovia shall notify Genpact of any Laws and any changes in Wachovia Laws that would be reasonably likely to (i) negatively impact Genpact's ability to perform the Services or (ii) have any other material adverse impact on Genpact's ability to perform the Services.
- (c) Genpact shall, through the Executive Management Team generally and other Key Employees designated in a Statement of Work in respect of the Services provided under such Statement of Work, maintain general familiarity with Wachovia Laws, and will use commercially reasonable efforts to bring additional or changed requirements of which they become aware to Wachovia's attention.
- (d) Each Party will use commercially reasonable efforts to advise the other of Laws and changes in Laws about which such Party becomes aware in the other Party's area of responsibility, but without assuming an affirmative obligation of inquiry, except as otherwise provided herein, and without relieving the other Party of its obligations under this Agreement.
- (e) At Wachovia's request, Genpact Personnel will participate in Wachovia-provided compliance training programs.

### 19.4 Interpretation of Laws or Changes in Laws.

- (a) Wachovia shall be responsible, with Genpact's cooperation and assistance, for interpreting Wachovia Laws or changes in Wachovia Laws and for identifying the impact of Wachovia Laws or changes in Wachovia Laws on Wachovia's receipt and use of the Services.
- (b) Genpact shall be responsible, with Wachovia's cooperation and assistance, for interpreting Genpact Laws or changes in Genpact Laws and for identifying the impact of such Genpact Laws

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or changes in Genpact Laws on Genpact's performance and Wachovia's receipt and use of the Services.

- (c) To the extent the impact of any Genpact Law or change in Genpact Law cannot be readily identified by Genpact, the Parties will cooperate in interpreting such Law or change in Law and will seek in good faith to identify and agree upon the impact on Genpact's performance and Wachovia's receipt and use of the Services. If either Party reasonably concludes, after due inquiry, that the compliance obligations associated with any Genpact Law or change in Genpact Law are unclear or that there is more than one reasonable approach to achieving compliance, such Party may escalate the issue to Wachovia for a final decision in accordance with Schedule K.

### 19.5 Implementation of Changes in Laws.

In the event of any change in Law (including Wachovia Laws to the extent Genpact receives notice of such Wachovia Laws from Wachovia or as otherwise provided in Section 19.3) and subject to Section 19.4(c), Genpact shall implement any necessary modifications to the Services prior to the deadline imposed by the Governmental Entity having jurisdiction for such requirement or change. Genpact shall bear the costs associated with compliance with any change in Genpact Laws applicable to the Services. Wachovia shall bear the costs associated with compliance with any change in Wachovia Laws applicable to the Services.

## 20. DISCLAIMER

EXCEPT AS EXPRESSLY SPECIFIED IN THIS AGREEMENT OR A STATEMENT OF WORK:

- (a) WACHOVIA AND ITS AFFILIATES MAKE NO OTHER REPRESENTATIONS, COVENANTS OR WARRANTIES WITH RESPECT TO THE WACHOVIA DATA, THE WACHOVIA PROVIDED EQUIPMENT, THE WACHOVIA OWNED MATERIALS, THE WACHOVIA OWNED SOFTWARE OR THE WACHOVIA THIRD PARTY MATERIALS, ANY WACHOVIA SYSTEM OR ANY OTHER MATTER RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT AND EXPLICITLY DISCLAIMS ALL OTHER REPRESENTATIONS, COVENANTS OR WARRANTIES, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE, TITLE AND NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.
- (b) GENPACT AND ITS AFFILIATES MAKE NO OTHER REPRESENTATIONS, COVENANTS OR WARRANTIES WITH RESPECT TO THE SERVICES, THE GENPACT OWNED MATERIALS, THE GENPACT OWNED SOFTWARE, THE GENPACT THIRD PARTY MATERIALS, ANY GENPACT SYSTEM OR ANY OTHER MATTER RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT AND EXPLICITLY DISCLAIMS ALL OTHER REPRESENTATIONS, COVENANTS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE, TITLE AND NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

## 21. INDEMNITIES

## 21.1 Indemnities by Genpact.

Genpact agrees to indemnify, defend, and hold harmless Wachovia and its Affiliates and their respective officers, directors, employees, agents, representatives, successors, and assigns from any and all Losses

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(subject to **Article 22**) due to third-party claims asserted against Wachovia and its Affiliates and to the extent arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** Breach of any of the representations, warranties and covenants set forth in **Section 17.2(c)(ii)**, **18.4(c)** or **18.10(a)(ii)**;
- (b) **Assumed Contracts.** Genpact's termination of, or breach of any duties or obligations to be performed on or after the SOW Commencement Date by Genpact under, any of the Third Party Software licenses or Third Party Contracts assigned to Genpact or for which Genpact has assumed financial or operational responsibility pursuant to the applicable Statement of Work;
- (c) **Licenses, Leases and Contracts.** Breach by Genpact, Genpact Affiliates or its Subcontractors of any duties or obligations to be performed on or after the SOW Commencement Date by Genpact under Third Party Software licenses, Equipment leases or Third Party Contracts used by Genpact to provide the Services;
- (d) **Wachovia Data or Proprietary Information.** Breach of Genpact's obligations with respect to Wachovia Data or Wachovia Proprietary Information;
- (e) **Infringement.** Infringement or misappropriation of a patent, trade secret, copyright or other proprietary rights in contravention of Genpact's warranties and covenants in **Sections 18.3(a)** or **18.4(a)**;
- (f) **Compliance with Laws.** Breach of Genpact's obligations under **Section 19.2** (other than claims by a Governmental Agency, which shall be covered under **Section 21.1(g)**);
- (g) **Government Claims.** Fines, penalties, sanctions, interest or other monetary remedies imposed by any Governmental Entity resulting from Genpact's failure to perform its responsibilities under this Agreement, including **Section 19.2**, or any Statement of Work;
- (h) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Genpact under **Section 12.3**;
- (i) **Claims Arising From Shared Facility Services.** Damage, interruption, delay or loss of service (not constituting Services provided pursuant to this Agreement or any Statement of Work) by a third party (other than an Eligible Recipient or a Wachovia Third Party Contractor, in its capacity as such) receiving services from a shared Genpact facility or using shared Genpact resources;
- (j) **Affiliate, Subcontractor or Assignee Claims.** Initiated by (i) a Genpact Affiliate or Subcontractor asserting rights under this Agreement (other than an indemnification claim under this Agreement), or (ii) any person or Entity that is a party to a financial securitization or transaction described in **Section 27.15**.
- (k) **Employment Claims.**
  - (i) violation by Genpact, Genpact Affiliates or Subcontractors, or their respective officers, directors, employees, representatives or agents, of any Laws or any common law protecting persons or members of protected classes or categories, including Laws prohibiting discrimination or harassment on the basis of a protected characteristic;
  - (ii) liability arising or resulting from the employment of Genpact Personnel by Genpact, Genpact Affiliates or Subcontractors (including liability for any social security or other

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employment taxes, workers' compensation claims and premium payments, and contributions applicable to the wages and salaries of such Genpact Personnel);

- (iii) payment or failure to pay any salary, wages or other cash compensation due and owing to any Genpact Personnel;
  - (iv) employee pension or other benefits of any Genpact Personnel; or
  - (v) other aspects of the employment relationship of Genpact Personnel with Genpact, Genpact Affiliates or Subcontractors or the termination of such relationship, including claims for wrongful discharge, claims for breach of express or implied employment contract and claims of joint employment;
- (l) **Personnel Injury Claims.** The death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by (i) the negligence or other tortious conduct of Genpact, Genpact Affiliates or Subcontractors or (ii) the failure of Genpact, Genpact Affiliates or Subcontractors to comply with its obligations under this Agreement or any Statement of Work; and
  - (m) **Property Damage.** The damage, loss or destruction of any real or tangible personal property caused by the negligence or other tortious conduct of Genpact, Genpact Affiliates or Subcontractors or the failure of Genpact, Genpact Affiliates or Subcontractors to comply with its obligations under this Agreement or any Statement of Work.

Genpact will pay or reimburse Wachovia for any costs and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable fees and expenses of litigation or other proceedings) incurred by Wachovia (i) as a result of any third party claim for which Wachovia is indemnified by Genpact under this **Section 21.1** except as set forth otherwise in **Section 21.4** or **21.5**, or (ii) in connection with the enforcement of this **Section 21.1** against Genpact.

## 21.2 Indemnity by Wachovia.

Wachovia agrees to indemnify, defend, and hold harmless Genpact and its Affiliates, and its or their officers, directors, employees, agents, representatives, successors, and assigns, from any Losses (subject to **Article 22**) due to third-party claims asserted against Genpact and its Affiliates and to the extent arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** Breach of any of the representations, warranties and covenants set forth in **Section 17.1(c)(ii)**, **18.11(a)** or **(b)(ii)**;
- (b) **Pre-Assignment Date Matters.** Wachovia's breach of any duties or obligations to be performed prior to the SOW Commencement Date by Wachovia under any of the Third Party Software licenses or Third Party Contracts assigned to Genpact by Wachovia pursuant to this Agreement or any Statement of Work;
- (c) **Licenses, Leases or Contracts.** Breach by Wachovia or the Eligible Recipients of any duties or obligations to be performed by Wachovia under any of the applicable Third Party Software licenses, Equipment leases or Third Party Contracts to the extent Wachovia is financially or operationally responsible under this Agreement or any Statement of Work;
- (d) **Genpact's Proprietary Information.** Breach of Wachovia's obligations with respect to Genpact's Proprietary Information;

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- (e) **Infringement.** Infringement or misappropriation of a patent, trade secret, copyright or other proprietary right of a third party in contravention of Wachovia's warranties and covenants in **Section 18.4(b)**;
- (f) **Compliance with Laws.** Breach of Wachovia's obligations under **Section 19.1** (other than claims by a Governmental Agency, which shall be covered under **Section 21.2(g)**);
- (g) **Government Claims.** Fines, penalties, monetary sanctions, interest or other monetary remedies imposed by any Governmental Entity on account of Wachovia's failure to perform its responsibilities under this Agreement, including **Section 19.1**, or any Statement of Work;
- (h) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Wachovia under **Section 12.3**;
- (i) **Wachovia Affiliate, Eligible Recipient or Third Party Contractor Claims.** Initiated by a Wachovia Affiliate, an Eligible Recipient or a Wachovia Third Party Contractor asserting rights under this Agreement or any Statement of Work (other than an indemnification claim or insurance claim under this Agreement); and
- (j) **Employment Claims.**
  - (i) violation by Wachovia, Wachovia Affiliates or their respective officers, directors, employees, representatives or agents, of any Laws or any common law protecting persons or members of protected classes or categories, including Laws prohibiting discrimination or harassment on the basis of a protected characteristic;
  - (ii) liability arising or resulting from the employment of employees of Wachovia or Wachovia Affiliates (including liability for any social security or other employment taxes, workers' compensation claims and premium payments, and contributions applicable to the wages and salaries of such employees);

- (iii) payment or failure to pay any salary, wages or other cash compensation of employees of Wachovia or Wachovia Affiliates;
  - (iv) employee pension or other benefits compensation of employees of Wachovia or Wachovia Affiliates; or
  - (v) other aspects of the employment relationship of employees of Wachovia or Wachovia Affiliates with Wachovia or Wachovia Affiliates or the termination of such relationship, including claims for wrongful discharge, claims for breach of express or implied employment contract and claims of joint employment;
- (k) **Personnel Injury Claims.** The death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by (i) the negligence or other tortious conduct of Wachovia or Wachovia Affiliates or (ii) the failure of Wachovia or Wachovia Affiliates to comply with its obligations under this Agreement or any Statement of Work; and
- (l) **Property Damage.** The damage, loss or destruction of any real or tangible personal property caused by the negligence or other tortious conduct of Wachovia, the Eligible Recipients or Wachovia Third Party Contractors or the failure of Wachovia to comply with its obligations under this Agreement or any Statement of Work.

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Wachovia will pay or reimburse Genpact for any costs and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable fees and expenses of litigation or other proceedings) incurred by Genpact (i) as a result of any third party claim for which Genpact is indemnified by Wachovia under this [Section 21.2](#) except as set forth otherwise in [Section 21.4](#) or [21.5](#), or (ii) in connection with the enforcement of this [Section 21.2](#) against Wachovia.

### 21.3 Infringement.

In the event that (a) any Software, Equipment, Materials or Services provided by Genpact or its Affiliates or Subcontractors pursuant to this Agreement or any Statement of Work are found, or are reasonably likely to be found, to infringe upon the patent, copyright, trademark, trade secrets, intellectual property or proprietary rights of any third party in any country in which Services are to be performed or received under this Agreement or any Statement of Work, or (b) the continued use of such Software, Equipment, Materials or Services is enjoined, Genpact shall, in addition to defending, indemnifying and holding harmless Wachovia as provided in [Section 21.1\(e\)](#), and to the other rights Wachovia may have under this Agreement or such Statement of Work, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to Wachovia's and Wachovia Affiliates' business activities do one of the following:

- (i) **Obtain Rights.** Obtain for Wachovia and Wachovia Affiliates the right to continue using such Software, Equipment or Materials;
- (ii) **Modification.** Modify the item(s) in question so that it is no longer infringing (provided that such modification does not degrade the performance or quality of the Services or adversely affect Wachovia's and Wachovia Affiliates' intended use as contemplated by this Agreement or such Statement of Work); or
- (iii) **Replacement.** Replace such item(s) with a non-infringing functional equivalent acceptable to Wachovia.

### 21.4 Indemnification Procedures.

With respect to third-party claims which are subject to indemnification under this Agreement (other than as provided in [Section 21.5](#) with respect to claims covered by [Section 21.1\(g\)](#) or [21.2\(g\)](#)), the following procedures will apply:

- (a) **Notice.** Promptly after receipt by any entity entitled to indemnification under this Agreement of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee will seek indemnification hereunder, the indemnitee will notify the indemnitor of such claim setting forth in reasonable detail the facts and circumstances pertaining thereto. No delay or failure to so notify an indemnitor will relieve it of its obligations under this Agreement except to the extent that such indemnitor has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the indemnitor will notify the indemnitee that the indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").
- (b) **Procedure Following Notice of Election.** If the indemnitor delivers a Notice of Election within the required notice period, the indemnitor will assume sole control over the defense and settlement of the claim; provided, however, that (i) the indemnitor will keep the indemnitee fully apprised at all times as to the status of the defense, and (ii) the indemnitor will obtain the prior approval of the indemnitee before entering into any settlement of such claim imposing any liability for which the indemnitee will be financially responsible or imposing any obligations or restrictions on the

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indemnitee or ceasing to defend against such claim. The indemnitor will not be liable for any legal fees or expenses incurred by the indemnitee following the delivery of a Notice of Election; provided, however, that (i) the indemnitee will be entitled to employ counsel at its own expense to participate in the handling of the claim, and (ii) the indemnitor will pay the fees and expenses associated with such counsel if (A) there is a conflict of interest with respect to such claim which is not otherwise resolved, (B) the indemnitor has requested the assistance of the indemnitee in the defense of the claim or (C) the indemnitor has failed to defend the claim diligently and the indemnitee is prejudiced or likely to be prejudiced by such failure. The indemnitor will not be obligated to indemnify the indemnitee for any amount paid or payable by such indemnitee in the settlement of any claim if (i) the indemnitor has delivered a timely Notice of Election and such amount was agreed to without the consent of the indemnitor, (ii) the indemnitee has not provided the indemnitor with notice of such claim and a reasonable opportunity to respond thereto, or (iii) the time period within which to deliver a Notice of Election has not yet expired.

- (c) **Procedure Where No Notice of Election Is Delivered.** If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee will have the right to defend the claim in such manner as it may reasonably deem appropriate. The indemnitor will promptly reimburse the indemnitee for all such reasonable costs and expenses incurred by the indemnitee, including reasonable attorneys' fees.
- (d) **Claim Information.** In the event of a claim for indemnity under this **Article 21**, the indemnitee shall grant the indemnitor reasonable access to documents and other information in connection with the matters for which indemnification is sought to the extent such indemnitor reasonably deems necessary in connection with determining its rights and obligations under this **Article 21**.

## 21.5 Indemnification Procedures — Governmental Claims.

With respect to claims covered by **Section 21.1(g)** or **21.2(g)**, the following procedures will apply:

- (a) **Notice.** Promptly after receipt by a Party of notice of the commencement or threatened commencement of any action or proceeding involving a claim in respect of which such Party, the indemnitee, will seek indemnification pursuant to **Section 21.1(g)** or **21.2(g)**, the indemnitee will notify the indemnitor of such claim setting forth in reasonable detail the facts and circumstances pertaining thereto. No delay or failure to so notify the indemnitor will relieve the indemnitee of its obligations under this Agreement except to the extent that the indemnitor has suffered actual prejudice by such delay or failure.
- (b) **Procedure for Defense.** The indemnitee will be entitled, at its option, to have the claim handled pursuant to this **Section 21.5** or to retain control over the defense and settlement of such claim; provided that, in the latter case, the indemnitee will:
- (i) consult with the indemnitor and reasonably consider the indemnitor's views on the selection of counsel;
  - (ii) consult with the indemnitor on a regular basis regarding claim processing (including actual and anticipated costs and expenses) and litigation strategy;
  - (iii) reasonably consider any indemnitor settlement proposals or suggestions;
  - (iv) consult with the indemnitor and reasonably consider the indemnitor's views with respect to any settlement for which the indemnitor would be financially responsible; and

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- (v) use commercially reasonable efforts to minimize any amounts payable or reimbursable by the indemnitor.

## 21.6 Subrogation.

Except as otherwise provided in **Section 21.1** or **21.2**, in the event that an indemnitor will be obligated to indemnify an indemnitee pursuant to any provision of this Agreement, the indemnitor will, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

## 22. DAMAGES

### 22.1 General Intent.

Subject to the specific provisions and limitations of this **Article 22**, it is the intent of the Parties that each Party will be liable to the other Party for any actual damages incurred by the other Party as a result of the first Party's failure to perform its obligations in the manner required by this Agreement or any Statement of Work.

### 22.2 Direct Damages.

Except as otherwise provided in this **Article 22**, the aggregate liability of Genpact and Wachovia to each other for any and all cause(s) of action, regardless of the form of action (including contract, tort, negligence or any other), arising out of or resulting from the performance or breach of this Agreement or any Statement of Work in a Contract Year, including for any Operational Losses incurred in such Contract Year (but subject to **Section 22.3(a)(i)** in respect of Operational Losses under a Statement of Work specifying a Historic Level of Operational Losses), (a “**Direct Damage Claim**”) shall in no event exceed in the aggregate:

- (a) in respect of [[[\*\*\*]]] or
- (b) in respect of [[[\*\*\*]]].

In addition, in no event shall Genpact be liable to Wachovia in the aggregate in any Contract Year in respect of any and all Direct Damage Claims for more than [[[\*\*\*]]].

## 22.3 Operational Losses.

### (a) Liability for Operational Losses.

- (i) To the extent agreed upon in a Statement of Work, Genpact shall, subject to the limitations set forth in this **Section 22.3(a)**, be responsible for Operational Losses incurred by Wachovia or an Eligible Recipient as a direct result of a breach by Genpact of its obligations under such Statement of Work in excess of the historic level of Operational Losses experienced by Wachovia set forth in the applicable Statement of Work and as adjusted pursuant to **Section 22.3(b)** (the “**Historic Level**”) in any Contract Year; provided, however, that Genpact’s responsibility for Operational Losses under such Statement of Work in any Contract Year shall not exceed an amount equal to [[[\*\*\*]]] the Historic Level.

