

Grant Access	Print	Copy Request	<a href="#">View All</a>
<b>Sourcing Contract Executive Review - Request #35741189</b>			
Request URL : <a href="http://supportcentral.ge.com/caseforms/sup_myforms.asp?form_doc_id=35741189">http://supportcentral.ge.com/caseforms/sup_myforms.asp?form_doc_id=35741189</a>			
<a href="#"> Request on Hold</a>   <a href="#"> Role members</a>   <b>Pending</b>			
<b>Workflow Status</b>		<a href="#">Click to view workflow status</a>	
<b>Current Step(s) :</b>			
Contract Administrator			
Community	GEHC Global Sourcing		
Requestor	Gierach, Bruce		
Requestor SSO ID	212021842		
Requestor Phone	262-548-4816		
Requestor Business Name	GSC-Staff		
Requestor Department Name	GSC-Sourcing-Mechanical-E&M		
Business Segment	Technology Infrastructure - Healthcare		
Industry Focus Group	GE Technology Infrastructure		
Legal Entity ID	MS0074		
Requestor Location	3000 North Grandview Blvd., Waukesha, Wisconsin, United States		
Manager Name	Betti, Diane		
Manager's SSO	212005865		
Supplier Type:*	Direct		
Agreement Value:*	2M - 25M		
Direct Agreement Type:*	Contract Manufacturing (Direct Material)		
Agreement Form Template:*	Strategic Supplier Alliance Agreement		
Supplier Overview			
Supplier Name:*	Fastenal Company		
Global Contract Database (GCDB) ID:*	102496		
Purchase Family:*	Fab & Machining		
Supplier's Headquarter Location:*	Winona, MN, USA		
Agreement Overview			
What is the initial geographical scope of this Agreement?:*	Global		
Objective of Agreement (What business need, product, service is this agreement addressing, and coverage area)?:*	Global fastener distributor.		
Term of Agreement in Months:*	60		
Agreement Start Date:*	01-JAN-2010		
Is this an Evergreen Contract?:*	No		
Agreement End Date:*	31-DEC-2014		
Total estimated amount of GEHC spend with Supplier under	20000000		

term of this Agreement?:*	
Contract Currency?:*	USD
GEHC Contractual Commitment?:*	None
Current Payment Terms?:*	Net 60
Payment Terms within the Agreement?:*	Net 75
Is the pricing in the contract inflationary or deflationary?:*	Deflationary
Were any legal liability terms changed?:*	No
Were any Commercial liability terms changed?:*	No
Does GEHC have the option to terminate the Agreement for convenience?:*	Yes
Does the supplier have the option to terminate the Agreement for convenience?:*	No
Is this an Exclusive Agreement (GEHC is contractually obligated to purchase these products only from this supplier)?,:*	No
Was a Standard GE/GEHC agreement used?:*	Yes
If this Agreement pertains to products, were service and parts prices also part of this agreement?:*	Yes
Are there any other risks associated with GEHC conducting business with this supplier (including, but not limited to, actual or foreseeable quality or delivery problems)?,:*	No
<b>GEHC Contract Supplements</b>	
Is GEHC's Supplier Integrity Statement a part of this agreement?:*	Yes
Is GEHC's PMQR a part of this agreement?:*	Yes
Is GEHC's Business Associate Addendum (HIPPA) a part of this agreement?:*	No (Supplier WILL NOT have access patient information)
Is GEHC's Transportation Guidelines apart of this agreement?:*	Yes
Is GEHC's Packaging Specifications a part of this agreement?:*	Yes
Is GEHC's Personal Data Protection a part of this agreement?:*	Yes
<b>Finance Section</b>	
Are there any special pricing conditions?:*	No
Is the invoice currency the currency of the buyer's country (our functional currency)?,:*	Yes
Is the invoice currency the currency of the supplier's country?:*	N/A
Are there or have there been any references to Currencies or Commodity input prices in the contract OR in other correspondance (eg email/phone):*	No
Have we indicated that the supplier should lock-in any portion of its commodity cost content, either in the contract language or in other communications outside of the contract (eg email)?,:*	No
Have we suggested that the results of any supplier commodity or FX risk management practices should be for GEHC's benefit?:*	No
Are there any references to other market indices in the contract, such as for labor, inflation, etc.?,:*	No
Is this a contract for the purchase of a raw commodity or a	