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- (ii) The Historic Level specified in the applicable Statement of Work shall be equal to the historic level of Operational Losses experienced by Wachovia for the process that is the subject of such Statement of Work during the thirty-six (36) months preceding the SOW Commencement Date and shall be net of any Operational Losses experienced as a result of the fraudulent activities of Wachovia personnel. The applicable Statement of Work shall also specify the relevant transaction volumes of the applicable process during such thirty-six (36) month period. If there is not a historic level of Operational Losses for the full thirty-six (36) month period, the Parties shall establish in the applicable Statement of Work a presumptive level based on the historic level available, a baseline during which the Parties shall measure such Operational Losses and the allocation of responsibility for Operational Losses during such baseline measurement period.
- (iii) Notwithstanding the foregoing, in a specific Statement of Work in respect of a particular settlement process with irregular Operational Losses the Parties may agree to a different allocation of responsibility for Operational Losses if such different allocation has been approved by each of (A) the CFO of the affected Wachovia business line and (B) the Wachovia Outsourcing Governance Director.
- (iv) Genpact’s liability in any Contract Year for Operational Losses under all Statements of Work specifying a Historic Level shall be counted toward the cap for such Contract Year under **Section 22.2**.
- (v) Any claim by Wachovia for Operational Losses under a Statement of Work that does not specify a Historic Level shall be a Direct Damage Claim subject to the applicable cap under **Section 22.2** and shall not include damages that are excluded pursuant to **Section 22.4** except as provided in **Section 22.5** or **22.6**.
- (vi) Genpact’s liability in any Contract Year for all Operational Losses under all Statements of Work, whether or not specifying a Historic Level, shall not exceed, the cap for such Contract Year under **Section 22.2**.

### (b) Adjustments in Historic Levels.

- (i) If at any time during the first Contract Year of a Statement of Work for which a Historic Level is specified the Parties discover that the Historic Level was based upon inaccurate information, then the Parties shall adjust the Historic Level appropriately.
- (ii) At the end of each Contract Year under a Statement of Work for which a Historic Level is specified:
  - (A) the Parties shall compare the actual transaction volumes under such Statement of Work to the relevant transaction volumes specified in such Statement of Work for the twelve (12) months preceding the SOW Commencement Date. If the actual transaction volumes during such Contract Year is more than ten percent (10%) higher than or lower than such transaction volumes specified in the Statement of Work, then the Historic Level applicable to the next Contract Year shall be increased or decreased, as the case may be, by the same percentage; and
  - (B) if changes in technology implemented by Wachovia or the Eligible Recipients during such Contract Year (or during the previous Contract Year) have resulted in a reduction over a consecutive six (6) month period of more than ten percent (10%) from the Historic Level applicable to such Contract Year, then the

Historic Level applicable to the next Contract Year shall be reduced by the same percentage.

#### 22.4 Consequential Damages.

Except as provided in Section 22.5 or 22.6, neither Party will be liable to the other Party for indirect, incidental or consequential damages, regardless of the form of the action or the theory of recovery, even if such Party has been advised of the possibility of such damages.

#### 22.5 Exclusions.

The limitations or exculpations of liability set forth in Sections 22.2, 22.3 and 22.4 will not apply to:

- (a) Losses occasioned by the fraud, knowing or willful misconduct or gross negligence of a Party;
- (b) Losses that are the subject or indemnification under Section 21.1(d), (e), (f), (g), (h), (j), (l), (m) or Section 21.2(d), (e), (f), (g), (h), (i), (k) or (l);
- (c) Losses occasioned by breaches of Article 15 (except for Section 15.5); and
- (d) Losses occasioned by Genpact's refusal to provide Termination Assistance Services. For purposes of this provision, "refusal" means the intentional cessation by Genpact, in a manner impermissible under this Agreement, of the performance of all or a material portion of the Termination Assistance Services then required to be provided by Genpact under this Agreement.

#### 22.6 Items Not Considered Damages.

The following amounts will not be considered damages subject to, and will not be counted toward the liability exclusion or cap specified in, Section 22.2, 22.3 or 22.4:

- (a) Service Level Credits or Deliverable Credits assessed against Genpact;
- (b) amounts withheld by Wachovia in accordance with this Agreement or the applicable Statement of Work;
- (c) amounts paid by Wachovia but subsequently recovered from Genpact; and
- (d) invoiced Charges and other amounts that are due and owing to Genpact for Services under this Agreement or any Statement of Work.

#### 22.7 Mitigation Efforts.

Genpact and Wachovia each agree to use reasonable efforts to mitigate their own, as well as each other's, liability, damages, and other losses suffered in connection with this Agreement or any Statement of Work. Where damages or losses can be mitigated by lawfully pursuing recovery from other third parties, Genpact and Wachovia shall conduct or permit diligent efforts to so recover, with the associated expense to be borne by each Party in proportion to each such Party's responsibility for such losses, if any. Notwithstanding the foregoing, in respect of Operational Losses, Wachovia reserves the right, consistent with its practices during the measurement period of the applicable Historical Level, to determine the strategy and approach to be employed in pursuing recovery from its customers and to elect not to pursue recovery from some or all its customers in certain circumstances. In such circumstances, Genpact's financial responsibility will be equitably reduced, taking into account the extent to which claims would otherwise have been brought, the

likelihood of recovery, the costs that would have been incurred in pursuing recovery, and other relevant factors.

### 23. INSURANCE AND RISK OF LOSS

#### 23.1 Insurance.

Genpact agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability during the Term and any Termination Assistance Period:

- (a) Workers' Compensation and Employer's Liability Insurance with an alternate employers endorsement in favor of Wachovia Corporation (or equivalent coverage outside of the United States) in full compliance with the applicable Laws of the state and country in which the work is to be performed or the country of hire (whichever is applicable). Each such policy will contain a waiver of subrogation endorsement against Wachovia and Wachovia Affiliates and their respective officers, directors, employees, agents, subsidiaries and successors.
  - (i) The limits of liability of Workers' Compensation Insurance will be statutory or if outside of the United States, not less than the limits required by applicable Law.
  - (ii) The limits of liability of Employer's Liability Insurance with minimum limits of \$1,000,000 per employee by accident/\$1,000,000 per employee by disease/\$1,000,000 policy limit by disease (as per the policy limits required by applicable Law).
- (b) Commercial General Liability Insurance (including coverage for Contractual Liability, Premises-Operations and Independent Contractors), providing coverage for bodily injury (including death), and property damage with combined single limits of not less than \$1,000,000 per occurrence, subject to a \$2,000,000 annual aggregate.
- (c) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability, with combined single limits of not less than \$1,000,000 per occurrence or equivalent coverage outside of the United States).
- (d) Umbrella Liability Insurance with respect to **Sections 23.1(a), (b) and (c)** in an amount not less than \$20,000,000 per occurrence and annual aggregate.
- (e) Professional Liability (also known as Errors and Omissions Liability) Insurance covering acts, errors and omissions, including personal injury, arising out of Genpact's operations or Services in an amount not less than \$10,000,000 per occurrence and annual aggregate.
- (f) Comprehensive Crime Insurance or Blanket Fidelity Bond, including Employee Dishonesty and Computer Fraud Insurance, covering losses arising out of or in connection with any fraudulent or dishonest acts committed by employees of Genpact or Affiliate Subcontractors performing under this Agreement, acting alone or with others, in an amount not less than \$5,000,000 per occurrence and annual aggregate. On the first renewal of such policy that is effective after the Effective Date, Genpact shall obtain and maintain thereafter an amount not less than \$10,000,000 per occurrence and annual aggregate. This policy shall be endorsed to include loss to or loss of the property of Wachovia or Wachovia Affiliates.
- (g) Commercial Property Insurance that insures loss or damage to Genpact's owned or leased Equipment and other assets in an amount not less than the full replacement cost of such

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Equipment and assets. The commercial property insurance policy will, at a minimum, insure against perils included in an "all risk" policy, including loss or damage due to fire, flood, windstorm, earthquake and terrorism.

In the event that any of Genpact's obligations under this Agreement are to be rendered by persons other than employees of Genpact or Affiliate Subcontractors, Supplier shall require such persons or third parties to maintain insurance in accordance with the terms and conditions required under **Article 23**, and, prior to commencement of any work and annually thereafter, submit a Certificate of Insurance evidencing such terms and conditions. If the other party's insurance coverages and/or limits are less than those required under this **Section 23.1**, in connection with requesting Wachovia's approval of such other party as a Non-affiliate Subcontractor under **Section 9.8(a)**, Genpact shall obtain Wachovia approval for any exceptions or reductions to such requirements.

### 23.2 Approved Companies.

All of the insurance policies required under **Section 23.1** shall be issued by insurance companies having an "A minus" rating or better by A.M. Best Company or Standard & Poor's.

### 23.3 Location of Insurers.

The policies identified in **Section 23.1** shall be issued in the United States of America, except the Professional Liability policy, which may be placed in London, Bermuda or other European markets. The Professional Liability, Comprehensive Crime and Umbrella policies shall have worldwide territorial provisions. Each of the policies required under **Sections 23.1(a), (b), (c) and (d)** shall respond excess and difference-in-conditions of the underlying country policies and shall provide world-wide coverage for any policies issued outside of the United States of America. In addition to the insurance required in this Section, if any of the Services are performed outside of the United States of America, policies will be issued in accordance with any regulatory requirements for admitted insurance, and local policies will contain any additional coverage that is customarily insured for a location or operation that is similar to the Supplier in that country.

### 23.4 Endorsements.



Genpact shall obtain the following endorsements to its policy or policies of insurance as are necessary to cause the policy or policies to comply with the requirements stated herein.

- (a) Genpact's insurance policies as required herein under **Sections 23.1(b)** and **(d)** will name Wachovia and Wachovia Affiliates, and their respective officers, directors, employees, agents and successors, as Additional Insureds for any and all liability arising at any time in connection with the performance of Genpact or Genpact Personnel under this Agreement. If such policies do not contain a standard Insurance Services Office separation of insureds provision, they will be endorsed to provide cross-liability coverage. These policies will have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.
- (b) Genpact shall promptly pay over to Wachovia any amounts paid under the Genpact insurance policies required under **Section 23.1(f)** in respect of any loss borne by Wachovia.
- (c) Each policy will provide that it will not be canceled except after thirty (30) days' advance written notice to Wachovia.
- (d) All insurance required under this **Article 23** will be primary insurance and any other valid insurance existing for Wachovia's benefit will be excess of such primary insurance.

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### 23.5 Other Requirements.

These insurance provisions set forth the minimum amounts and scopes of coverage to be maintained by Genpact. Genpact shall not self-insure any of its obligations under this Agreement without full disclosure to Wachovia of its intention to self-insure. Any and all deductibles in and self-insurance for the above-referenced insurance policies will be assumed by, for the account of, and at the sole risk of Genpact.

### 23.6 Certificates.

Genpact shall provide Wachovia with certificates of insurance evidencing compliance with this **Article 23** (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Each certificate of insurance will provide that the issuing company will not cancel the insurance afforded under the above policies unless notice of such cancellation has been provided at least thirty (30) days in advance to:

Wachovia Corporation  
One Wachovia Center  
301 South College Street  
Charlotte, NC 28288-0013  
Attention: General Counsel

### 23.7 No Implied Limitation.

The obligation of Genpact and its Affiliates to provide the insurance specified herein will not limit or expand in any way any obligation or liability of Genpact provided elsewhere in this Agreement. The rights of Wachovia and Wachovia Affiliates to insurance coverage under policies issued to or for the benefit of one or more of them are independent of this Agreement will not be limited by this Agreement or any Statement of Work.

### 23.8 Waiver of Subrogation.

With respect to insurance coverage to be provided by Genpact pursuant to **Sections 23.1(a), (b), (c), (d) and (g)**, the insurance policies will provide that the insurance companies waive all rights of subrogation against Genpact, Wachovia, and their respective Affiliates, officers, directors and employees. Genpact waives its rights to recover against Wachovia and Wachovia Affiliates, and their respective officers, directors, employees, successors and agents, in subrogation or as subrogee for another party.

### 23.9 Risk of Loss.

- (a) **General.** Except as otherwise provided in **Sections 21.1(l)** and **(m)** and **Sections 21.2(k)** and **(l)**, Genpact and Wachovia each will be responsible for any damage, destruction, loss, theft or governmental taking of their respective tangible property or real property (whether owned or leased) and each Party agrees to look only to its own insuring arrangements (if any) with respect to such damage, destruction, loss, theft, or governmental taking. Each Party will promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of such other Party's tangible property or real property (whether owned or leased).
- (b) **Waiver of Subrogation.** Genpact and Wachovia shall cause their respective insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies maintained by each Party.

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**24. DISPUTE RESOLUTION****24.1 Informal Dispute Resolution.**

Prior to the initiation of formal dispute resolution procedures with respect to any dispute, other than as provided in **Section 24.1(f)**, the Parties shall first attempt to resolve such dispute informally, as follows:

- (a) **Initial Effort.** The Parties agree that the Wachovia Project Executive and the Global Operations Leader shall attempt in good faith to resolve all disputes (other than those described in **Section 24.1(f)**). In the event the Wachovia Project Executive and the Global Operations Leader are unable to resolve a dispute in an amount of time that either Party deems reasonable under the circumstances, such Party may refer the dispute for resolution to the senior corporate executives as specified in **Section 24.1(b)** upon notice to the other Party.
- (b) **Senior Corporate Executives.** Within five (5) business days after a notice under **Section 24.1(a)** referring a dispute for resolution by the Wachovia Project Executive and the Global Operations Leader, Wachovia's designated senior corporate executive and Genpact's Chief Financial Officer will discuss the problem and negotiate in good faith in an effort to resolve the dispute. In the event such senior corporate executives are unable to resolve a dispute in an amount of time that either Party deems reasonable under the circumstances, such Party may refer the dispute for resolution to the President of each Party as specified in **Section 24.1(c)** upon notice to the other Party.
- (c) **Presidents.** Within five (5) business days after a notice under **Section 24.1(b)** referring a dispute for resolution by the President of each Party, the Presidents will discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions will be left to the discretion of the Presidents, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (d) **Provision of Information.** During the course of negotiations under **Sections 24.1(a), (b) or (c)**, all requests made by one Party to another for non-privileged information, reasonably related to the dispute, will be honored in order that each of the Parties may be fully advised of the other's position. All negotiation shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for these proceedings shall not be used as evidence by the other Party in any subsequent arbitration or litigation; provided, however, the underlying facts supporting such materials may be subject to discovery.
- (e) **Prerequisite to Formal Proceedings.** Formal proceedings for the resolution of a dispute may not be commenced until the earlier of:
  - (i) the Presidents under **Section 24.1(c)** concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or
  - (ii) thirty (30) days after the notice under **Section 24.1(b)** referring the dispute to the Presidents of the Parties.
- (f) **Exclusions From Dispute Resolution.**
  - (i) The provisions and time periods specified in this **Section 24.1** shall not be construed to prevent a Party from instituting, and a Party is authorized to institute, formal proceedings earlier to (A) avoid the expiration of any applicable limitations period, (B) preserve a superior position with respect to other creditors, (C) address a claim arising out of the breach of a Party's obligations under **Article 15**, or (D) address a claim arising out of the

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breach or attempted or threatened breach of the obligations described in the next paragraph.

- (ii) Genpact acknowledges that, in the event it breaches its obligation to provide Termination Assistance Services in accordance with this Agreement, its obligation respecting continued performance in accordance with **Section 24.3**, or its obligation to provide Wachovia with access to Wachovia Data in accordance with **Section 15.1**, Wachovia and/or the Eligible Recipients may be irreparably harmed. In such a circumstance, Wachovia may proceed directly to court. If a court of competent jurisdiction finds that Genpact has breached (or attempted or threatened to breach) any such obligations, Genpact agrees that without any additional findings of irreparable injury or other conditions to injunctive relief it shall not oppose the entry of an appropriate order compelling performance by Genpact and restraining it from any further breaches (or attempted or threatened breaches).

**24.2 Arbitration.**

Any controversy, claim or dispute arising out of or relating to this Agreement or the breach, termination or validity thereof (a "**Dispute**") will be resolved exclusively by final and binding arbitration in accordance with the Dispute Resolution Procedures of the American Arbitration

Association's International Centre for Dispute Resolution then in effect (the "Rules"). The arbitration hearing will be held in New York, New York. All proceedings of such arbitration will be in the English language.

- (a) **Arbitration Panel.** The arbitration panel will consist of a sole arbitrator appointed in accordance with the Rules.
- (b) **Expenses.** All reasonable out-of-pocket expenses (including reasonable attorneys' fees) incurred by any Party in connection with any Dispute will be paid by the non-prevailing Party in accordance with the direction of the arbitrator.
- (c) **Equitable Remedies.** Nothing in this Agreement will be deemed to limit a Party's rights to seek injunctive relief or specific performance.

### 24.3 Continued Performance.

- (a) **General.** Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided that this provision shall not operate or be construed as extending the Term or a SOW Term or prohibiting or delaying a Party's exercise of any right it may have to terminate the Term or a SOW Term as to all or any part of the Services. For purposes of clarification, Wachovia Data may not be withheld by Genpact pending the resolution of any dispute.
- (b) **Non-Interruption of Services.** Genpact acknowledges and agrees that any interruption to the Service may cause irreparable harm to Wachovia or the Eligible Recipients, in which case an adequate remedy at law would not be available. Genpact expressly acknowledges and agrees that, pending resolution of any dispute or controversy, it shall not deny, withdraw, or restrict Genpact's provision of the Services to either Wachovia or the Eligible Recipients under this Agreement, except as specifically and expressly agreed by Wachovia and Genpact.

### 24.4 Governing Law.

This Agreement and performance under it shall be governed by and construed in accordance with the applicable Laws of the State of New York, without giving effect to the principles thereof relating to

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conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. In the event New York adopts any form of UCITA after the Effective Date, the Parties hereby agree UCITA shall not apply to this Agreement or any of the transactions contemplated hereunder, to the extent such exclusion is legally permissible under such adopted form of UCITA.

## 25. TERMINATION

### 25.1 Termination of Agreement for Cause.

- (a) **By Wachovia.**
  - (i) If Genpact:
    - (A) commits a material breach of this Agreement (or commits numerous breaches of its duties or obligations which collectively constitute a material breach of this Agreement), which breach is not cured within thirty (30) days after notice of the breach from Wachovia;
    - (B) commits a material breach of this Agreement which is not capable of being cured within the period specified in, and pursuant to, **Section 25.1(a)(i)(A)**;
    - (C) fails to perform in accordance with more than twenty-five percent (25%) of the Critical Service Levels under all Statements of Work in any rolling twelve (12) month period. For the avoidance of doubt, the calculation of the percentage for each month shall include all Statements of Work in effect during such month;
    - (D) fails to report, or take reasonable measures to resolve, an Electronic Incident, as provided in **Section 15.2(g)**; or
    - (E) fails to take reasonable measures to remedy a risk identified in an information security review, as provided in **Section 15.2(h)**; or
  - (ii) pursuant to **Section 25.2(a)(i)**, Wachovia terminates Statements of Work representing forty percent (40%) or more of the total number of FTEs providing Services under all Statements of Work. The percentage shall be equal to the quotient of (A) the sum of the FTE counts specified for the month in which the Full Production Date falls in each Statement of Work that has been terminated by Wachovia pursuant to **Section 25.2(a)(i)** since the Effective Date, divided by (B) the sum of the FTE counts specified for the month in which the Full Production Date falls in each Statement of Work that has been executed since the Effective Date, multiplied by one hundred percent (100%).

then Wachovia may, by giving notice to Genpact, terminate this Agreement and all Statements of Work then in effect as of a date specified in the notice of termination. Genpact shall not be entitled to recover any Stranded Costs or Termination Charge in connection with such a termination for cause.