product that is comprise of >90% raw commodity?:*	No
Are there any Rebates?:*	Yes
Rebate Type:	Volume
Incoterms:	FOB (Free On Board)
<b>Sourcing Overview</b>	
Is the Supplier Single Source?:*	No
Is the Supplier Sole Source?:*	No
Why was this supplier selected?:*	Strategic supplier providing annual deflation and global reach.
Previous Annual Spend (with the same or similar supplier), if applicable:	3000000
Annual Cost Savings (based on prior year spend with the same or other supplier):*	5% target in each year
Affected GEHC Products, Services, P&Ls, or Functions:*	LSS, MIC, MR, MONITORING
Are there additional GEHC costs associated with this Agreement?:*	No
Is Supplier Experiencing or likely to experience any financial problems?:*	No
Annual Supplier Revenue:*	1900000000
<b>Contract</b>	
Please attach the Main Agreement and all Attachments:*	 (Fastenal SSAA 2010.doc)
Additional Attachments:	
<b>Approvals</b>	
Do you require any additional approvals from the P&L/Function?:*	No
Sourcing Finance Manager:*	<u>Ceccato, Mary (212024052)</u>
Global Sourcing Compliance Leader:*	<u>Drzewiecki, Nancy (212013426)</u>
Please reference the following link to assign the appropriate Legal resource.	
<a href="http://libraries.ge.com/download?fileid=82675170101&amp;entity_id=9279234101&amp;sid=101">http://libraries.ge.com/download?fileid=82675170101&amp;entity_id=9279234101&amp;sid=101</a>	
Legal:*	<u>Finnerty, Timothy (212050786)</u>
Global Sourcing Leader:*	<u>Betti, Diane (212005865)</u>
Commodity Sourcing Manager:*	<u>Diane Betti</u>
GM Global Sourcing:*	<u>Raphael Strosin</u>
Contract Administrator:*	<u>Gierach, Bruce (212021842)</u>

(Fields marked as '\*' are mandatory)

[Audit Trail](#) | [Workflow Status](#) | [Workflow Relationships](#)

Audit Trail (Workflow History)		Click to view workflow status
March 07, 2010 1:09:31 PM	Request has been approved through automatic approval.	
March 07, 2010 1:09:31 PM	Request submitted by ~Corp Support Central, Distribution List [Workflow Auto Actions] at Step:Form Closure (2M+).	
March 07, 2010 1:09:03 PM	Request submitted by Strosin, Raphael [GM Global Sourcing].	
March 03, 2010 5:47:45 PM	Request has been approved through automatic approval.	
March 03, 2010 5:47:45 PM	Request submitted by ~Corp Support Central, Distribution List [Workflow Auto Actions] at Step:Acting Approval Routing - Auto Approval.	

March 03, 2010 5:47:12 PM	Request has been approved through automatic approval.
March 03, 2010 5:47:12 PM	Request submitted by ~Corp Support Central, Distribution List [Finance Manager - Sourcing].
March 03, 2010 5:47:03 PM	This request will be automatically approved for [Finance Manager - Sourcing] because role member(s) Ceccato, Mary already approved this request at a previous step of the workflow.
March 03, 2010 5:47:03 PM	Request submitted by Betti, Diane [Global Sourcing Manager].
March 03, 2010 5:46:31 PM	Request submitted by Betti, Diane [GSL].
March 03, 2010 4:25:06 PM	Request has been approved through automatic approval.
March 03, 2010 4:25:06 PM	Request submitted by ~Corp Support Central, Distribution List [Workflow Auto Actions] at Step:GSL Routing.
March 03, 2010 4:24:19 PM	Request submitted by ~Corp Support Central, Distribution List [Workflow Auto Actions] at Step:Additional Approvers.
March 03, 2010 4:24:19 PM	Request has been approved through automatic approval.
March 03, 2010 4:23:44 PM	Request submitted by ~Corp Support Central, Distribution List [Workflow Auto Actions] at Step:Direct Approvals.
March 03, 2010 4:23:44 PM	Request has been approved through automatic approval.
March 03, 2010 4:23:17 PM	Request submitted by Finnerty, Timothy [Legal].
February 24, 2010 4:45:40 PM	Request submitted by Ceccato, Mary [Manager Operations Finance].
February 24, 2010 12:21:07 PM	Request submitted by Drzewiecki, Nancy [Global Sourcing Compliance Leader].
February 23, 2010 11:19:03 AM	Request has been approved through automatic approval.
February 23, 2010 11:19:03 AM	Request submitted by ~Corp Support Central, Distribution List [Workflow Auto Actions] at Step:Direct Approval Chain >2M.
February 23, 2010 10:48:18 AM	Request submitted by ~Corp Support Central, Distribution List [Workflow Auto Actions] at Step:Agreement Value Over 2 Million.
February 23, 2010 10:48:18 AM	Request has been approved through automatic approval.
February 23, 2010 9:30:30 AM	Request submitted by Gierach, Bruce [Requestor].
February 22, 2010 4:21:07 PM	Request updated by Gierach, Bruce[Requestor].
February 22, 2010 4:16:08 PM	Request updated by Gierach, Bruce[Requestor].
February 22, 2010 4:07:10 PM	Request created/updated by Gierach, Bruce[Requestor].

**Comments** view all comments / add your comments

[Comments By Gierach, Bruce on February 22, 2010 4:16:08 PM.]  
Purchase family is E&M.

[Comments By Drzewiecki, Nancy on February 24, 2010 12:21:07 PM.]  
Approved for Use as a DIR Supplier.

**STRATEGIC SUPPLIER ALLIANCE AGREEMENT**  
**(GCDB CONTRACT ID #102496)**

**SUPPLIER NAME:** Fastenal Company, Inc., a corporation organized under the laws of the State of Minnesota and its subsidiaries ("Supplier").

**CUSTOMER:** GE Healthcare, a division of the General Electric Company ("GEHC"). The General Electric Company is a corporation organized under the laws of the State of New York.

**EFFECTIVE DATE:** March 19, 2010 (the "Effective Date").

**SCOPE:** This Strategic Supplier Alliance Agreement (this "Agreement") includes the Attachments referenced below in Section 27 and attached hereto, including the documents and exhibits referenced herein and therein. Pursuant to the terms of this Agreement, Supplier agrees to sell and/or license its Products (as this term is defined below in Section 2) to GEHC, and GEHC may purchase Products from Supplier in such amounts as GEHC may order from time-to-time during the term of this Agreement for GEHC's use and/or for resale to GEHC customers through direct and indirect distribution channels.

**1. Term of this Agreement.**

The term of this Agreement will commence as of the Effective Date and will continue through ~~December 31, 2014~~ (the "Initial Term"), unless terminated earlier per the terms of Attachment H. GEHC may elect to extend the Initial Term for additional one (1) year periods (the "Extension Term(s)") upon written notice to Supplier. The Initial Term and Extension Term(s), if any, are collectively referred to herein as the "Term".