(b) **By Genpact.**

(i) If Wachovia:

- (A) commits a material breach of **Article 15** in respect of the Proprietary Information of Genpact, which breach (1) is not capable of being cured or (2) if

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curable, is not cured within thirty (30) days after notice from Genpact of such default; or

- (B) misappropriates Genpact's intellectual property in violation of its obligations under this Agreement which is not capable of being cured within the period specified in, and pursuant to, **Section 25.1(b)(i)(A)(2)**; or
- (ii) If, pursuant to **Section 25.2(b)**, Genpact terminates Statements of Work representing forty percent (40%) or more of the total number of FTEs providing Services under all Statements of Work. The percentage shall be equal to the quotient of (A) the sum of the FTE counts specified for the month in which the Full Production Date falls in each Statement of Work that has been terminated by Genpact pursuant to **Section 25.2(b)(i)** since the Effective Date, divided by (B) the sum of the FTE counts specified for the month in which the Full Production Date falls in each Statement of Work that has been executed since the Effective Date, multiplied by one hundred percent (100%);

then Genpact may terminate this Agreement and all Statements of Work then in effect upon notice to Wachovia.

**25.2 Termination of Statement of Work for Cause.**

(a) **By Wachovia.** If:

- (i) Genpact commits a material breach of its obligations with respect to Transition Services, including providing any Deliverables, and fails to cure such breach within thirty (30) days (or such longer cure period set forth in the applicable Statement of Work) after its receipt of notice;
- (ii) Genpact fails to obtain any Genpact Consent within sixty (60) days after the SOW Commencement Date and such failure has a material adverse impact on the use of the Services by Wachovia or the Eligible Recipients, and no reasonable workaround is available and Wachovia exercises such right as provided in **Section 5.3(d)**;
- (iii) if any event described in **Section 10.2(c)** substantially prevents, hinders or delays the performance by Genpact, its Subcontractors or an alternate source paid by Genpact of Services necessary for the performance of critical Wachovia or Eligible Recipient functions for more than fifteen (15) days;
- (iv) unless the Parties are complying with the plan agreed pursuant to **Section 10.5(d)** or the Parties otherwise agreed, Wachovia's control over the Services under a Statement of Work providing for step-in rights persists as provided in **Section 10.5(e)** with respect to any Wachovia or Eligible Recipient functions identified in such Statement of Work as critical;
- (v) Genpact commits a material breach of a Statement of Work (or commits numerous breaches of its duties or obligations which collectively constitute a material breach of such Statement of Work), which breach is not cured within thirty (30) days (or such other cure period set forth in the applicable Statement of Work) after notice of the breach from Wachovia;
- (vi) Genpact commits a material breach of a Statement of Work which is not capable of being cured within the period specified in, and pursuant to, **Section 25.2(a)(v)**;

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- (vii) Genpact fails to perform in accordance with any Expected Service Level under a Statement of Work in six (6) months in any rolling twelve (12) month period;

- (viii) Genpact fails to meet a Transition Milestone and such failure constitutes a material breach under the applicable Statement of Work and Genpact fails to cure such breach within thirty (30) days (or such longer cure period set forth in such Statement of Work) after its receipt of notice;
- (ix) unless otherwise agreed in the applicable Statement of Work, Genpact fails to meet the Transition Milestone for the completion of the transition of all the applicable Services under a Statement of Work to Genpact by more than forty-five (45) days, which failure is not excused as described in **Section 7.1(e)(ii)**, without requirement of notice or opportunity to cure; or
- (x) Operational Losses under any Statement of Work specifying a Historic Level of Operational Losses exceeds four (4) times the Historic Level in any Contract Year;

then Wachovia may, by giving notice to Genpact, terminate the applicable Statement of Work with respect to all or any part of the Services under such Statement of Work as of a date specified in the notice of termination. Genpact shall not be entitled to recover any Stranded Costs or Termination Charge in connection with such a termination for cause. If Wachovia chooses to terminate a Statement of Work in part, the Charges payable under this Agreement and/or the applicable Statement of Work will be equitably adjusted in accordance with the pricing methodology set forth in **Schedule O** and such Statement of Work, to reflect such partial termination.

- (b) **By Genpact.** If Wachovia (i) fails to pay Genpact undisputed Charges under a Statement of Work, subject to **Section 13.3**, after the due date and (ii) fails to cure such default within thirty (30) days after notice from Genpact of such default (or such other cure period set forth in the applicable Statement of Work), then Genpact may terminate such Statement of Work upon notice to Wachovia upon the expiration of the thirty (30) day cure period (or such other cure period set forth in the applicable Statement of Work) if Wachovia has not cured such default.

**25.3 Termination for Convenience.**

Wachovia may terminate this Agreement and all Statements of Work, or all or any portion of the Services under one or more Statements of Work, for convenience and without cause at any time and from time to time by giving Genpact at least one hundred eighty (180) days' prior notice (if at the time of the notice the Genpact Personnel constitute less than 1,000 FTEs, as calculated below) or two hundred seventy (270) days' prior notice (if at the time of the notice the Genpact Personnel constitute 1,000 or more FTEs, as calculated below) designating the termination date. If Wachovia chooses to terminate any Statement of Work in part, the Charges payable under the applicable Statement of Work will be equitably adjusted in accordance with the pricing methodology set forth in **Schedule O** and such Statement of Work, to reflect such partial termination. Except as set forth in the next sentence, if Wachovia terminates this Agreement and all Statements of Work, or all or any portion of the Services under one or more Statements of Work (including by insourcing or resourcing), under this **Section 25.3**, Wachovia shall pay Genpact its Stranded Costs, subject to the caps specified in **Schedule I** and the terminated Statement(s) of Work, in connection with such a termination for convenience, plus a Termination Charge equal to [[\*\*\*]]. During any Contract Year, Wachovia may terminate one or more Statements of Work representing up to:

- (a) [[\*\*\*]];
- (b) [[\*\*\*]]; or

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- (c) [[\*\*\*]];

and, in such event, Wachovia shall only be obligated to pay Genpact its Stranded Costs, in accordance with the Stranded Cost calculation methodology set forth in **Schedule I** and subject to the cap set forth in the terminated Statement(s) of Work, in connection with such termination for convenience, but Genpact shall not be entitled to any Termination Charge in respect of such termination(s).

**25.4 Termination Upon Genpact Change of Control.**

In the event of a change in Control of Genpact or the Entity that Controls Genpact, where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or if (a) all or substantially all of the assets of Genpact are acquired by any entity or (b) Genpact is merged with or into another entity to form a new entity, provided that such merger results in a change of Control of Genpact or the Entity that Controls Genpact, or in the event of a change in the executive management of Genpact or the Entity that Controls Genpact, then at any time within six (6) months after the date Genpact's notice to Wachovia of Genpact's intent to enter into such a transaction, Wachovia may at its option terminate the Agreement by giving Genpact at least six (6) months prior notice and designating a date upon which such termination shall be effective. Notwithstanding the foregoing sentence, Wachovia shall not have any termination right under this **Section 25.4** in the event of a change in Control of the Entity that Controls Genpact as a result of an initial public offering by such Entity or a successor to such Entity or the introduction of another financial investor (such as a private equity firm or other non-operating entity) in such Entity. If Wachovia terminates this Agreement under this **Section 25.4**, Wachovia shall pay Genpact its Stranded Costs, in accordance with the Stranded Cost calculation methodology set forth in **Schedule I** and subject to the cap set forth in the terminated Statement(s) of Work, in connection with such a termination for convenience, plus a Termination Charge equal to the product of (x) twenty percent (20%) of the Contracted Work in respect of the terminated Statement(s) of Work, multiplied by (y) .17.

**25.5 Termination for Insolvency.**

In the event that either Party (a) files for bankruptcy, (b) becomes or is declared insolvent, or is the subject of any bona fide proceedings related to its liquidation, administration, provisional liquidation, insolvency or the appointment of a receiver or similar officer for it, (c) passes a resolution for its

voluntary liquidation, (d) has a receiver appointed over all or substantially all of its assets, (e) makes an assignment for the benefit of all or substantially all of its creditors or (f) experiences an event analogous to any of the foregoing in any jurisdiction in which any material portion of its assets are situated, then the other Party may terminate this Agreement as of a date specified in a termination notice; provided, however, that Genpact shall not have the right to exercise such termination under this Section 25.5 so long as Wachovia pays for the Services to be received hereunder in advance on a month-to-month basis. If a Party elects to terminate this Agreement due to the insolvency of the other Party, such termination will be deemed to be a termination for cause hereunder and Genpact shall not be entitled to recover any Stranded Costs or Termination Charge in connection with such a termination for the insolvency of Genpact.

## 25.6 Wachovia Rights Upon Genpact's Bankruptcy.

- (a) **General Rights.** In the event of Genpact's bankruptcy or other formal procedure referenced in Section 25.5 or of the filing of any involuntary petition against Genpact under bankruptcy laws affecting the rights of Genpact which is not stayed or dismissed within thirty (30) days after filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by Law, Wachovia shall have the immediate right to retain and take possession for safekeeping of all Wachovia Data, Wachovia Proprietary Information, Wachovia licensed Third Party Software, Wachovia owned Equipment, Wachovia owned Materials, Wachovia owned Developed Materials, and all other Software, Equipment, Systems or Materials to which Wachovia and/or the Eligible Recipients are or would be entitled during the Term or upon the expiration or termination of this

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Agreement. Genpact shall cooperate with Wachovia and the Eligible Recipients and assist Wachovia and the Eligible Recipients in identifying and taking possession of the items listed in the preceding sentence. Wachovia shall have the right to hold such Wachovia Data, Proprietary Information, Software, Equipment, Systems and Materials until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate assurances and evidence to Wachovia that they will be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. Genpact and Wachovia agree that without this material provision, Wachovia would not have entered into this Agreement or provided any right to the possession or use of Wachovia Data, Wachovia Proprietary Information, or Wachovia Software covered by this Agreement.

- (b) **Wachovia Rights in Event of Bankruptcy Rejection.** Notwithstanding any other provision of this Agreement to the contrary, in the event that Genpact becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar Law in any other country (the "**Bankruptcy Code**")) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a "**Bankruptcy Rejection**") or other similar provision, (i) any and all of the licensee and sublicense rights of Wachovia and the Eligible Recipients arising under or otherwise set forth in this Agreement, including without limitation the rights of Wachovia and/or the Eligible Recipients referred to in Section 26.2, shall be deemed fully retained by and vested in Wachovia and/or the Eligible Recipients as protected intellectual property rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Genpact is the debtor; (ii) Wachovia shall have all of the rights afforded to non-debtor licensees and sublicenses under Section 365(n) of the Bankruptcy Code; and (iii) to the extent any rights of Wachovia and/or the Eligible Recipients under this Agreement which arise after the termination or expiration of this Agreement are determined by a bankruptcy court not to be "intellectual property rights" for purposes of Section 365(n), all of such rights shall remain vested in and fully retained by Wachovia and/or the Eligible Recipients according to its terms after any Bankruptcy Rejection as though this Agreement were terminated or expired according to its terms. To the extent that Section 365(n) of the Bankruptcy Code is applicable, Wachovia shall under no circumstances be required to terminate this Agreement after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, including without limitation any of the rights of Wachovia referred to in Section 26.2.

## 25.7 Termination for Genpact Degraded Financial Condition.

If Genpact or other obligor is notified in writing by its bank group of a default under one or more of the covenants of its senior loan agreement, then Genpact shall promptly notify Wachovia. If Wachovia determines in its sole discretion that, as a consequence of Genpact's financial condition and prospects and in light of the nature and extent of any changes in the terms and conditions that would be necessary in order to enable Genpact to continue to perform the Services in accordance with the Service Levels and other provisions of this Agreement, continuation of this Agreement may have an adverse impact on Wachovia's business or in-scope business processes, Wachovia may terminate this Agreement by giving Genpact at least sixty (60) days' prior notice of such termination. If Wachovia terminates this Agreement under this Section 25.7, Wachovia shall pay Genpact its Stranded Costs, in accordance with the Stranded Cost calculation methodology set forth in Schedule I and subject to the cap set forth in the terminated Statement(s) of Work, in connection with such a termination for convenience, but Genpact shall not be entitled to any Termination Charge in respect of such a termination.

## 25.8 Termination by Wachovia by Based on Regulatory Action.

This Agreement and all Statements of Work, or any applicable portions of the Services under one or more Statements of Work, may be terminated (a) by a Governmental Entity with jurisdiction over Wachovia or an Eligible Recipient or (b) by Wachovia at the direction of a Governmental Entity having jurisdiction over

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Wachovia or an Eligible Recipient, by giving Genpact thirty (30) days' prior notice of such termination. If legally permissible, Wachovia shall give Genpact prompt notice of any inquiry or objection raised by such Governmental Entity and shall use commercially reasonable efforts to allow Genpact to participate in any discussions with such Governmental Entity regarding such inquiry or objection. If Wachovia terminates under this **Section 25.8**, this Agreement and all Statements of Work, or all or any portion of the Services under one or more Statements of Work, Wachovia shall pay Genpact its Stranded Costs, in accordance with the Stranded Cost calculation methodology set forth in **Schedule I** and subject to the cap set forth in the terminated Statement(s) of Work, in connection with such a termination for convenience, plus a Termination Charge equal to [[\*\*\*]].

## 26. TERMINATION ASSISTANCE SERVICES AND EXIT RIGHTS

### 26.1 Termination Assistance Services.

- (a) **Availability.** As part of the Services, and for the Charges set forth in **Section 26.1(d)**, **Schedule O** and the applicable Statement(s) of Work, as applicable, Genpact shall provide to Wachovia, the Eligible Recipients and/or Wachovia Third Party Contractors the Termination Assistance Services described in **Section 26.1(b)**.
- (i) **Period of Provision.** Genpact shall provide such Termination Assistance Services to Wachovia, any Eligible Recipient and/or Wachovia Third Party Contractors (A) commencing upon notice from Wachovia up to six (6) months prior to the expiration of any Statement of Work or on such earlier date as Wachovia may reasonably request and continuing for up to twelve (12) months following the effective date of the expiration of the Statement of Work, (B) commencing upon any notice of termination (including notice based upon breach or default by Wachovia, breach or default by Genpact or termination for convenience by Wachovia) with respect to all or any part of the Services under the applicable Statement of Work, and continuing for up to twelve (12) months following the effective date of such termination of all or part of the Services under the applicable Statement of Work, or (C) commencing upon notice of termination of all or part of the Services under one or more Statements of Work to an Eligible Recipient no longer Controlled by Wachovia and continuing for up to twelve (12) months following the effective date of such termination.
- (ii) **Extension of Services.** Wachovia may elect once during any Termination Assistance Period, upon thirty (30) days' prior notice, to extend the period following the effective date of any expiration or termination for the performance of Termination Assistance Services, provided that the period between the effective date and the completion of all Termination Assistance Services is not greater than eighteen (18) months following the effective date of the expiration of the applicable Statement of Work.
- (iii) **Firm Commitment.** Genpact shall provide Termination Assistance Services to Wachovia, any Eligible Recipient or Wachovia Third Party Contractors regardless of the reason for the expiration or termination of this Agreement or any Statement of Work; provided, if this Agreement and all Statements of Work are terminated by Genpact under **Section 25.1(b)(ii)** or a Statement of Work is terminated by Genpact under **Section 25.2(b)** for Wachovia's failure to pay undisputed amounts, Genpact may require Wachovia to pay in advance for Termination Assistance Services provided or performed under this **Section 26.1**.
- (iv) **Performance.** To the extent Wachovia requests Termination Assistance Services, such Services shall be provided subject to and in accordance with the terms and conditions of

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this Agreement. Genpact shall perform the Termination Assistance Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it provided and was required to provide the same or similar Services during the applicable SOW Term. Except as set forth in the last sentence of this **Section 26.1(a)(iv)** or in **Section 26.1(c)**, the quality and level of performance of the Services provided by Genpact following the expiration or termination as to all or part of the Services or Genpact's receipt of a notice of termination or non-renewal shall continue to meet the Service Levels and not be degraded or deficient in any respect and Service Level Credits shall be assessed for any failure to meet Service Levels during the period Termination Assistance Services are provided. In case of a termination for failure to meet Services Levels, then during the Termination Assistance Period (A) the related Expected Service Levels shall not apply, (B) Genpact shall meet the related Minimum Service Levels except as set forth in **Section 26.1(c)** and (C) no Service Level Credits shall be assessed for any failure to meet the related Services Levels.

- (b) **Scope of Termination Assistance Services.** As part of the Termination Assistance Services for each Statement of Work, Genpact shall timely transfer the control and responsibility for all business process and related functions and Services previously performed by or for Genpact to Wachovia under such Statement of Work, the Eligible Recipients and/or Wachovia Third Party Contractors. Additionally, Genpact shall provide any and all reasonable assistance requested by Wachovia to allow:
- (i) the Systems and processes associated with the Services to operate efficiently;
- (ii) the Services to continue without unnecessary interruption or adverse effect; and

- (iii) the orderly transfer of the Services to Wachovia, the Eligible Recipients and/or Wachovia Third Party Contractors.