**2. Terms.**

As used in this Agreement:

- (a) "Documentation" means all Product-related information, including user manuals, drawings, schematics, design history files, labels, functional descriptions, Product descriptions, instructions, operator aids, promotion material, videos, and spare part lists, as well as all documentation pertaining to theories of operation, service troubleshooting diagnostics, testing protocols, and instructions necessary for the use, installation, manufacture, operation, maintenance, and repair of the Products. The term "Documentation" also includes all revised versions of any of the foregoing that are created or provided by Supplier during the Term.
- (b) "Part(s)" means any Product-related part (including all spare and replacement parts), component, subassembly, field replacement unit, or other module used or supplied by Supplier.
- (c) "Product(s)" means (i) the items identified in Attachment A; (ii) those items otherwise purchased from Supplier by GEHC during the Term of this Agreement (unless other terms are mutually agreed upon in writing); and (iii) all Parts, Software and Documentation pertaining to any and all of the items described in (i) and (ii) above.
- (d) A "Standard" Product shall mean any Fastenal catalog item that Supplier sells to other customers and a "Non Standard Product" shall mean any Fastenal catalog item that Supplier sells exclusively to GEHC.
- (e) "Software" means software that Supplier provides in object and/or source code form whether (i) incorporated into, or included or bundled with, Product(s); and/or (ii) specified as a Product in Attachment A. Software also includes all modifications, derivative works, changes and improvements made to any of the foregoing by Supplier during the Term. Examples of Software include, but are not limited to, firmware, operating system software, data, applications, and drivers. Software also includes all error corrections and bug fixes, as well as all new versions, releases, updates, and upgrades, made available during the Term.

(f) "Specification(s)" means those Product specifications and requirements set forth in Attachment A or provided by GEHC to Supplier in writing, including via electronic data interchange.

(g) "Obsolete Products" shall mean any Fastenal catalog item that Supplier has not delivered to GEHC within the previous twelve (12) month period. Supplier shall provide GEHC with written notice of Obsolete Products on the first business day of each calendar quarter during the Term of the Agreement.

### **3. Forecasts and Material Commitments**

3.1 *Non-Binding Forecasting*. All Product purchase forecasts must be set forth in writing, and either: (i) provided by GEHC or (ii) mutually developed and agreed to by the parties. Notwithstanding anything to the contrary, all Product purchase forecasts are not binding in any way on GEHC. GEHC may modify any and all Product purchase forecasts at any time in its sole discretion. Supplier represents and warrants that it (a) has the capacity, resources, and expertise necessary to manufacture and deliver to GEHC the forecasted volume of Products, and any GEHC increased volume of up to 20 percent greater than the currently forecasted amount; and (b) will immediately notify (and thereafter confirm in writing to) the GEHC representative that issued the Purchase Order (as defined below in Section 5.1) at issue of any inability to meet current forecasts when Supplier becomes aware of such inability.

3.2 *Material Commitments*. Unless otherwise agreed to in a written document signed by both parties, GEHC will not be responsible for, or in any way liable to Supplier or any third party with respect to, any material commitments or production arrangements.

### **4. Pricing and the Annual Business Plan**

4.1 *Pricing*. The Product prices specified in Attachment A are referred to in this Agreement as the "Price(s)". The Prices include all Product-related packaging, labeling (including, but not limited to, date of manufacture and bar code labeling), insurance, storage, handling, interest charges, service charges, and any other expenses with the exception of shipment charges. The Prices also include shipment charges in the event that Supplier does not utilize GEHC's designated carrier. The Prices are firm and fixed for the Term, unless changes to the Prices are mutually agreed upon in writing.

4.2 *Annual Business Plan*. GEHC and Supplier will meet at least annually during the Term to review Supplier's performance under this Agreement and GEHC's then-current requirements of its suppliers. Attachment A may be amended with respect to any Price or cost reductions, and this Agreement (excluding Attachments B, C, D, G and H) may be supplemented with such additional requirements, to the extent stated in a completed Annual Business Plan (the form of which shall be provided by GEHC) that has been signed by GEHC and Supplier, or as otherwise set forth in a written document signed by both parties.

4.3 *Special Sales Opportunity Discounts*. From time-to-time, GEHC may request special terms and discounts for specific Product-related sales opportunities. Supplier agrees to review and reach mutual written agreement with GEHC on a case-by-case basis with respect to such special terms and further discounted Price upon the understanding that they may be better than those stated in this Agreement, and that such terms and discounts will remain valid for the duration of the applicable sales opportunity's Product delivery, installation and support schedule. Any such special terms and further discounted Prices must be mutually agreed upon in writing.

4.4 *Price Reductions*. During the Term of this Agreement, Supplier represents and warrants that the Prices are as low as the prices at which Supplier is offering or selling the Product(s) or items that are similar to the Product(s) to any third party in the same or similar quantities. If during the Term, Supplier reduces or offers to reduce the price of the Product(s) or such similar item(s) to any third party, Supplier will: (i) promptly notify GEHC in writing of such reduction or offer; and (ii) apply an equivalent reduction in Price to all Product(s) ordered by GEHC for the remaining Term of this Agreement. Supplier will also promptly reimburse GEHC an amount equivalent to the difference in price of (a) said reduction or offer, and (b) the price charged GEHC for all Product(s) ordered on or after the date such reduction or offer to a third party was made. If GEHC receives a bona fide offer from a third party for similar quantities of the Product(s) or similar item(s) at a lower price, Supplier will reduce its price for all future orders of such Product(s) to meet such lower price.

4.5 *Best Practices.* Supplier will implement a cost reduction program to achieve reductions in GEHC's cost of Products by Supplier utilizing cost-effective design, lower cost components, new technology, productivity improvements, and automation of the manufacturing process, provided that Product quality, performance, reliability, and compliance with the Specifications are not compromised or jeopardized. Supplier will also fully cooperate with GEHC in Supplier's implementation of such a program. Accordingly, Supplier will provide GEHC with all cost data (including bills/cost of materials) required to determine the feasibility and potential cost savings attributable to cost reduction-related alternative actions. GEHC will provide Supplier with such assistance (as GEHC and Supplier may mutually agree upon in writing) in the selection of materials, components, and manufacturing processes for Supplier's analysis. The goal of the cost reduction program is to reduce Prices 3% in year 1 and 5% annually thereafter during the Term as may be mutually agreed to by the parties in writing.

4.5.1 *Incremental Volume Incentives.* Supplier agrees to provide GEHC with the following volume incentives, effective on January 1<sup>st</sup> of each calendar year during the Term of the Agreement:

- (a) On January 1<sup>st</sup> of each year during the Term of the Agreement, Supplier agrees to provide GEHC with a list of all Products (excluding Obsolete Parts) supplied to GEHC.
- (b) Supplier agrees to provide GEHC with a rebate of 3% of the incremental increase in purchases made by GEHC from the preceding calendar year if the incremental increase exceeds the prior calendar year's purchases by greater than \$400,000. For illustrative purposes only, if GEHC purchases \$4,000,000 of Product during year 1, and GEHC purchases \$4,500,000 of Product during year 2, then Supplier shall pay GEHC a rebate in the amount of \$15,000 (\$500,000 x .03). Supplier shall pay such rebate on or before January 31<sup>st</sup> of each calendar year during the Term of the Agreement.
- (c) Supplier agrees to provide GEHC with a 3% price reduction for all Products if GEHC's purchases exceed the prior calendar year's purchases by \$400,000. For illustrative purposes only, if GEHC purchases \$4,000,000 of Product during year 1, and GEHC purchases \$4,500,000 of Product during year 2, then the price for all Products shall be reduced by 3%, effective January 1<sup>st</sup> of year 3.