In addition to any specific Termination Assistance Services set forth in a Statement of Work, in connection with such termination or expiration, Genpact shall, at Wachovia's request and direction:

- (iv) assist Wachovia or an Eligible Recipient in developing a written transition plan for the transition of the Services to Wachovia, such Eligible Recipient, and/or Wachovia Third Party Contractors, which plan shall include capacity planning, business process planning, facilities planning, human resources planning, technology planning, telecommunications planning and other planning necessary to effect the transition;
- (v) perform project and consulting services as requested to assist in implementing the transition plan;
- (vi) provide knowledge transfer to personnel designated by Wachovia, an Eligible Recipient and/or Wachovia Third Party Contractors regarding the Services, including the use of any business processes or associated Equipment, Software, Systems, Materials or tools used in connection with the provision of the Services;
- (vii) provide sufficient information regarding applicable Software, Wachovia Data, Equipment, Materials, Third Party Contracts and tools used to provide the Services to permit the transition of such Services to Wachovia, an Eligible Recipient and/or Wachovia Third Party Contractors;

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- (viii) provide machine readable and printed listings and associated documentation for Source Code for Software owned by Wachovia and Source Code to which Wachovia is entitled under this Agreement or a Statement of Work and assist in its re-configuration;
  - (ix) provide technical documentation for Software used by Genpact to provide the Services;
  - (x) analyze and report on the space required for the Wachovia Data and the Software needed to provide the Services;
  - (xi) assist in the execution of a parallel operation, data migration and testing process until the successful completion of the transition to Wachovia, an Eligible Recipient and/or Wachovia Third Party Contractors;
  - (xii) create and provide copies of the Wachovia Data in the format and on the media reasonably requested by Wachovia;
  - (xiii) provide the latest version, in electronic copy, of each Policy and Procedures Manual in the format and on the media reasonably requested by Wachovia; and
  - (xiv) provide other technical assistance as requested by Wachovia, an Eligible Recipient and/or Wachovia Third Party Contractors.
- (c) **Extension of Services.** Wachovia may, upon sixty (60) days prior notice to Genpact, extend the period for the provision of Termination Assistance Services under a Statement of Work for up to six (6) additional months. If Wachovia elects to do so, Genpact shall be entitled to a premium over the rates and charges specified in Schedule O equal to ten percent (10%) and if and to the extent that Genpact is unable to meet or exceed the Service Levels under Section 26.1(a)(iv), Genpact shall be excused from its obligation to do so during such extension.
- (d) **Rates and Charges.** During any Termination Assistance Period, to the extent that Genpact is continuing to provide the Services under the applicable Statement of Work, Wachovia shall pay the Charges in accordance with such Statement of Work. Wachovia shall pay Genpact the rates and charges specified in Schedule O and such Statement of Work in respect of any Termination Assistance Services. To the extent rates and charges for such Genpact Personnel or resources are not specified in Schedule O, Wachovia shall pay Genpact the rates agreed upon by the Parties, provided that the rates proposed by Genpact shall not exceed Genpact's actual costs plus ten percent (10%). Notwithstanding the foregoing, in the event of a termination by Wachovia pursuant to Section 25.1(a) or 25.2(a), Termination Assistance Services shall be provided by Genpact at its cost except in respect of such a termination pursuant to Section 25.1(a)(i)(C) or Section 25.2(a)(vii).
- (e) **Proprietary Communications Network.** If Genpact uses a proprietary communications network to provide any of the Services to Wachovia or the Eligible Recipients, then for a period of no more than eighteen (18) months following the expiration or termination of this Agreement or any applicable Statement of Work or the completion of any Termination Assistance Services, Wachovia may request that Genpact continue to provide such proprietary communications network and other network services at reasonable commercial rates, and subject to other reasonable terms and conditions.
- (f) **Requests for Proposal.** Genpact shall provide (i) Wachovia with information related to the Services that Wachovia reasonably requests to enable Wachovia to draft requests for proposal relating to the Services, and (ii) at Wachovia's request, due diligence information to recipients of

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such requests for proposal. Genpact may or may not be a recipient of any such requests for proposal.

- (g) **Ramp-Down Plan.** Upon notice to Genpact of a termination of the Agreement other than a termination for cause, Wachovia and Genpact shall work together to create a mutually agreeable ramp-down plan governing Genpact's provision of the Termination Assistance Services.

## 26.2 Exit Rights.

- (a) **Wachovia Facilities, Equipment and Software.** Upon Wachovia's request pursuant to **Section 26.1**, and as of the expiration or termination date or the completion of any Termination Assistance Services, Genpact shall vacate the Wachovia Facilities and return to Wachovia, if not previously returned, all Wachovia owned Equipment (including the Wachovia Provided Equipment), Wachovia leased Equipment, Wachovia Owned Materials (including Software) and Wachovia licensed Materials (including Software), in condition at least as good as the condition thereof on the date Genpact first began using the same, ordinary wear and tear excepted.
- (b) **Wachovia Owned Materials.** With respect to Wachovia Owned Materials, Genpact shall, at no cost to Wachovia:
- (i) deliver to Wachovia all Wachovia Owned Materials and all copies thereof in the format and medium in use by Genpact in connection with the Services under the applicable Statement of Work as of the date of such expiration or termination of such Statement of Work; and
- (ii) following confirmation by Wachovia that the copies of the Wachovia Owned Materials delivered by Genpact are acceptable and the completion by Genpact of any Termination Assistance Services for which such Materials are required, destroy or securely erase all other copies of such Materials then in Genpact's possession and cease using such Materials and any information contained therein for any purpose; provided, however, that Genpact may retain one copy of the Wachovia Owned Materials for the sole purpose of defending itself or its Affiliates in any legal proceedings that may be brought against Genpact or its Affiliates.
- (c) **Genpact Owned Materials.** With respect to those Materials owned by Genpact, Genpact Affiliates or Subcontractors and used by them to provide the Services (and any modifications, enhancements, Upgrades, methodologies, tools, documentation, materials and media related thereto used to provide the Services):
- (i) Genpact hereby grants to Wachovia and its successors and Permitted Assigns a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up, royalty-free license, with the right to grant sublicenses, to use, execute, reproduce, display, perform, distribute, modify, enhance and create Derivative Works and to permit a third party to use, execute, reproduce, display, perform, distribute, modify, enhance and create Derivative Works of such Genpact Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto related thereto) solely (A) to the extent such Genpact Owned Materials or Derivative Works of such Genpact Owned Materials remain embedded or incorporated in the Developed Materials and are not separately commercially exploited by Wachovia, Wachovia Affiliates and the Eligible Recipients and (B) for the benefit or use of Wachovia, Wachovia Affiliates and the Eligible Recipients to which Wachovia has granted sublicenses to such Genpact Owned Materials upon the expiration or termination of the Term and each SOW Term;

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- (ii) Genpact shall deliver to Wachovia (A) a copy of such Genpact Owned Materials and related documentation, (B) the Source Code and Object Code for such Genpact Owned Materials to the extent such code is reasonably necessary to permit them to use such Genpact Owned Materials, (C) the Source Code and Object Code for such Genpact Owned Materials that are not commercial off-the-shelf products, and (D) the Source Code and Object Code for such Genpact Owned Materials that are commercial off-the-shelf products if Genpact does not offer or provide Upgrades, maintenance, support and other services for such Materials as provided in **Section 26.2(c)(iii)**; and

- (iii) Genpact shall offer to provide to Wachovia, and to the Eligible Recipients to which Wachovia has granted sublicenses to such Genpact Owned Materials identified by Wachovia from time to time, Upgrades, maintenance, support and other services for such Genpact Owned Materials that are commercial off-the-shelf products on Genpact's then-current standard terms and conditions for such services.

Unless Wachovia has otherwise agreed in advance, Wachovia and the Eligible Recipients to which Wachovia has granted sublicenses shall not be obligated to pay any license or transfer fees to Genpact in connection with its receipt of the licenses, sublicenses and other rights specified in this **Section 26.2(c)**. Genpact shall not use any Genpact Owned Materials for which it is unable to offer such license or other rights without Wachovia's prior approval (and absent such approval, Genpact's use of any such Genpact Owned Materials shall obligate Genpact to provide, at no additional cost to Wachovia, such license, sublicense and other rights described in this **Section 26.2(c)**).

(d) **Genpact Third Party Materials.** With respect to Third Party Materials licensed by Genpact or Genpact Affiliates or Subcontractors or owned by Subcontractors and used by them to provide the Services, but only to the extent such Third Party Materials remain embedded or incorporated in the Developed Materials and are not separately commercially exploited by Wachovia, Wachovia Affiliates and the Eligible Recipients, Genpact hereby grants to Wachovia and its successors and assigns a sublicense, with the right to grant further sublicenses, offering the same rights and warranties with respect to such Third Party Materials available to Genpact (or Genpact Affiliates or Subcontractors), on the same terms and conditions, for the benefit and use of Wachovia, Wachovia Affiliates and the Eligible Recipients upon the expiration or termination of this Agreement and each Statement of Work with respect to the Services for which such Third Party Materials were used under this Agreement as a whole or the applicable Statement of Work; provided that, during the Termination Assistance Period, Genpact may, with Wachovia's approval, substitute one of the following for such sublicense:

- (i) the assignment to Wachovia of the underlying license for such Third Party Materials;
- (ii) the procurement for Wachovia of a new license (with terms at least as favorable as those in the license held by Genpact or its Affiliates or Subcontractors and with the right to grant sublicenses) to such Third Party Materials for the benefit or use of Wachovia, Wachovia Affiliates and the Eligible Recipients; or
- (iii) the procurement for Wachovia of a substitute license for Third Party Materials sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of the Third Party Materials necessary to enable Wachovia to provide the Services after the expiration or termination of the Term or the applicable SOW Term.

In addition, Genpact shall deliver to Wachovia a copy of such Third Party Materials (including Source Code, to the extent it has been available to Genpact) and related documentation and shall

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cause maintenance, support and other services to continue to be available to Wachovia and the Eligible Recipients to which Wachovia has granted sublicenses to such Third Party Materials identified by Wachovia from time to time to the extent it has been available to Genpact. Unless Wachovia has otherwise agreed in advance, Wachovia and the Eligible Recipients to which Wachovia has granted sublicenses shall not be obligated to any one-time license or transfer fees in connection with its receipt of the licenses, sublicenses and other rights specified in this **Section 26.2(d)**. Genpact shall not use any Third Party Materials for which it is unable to offer such license, sublicense or other rights without Wachovia's prior approval (and absent such approval, Genpact's use of any such Third Party Materials shall obligate Genpact to provide, at no additional cost to Wachovia, such licenses, sublicenses and other rights). Wachovia, however, shall be obligated to make monthly or annual payments attributable to periods after the expiration or termination of this Agreement or the applicable Statement of Work with respect to the Services for which such Third Party Materials were used under this Agreement as a whole or the applicable Statement of Work, respectively, for the right to use and receive maintenance or support related thereto, but only to the extent Genpact would have been obligated to make such payments if it had continued to hold the licenses in question or Wachovia has agreed in advance to make such payments.

To the extent Wachovia has agreed in advance to pay any fees in connection with its receipt of such licenses, sublicenses or other rights, Genpact shall, at Wachovia's request, identify the licensing and sublicensing options available to Wachovia and the license or transfer fees associated with each. Genpact shall use commercially reasonable efforts to obtain the most favorable options and the lowest possible transfer, license, relicense, assignment or termination fees for Third Party Materials. Genpact shall not commit Wachovia or the Eligible Recipients to paying any such fees or expenses without Wachovia's prior approval. If the licensor offers more than one form of license, Wachovia (not Genpact) shall select the form of license to be received by Wachovia.

(e) **Hiring.**

- (i) Upon the expiration, or termination pursuant to **Section 25.1(a), 25.2(a), 25.7** or **25.8** of this Agreement or any Statement of Work, Wachovia and Wachovia Affiliates shall be permitted to undertake, without interference from Genpact or Genpact Affiliates (including counter-offers), to hire, effective after the later of the expiration or termination of the applicable Statement of Work under or completion of any Termination Assistance Services by Wachovia for such Statement of Work, any employees of Genpact and Genpact Affiliates primarily assigned to the performance of Services as of the expiration date or the date of notice of such a termination. Genpact and Genpact Affiliates shall waive their rights, if any, under contracts with such personnel restricting the ability of such personnel to be recruited or hired by Wachovia or a Wachovia Affiliate. Genpact shall in the event of (A) a termination pursuant to **Section 25.1(a), 25.2(a), 25.7** or **25.8**, (1) give Wachovia and the Wachovia Affiliates reasonable access to such employees of Genpact and Genpact Affiliates for interviews, evaluations and recruitment and (2) provide Wachovia and the Wachovia Affiliates with reasonable assistance in their efforts to hire such employees of Genpact and Genpact Affiliates, and (B) the expiration or termination of this Agreement or any Statement of Work, not impede the efforts of Wachovia and the Wachovia Affiliates by implementing any form of new incentives designed to dissuade such employees from accepting an offer from Wachovia or any Wachovia Affiliate. Wachovia and Wachovia Affiliates shall endeavor to conduct the above-described hiring activity in a manner that is not unnecessarily disruptive of the performance by Genpact of its obligations under this Agreement.

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- (ii) Promptly upon sending or receiving a notice of termination pursuant to Section 25.1(a), 25.2(a), 25.7 or 25.8 of the applicable Statement of Work, Genpact shall provide to Wachovia a list, organized by location, of the employees of Genpact and Genpact Affiliates who are eligible for solicitation for employment pursuant to this Section 26.2(e). Subject to applicable Privacy Laws, such list shall specify the job title and annual rate of pay of such employee of Genpact and Genpact Affiliates.

(f) **Carve-Out Option.**

- (i) **Facilities.** Upon termination of this Agreement or any Statement of Work pursuant to Section 25.1(a), 25.2(a) or 25.8, Wachovia or a Wachovia Affiliates shall have the right (but not the obligation), upon reasonable notice to Genpact, to purchase, or assume the lease for, any Genpact Facility owned or leased by Genpact that is primarily used by Genpact or Genpact Affiliates to perform the Services; provided, however, that if the sale of any such Genpact Facility owned by Genpact would impair or prevent Genpact from continuing to take advantage of favorable tax treatment or government sponsored corporate subsidies of which Genpact is taking advantage as of the date of such notice, then Genpact shall lease such Genpact Facility to Wachovia or a Wachovia Affiliate on mutually agreeable terms, which shall no be less favorable to Wachovia than prevailing market terms. Each such Genpact Facility shall be transferred in good condition, reasonable wear and tear excepted, as of the expiration or termination date or the completion of any Services requiring such Genpact Facility requested by Wachovia, whichever is later. Genpact shall, at no additional charge to Wachovia, maintain such Genpact Facility through the date of transfer. In the case of such a Genpact Facility owned by Genpact, and to the extent customary in the particular jurisdiction in which the Genpact Facility is located, Genpact shall grant to Wachovia or the Wachovia Affiliate a warranty of title and a warranty that such Genpact Facility is free and clear of all liens and encumbrances. Such conveyance by Genpact to Wachovia or a Wachovia Affiliate shall be at replacement cost calculated in accordance with generally accepted accounting principles. Wachovia shall pay Transfer Taxes on such transaction; provided that Genpact shall pay such Transfer Taxes in the event of an undisputed termination pursuant to Section 25.1(a) or 25.2(a) or reimburse Wachovia for such Transfer Taxes within thirty (30) days after the resolution of a disputed termination pursuant to Section 25.1(a) or 25.2(a). At Wachovia's request, the Parties shall negotiate in good faith and agree upon the form and structure of the purchase. In the case of such Genpact Facilities that are leased by Genpact, Genpact shall (A) represent and warrant that the lease is not in default, (B) represent and warrant that all undisputed payments thereunder have been made through the date of transfer, and (C) notify Wachovia of any material lessor defaults of which it is aware at the time.
- (ii) **Equipment.** Upon the termination pursuant to Section 25.1(a) or 25.8 of this Agreement or any Statement of Work, Wachovia or a Wachovia Affiliate shall have the right (but not the obligation) to purchase, or assume the lease for, any Equipment owned or leased by Genpact that is primarily used by Genpact or Genpact Affiliates to perform the Services. Such Equipment shall be transferred in good working condition, reasonable wear and tear excepted, as of the expiration or termination date or the completion of any Services requiring such Equipment requested by Wachovia, whichever is later. Genpact shall, at no additional charge to Wachovia, maintain such Equipment through the date of transfer so as to be eligible for the applicable manufacturer's maintenance program. In the case of Genpact owned Equipment, Genpact shall grant to Wachovia or such Wachovia Affiliate a warranty of title and a warranty that such Equipment is free and clear of all liens and encumbrances. Such conveyance by Genpact to Wachovia or a Wachovia Affiliate shall be at replacement cost calculated in accordance with generally accepted

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accounting principles. Wachovia shall pay Transfer Taxes on such transaction; provided that Genpact shall pay such Transfer Taxes in the event of an undisputed termination pursuant to Section 25.1(a) or 25.2(a) or reimburse Wachovia for such Transfer Taxes within thirty (30) days after the resolution of a disputed termination pursuant to Section 25.1(a) or 25.2(a). At Wachovia's request, the Parties shall negotiate in good faith and agree upon the form and structure of the purchase. In the case of Genpact leased Equipment, Genpact shall (A) represent and warrant that the lease is not in default, (B) represent and warrant that all undisputed payments thereunder have been made through the date of transfer, and (C) notify Wachovia of any material lessor defaults of which it is aware at the time.

- (iii) **Genpact Subcontracts and Third Party Contracts.** Genpact shall inform Wachovia of subcontracts or Third Party Contracts primarily used by Genpact, Genpact Subcontractors or Genpact Affiliates to perform the Services. Genpact shall, at Wachovia's request, cause any such Subcontractors, Genpact Affiliates, or third party contractors to permit Wachovia or a Wachovia Affiliate to assume prospectively any or all such contracts or to enter into new contracts with Wachovia or a Wachovia Affiliate on substantially the same or more favorable terms and conditions, including price. Genpact shall so assign the designated subcontracts and Third Party Contracts to Wachovia or such Wachovia Affiliate as of the expiration or termination date or the completion of any Termination Assistance Services requiring such subcontracts or Third Party Contracts requested by Wachovia under Section 26.1, whichever is later. Unless otherwise agreed by Wachovia, there shall be no charge or fee imposed on Wachovia or a Wachovia Affiliate by Genpact or its Subcontractors, Affiliates or third party contractors for such assignment. Genpact shall (A) represent and warrant that, it is not in default under such subcontracts and Third Party Contracts, (B) represent and warrant that all undisputed payments thereunder through the date of assignment are current, and (C) notify Wachovia of any

material Subcontractor or third party contractors defaults with respect to such subcontracts and Third Party Contracts of which it is aware at the time.

- (iv) **Multi-Client Subcontracts and Third Party Contracts.** In addition to its obligations under **Section 26.2(d)(iii)**, Genpact shall use commercially reasonable efforts to make available to Wachovia, on behalf of Wachovia and the Eligible Recipients and pursuant to reasonable terms and conditions, any Subcontractor or third party services then being utilized by Genpact in the performance of the Services. Genpact shall retain the right to utilize any such Subcontractor or third party services in connection with the performance of services for any other Genpact customer. Wachovia and the Eligible Recipients shall retain the right to contract directly with any Subcontractor or third party previously utilized by Genpact to perform any Services or to assume Genpact's contract with such Subcontractor or third party to the extent provided in **Section 26.2(d)(iii)**.
- (g) **Identification of Sublicensees.** Prior to the end of the applicable Termination Assistance Period, Wachovia shall notify Genpact of those Wachovia Affiliates and other Eligible Recipients to which Wachovia has or will grant sublicenses under **Section 26.2(c)(i) or (d)** as of the end of such Termination Assistance Period. Thereafter, Wachovia shall notify Genpact of other Wachovia Affiliates or Eligible Recipients to which Wachovia grants sublicenses under **Section 26.2(c)(i) or (d)**.

### 26.3 Stranded Costs.

Subject to the description and the cap specified in the applicable Statement(s) of Work, "**Stranded Costs**" shall be calculated in accordance with **Schedule I**.

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## 27. GENERAL

### 27.1 Binding Nature and Assignment.

- (a) **Binding Nature.** This Agreement will be binding on the Parties and their respective successors and permitted assigns.
- (b) **Assignment.** Neither Party may, or will have the power to, assign this Agreement without the prior consent of the other, except in the following circumstances:
  - (i) Wachovia may assign its rights or obligations under this Agreement, without the approval of Genpact, to an Affiliate which expressly assumes Wachovia's obligations and responsibilities hereunder, provided Wachovia remains fully liable for and is not relieved from the full performance of its obligations under this Agreement; and
  - (ii) Either Party may assign its rights and obligations under this Agreement, without the approval of the other Party, to an Entity acquiring, directly or indirectly, Control of the assigning Party, an Entity into which the assigning Party is merged, or an Entity acquiring all or substantially all of the assigning Party's assets, provided the acquirer or surviving Entity agrees to be bound by the terms and conditions of this Agreement.
- (c) **Impermissible Assignment.** Any attempted assignment that does not comply with the terms of this **Section 27.1** shall be null and void.

### 27.2 Entire Agreement; Amendment.

This Agreement, including any attachments referred to herein and attached hereto and the Statements of Work, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertaking, whether written or oral, with respect to the subject matter contained in this Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver, or discharge is sought to be enforced.

### 27.3 Notices.

- (a) **Primary Notices.** Any notice, notification, request, demand or determination provided by a Party pursuant to the following:
  - (i) **Section 4.6(a)** (Use of Third Parties – Right of Use);
  - (ii) **Section 4.7** (Notice of Adverse Impact);
  - (iii) **Section 6.11** (Notice of Defaults);
  - (iv) **Section 10.2** (Force Majeure);
  - (v) **Section 12.4** (Extraordinary Events);

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- (vii) **Section 21.4** (Indemnification Procedures);
- (viii) **Section 21.5** (Indemnification Procedures – Government Claims);
- (ix) **Section 24.1** (Informal Dispute Resolution);
- (x) **Article 25** (Termination);
- (xi) **Article 26** (Termination Assistance Services and Exit Rights); and
- (xii) **Section 27.1** (Binding Nature and Assignment)

shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (A) by hand, (B) by an express courier with a reliable system for tracking delivery, or (C) by registered or certified mail, return receipt requested, postage prepaid. Unless otherwise notified, the foregoing notices shall be delivered as follows:

In the case of Wachovia:

Macro\*World Research Corporation  
201 S. College Street  
Charlotte, North Carolina 28244-1116  
Attention: Strategic Sourcing Group

with a copy to:

Wachovia Corporation  
One Wachovia Center  
301 South College Street  
Charlotte, NC 28288-0013  
Attention: General Counsel

and

In the case of Genpact:

Genpact International  
65, Boulevard Grande Duchesse Charlotte  
L-1331 Luxembourg  
Attention: Board of Managers

with a copy to:

Genpact International  
DFL City – Phase V  
Sector 53, Gurgaon – 122002  
Haryana State, India  
Attention: General Counsel

- (b) **Other Notices.** All notices, notifications, requests, demands or determinations required or provided pursuant to this Agreement, other than those specified in **Section 27.3(a)**, may be sent in hard copy in the manner specified in **Section 27.3(a)**, or by e-mail transmission (where receipt is

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acknowledged by the recipient) or facsimile transmission (with acknowledgment of receipt from the recipient's facsimile machine) to the addresses set forth below:

In the case of Wachovia:

Macro\*World Research Corporation  
201 S. College Street  
Charlotte, North Carolina 28244-1116  
Attention: Strategic Sourcing Group  
Facsimile No: (704) 383-6293

with a copy to:

Wachovia Corporation  
One Wachovia Center  
301 South College Street  
Charlotte, NC 28288-0013  
Attention: General Counsel  
Facsimile No.: (704) 383-6293

and

In the case of Genpact:

Genpact International  
65, Boulevard Grande Duchesse Charlotte  
L-1331 Luxembourg  
Attention: Board of Managers  
Facsimile No: +35 2 26 383 509

with a copy to:

Genpact International  
DFL City – Phase V  
Sector 53, Gurgaon – 122002  
Haryana State, India  
Attention: General Counsel  
Facsimile No: +91 124 502 2205

- (c) **Notice of Change.** A Party may from time to time change its address or designee for notification purposes by giving the other prior notice of the new address or designee and the date upon which it shall become effective.

#### 27.4 Counterparts.

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

#### 27.5 Headings.

The Article and Section headings and the table of contents used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

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#### 27.6 Relationship of Parties.

Genpact, in furnishing services to Wachovia and the Eligible Recipients hereunder, is acting as an independent contractor, and Genpact has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Genpact under this Agreement. The relationship of the Parties under this Agreement shall not constitute a partnership or joint venture for any purpose. Except as expressly provided in this Agreement, Genpact is not an agent of Wachovia or the Eligible Recipients and has no right, power or authority, expressly or impliedly, to represent or bind Wachovia or the Eligible Recipients as to any matters, except as expressly authorized in this Agreement.

#### 27.7 Severability.

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as

possible the original intentions of the Parties in accordance with applicable Law. The remaining provisions of this Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by applicable Law.

## 27.8 Consents, Approvals and Requests.

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, confirmation, notice or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent. Each Party shall make only reasonable requests under this Agreement, except to the extent that a request by Wachovia is being made at the request of a Governmental Entity having jurisdiction over Wachovia.

## 27.9 Waiver of Default; Cumulative Remedies.

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.
- (b) **Cumulative Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at Law, in equity, by contract or otherwise.

## 27.10 Survival.

The terms of Section 2, Section 3.4, Section 7.2, Section 8.8(b), Article 12, Article 13 (to the extent that Charges are unpaid), Article 14, Article 15, Article 16, Section 18.3, Section 18.4, Section 18.5, Section 18.6, Section 18.10, Section 18.11, Article 20, Article 21, Article 22, Section 23.6, Section 23.7, Section 23.9(a), Article 24, Article 25, Article 26, Section 27.1, Section 27.2, Section 27.3, Section 27.5, Section 27.7, Section 27.9, this Section 27.10, Section 27.11, Section 27.12, Section 27.13, Section 27.14, Section 27.15, Section 27.16, Section 27.17, Section 27.18, Section 27.20 and Section 27.21 and the

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guarantee by Wachovia Corporation on the signature page hereof shall survive the expiration or termination of this Agreement.

## 27.11 Publicity.

Neither Party shall use the other Party's name or mark or refer to the other Party directly or indirectly in any media release, public announcement, or public disclosure relating to this Agreement, including in any promotional or marketing materials, customer lists or business presentations without the prior consent of the other Party prior to each such use or release. Genpact shall not make any public statements about this Agreement, the Services or its relationship with Wachovia and/or the Eligible Recipients without Wachovia's prior approval.

## 27.12 Service Marks.

Each Party agrees that it shall not, without the other Party's prior consent, use any of the names, service marks or trademarks of that Party in any of its advertising or marketing materials.

## 27.13 Export.

The Parties acknowledge that certain Software and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the laws and regulations of the United States, the European Union, the United Nations and other jurisdictions. No Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such laws or regulations. To the extent within Genpact's control, Genpact shall be responsible for, and shall coordinate and oversee, compliance with such export laws in respect of such items exported or imported hereunder.

## 27.14 Third Party Beneficiaries.

Except as expressly provided herein, this Agreement is entered into solely between, and may be enforced only by, Wachovia and Genpact. This Agreement shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including without limitation employees, Eligible Recipients, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

## 27.15 Covenant Against Pledging.

Genpact agrees that, without the prior consent of Wachovia, it shall not include this Agreement or future revenues under this Agreement as part of any financial securitization. To the extent Wachovia permits Genpact to do so, Genpact shall continue to be Wachovia's sole point of contact with

respect to this Agreement, including with respect to payment. Any person or Entity that is a party to such financial securitization shall not be considered a third party beneficiary under this Agreement and shall not have any rights or causes of action against Wachovia.

#### 27.16 Order of Precedence.

In the event of a conflict between the terms in the body of this Agreement and any of the Schedules and Exhibits or Statements of Work (or any documents referred to therein), then the terms in the body of this Agreement shall prevail, unless the Statement of Work expressly states that a provision is intended to supersede a term of this Agreement.

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#### 27.17 Hiring of Employees.

- (a) **Solicitation and Hiring.** Except as expressly set forth herein, during the Term and for a period of [[[\*\*\*]]] thereafter, Genpact will not solicit for employment directly or indirectly, nor employ, any employees of Wachovia or an Eligible Recipient or individual Wachovia Third Party Contractors without the prior approval of Wachovia. Except as expressly set forth herein in connection with the expiration or termination of this Agreement, during the Term and for a period of [[[\*\*\*]]], Wachovia will not solicit for employment directly or indirectly, nor employ, any employee of Genpact involved in the performance of Genpact's obligations under this Agreement without the prior consent of Genpact. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.
- (b) **Publications.** Neither the publication of classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications of general availability or circulation nor the consideration and hiring of persons responding to such advertisements shall be deemed a breach of this **Section 27.17**, unless the advertisement and solicitation is undertaken as a means to fraudulently circumvent or conceal a violation of this provision and/or the hiring party acts with knowledge of this hiring prohibition.

#### 27.18 Further Assurances.

Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

#### 27.19 Liens.

Genpact shall not file, or by its action or inaction permit, any liens to be filed on or against property or realty of Wachovia or any Eligible Recipient of which Genpact has actual knowledge. In the event that any such liens arise as a result of Genpact's action or inaction, Genpact will obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within ten (10) business days. If Genpact fails to do so, Wachovia may, in its sole discretion, pay the amount of such lien, and/or deduct such amounts from payments due to Genpact.

#### 27.20 Covenant of Good Faith.

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

#### 27.21 Remarketing.

Wachovia may not remarket all or any portion of the Services provided under this Agreement or any Statement of Work, or make all or any portion of the Services available to any party, other than Wachovia and the Eligible Recipients, without the prior consent of Genpact.

#### 27.22 Acknowledgment.

The Parties each acknowledge that the terms and conditions of this Agreement have been the subject of active and complete negotiations, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

**Macro\*World Research Corp**

**Genpact International**

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

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

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

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

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

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

Date: November 30, 2005

Date: November 30, 2005

Wachovia Corporation hereby guarantees the performance and payment obligations of Macro\*World Research Corporation under this Agreement.

Wachovia Corporation

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

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

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

Date: November 30, 2005

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**Schedule A**

**Definitions**

The following terms, when used in the Agreement or any Schedule to the Agreement, shall have the meanings specified below.

- (1) **“Acceptance”** means the determination, in Wachovia’s reasonable discretion, and in accordance with the criteria agreed to by the Parties, following implementation, installation, testing and execution in the production environment for an agreed upon number of business cycles, if applicable, that Software, Equipment, Systems and/or other contract deliverables are in compliance in all material respects with the Specifications.
- (2) **“Acquired Assets”** means the Equipment, Software and other assets owned or controlled by Wachovia or the Eligible Recipients and listed in a Statement of Work that Genpact shall acquire as of the SOW Commencement Date.
- (3) **“Additional Resource Charge”** or **“ARC”** is the charge per Resource Unit that is applicable whenever the actual consumption of a defined Resource Unit by Wachovia and the Eligible Recipients exceeds the Resource Baseline for such Resource Unit set forth in the applicable Statement of Work. The total additional charges will be calculated by multiplying the Additional Resource Charge by the number of Resource Units in excess of the Resource Baseline actually consumed by Wachovia and the Eligible Recipients.
- (4) **“Affiliate”** means, with respect to any Entity, any other Entity Controlling, Controlled by or under common Control with such Entity at the time in question.
- (5) **“Affiliate Subcontractor”** has the meaning given in **Section 9.8(a)**.
- (6) **“Agreement”** has the meaning given in the preamble to this Agreement.
- (7) **“Allocation of Pool Percentage”** means the portion of the Pool Percentage Available for Allocation that is specified for a Performance Category. The total of all Allocation of Pool Percentages shall not exceed the Pool Percentage Available for Allocation.
- (8) **“Applications Software”** or **“Applications”** means those software application programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) used to support day-to-day business operations and accomplish specific business objectives to the extent a Party has financial or operational responsibility for such programs or programming under a Statement of Work. Applications Software includes all such programs or programming that are identified in Statements of Work. Applications Software also shall include all such programs or programming developed and/or introduced by or for Wachovia on or after the SOW Commencement Date, which shall be added to the applicable Statement of Work pursuant to amendment(s) to such Statement of Work, to the extent a Party has financial or operational responsibility for such programs or programming under such Statement of Work.

- (9) “**At Risk Amount**” has the meaning given in Section 7.1(c)(ii).
- (10) “**Audit Period**” has the meaning given in Section 14.1.
- (11) “**Bankruptcy Code**” has the meaning given in Section 25.6(b).

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- (12) “**Bankruptcy Rejection**” has the meaning given in Section 25.6(b).
- (13) “**Benchmark Standard**” has the meaning given in Section 12.8(c)(i).
- (14) “**Benchmarker**” has the meaning given in Section 12.8(a).
- (15) “**Benchmarking**” has the meaning given in Section 12.8(a).
- (16) “**Change Control Procedures**” has the meaning given in Section 9.6.
- (17) “**Charges**” means the amounts set forth in this Agreement, including in Article 12, Schedule O and/or the applicable Statement of Work, as charges for the Services.
- (18) “**Consents**” means the Wachovia Consents and the Genpact Consents, collectively.
- (19) “**Contract Records**” has the meaning given in Section 14.1.
- (20) “**Contract Year**” means a period during the Term or applicable Termination Assistance Period commencing on the Effective Date or an anniversary thereof and ending on the date one (1) year thereafter (or, if earlier, on the last day of the Term). With respect to any Statement of Work, a Contract Year shall mean a period, including any Termination Assistance Period under such Statement of Work, commencing on the SOW Commencement Date or an anniversary thereof and ending on the date one (1) year thereafter (or, if earlier, on the last day of the SOW Term). If any Contract Year for this Agreement or for any Statement of Work is less than twelve (12) months, the rights and obligations under this Agreement that are calculated on a Contract Year basis will be proportionately adjusted for such shorter period.
- (21) “**Contracted Work**” in respect of a Statement of Work means the (a) product of (i) the average monthly Charges under the applicable Statement of Work during the twelve (12) full calendar months prior to the date of notice of termination in respect of such Statement of Work, multiplied by (ii) the whole number of calendar months between the Effective Date of Termination of such Statement of Work and the end of the SOW Term if such Statement of Work had not been terminated (but not including any SOW Renewal Period that has not been exercised), minus (b) Charges in respect of the Termination Assistance Period.
- (22) “**Control**” and its derivatives means: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of at least 50% of the aggregate of all voting equity interests in an Entity; (b) the right to appoint, directly or indirectly, a majority of the board of directors; (c) the right to control, directly or indirectly, the management or direction of the Entity by contract or corporate governance document; or (d) in the case of a partnership, the holding by an Entity (or one of its Affiliates) of the position of sole general partner.
- (23) “**Corporate Readiness Assessment Program**” means Wachovia’s then-current Corporate Readiness Assessment Program.
- (24) “**Critical Deliverables**” means any deliverable under a Statement of Work for which a Deliverable Credit is specified.
- (25) “**Critical Service Level**” has the meaning given in Section 7.1(b).
- (26) “**Deliverable Credits**” has the meaning given in Section 7.2(e).

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- (27) “**Deliverables**” has the meaning given in Section 16.5(c).

- (28) **“Derivative Work”** means a work based on one or more preexisting works, including a condensation, transformation, translation, modification, expansion, or adaptation, that, if prepared without authorization of the owner of the copyright of such preexisting work, would constitute a copyright infringement under applicable Law, but excluding the preexisting work.
- (29) **“Developed Materials”** means any Software or Materials, or any modifications, enhancements or Derivative Works thereof, developed by or on behalf of Genpact for Wachovia or the Eligible Recipients in connection with or as part of the Services.
- (30) **“Development Tools”** means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used in the development, testing, deployment and maintenance of Applications to the extent a Party has financial or operational responsibility for such programs or programming under a Statement of Work. Development Tools shall include all such products in use or required to be used as of the SOW Commencement Date, including those set forth in the applicable Statement of Work, those as to which the license, maintenance or support costs are included in the Wachovia Base Case, and those as to which Genpact received reasonable notice and/or access prior to the SOW Commencement Date. Development Tools also shall include all such products selected and/or developed by or for Wachovia or the Eligible Recipients on or after the SOW Commencement Date to the extent a Party has financial or operational responsibility for such programs or programming under a Statement of Work.
- (31) **“Direct Benefit”** has the meaning given in Section 12.9(a).
- (32) **“Direct Damages Claim”** has the meaning given in Section 22.2.
- (33) **“Disaster Recovery Plan”** has the meaning given in Section 10.1(b).
- (34) **“Dispute”** has the meaning given in Section 24.2.
- (35) **“Earnback”** means the potential return of Service Level Credits as described in Section 7.2(b).
- (36) **“Earnback Credit”** has the meaning given in Section 7.2(b)(ii).
- (37) **“Effective Date”** has the meaning given in the preamble to this Agreement.
- (38) **“Electronic Incident”** has the meaning given in Section 15.2(g).
- (39) **“Eligible Recipients”** means, collectively, and to the extent such individual or Entity is receiving Services under this Agreement, the following:
- (a) any Entity that is an Affiliate of Wachovia Corporation on the Effective Date, or thereafter becomes an Affiliate of Wachovia Corporation;
  - (b) any Entity that purchases, after the Effective Date, all or substantially all of the assets of Wachovia Corporation, provided that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;

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- (c) any Entity into which Wachovia merges or consolidates, provided that such Entity has assumed Wachovia’s obligations under this Agreement and agrees in writing to be bound by the terms and conditions of this Agreement;
  - (d) any Entity in which, on or after the Effective Date, Wachovia or any Affiliate of Wachovia has a significant ownership interest (at least thirty-three percent (33%)) and as to which Wachovia or such Affiliate has management or operational responsibility;
  - (e) any individual or Entity engaged in the provision of products or services to Wachovia or an Eligible Recipient identified in clauses (a) through (d) (e.g., contract personnel working at a Wachovia Site or an outsourcer to Wachovia and/or one or more Eligible Recipients), but only to the extent the receipt of Services under this Agreement is necessary to enable such individual or Entity to provide such products or services to Wachovia or such Eligible Recipient;
  - (f) any customer of an Eligible Recipient identified in clauses (a) through (d), but only to the extent the receipt of Services under this Agreement is necessary to enable such customer to obtain the benefit of the product or services from such Eligible Recipient; and
  - (g) other Entities to which the Parties agree.
- (40) **“Entity”** means a corporation, partnership, joint venture, trust, limited liability company, limited liability partnership, association or other organization or entity.
- (41) **“Equipment”** means all computing, networking, telecommunications and other equipment (hardware and firmware) procured, provided, operated, supported, or used by Wachovia, Genpact or Eligible Recipients in connection with the Services, including (A) mainframe, midrange, server and distributed computing equipment and associated attachments, features, accessories, peripheral devices, and cabling, (B) personal computers, laptop computers, terminals, workstations and personal data devices and associated attachments, features,

accessories, printers, multi-functional printers, peripheral or network devices, and cabling, and (C) voice, data, video and wireless telecommunications and network and monitoring equipment and associated attachments, features, accessories, cell phones, peripheral devices, and cabling.

- (42) “**Executive Committee**” has the meaning given in Schedule K.
- (43) “**Executive Management Team**” has the meaning given in Section 8.3(a).
- (44) “**Expected Service Level**” has the meaning given in Section 7.1(b).
- (45) “**Expected Service Level Default**” means [[\*\*\*]].
- (46) “**Extraordinary Event**” has the meaning given in Section 12.4(a).
- (47) “**Full Production Date**” has the meaning given in Schedule B.
- (48) “**Full Time Equivalent**” or “**FTE**” means a level of effort (whether by one person or more than one person), excluding vacation, holidays, training, administrative and other non-productive time, equivalent to that which would be provided by one person working full time for one year.
- (49) “**Genpact**” has the meaning given in the preamble to this Agreement.