## **5. Purchase Orders**

5.1 *Purchase Order Contents.* Notwithstanding anything to the contrary, GEHC is under no obligation or commitment to purchase or license any Product and/or service from Supplier until GEHC issues a purchase order for Products ("Purchase Order(s)") subject to the terms of this Agreement. A Purchase Order consists of a GEHC-issued: (i) hard copy purchase order, (ii) electronic message sent in accordance with Section 23 of Attachment H of this Agreement, or (iii) any other GEHC written communication to Supplier that complies with the requirements of this Agreement. Purchase Orders released by GEHC will include: (a) a Purchase Order number, (b) Product delivery date(s), and (c) Product quantities.

5.2 *Changes to Purchase Orders.* GEHC may change the quantity of Product ordered under a Purchase Order or cancel a Purchase Order: (i) upon written notice to Supplier if sent outside the applicable Product lead time set forth in Attachment A; and (ii) upon mutual written agreement if GEHC notifies Supplier of such change within said Product lead time.

5.3 *Acceptance of Purchase Orders.* Supplier will be deemed to have accepted a Purchase Order issued by GEHC in accordance with the terms of this Agreement upon its Submission Date, unless rejected by Supplier as set forth below. The "Submission Date" is the date that GEHC submits the Purchase Order. Supplier will send written acknowledgement of receipt of such Purchase Order within five (5) business days of the Submission Date ("Confirmation Period"). Supplier will not reject any Purchase Order issued under this Agreement, unless the Purchase Order does not conform to the terms of this Agreement; in such event, Supplier must notify GEHC of the rejection and the specific non-conformity within the Confirmation Period. To the extent that such non-conformity exists, GEHC may thereafter issue a corrected Purchase Order.

## **6. Packaging**

Supplier is responsible, at its own expense, for: (i) the safe and suitable packaging and labeling of the Products; (ii) complying with any Packaging Specifications set forth in Attachment F, and (iii) complying with all applicable laws and regulations relating to the packaging, labeling, and carriage of the Products in the countries of manufacture, shipment, transit, and/or destination. Unless GEHC otherwise agrees in writing, GEHC will not accept partial shipments of Product orders. Supplier shall utilize returnable and reusable Product containers where possible, and comply with GEHC's requirements with regard to optimum container size and construction in order to satisfy GEHC's shipment, handling and storage requirements.

## **7. Transportation**

Shipping terms are FOB Destination, unless both Parties mutually agree in writing: (i) to use GEHC's designated carrier (as identified in Attachment E) in the shipment of all Products, and (ii) such designated carrier will bill its transportation charges directly to GEHC (in which case Product prices shall be reduced by the actual transportation charges incurred by GEHC). GEHC will not pay any other transportation charges, unless authorized by GEHC in advance and in writing. Supplier will comply with the provisions of Attachment E, and any exceptions by Supplier must be approved in advance and in writing by GEHC on a per shipment basis. If Supplier ships Products by a method or carrier without GEHC's prior written authorization, Supplier will pay all costs pertaining thereto, including all freight, warehousing, handling, shipping, and transportation costs. Supplier will release rail or truck shipments at the lowest valuation permitted and will not declare value on Products shipped.

## **8. Shipments, On-Time Delivery, and Quality**

8.1 Shipments. In the event that any Product shipment is not made in time for delivery on the date and in the quantities set forth in the applicable Purchase Order, GEHC may: (i) return to Supplier some or all of the Products in said shipment at Supplier's risk and expense (including, without limitation, all freight, warehousing, handling, shipping, and transportation costs); (ii) purchase substitute Products from a third party and charge Supplier with the increased difference in cost thereof (if any); and/or (iii) direct Supplier to make an expedited shipment of additional or replacement Products, with the cost of the expedited shipment to be paid by Supplier. Supplier agrees to notify GEHC immediately if Supplier has any reason to believe that any quantities of Products will not be delivered as ordered, and/or any shipment will not be made as scheduled. The foregoing is in addition to any other rights or remedies available to GEHC at law or in equity. Each Product shipment made by Supplier will include a packing list containing the Purchase Order number, GEHC product identification and part number, quantity shipped, date of shipment, country of origin, Product weight, and such other information required by applicable law and/or GEHC.