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- (50) “**Genpact Competitor**” means each of the following entities: (a) Accenture, (b) IBM, (c) TCS, (d) Infosys, (e) EXL, (d) Wipro, (e) EDS and (f) WNS.
- (51) “**Genpact Consents**” means the consents (if any) required to be obtained: (a) to grant Wachovia and the Eligible Recipients the right to use and/or access the Genpact Owned Materials, Third Party Software and Equipment acquired, operated, supported or used by Genpact in connection with providing the Services; (b) to assign or transfer to Wachovia, the Eligible Recipients or their designee(s) any Developed Materials; (c) to assign or transfer to Wachovia, the Eligible Recipients or their designee(s) Genpact Owned Materials, Third Party Software, Third Party Contracts, Equipment leases or other rights following the applicable SOW Term to the extent provided in the applicable Statement of Work; and (d) all other consents (other than Wachovia Consents) required from third parties in connection with Genpact’s provision of the Services or performance of its obligations hereunder.
- (52) “**Genpact Facilities**” means, individually and collectively, the facilities owned or leased by Genpact or its Affiliates or Subcontractors from which Genpact or its Affiliates or Subcontractors provide any Services.
- (53) “**Genpact Internal Enabling Functions Plan**” has the meaning given in Section 10.1(a).
- (54) “**Genpact Laws**” has the meaning given in Section 19.2.
- (55) “**Genpact Owned Materials**” has the meaning given in Section 16.3(a).
- (56) “**Genpact Owned Software**” means any Software owned by Genpact or its Affiliates and used to provide the Services.
- (57) “**Genpact Personnel**” means those employees, representatives, contractors, subcontractors and agents of Genpact or Subcontractors who perform any Services under this Agreement.
- (58) “**Genpact Relationship Manager**” has the meaning given in Schedule K.
- (59) “**Genpact’s systems or networks**” has the meaning given in Section 15.2(g).
- (60) “**Genpact Third Party Materials**” has the meaning given in Section 16.5(f).
- (61) “**Global Operations Leader**” shall have the meaning given in Section 8.2.
- (62) “**Governmental Entity**” means any court, tribunal, arbiter, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, country, city or other political subdivision.
- (63) “**Historic Level**” has the meaning given in Section 22.3(a).
- (64) “**Income Taxes**” means any tax on or measured by the net income of a Party (including taxes on capital or net worth that are imposed as an alternative to a tax based on net or gross income), or taxes which are of the nature of excess profits tax, minimum tax on tax preferences, alternative minimum tax, accumulated earnings tax, personal holding company tax, capital gains tax or franchise tax for the privilege of doing business.

(65) “**Initial Term**” has the meaning given in Section 3.1.

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- (66) “**Key Employees**” means the Executive Management Team and such additional Genpact Personnel as may be designated a “Key Employee” in accordance with Article 8.
- (67) “**Key Measurement**” has the meaning set forth in Section 7.1(b).
- (68) “**Key Wachovia Competitors**” means [[[\*\*\*]]].
- (69) “**Laws**” means all national, intergovernmental, common law, federal, state, provincial, regional, territorial and local laws, statutes, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof, including Privacy Laws. Laws shall include the Gramm-Leach-Bliley Act of 1999, generally accepted accounting principles (GAAP), applied in accordance with SAS-69, and generally accepted auditing standards (GAAS), as such principles and standards may be modified during the Term by the Public Company Accounting Oversight Board or other applicable authorities.
- (70) “**Losses**” means all losses, liabilities, damages, fines, penalties and claims (including taxes), and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
- (71) “**Major Release**” means a new version of Software that includes changes to the architecture and/or adds new features and functionality in addition to the original functional characteristics of the preceding software release. These releases are usually identified by full integer changes in the numbering, such as from “7.0” to “8.0,” but may be identified by the industry as a major release without the accompanying integer change.
- (72) “**Malicious Code**” means (a) any code, program, or sub-program whose knowing or intended purpose is to (i) damage or interfere with the operation of the computer system containing the code, program or sub-program, (ii) halt, disable or interfere with the operation of the Software, code, program, or sub-program or any other Software, Equipment, Materials or Systems, or (iii) reveal any Wachovia Data or other information accessed through, or processed by the applicable Software to anyone outside of Wachovia without Wachovia’s explicit knowledge and prior approval, or (b) any device, method, or token that permits any person to circumvent the normal security of the Software or the system containing the code without Wachovia’s explicit knowledge.
- (73) “**Managed Third Parties**” means the Wachovia Third Party Contractors listed in a Statement of Work as “Managed Third Parties” and any substitute or replacement third party contractors reasonably designated by Wachovia.
- (74) “**Management Fee**” has the meaning given in Schedule O.
- (75) “**Management Tools**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used by Genpact to deliver and manage the Services. Management Tools shall include all such products in use or required to be used as of the SOW Commencement Date, including those set forth in the applicable Statement of Work, those as to which the license, maintenance or support costs are included in the Wachovia Base Case, and those as to which Genpact received reasonable notice and/or access prior to the SOW Commencement Date. Management Tools also shall include all such products selected and/or developed by or for Wachovia, the Eligible Recipients or Genpact on or after the SOW Commencement Date to the extent a Party has financial or operational responsibility for such programs or programming under the applicable Statement of Work.

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- (76) “**Management Procedures Manual**” means a document setting forth non-Statement of Work specific procedures for the interaction of the Parties, including (i) the procedures for interaction and communication of the Executive Management Team with the Wachovia team managing the overall relationship with Genpact and (ii) the processes, methodologies and controls to be implemented and used by Genpact to ensure overall compliance with Genpact Laws and, subject to Article 19, Wachovia Laws.
- (77) “**Materials**” means, collectively, Software, literary works, other works of authorship, specifications, designs, analyses, processes, methodologies, concepts, inventions, know-how, programs, program listings, programming tools, documentation, user manuals, reports, drawings, databases, spreadsheets, financial models, machine readable text and files and work product, whether tangible or intangible.

- (78) “**Minimum Service Level**” has the meaning given in Section 7.1(b).
- (79) “**Minimum Service Level Default**” means Genpact’s level of performance for a particular Service Level fails to meet the applicable Minimum Service Level at any time.
- (80) “**Minor Release**” means a scheduled Software release containing small functionality updates and/or accumulated resolutions to Software defects or non-conformances made available since the immediately preceding release (whether Major Release or Minor Release). Minor Releases shall include “Maintenance Releases” which are supplemental to and made available between Major Releases and other Minor Releases, issued and provided under specific vendor service level or maintenance obligations and contain only accumulated resolutions or mandated changes. These releases are usually identified by a change in the decimal numbering of a release, such as “7.12” to “7.13.”
- (81) “**New Advances**” has the meaning given in Section 9.9(b).
- (82) “**Non-affiliate Subcontractor**” has the meaning given in Section 9.8(a).
- (83) “**Notice of Election**” has the meaning given in Section 21.4(a).
- (84) “**Object Code**” means, with respect to Software, all machine-readable instructions for the Software.
- (85) “**Operating Council**” has the meaning given in Schedule K.
- (86) “**Operational Losses**” means financial losses (including direct expenses, write-downs, restitution, quantifiable loss of income, settlements, judgments, fines or penalties) from failed transaction processing or process management (including transaction capture, execution and maintenance; monitoring and reporting; customer intake and documentation; and customer/client account management) or from relations with trade counter parties and vendors and suppliers. Losses under a Statement of Work specifying a Historic Level of Operational Losses that are of the type or types included in the Historic Level shall be deemed to be direct damages and not indirect, incidental or consequential damages. Otherwise, Operational Losses shall not include damages that are excluded pursuant to Section 22.4.
- (87) “**Out-of-Pocket Expenses**” means reasonable, demonstrable and actual out-of-pocket expenses due and payable to a third party by Genpact for which Genpact is entitled to be reimbursed by Wachovia under this Agreement. Out-of-Pocket Expenses shall not include Genpact’s overhead costs (or allocations thereof), general and/or administrative expenses or other mark-ups, Out-of-

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Pocket Expenses shall be calculated at Genpact’s actual incremental expense and shall be net of all rebates and allowances.

- (88) “**Parties**” and “**Party**” have the meaning given in the preamble to this Agreement.
- (89) “**Pass-Through Expenses**” means the expenses, if any, listed in the applicable Statement of Work, for which Wachovia has agreed in advance to be financially responsible, in accordance with Article 12 of this Agreement, following processing and review of the third party invoice by Genpact for accuracy.
- (90) “**Performance Category**” means a grouping of Critical Service Levels as set forth in a Statement of Work.
- (91) “**Permitted Assigns**” means assignees that would be permissible assignees under Section 27.1(b)(i) or (ii).
- (92) “**Pool Percentage Available for Allocation**” has the meaning given in Section 7.1(c)(i).
- (93) “**Policy and Procedures Manual**” has the meaning given in Section 9.1(b).
- (94) “**Presumptive Service Levels**” means those Service Levels identified in Exhibit F to a Statement of Work as a Presumptive Service Level.
- (95) “**Privacy Laws**” means the Laws relating to data privacy, trans-border data flow or data protection (e.g., the implementing legislation and regulations of the European Union member states under the European Union Directive 95/46/EC), including any rules, regulations, directives, principles and policies of Wachovia or an Eligible Recipient or any self-regulatory organizations to which Wachovia or an Eligible Recipient belongs.
- (96) “**Proprietary Information**” has the meaning given in Section 15.4(a).
- (97) “**Quality Assurance**” means the actions, planned and performed, to provide confidence that all business processes, Systems, Equipment, Software and components of such Systems, Equipment and Software that influence the quality of the Services are working as expected, both individually and collectively.
- (98) “**Recoverable Taxes**” means any tax on goods or services where the payer of the tax is able to claim a credit for that tax from a Tax Authority, and includes goods and services taxes, harmonized sales taxes, value added taxes and other similar taxes.

- (99) “**Reduced Resource Credit**” or “**RRC**” means the credit per Resource Unit that is applicable whenever the actual consumption of a defined Resource Unit by the Eligible Recipients falls below the Resource Baseline for utilization of such Resource Unit set forth in the applicable Statement of Work. The total credit will be calculated by multiplying the Reduced Resource Credit by the number of Resource Units below the Resource Baseline actually consumed by the Eligible Recipients.
- (100) “**Renewal Term**” has the meaning set forth in **Section 3.2**.
- (101) “**Reports**” has the meaning set forth in **Section 9.2(a)**.

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- (102) “**Resource Baselines**” means the estimated number of Resource Units to be required and/or consumed by Wachovia and the Eligible Recipients during a defined period of time and included in any periodic Charges specified in a Statement of Work.
- (103) “**Resource Unit**” or “**RU**” means a measurable device, unit of consumption, staffing level, or other resource that is associated with the Services, as described in **Schedule O**, that is measured to determine Wachovia’s and the Eligible Recipients’ actual utilization of such resource compared to the applicable Resource Baseline for purposes of calculating Additional Resource Charges and Reduced Resource Credits as described in **Schedule O** or the applicable Statement of Work.
- (104) “**Retained Systems and Business Processes**” means those systems and business processes of Wachovia or an Eligible Recipient for which Genpact has not assumed responsibility under this Agreement (including those provided, managed, operated, supported and/or used on their behalf by Wachovia Third Party Contractors). Retained Systems and Business Processes include equipment and software associated with such systems and business processes.
- (105) “**Reviews**” has the meaning given in **Section 15.2(h)**.
- (106) “**Root Cause Analysis**” means the formal process to be used by Genpact to diagnose the underlying cause of problems at the lowest reasonable level so that corrective action can be taken that will eliminate repeat failures.
- (107) “**Rules**” has the meaning given in **Section 24.2**.
- (108) “**SAS**” has the meaning given in **Section 14.9(a)**.
- (109) “**SEI CMM Level 5**” means Level 5 of the Capability Maturity Model Integration developed by the Carnegie Mellon Software Engineering Institute or any equivalent successor thereof developed by the Carnegie Mellon Software Engineering Institute.
- (110) “**Service Level Credit Allocation Percentage**” means the percentage of the Allocation of Pool Percentage allocated to a Critical Service Level within a Performance Category.
- (111) “**Service Level Credits**” has the meaning given in **Section 7.2(a)**.
- (112) “**Service Level Default**” means a Minimum Service Level Default or an Expected Service Level Default
- (113) “**Service Levels**” means, individually and collectively, the performance standards for the Services set forth in the applicable Statement of Work.
- (114) “**Service Taxes**” means all sales, service, value-added, use, excise, consumption and other similar taxes that are assessed against either Party on the provision of the Services as a whole, or on any particular Service received by Wachovia or the Eligible Recipients from Genpact, including US Service Taxes but excluding Recoverable Taxes and Income Taxes.
- (115) “**Services**” has the meaning given in **Section 4.1(a)**.
- (116) “**Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto), including Applications, Development Tools, Management Tools, and Systems Software.

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- (117) “**Source Code**” means, with respect to Software, all human-readable computer programming statements, instructions and commands and all associated programmer notes, comments, technical language specifications, design specifications, interface specifications, program specifications, maintenance utilities, listings of proprietary or third-party system utilities (including compiler, interpreter and/or assembler descriptions), development programs, descriptions of system/program generation, and descriptions of programs not owned by the developer or present owner but required for use and/or support; all sufficient to enable any reasonably competent programmer trained in the applicable programming language to create, maintain and/or enhance the Software without reference to any other materials or assistance.
- (118) “**SOW Commencement Date**” means, with respect to a Statement of Work, the date set forth in the applicable Statement of Work as the date on which Genpact will commence provision of the Services under such Statement of Work.
- (119) “**SOW Initial Term**” has the meaning given in Section 3.3(a).
- (120) “**SOW Renewal Term**” has the meaning given in Section 3.3(b).
- (121) “**SOW Term**” has the meaning given in Section 3.3(b).
- (122) “**Specifications**” means, with respect to Software, Equipment, Systems or other contract deliverables to be designed, developed, maintained, modified, enhanced, delivered, integrated, installed and/or tested by Genpact, the technical, design and/or functional specifications set forth in third party vendor standard documentation, in a Statement of Work or otherwise agreed upon by the Parties.
- (123) “**Statement of Work**” means each document in the format set forth in Schedule B that is executed by the Parties pursuant to Section 4.2 and that details the work effort and further describes the Services to be performed by Genpact.
- (124) “**Step-In Events**” has the meaning given in Section 10.5(a).
- (125) “**Stranded Costs**” has the meaning given in Schedule I.
- (126) “**Strategic Plan**” means the plans that may be periodically developed by Wachovia that set forth Wachovia’s key business objectives and requirements and outline its strategies for achieving such objectives and requirements. Wachovia may revise the Strategic Plan from time to time. The Strategic Plan is likely to include both annual and multi-year strategies, objectives and requirements.
- (127) “**Subcontractors**” means Affiliate Subcontractors and Non-affiliate Subcontractors of Genpact, collectively.
- (128) “**System**” means an interconnected grouping of manual or electronic processes, including Equipment, Software and associated attachments, features, accessories, peripherals and cabling, and all additions, modifications, substitutions, Upgrades or enhancements to such System, to the extent a Party has financial or operational responsibility under a Statement of Work for such System or System components. System shall include all Systems in use or required to be used as of the SOW Commencement Date, all additions, modifications, substitutions, Upgrades or enhancements to such Systems and all Systems installed or developed by or for Wachovia, the Eligible Recipients or Genpact following the SOW Commencement Date.

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- (129) “**Tax Authority**” means any federal, state, provincial, regional, territorial, local or other fiscal, revenue, customs or excise authority, body or official competent to impose, collect or assess tax.
- (130) “**Technology and Business Process Evolution**” means any improvement, upgrade, addition, modification, replacement, or enhancement to the standards, policies, practices, processes, procedures, methods, controls, scripts, product information, technologies, architectures, standards, Applications, Equipment, Software, Systems, tools, products, transport systems, interfaces and personnel skills associated with the performance of the in-scope business process products and services in line with the best practices of leading providers of such products and services. Genpact’s obligations with respect to Technology and Business Process Evolution apply not only to the Services performed by Genpact, but also to its support of the related business processes and functions performed by or for Wachovia and the Eligible Recipients. Technology and Business Process Evolution includes (a) higher capacity, further scaling and commercializing of business processes, more efficient and scalable business processes, new versions and types of applications and systems/network software, new business or IT processes, and new types of hardware and communications equipment that will enable Genpact to perform the Services more efficiently and effectively as well as enable Wachovia and the Eligible Recipients to meet and support their business requirements and strategies and (b) any change to the Equipment, Software or methodologies used to provide the Services that is necessary to bring that function, Equipment or Software or those methodologies into line with the Wachovia Standards and/or current industry standards.
- (131) “**Technology and Business Process Plan**” has the meaning given in Section 9.10(a).
- (132) “**Term**” has the meaning given in Section 3.2.
- (133) “**Termination Assistance Period**” means, in respect of a Statement of Work, the applicable period requested by Wachovia pursuant to Section 26.1(a)(i), as such period may be extended pursuant to Section 26.1(a)(ii) or 26.1(c).
- (134) “**Termination Assistance Services**” means the termination and expiration assistance requested by Wachovia to effect and facilitate the orderly transfer of the Services to Wachovia, the Eligible Recipients or Wachovia Third Party Contractors, as such assistance is further



described in Section 26.1 and the applicable Statement of Work.

- (135) “**Termination Charge**” shall mean an amount payable by Wachovia upon termination of a Statement of Work or the Agreement subject to and in accordance with Section 12.4(c), 25.3, 25.4 or 25.8.
- (136) “**Third Party Contracts**” means all agreements (including Equipment leases) between third parties and Wachovia or Genpact that have been or will be used to provide the Services to the extent a Party has financial or operational responsibility for such contracts under a Statement of Work. Third Party Contracts shall include all such agreements in effect as of the SOW Commencement Date, including those contracts identified in the applicable Statement of Work, those as to which the costs are included in the Wachovia Base Case, and those as to which Genpact received reasonable notice and/or reasonable access prior to the SOW Commencement Date. Third Party Contracts also shall include those third party agreements entered into by or for Wachovia, an Eligible Recipient or Genpact (or Genpact’s Subcontractors or Affiliates) after the SOW Commencement Date to the extent a Party has financial or operational responsibility for such Third Party Contracts under the applicable Statement of Work.
- (137) “**Third Party Materials**” means intellectual property, Third Party Software, or other Materials that are owned by third parties and provided under license to Genpact (or Genpact Affiliates or

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Subcontractors) or Wachovia (or Eligible Recipients) and that have been or will be used to provide or receive the Services. Third Party Materials include Materials owned by Subcontractors and used in the performance of the Services.