8.2 On-Time Delivery.

(a) Unless otherwise mutually agreed in writing, Product on-time delivery ("OTD") rate shall not be less than 98% per Supplier's site on a rolling three calendar month basis. The term "Supplier's site" as used in this Section 8.2 means the Supplier site that ships the Product to GEHC. GEHC will use the following calculation in determining the OTD rate at the conclusion of each calendar month:

- (i) the total number of "complete" Product shipments by Supplier site that are received by GEHC on or before the delivery date required by GEHC during that calendar month, will be divided by
- (ii) the total number of all Product shipments that GEHC received from the same Supplier site during the same calendar month.

(b) The term "complete" as used in (i) above means that all Products, as ordered by GEHC, must arrive at GEHC's dock by GEHC's required delivery date (partial or incomplete Product shipments will not be used in the calculation specified in (a) above). Any Product deliveries that were not on-time to the extent solely caused by GEHC will not be included in the calculation.

(c) Unless otherwise mutually agreed in writing, if GEHC determines that the OTD rate for any Supplier site has fallen below 98%, GEHC may upon written notification require Supplier to reimburse GEHC an amount equivalent to 2% of the value of all Products received from that Supplier site during the reported period. Supplier will provide such reimbursement payment to GEHC within thirty (30) days of receiving such notice. This reimbursement will continue until Product OTD (from the same Supplier

site) of 98% is met or exceeded. Within thirty (30) days of receiving the aforementioned notice from GEHC, Supplier shall also develop and implement a written corrective and preventative action plan (and submit a copy to GEHC) that addresses Product OTD improvement. Should Supplier fail to correct OTD issues after a six-month period, GEHC may, at its discretion, terminate all unfulfilled Purchase Orders with respect to affected Product(s) without incurring any liability notwithstanding anything to the contrary herein. The provisions of this Section 8.2 are in addition to any other rights or remedies available to GEHC at law or in equity.

**8.3 Product Quality**

- (a) Unless otherwise mutually agreed in writing, if GEHC determines that two percent (2%) or more of any of the same Products shipped by Supplier during a rolling three calendar month period do not meet the Specifications for that Product (a "Product Quality Problem"), Supplier shall reimburse GEHC an amount equivalent to two percent (2%) of the value of such Product. Supplier will provide such reimbursement payment to GEHC within thirty (30) days of receiving GEHC's written notice. Within thirty (30) days of receiving the aforementioned notice from GEHC, Supplier shall also develop and implement a written corrective and preventative action plan (and submit a copy to GEHC) that addresses the Product Quality Problem. Should Supplier fail to correct the Product Quality Problem after a six-month period, GEHC may, at its discretion, terminate all unfulfilled Purchase Orders with respect to the affected Product(s) without incurring any liability notwithstanding anything to the contrary herein. The provisions of this Section 8.3 are in addition to any other rights or remedies available to GEHC at law or in equity.
- (b) In order to determine whether a Product Quality Problem exists, GEHC will perform the following calculation:
  - (i) the total number of each specific Product received and coded by GEHC as "Supplier at Fault" during the reported rolling three calendar month period at issue, will be divided by
  - (ii) the total number of the same specific Product during the same period.
- (c) The "Supplier at Fault" quantity used in the above calculation shall be adjusted to the extent verified that the Product Quality Problem was solely caused by GEHC.