- (138) “**Third Party Software**” means all Software products (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are provided under license or lease to Genpact or Wachovia or an Eligible Recipient to the extent a Party has financial or operational responsibility for such Software products under a Statement of Work. Third Party Software shall include all such programs or programming in use or required to be used as of the SOW Commencement Date, including those set forth in the applicable Statement of Work, those as to which the license, maintenance or support costs are included in the Wachovia Base Case, and those as to which Genpact received reasonable notice and/or access prior to the SOW Commencement Date. Third Party Software also shall include all such programs or programming licensed and/or leased after the SOW Commencement Date to the extent a Party has financial or operational responsibility for such Third Party Software under the applicable Statement of Work.
- (139) “**Transfer Taxes**” means stamp, transfer, excise, documentary, sale, use, registration and other taxes and fees levied by a Tax Authority or Governmental Entity in connection with the transfer of assets.
- (140) “**Transition Milestone**” means each date identified on a Transition Plan as a milestone by which Genpact shall have completed a certain task or set of tasks in the Transition Plan in a manner acceptable to Wachovia.
- (141) “**Transition Period**” means, with respect to a Statement of Work that includes Transition Services, the period that commences on the date the Statement of Work is signed by the Parties and expires on the date specified for the completion of the Transition Services as specified in the Transition Plan for the Statement of Work, unless expressly extended in writing by Wachovia.
- (142) “**Transition Plan**” means, with respect to a Statement of Work that includes Transition Services, the plan set forth in the Statement of Work and developed pursuant to Section 4.4, which identifies (a) all material transition tasks and deliverables to be undertaken by Genpact in connection with the transition of all Services under the Statement of Work to Genpact, any applicable acceptance criteria, all enhancement projects to be completed during the Transition Period for such Statement of Work, and (b) the dates by which each will be completed by Genpact as set forth in the Statement of Work.
- (143) “**Transition Services**” means the services, functions and responsibilities described in Section 4.4 and the applicable Statement of Work to be performed by Genpact during the Transition Period for a Statement of Work.
- (144) “**UCITA**” means the Uniform Computer Information Transactions Act or any version or portion of the same implemented into Law.
- (145) “**Unanticipated Change**” has the meaning given in Section 12.5.
- (146) “**Upgrade**” and its derivatives mean updates, renovations, enhancements, additions and/or new versions or releases of Software or Equipment. Unless otherwise agreed, financial responsibility for the costs, fees and expenses associated with an Upgrade of Software or Equipment shall be allocated between the Parties in accordance with Section 6.6 and Exhibit C to Schedule D.

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- (147) “**US Service Taxes**” has the meaning given in Section 12.3(e)(i).
- (148) “**Wachovia**” has the meaning given in the preamble to this Agreement.
- (149) “**Wachovia Auditor**” has the meaning given in Section 14.2.
- (150) “**Wachovia Base Case**” means the summary financial base case attached to a Statement of Work, as well as the detailed financial and budget information underlying such summary base case.
- (151) “**Wachovia Consents**” means the consents (if any) required to be obtained: (a) to assign or transfer to Genpact, or obtain for Genpact the right to use and/or access, any Wachovia licensed Third Party Software, Third Party Contracts or Equipment leases or Acquired Assets and (b) to grant Genpact the right to use and/or access the Wachovia licensed Third Party Software in connection with providing the Services.
- (152) “**Wachovia Data**” means any data or information of Wachovia or an Eligible Recipient that is provided to or obtained by Genpact in connection with the negotiation and execution of this Agreement or the performance of its obligations under this Agreement, including data and information with respect to the businesses, customer, operations, facilities, products, rates, regulatory compliance, competitors, consumer markets, assets, expenditures, mergers, acquisitions, divestitures, billings, collections, revenues and finances of Wachovia or an Eligible Recipient. Wachovia Data also means any data or information relating to Wachovia or any Eligible Recipient, their vendors (other than Genpact), customers or products (a) created, generated, collected or processed by Genpact in the performance of its obligations under this Agreement, including data processing input and output, service level measurements, asset information, Reports, third party service and product agreements, contract charges, retained expenses and Pass-Through Expenses or (b) that resides in or is accessed through Software, Equipment or Systems provided, operated, supported, or used by Genpact in connection with the Services, as well as information derived from this data and information.
- (153) “**Wachovia Facilities**” means the facilities specified in one or more Statement of Works to be provided by Wachovia or the Eligible Recipient for the use of Genpact to the extent necessary to provide the Services under such Statement of Work(s).
- (154) “**Wachovia Laws**” has the meaning given in Section 19.1.
- (155) “**Wachovia Owned Materials**” has the meaning given in Section 16.1(a).
- (156) “**Wachovia Owned Software**” means Software owned by Wachovia or an Eligible Recipient and used, operated, maintained or supported by or on behalf of Genpact under or in connection with this Agreement.
- (157) “**Wachovia Personal Data**” means that portion of Wachovia Data that is subject to any Privacy Laws.
- (158) “**Wachovia Privacy Policy**” means Wachovia’s then-current corporate privacy policy.
- (159) “**Wachovia Project Executive**” has the meaning given in Section 11.1(a).
- (160) “**Wachovia Provided Equipment**” has the meaning given in Section 6.4(e).
- (161) “**Wachovia Rules**” has the meaning given in Section 6.9.

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- (162) “**Wachovia Sites**” or “**Sites**” means the offices or other facilities at or to which Genpact is to provide the Services.
- (163) “**Wachovia Standards**” has the meaning set forth in Section 9.5(a).
- (164) “**Wachovia Third Party Contractors**” has the meaning given in Section 4.6(a)(ii).
- (165) “**Wachovia Third Party Materials**” has the meaning given in Section 16.5(b).
- (166) “**Warranty Period**” has the meaning given in Section 18.3(c).
- (167) “**Yearly Performance Average**” means the average of Genpact’s performance in a Performance Category over a twelve (12) month period, calculated using the same methodology as is used to calculate potential Service Level Credits for such Performance Category.

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## 17.01.02 – MSA : Wachovia

## Genpact International, Lux., Hungarian Branch

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## Version Control

| Version No.                                      | Version Date | Types of Changes | Owner/ Author | Date of review/ expiry |
|--|--------------|------------------|---------------|------------------------|
| As per the Exhaustive List Available on RIM Site |              |                  |               |                        |

**Classification: Genpact confidential**

## Summary Sheet for MSA/SOW/NDA/LOI/LOA/LOE

|  |   |
|--|---|
| Contract signed By & Between                           | Macro*World Research Corp. & Genpact International, Luxembourg, HU Branch |
| Type of Document (whether MSA or sub-Contract)         | MSA Amendment   |
| If it is a sub contract, give the name of the main MSA |   |
| Effective date   | 26-Aug-06   |
| Expiry date  | 30-Nov-12   |
| Signatories  | Jay Stephenson & Anju Talwar  |
| Retention  | 9 years   |
| Process ID / PPC Code                                  |   |
| Function / COE responsible                             | External (Wachovia)   |
| Customer/Client Country                                | United States   |
| Attorney worked on the Document                        | Arjun Nath  |
| SPOC (from whom the RIM Team receives the document)    | Arjun Nath  |
| If scanned copy, then Location of Original document    |   |
| Genpact Classification                                 | Restricted  |

## FIRST AMENDMENT TO

## MASTER PROFESSIONAL SERVICES AGREEMENT

## BY AND BETWEEN

## MACRO\*WORLD RESEARCH CORPORATION

## AND

## GENPACT INTERNATIONAL, LUXEMBOURG, HUNGARIAN BRANCH

**DATED: AUGUST 26, 2006**

## FIRST AMENDMENT TO

## MASTER PROFESSIONAL SERVICES AGREEMENT

This First Amendment (the “**Amendment**”) entered into and effective August 26, 2006 amends that certain Master Professional Services Agreement dated as of November 30, 2005 (as amended, modified and supplemented from time to time, the “**Agreement**”) by and between Macro\*World Research Corporation, a North Carolina corporation having a principal place of business at 301 S. College Street, Charlotte, NC 28288 (“**Wachovia**”) and Genpact International, S.A.R.L., a Luxembourg société à responsabilité limitée, existing and organized under the laws of Luxembourg, acting through its Hungarian Branch, having its principal place of business at Duna Plaza Offices, 4th Floor, H-1138, Budapest Vacı ut 178, Hungary (“**Genpact**”). Capitalized terms used herein and not otherwise defined have the meaning given in the Agreement.

WHEREAS, Wachovia and Genpact are parties to the Agreement and have agreed to amend the Agreement as provided herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and of other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, Wachovia and Genpact hereby agree as follows:

## AMENDMENTS TO THE AGREEMENT

1. Section 3.1 Term, Initial Term is deleted and replaced in its entirety with the following:
  - “(a) The initial term of this Agreement shall commence as of 12:00:01 a.m. Eastern Time, on the Effective Date and, unless this Agreement is earlier terminated as provided herein, shall continue until 11:59:59 p.m. Eastern Time, on the seventh anniversary of the Effective Date (the “**Initial Term**”) or the date to which this Agreement is extended pursuant to **Section 3.2**.
  - (b) Year 1 of the Agreement extends from November of 2005 through December of 2006. Year 2 of the Agreement extends from January of 2007 through December of 2007. Each year following 2007, the contract year will be the applicable calendar year.”
2. Section 6.2, Infrastructure for the Provision of the Services, Physically Segregated Facilities: Delete all references to “building” and replace them with “facility”.
3. Section 6.2 (a) and (b) Physically Segregated Facilities: Replace all references to “FTEs” with “Full Production FTEs”.
4. Section 7.1(b) Service Level Performance Standards: Delete all references to Exhibit "F" and replace with Exhibit "C".

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5. Section 7.2 “Service Level Credits, Earnback and Deliverable Credits”: Delete all references to Exhibit "F" and replace with Exhibit "C".
  6. Section 8.5(c), Turnover Rate and Data, of the Agreement is deleted and replaced in its entirety with the following:

“In connection with entering into a Statement of Work, Wachovia and Genpact shall jointly establish a monthly “expected” level of Turnover and a “maximum acceptable” level of Turnover based upon the requirements of the business process covered by such Statement of Work and the Service Levels set forth in such Statement of Work. Such levels shall take into account transaction volume fluctuations. The Parties shall reconsider these levels of Turnover at the beginning of each anniversary of the SOW Commencement Date and make any mutually agreeable adjustment, including, for example, changing the basis of Turnover levels from individual Statements of Work to Lines of Business. For the purposes of this Agreement and all Statements of Work hereunder, Wachovia and Genpact agree that the “expected” level of Turnover and the “maximum acceptable” level of Turnover shall be as specified in the applicable Statement(s) of Work.

- (i) If the average Turnover rate viewed for each individual Statement of Work, during the twelve (12) month period immediately prior to each anniversary of the SOW Commencement Date, is above the “expected” level but below the “maximum acceptable” level, then Genpact shall prepare, and the Parties shall discuss and jointly agree upon, an action plan to reduce such Turnover rate and Genpact shall implement the agreed-upon plan.
- (ii) If the average Turnover rate viewed for each individual Statement of Work, during the twelve (12) month period immediately prior to each anniversary of the SOW Commencement Date, is above the “maximum acceptable” level, then the Operating Council shall act immediately to reduce such Turnover, and Genpact shall invest two percent (2%) of the average monthly Base Charges paid under the affected Statement(s) of Work during the twelve (12) months prior to the month in which the Turnover rate is calculated into measures to reduce the Turnover rate below the “maximum acceptable” level and Genpact shall continue to do so until the Turnover rate falls below such level, within a reasonable period of time. Notwithstanding anything to the contrary contained herein, Genpact shall not be required to make such investment in respect of a Statement of Work, on which less than fifty (50) FTEs are engaged, in the event the average Turnover rate for such Statement of Work is above the “maximum acceptable” level.

For the purposes of this **Section 8.5(c)** and the Agreement, “Turnover” shall mean the replacement of FTEs on the Wachovia account by Genpact. The Turnover rate will be calculated using the FTEs identified in a Statement of Work that are assigned to perform the Production Services described in that Statement of Work and such other FTEs as the Parties mutually agree to include in the calculation. For the purposes of this Section 8.5(c). “Production Services” means the Services that Genpact begins to provide at the SOW Commencement Date. It is hereby clarified that the following categories of

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FTEs will not be considered when calculating the Turnover rate: (a) FTEs that are not assigned to the Wachovia account, (b) FTEs that have not been issued a Wachovia process identity (c) FTEs engaged in the support of IT, quality, training, and human resource management on the Wachovia account, (d) FTEs that are removed from the Wachovia account, or reassigned within the Wachovia account, at Wachovia’s request, or with Wachovia’s prior consent, as the case may be, and (e) FTEs that have worked on an SOW for a continuous period of two (2) years; provided, however, that the number of FTEs that are replaced after two (2) years may not exceed ten percent (10%) of the total number of FTE’s working on the Wachovia account on a month-to-month basis. For the avoidance of doubt, the provisions of this **Section 8.5(c)** are in addition to Genpact’s other obligations under the Agreement, including but not limited to its obligation to satisfy Service Level requirements pursuant to Article 7 of the Agreement and its obligations to maintain work standards, including the provision of qualified personnel, pursuant to Article 18 of the Agreement.

7. Section 14.9(a), SAS 70 Type II Audit, is deleted and replaced in its entirety with the following:

In addition to its other obligations under this **Article 14**, Genpact shall cause a Type II Statement of Auditing Standards (“SAS”) 70 audit to be conducted at least annually or such other period as required by law or regulation if such is more frequent than annually by an auditor that is reasonably acceptable to Wachovia for (i) any critical business processes that Wachovia, in its reasonable discretion, identifies to Genpact as being subject to a Type II SAS 70 audit, provided that the cost of any such audits shall not exceed five hundred thousand dollars (\$500,000.00) in

aggregate annually and (ii) internal controls (including but not limited to controls relating to Genpact's internal enabling functions such as financial controls, information technology controls, risk assessment processes, governance, and Genpact's overall control environment) for each Genpact Facility at or from which the Services are provided to Wachovia or the Eligible Recipients. For the purpose of this **Section 14.9(a)**, a critical business process is any process that Wachovia reasonably believes will impact Wachovia's compliance obligations under the Sarbanes-Oxley Act of 2002. For all Type II SAS 70 audits other than those relating to critical business processes, Genpact shall consider issues and concerns raised by Wachovia in the planning of each such audit, provide notice to Wachovia as to the scope and timing of each such audit and accommodate Wachovia's requirements and concerns to the extent practicable. For all critical business process Type II SAS 70 audits, Wachovia will provide notice Genpact as to the scope and timing of each such audit and will accommodate Genpact's requirements and concerns to the extent possible. Genpact shall provide Wachovia with a report from each SAS 70 audit to facilitate periodic compliance reporting by Wachovia and the Eligible Recipients under the Sarbanes-Oxley Act of 2002 (and implementing regulations promulgated by the United States Securities and Exchange Commission and Public Company Accounting Oversight Board) and comparable Laws in other jurisdictions. To the extent the resulting audit report is relevant to Wachovia or the Eligible Recipients, Genpact shall provide a copy of such report to Wachovia and its independent auditors for review and comment as soon as reasonably practicable and in all events within forty-five (45) days after the issuance of the report. Genpact shall respond to such report in accordance with this

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**Section 14.9(a).** For the purposes of this Section 14.9(a), a SAS 70 Type II Report is a report prepared in accordance with Statement on Auditing Standards (SAS) No. 70, *Service Organizations*, as amended issued by the Auditing Standards Board of the American Institute of Certified Public Accountants.

8. Section 12.9(b) Indirect Benefits, section (ii): Delete "Governance" in "Wachovia Outsourcing Governance Director".
9. Section 13.1 (a) Invoicing, is deleted and replaced in its entirety with the following:

"(a) **Invoice.** From the Effective Date upto (and including) June 30, 2007, Genpact shall issue an invoice for the Charges due and owing for the preceding month within fifteen (15) days after the beginning of each month. Commencing on July 1, 2007, Genpact shall issue all such invoices for the Charges within ten (10) days after the beginning of each month. Issuing invoices is subject to Genpact receiving a 'Purchase Order' from Wachovia at least 10 days prior to the last day of the preceding month. At Wachovia's request, Genpact shall provide separate monthly invoices for each Purchase Order issued by Wachovia. The invoice shall be delivered to Wachovia, at the address listed in the Statement of Work and/or electronically. Unless otherwise required under a Statement of Work, Genpact shall not invoice Wachovia for any advance or concurrent charges or other amounts. For the purposes of this section, "Purchase Order" is defined as a document titled Purchase Order issued by Wachovia.
10. Section 22.3(a) Liability for Operational Losses, section (iii): Delete "Governance" in "Wachovia Outsourcing Governance Director".
11. Section 24.1(b) Dispute Resolution, Informal Dispute Resolution, line 7: Replace "President of each Party" with "Operating Council".
12. Section 24.1(c) Informal Dispute Resolution, Presidents of the Agreement is deleted and replaced in its entirety with the following: "(c) **Operating Council.** If an issue has been escalated to the Operating Council, a special meeting of the Operating Council will be immediately convened to review and resolve the issue. If such issue is not resolved within five (5) days, it will be escalated to a special meeting of the Executive Committee. Either Party may request the escalation of an issue immediately to the Executive Committee if such Party does not believe it can be resolved by the Operating Council within the five (5) day period."
13. Section 25.1(a)(ii), Section 25.1(b)(ii), Termination for Cause and Section 25.3 Termination for Convenience: Replace all references to "FTE" with "Full Production FTEs".
14. Schedule A the definition of "Expected Service Level Default": Delete references to Exhibit "F" and replace with Exhibit "C".
15. Schedule A the definition of "Full Production Date" is deleted and replaced in its entirety with the following:

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"Full Production Date" means the Tollgate 4 date as referred to under Exhibit A of Schedule C ('Transition Methodology') of the Agreement, and as specified under each Statement of Work."

16. Schedule A the following definition of "Full Production FTEs" is inserted in Schedule A:

"Full Production FTEs" means the total number of FTE personnel engaged in providing Services on the Wachovia account, after the Full Production Date, in respect of whom Wachovia has been invoiced for Charges on the last day of the previous month."
17. Schedule A the definition of "Presumptive Service Levels": Delete references to Exhibit "F" and replace with Exhibit "C".
18. Schedule B, Statement of Work is deleted and replaced in its entirety with the form and content attached as Exhibit A hereto.
19. A new "Form of Transition Statement of Work" is added with the form and content attached as Exhibit B hereto.
20. Schedule K, 3.1.1 Committees and Teams, Executive Committee: Add bullet number 6 under Wachovia members "Wachovia Secretary (non-voting)".
21. Schedule O, Pricing Methodology, is deleted and replaced in its entirety with the form and content attached as Exhibit C hereto.

22. Schedule Q "Implementation Risk Readiness Assessment" formerly Schedule B, Exhibit B-1 is inserted into the Agreement, with the form and content attached as Exhibit D hereto.

**GENERAL**

23. **Authority for Amendment.**

The execution, delivery and performance of this Amendment has been duly authorized by all requisite corporate action on the part of Wachovia and Genpact and upon execution by all parties, will constitute a legal, binding obligation thereof.

24. **Effect of Amendment.**

Except as specifically amended hereby, the Agreement, and all terms contained therein, remains in full force and effect. The Agreement, as amended by this Amendment, constitutes the entire understanding of the Parties with respect to the subject matter hereof.

25. **Binding Effect; Severability.**

Each reference herein to a Party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this Amendment and in whose favor the

provisions of this Amendment shall inure. In case any one or more of the provisions contained in this Amendment shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

26. **Further Assurances.**

The parties hereto agree to execute such other documents and instruments and to do such other and further things as may be necessary or desirable for the execution and implementation of this Amendment and the consummation of the transactions contemplated hereby and thereby.

27. **Governing Law.**

This Amendment shall be governed by and construed in accordance with the laws of the State of New York.

28. **Counterparts.**

This Amendment may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their respective duly authorized representatives, all as of the day and year first above written.

**Marco\* World Research Corp.**

By: /s/ Jay Stephenson

Name: Jay Stephenson

Title: Vice President

Date: 8/30/2006

**Genpact International, Luxembourg,  
Hungarian Branch**

By: Anju Talwar

Name: Anju Talwar

Title: Sr. Vice President

Date: Aug. 24, 2006

## AGREEMENT

This Agreement, dated November 30, 2005 (this "Agreement"), is by and between Genpact Global Holdings SICAR S.a.r.l., a Luxembourg société à responsabilité limitée qualifying as a Société d'investissement en capital à risque (the "Company"), Macro\*World Research Corporation, a North Carolina corporation ("WB"), and Wachovia Corporation, a North Carolina corporation ("Guarantor"), each of which agrees as follows:

### RECITALS

WHEREAS, concurrently with the execution and delivery of this Agreement, Genpact International, a Luxembourg s.a.r.l. ("Genpact International"), WB and Guarantor are entering into the Master Professional Services Agreement (as defined herein) for the provision of services by Genpact International and certain of its Affiliates or other subcontractors as permitted under the Master Professional Services Agreement to WB and other Eligible Recipients (as defined herein);

WHEREAS, the Company, GE Capital International (Mauritius), a Mauritius corporation ("GE"), Wachovia Investment Holdings, LLC, a Delaware limited liability company ("Purchaser"), and Guarantor have entered into the Securities Purchase Agreement (as defined herein) pursuant to which GE shall sell to Purchaser on the date hereof, and Purchaser shall purchase from GE, 76,483 shares of Common Stock (as defined herein) of the Company;

WHEREAS, concurrently with the execution and delivery of this Agreement, the Company, Purchaser and the existing shareholders of the Company shall enter into the Amended and Restated Shareholders Agreement (as defined herein) which, among other things, shall set forth WB's rights and obligations as a shareholder of the Company; and

WHEREAS, the Company, WB and Guarantor desire to enter into this Agreement in order to set forth the terms and conditions of their agreement with regard to certain matters not addressed in the Master Professional Services Agreement, the Securities Purchase Agreement or the Amended and Restated Shareholders Agreement.

NOW, THEREFORE, in consideration of the premises and mutual agreements and covenants herein contained, and, intending to be legally bound hereby, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Certain Defined Terms.** Capitalized terms used in this Agreement shall have the meanings specified below, or elsewhere in, this Agreement;

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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(a) "2010 FTE Measurement Date" means December 31, 2010.

(a) "2011 Cash Payment" means the following:

(i) [[[\*\*\*]]]:

(ii) [[[\*\*\*]]]:

(b) "Amended and Restated Shareholders Agreement" means the Amended and Restated Shareholders Agreement, dated as of the date hereof, by and among Purchaser, the Company, Genpact Global (Lux) and the existing shareholders listed on the signature pages thereto, as the same may be amended, modified or supplemented from time to time in accordance with its terms.

(c) "Applicable FTE Level" means, (i) when calculating the 2011 Cash Payment, the FTEs as of the 2010 FTE Measurement Date, and (ii) when calculating the Early Termination Cash Payment, the FTEs on the MSA Termination Date.

(d) "Applicable Measurement Date" means (i) the 2010 FTE Measurement Date, when calculating the 2011 Cash Payment, and (ii) the MSA Termination Date, when calculating the Early Termination Cash Payment.

(e) "Applicable Share Amount" means [[[\*\*\*]]]

(f) "BPO/ITO Company" means, as of the IPO Date and, with respect to any Replacement Company, as of the Replacement Date, any publicly-traded company on a United States or major international stock exchange or trading system whose primary business is the provision of business process outsourcing or information technology outsourcing services and that has a sufficient public float that would allow for customary hedging transactions on the common equity securities of such company.

(g) "Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City of New York.

(h) "Change of Control" shall have the meaning set forth in the Amended and Restated Shareholders Agreement.

(i) "Common Stock" shall have the meaning set forth in the Amended and Restated Shareholders Agreement.



- (j) “Deemed Yield Amount” means [[\*\*\*]].
- (k) “Early Termination Cash Payment” means the following: [[\*\*\*]]
- (l) “Eligible Recipients” shall have the meaning set forth in the Master Professional Services Agreement.

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[[\*\*\*]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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- (m) “Fair Market Value” means the price that would be paid in an arm’s-length transaction to a willing seller under no compulsion to sell, by a willing buyer under no compulsion to buy.
- (n) “FTE” means [[\*\*\*]].
- (o) “Index” means an index consisting of a number of shares (which could be fractions of shares) of each Index Company determined by the Company in accordance with Section 2.04(a). The number of shares of each Index Company to be included in the Index is subject to the adjustments set forth in Section 2.04.
- (p) “Index Companies” means, as of any date, the BPO/ITO Companies that populate the Index as of such date.
- (q) “Index Differential” means [[\*\*\*]]%.
- (r) “Index Representation” means, with respect to each Index Company, the number of shares of such Index Company in the Index as of the IPO Date (as adjusted from time to time pursuant to Section 2.04).
- (s) “Index Value” means, as of any date, the value of the Index, as determined by the Company pursuant to Section 2.04(a) (as adjusted from time to time pursuant to Section 2.04).
- (t) “Initial Index Value” means the Index Value as of the IPO Date, as determined by the Company pursuant to Section 2.04(a).
- (u) “IPO Date” means the date of the first Qualified Initial Public Offering.
- (v) “IPO Price” means the volume weighted average price per share of Common Stock (or the class of the securities that is sold in the Qualified Initial Public Offering) for the twenty consecutive trading days following a Qualified Initial Public Offering.
- (w) “Legal Proceedings” means any judicial, administrative or arbitral actions, suits or proceedings (public or private, at law or in equity) by or before a governmental entity.
- (x) “Master Professional Services Agreement” means the Master Professional Services Agreement, dated as of the date hereof, between the Company, WB and the Guarantor, as the same may be amended, modified or supplemented from time to time in accordance with its terms.
- (y) “MSA Date” means the date of the Master Professional Services Agreement.
- (z) “MSA Expiration Date” means November 30, 2012.

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[[\*\*\*]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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- (aa) “MSA Termination Date” means, if, prior to the MSA Expiration Date, the Master Professional Services Agreement is terminated by (i) WB, for any reason other than a bona fide termination pursuant to Section 25.1(a), Section 25.5 or Section 25.7 of the Master Professional Services Agreement, or (ii) Genpact International pursuant to Section 25 of the Master Professional Services Agreement, the last day Genpact International is providing Services to WB (and the other Eligible Recipients) under the Master Professional Services Agreement (other than Termination Assistance Services) (as each term is defined in the Master Professional Services Agreement).
- (bb) “Person” means any individual, partnership, corporation, trust, limited liability company, unincorporated organization, governmental entity and any other entity.
- (cc) “Purchase Price” means \$90,020,491.
- (dd) “Qualified Initial Public Offering” shall have the meaning set forth in the Amended and Restated Shareholders Agreement.
- (ee) “Sale Price” means the Fair Market Value of a share of Common Stock at the time of a Change of Control, as determined in good faith by the board of managers of the Company.
- (ff) “Securities Purchase Agreement” means the Securities Purchase Agreement, dated as of November 30, 2005, by and between the Company, GE, Purchaser and Guarantor, as the same may be amended, modified or supplemented from time to time in accordance with its provisions.

(gg) “Share Purchase Price” means (i) the Purchase Price divided by (ii) the WB Share Amount.

(hh) “Unrecovered Share Purchase Price” means, as of any date, the excess, if any, of (i) the sum of the Share Purchase Price plus the Deemed Yield Amount through the date of determination over (ii) the cumulative amount of cash distributions and the Fair Market Value (as determined in good faith by the board of managers of the Company) of non-cash distributions distributed in respect of the WB Shares through the date of determination, in each case calculated on a per share basis.

(ii) “WB Share Amount” means 76,483 shares of Common Stock of the Company, as adjusted from time to time pursuant to Section 2.06.

(jj) “WB Shares” means the equity interests in the Company and/or Genpact Global (Lux), as the case may be, held by Purchaser (and its Permitted Transferees (as defined in the Amended and Restated Shareholders Agreement)) as of any date.

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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## ARTICLE II

### CASH PAYMENTS; INDEX

**Section 2.01. 2011 Cash Payment.** If a Qualified Initial Public Offering or a Change of Control shall have occurred prior to the 2010 FTE Measurement Date, WB shall pay, on January 31, 2011 (or the next Business Day), subject to Section 2.04(f), the 2011 Cash Payment to the Company by wire transfer of immediately available United States funds into an account designated by the Company.

**Section 2.02. Early Termination Cash Payment.**

(a) If a Qualified Initial Public Offering or a Change of Control shall have occurred prior to the MSA Termination Date, WB shall pay on the MSA Termination Date (or the next Business Day), subject to Section 2.04(f), the Early Termination Cash Payment to the Company by wire transfer of immediately available United States funds into an account designated by the Company.

(b) If the MSA Termination Date shall have occurred on or prior to the date of a Qualified Initial Public Offering or the date of a Change of Control, on the earlier to occur of a Qualified Initial Public Offering and a Change of Control, WB shall pay the Early Termination Cash Payment to the Company by wire transfer of immediately available United States funds into an account designated by the Company.

**Section 2.03. Qualified Initial Public Offering and Change of Control.** If both a Qualified Initial Public Offering and a Change of Control shall have occurred prior to any or each of the MSA Termination Date, and/or the 2010 FTE Measurement Date, the calculations under Sections 2.01 and 2.02 shall be based on the first to have occurred of a Qualified Initial Public Offering and a Change of Control.

**Section 2.04. Index.**

(a) Index Population; Index Value. The initial population of the Index, including the Index Representation, will be selected by the Company in its sole discretion within ten (10) days after the IPO Date and shall consist of no more than ten (10) BPO/ITO Companies. The Initial Index Value shall be determined by the Company in its sole discretion as of the date the Index is populated by the Company pursuant to this Section 2.04(a). The methodology for determining the Initial Index Value shall be provided to WB by the Company promptly after its determination. The Index Value as of any date shall be determined by the Company using the same methodology as was used to calculate the Initial Index Value.

(b) Removal of Index Company. If an Index Company ceases to trade for more than twenty (20) consecutive trading days for any reason such Index Company (the “Removed Company”) will be removed by the Company from the Index as soon as practicable (the date of such removal, the “Removal Date”) and the Company shall choose a BPO/ITO Company to replace the Removed Company on the Removal Date

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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(the “Replacement Company”). The Company shall equitably adjust the Index Value to reflect any change in value of the Removed Company through the Removal Date and the Replacement Company thereafter.

(c) Adjustment. The Index Representation of each Index Company and the Index Value will be equitably adjusted from time to time by the Company to account for any cash distributions, non-cash distributions, stock splits, dividends or other events involving Index Companies.

(d) Index Differential Calculation. The Company will deliver a notice to WB promptly following the MSA Termination Date or promptly following the 2010 FTE Measurement Date, as applicable (in each case, provided that a Qualified Initial Public Offering shall have occurred prior thereto), which notice shall set forth the Company’s calculation of the Index Differential as of the Applicable Measurement Date (the “Index Differential Calculation”).

(e) Determinations Binding. Absent manifest error, any determination or adjustment made by the Company pursuant to clauses (a), (b), (c) or (d) of this Section 2.04 shall be binding on the parties hereto.

(f) Dispute Notice.

(i) If WB disputes the Index Differential Calculation based on manifest error, it shall deliver written notice (the "Dispute Notice") to the Company within ten (10) Business Days after receipt by WB of the Index Differential Calculation, stating that WB objects to the Index Differential Calculation, specifying in reasonable detail the basis for such objection and setting forth WB's proposed modification to the Index Differential Calculation. WB and the Company will attempt to resolve and finally determine and agree upon the Index Differential Calculation as promptly as practicable. If WB and the Company are unable to agree upon the Index Differential Calculation within thirty (30) days after delivery of the Dispute Notice, a nationally recognized investment banking firm reasonably acceptable to each of WB and the Company will resolve the items set forth in the Dispute Notice within thirty (30) days of its engagement. The fees, costs and expenses of the investment banking firm will be borne by the party whose positions generally did not prevail in such determination, as determined by such investment banking firm, or if the investment banking firm determines that neither party could be fairly found to be the prevailing party, then such fees, costs and expenses will be borne 50% by WB and 50% by the Company. If WB does not deliver the Dispute Notice to the Company within ten (10) Business Days after receipt by WB of the Index Differential Calculation, such Index Differential Calculation will be conclusively presumed to be true and correct in all respects and will be final and binding upon the parties.

(ii) If, as of January 31, 2011, with respect to the 2011 Cash Payment, or the MSA Termination Date, with respect to the Early Termination Cash Payment, the Index Differential Calculation has not yet been finally determined in accordance with this Section 2.04(f), WB shall be required to make the 2011 Cash

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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Payment and the Early Termination Cash Payment, as applicable, in accordance with Sections 2.01 and 2.02, respectively, based upon the Index Differential Calculation set forth in the Dispute Notice. Not later than the third Business Day following the final determination of the Index Differential Calculation pursuant to this Section 2.04(f), WB shall pay the excess, if any, of the 2011 Cash Payment and the Early Termination Cash Payment, as applicable, calculated based on the finally determined Index Differential Calculation, over the 2011 Cash Payment and the Early Termination Cash Payment, respectively, previously made by WB.

**Section 2.05. Illustration.** Exhibit A attached hereto sets forth an illustration of certain of the calculations referred to in this Article II.

**Section 2.06. WB Share Amount Adjustment.** In the event of any merger, reorganization, consolidation, change of control, recapitalization, stock split, spin-off or other change in the corporate structure of the Company affecting the equity interests in the Company and/or Genpact Global (Lux), the WB Share Amount will be equitably adjusted in good faith by the board of managers of the Company.

**Section 2.07. Sustainability.** Without limiting WB's rights and remedies under the Master Professional Services Agreement, WB shall use commercially reasonable efforts to maintain the Applicable FTE Level as of the 2010 FTE Measurement Date through March 31, 2012 as long as Genpact International provides the Services (as defined in the Master Professional Services Agreement) in accordance with the requirements of the Master Professional Services Agreement and consistent with the potential expiration of the Master Professional Services Agreement at the end of the Initial Term thereof.

### ARTICLE III

#### GENERAL

**Section 3.01. Assignment.** This Agreement shall not be assignable by the Company without the prior written consent of WB, or by WB without the prior written consent of the Company. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties hereto and their permitted successors and assigns. This Agreement shall continue to be binding on WB following any transfer by WB of any WB Shares to any other person or entity.

**Section 3.02. Entire Agreement; Amendment.** This Agreement, including any schedules and attachments referred to herein and attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth in this Agreement. This Agreement is not a part of, and shall not be integrated with, the Master Professional Services Agreement. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertaking, whether written or oral, with respect to the subject matter contained in this Agreement. No

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, modification, change, waiver, or discharge is sought to be enforced.

**Section 3.03. No Offset.** The obligations of WB under this Agreement are absolute and unconditional and WB shall have no right to set-off, combine, consolidate or otherwise appropriate or apply against, or on account of, any obligations or liabilities owed by the Company or any of its affiliates to WB under this Agreement or otherwise, including, without limitation, any amounts that may be owed by the Company to WB or any of its Affiliates under the Master Professional Services Agreement.

**Section 3.04. Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.

**Section 3.05. Heading.** The Article and Section headings and used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

**Section 3.06. Severability.** In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the parties hereto, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties hereto in accordance with applicable law. The remaining provisions of this Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by applicable law.

**Section 3.07. Waiver of Default; Cumulative Remedies.**

(a) **Waiver of Default.** A delay or omission by either party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the party waiving its rights.

(b) **Cumulative Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party hereto at law, in equity or otherwise. The election by a party hereto of any remedy provided for in this Agreement or otherwise available to such party shall not preclude such party from pursuing any other remedies available to such party at law, in equity, by contract or otherwise.

**Section 3.08. Survival.** This Agreement shall survive the expiration or termination of the Master Professional Services Agreement.

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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**Section 3.09. Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties to this Agreement and their permitted successors and assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 3.10. Notices.** All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile with receipt confirmed (followed by delivery of an original via overnight courier service) or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 3.10):

if to the Company:

GENPACT GLOBAL HOLDINGS SICAR S.A.R.L.  
65, Boulevard Grande Duchesse Charlotte  
L - 1331  
Attention: Board of Managers  
Facsimile: 352 26 383 509

with a copy to (which shall not constitute notice):

GENPACT GLOBAL HOLDINGS SICAR S.A.R.L.  
1251 Avenue of the Americas  
Suite 41  
New York, NY 10020  
Attention: Eileen S. Silvers, Esq.  
Facsimile: (646) 823-0467

and

PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019  
Attention: Kenneth M. Schneider, Esq.  
Facsimile: (212) 592-0303

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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if to WB or Guarantor:

WACHOVIA CORPORATION  
301 South College St. NC0630  
Charlotte, NC 28288-0630  
Attention: Sterling A. Spainhour, Esq.  
Facsimile: (704) 715-4498

with a copy to (which shall not constitute notice):

JONES DAY  
2727 North Harwood Street  
Dallas, Texas 75201-1515  
Attention: John A. Funk, Esq.  
Facsimile: (214) 969-5100

Failure or delay in delivering any notice, demand, request, consent, approval, declaration or other communication to any Person designated to receive a copy thereof shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

**Section 3.11. Governing Law.**

(a) This Agreement and performance under it shall be governed by and construed in accordance with the applicable laws of the State of New York, without giving effect to the principles thereof relating to conflicts of laws other than Section 5-1401 of the General Obligations Law of the State of New York.

(b) Each of the parties by this Agreement irrevocably and unconditionally:

(i) submits for itself and its property in any Legal Proceeding relating to this Agreement, or for recognition and enforcement of any judgment in respect hereof, to the exclusive jurisdiction of the Courts of the State of New York sitting in the County of New York, the court of the United States of America for the Southern District of New York, and appellate courts having jurisdiction of appeals from any of the foregoing, and agrees that all claims in respect of any such Legal Proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such federal court;

(ii) consents that any such Legal Proceeding may and shall be brought in such courts and waives any objection that it may now or hereafter have to the venue or jurisdiction of any such Legal Proceeding in any such court or that such Legal Proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(iii) waives all right to trial by jury in any Legal Proceeding (whether based on contract, tort or otherwise) arising out of or relating to this Agreement, or its performance under or the enforcement of this Agreement;

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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(iv) agrees that service of process in any such Legal Proceeding may be effected by mailing a copy of such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address as provided in Section 3.10; and

(v) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by the laws of the State of New York.

**Section 3.12. Further Assurances.** Each party hereto covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each party hereto shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

**Section 3.13. Guarantee.** Guarantor hereby guarantees the payment and performance of all obligations, liabilities and indemnities of WB now existing or hereafter arising under this Agreement (collectively, the "Obligations"). This guarantee shall be a full, unconditional, irrevocable, absolute and continuing guarantee of payment and performance and not a guarantee of collection, and Guarantor shall remain liable on the Obligations hereunder until the payment in full of the Obligations. Guarantor's guarantee and responsibility shall not be discharged, released, diminished, or impaired by any setoff, counterclaim, defense, act or occurrence which Guarantor may have against the Company as a result of or arising out of this Agreement. If under applicable bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or other similar laws of general application with respect to creditors, any payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Company, this guarantee shall continue to be effective, or be reinstated, as the case may be, all as though such payment had not been made.

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[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers or representatives thereunto duly authorized, as of the date first above written.

GENPACT GLOBAL HOLDINGS SICAR  
S.A.R.L.

By: \_\_\_\_\_  
Name: Eileen S. Silvers  
Title: Senior Vice President, Taxes and  
Corporate Affairs

MACRO\*WORLD RESEARCH  
CORPORATION

By: \_\_\_\_\_  
Name: Jean E. Davis  
Title: Chairman

WACHOVIA CORPORATION

By: \_\_\_\_\_  
Name: Thomas K. Hoops  
Title: Senior Vice President

\_\_\_\_\_  
[[[\*\*\*]]] CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

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