**8.4 Vendor Managed Inventory**

- (a) Vendor Managed Inventory (VMI) are parts that the Parties mutually agree in writing will be managed by Supplier at GEHC locations. Minimum and maximum quantities will be determined for each part number by mutual written agreement. Supplier will check stock, maintain and deliver VMI parts on a mutually agreed upon frequency.
- (b) All VMI parts must be in Fastenal's process control plan for GEHC before the part can be managed at GEHC's location by Supplier .
- (c) Supplier agrees to maintain mandatory safety stock of all VMI part numbers. Supplier will stock at the location servicing the GEHC facility a minimum of six (6) weeks and a maximum of three (3) months average annual usage for all VMI parts. If Supplier must stock more than three (3) months average annual usage due to a manufacturer's Minimum Order Quantity (MOQ), Supplier will notify GEHC of their liability at the time of quotation. Liability will be limited to the MOQ and the MOQ will be identified in Attachment A.
- (d) If Supplier fails to deliver/maintain adequate inventories and such components require expediting or sourcing from alternative manufacturers/distributors, Supplier shall be fully responsible for the cost difference.
- (e) GEHC has objectives of zero obsolescence and zero cancellation charges with respect to Obsolete Products. GEHC and Supplier agree to work together on phase out logistics and shall use commercially reasonable efforts to achieve these objectives. If Obsolete Products cannot reasonably be consumed:
  - (i) Supplier will accept return of Standard Product from GEHC with no restocking charges.
  - (ii) Supplier will accept return of Non-standard Product provided it can be returned to the manufacturer. Supplier will be reimbursed by GEHC for any restocking charges limited to the actual expenses incurred by the Supplier from the manufacturer.

- (iii) For Non-standard Product that cannot be returned, GEHC will purchase the remaining stock (including on hand, in transit and non-cancelable purchase orders) limited to the agreed upon maximum stocking levels, based on the following calculation: (Quantity x Sales Price).
- (iv) Product will be identified as Standard or Non-standard in Attachment A.

## **9. Inspection Period**

All Products delivered to GEHC by Supplier must meet the terms of this Agreement and the applicable Purchase Order. All Products delivered are subject to GEHC's written acceptance or rejection on or before the end of the Inspection Period. Product acceptance or rejection does not in any way affect the rights and remedies available to GEHC at law or in equity. GEHC may reject any entire order based upon a reasonable sampling of Products as determined solely by GEHC. "Inspection Period" means a period of thirty (30) days after delivery of any Products to allow for the performance of any GEHC-required inspections, installation activities, testing, or trials. Supplier agrees to provide and maintain inspection and process control systems acceptable to GEHC with respect to the manufacture of Products, and Supplier agrees to keep and make available to GEHC complete records of all Supplier's inspection and process control work for the life of the Products plus seven (7) years.

## **10. Invoices**

Supplier's invoices must contain the GEHC Purchase Order number, item number of such release, GEHC part number(s) and revision number(s), invoice quantity, unit of measure, unit price, total invoice amount, and Supplier's name, phone number, and address to which remittance should be sent, as well as such other information as may be required by law or GEHC.

## **11. Payment Terms**

GEHC will settle invoices arising under this Agreement within seventy-five (75) days after receiving from Supplier both the accepted Product and a correct corresponding invoice that complies with the terms of this Agreement. All sums to be paid by GEHC under this Agreement will be in United States dollars, unless otherwise agreed to by the parties in writing.

## **12. Documentation**

Where applicable, Supplier will promptly deliver to GEHC at no additional charge a complete set of reproducible master copies of all Documentation. The Documentation, including all master copies thereof, will be provided in a format and language acceptable to GEHC. If any change in a Product requires a change in the Documentation, Supplier will promptly notify GEHC of the change, and provide at no charge to GEHC a reproducible master copy of the revised Documentation without charge. All such revised master copies will comply with the formatting and language requirements specified above. During the Term, GEHC may modify the Documentation formatting and language requirements upon written notice to Supplier.

## **13. Non-Defective Product Returns**

GEHC may return to Supplier any un-used, non-defective Products for a period of up to one (1) year after GEHC's receipt of such Product. For any payment GEHC made with respect to such Product, Supplier will provide GEHC (at GEHC's election) with either: (i) a credit that will be applied to offset amounts owed under any open or future Supplier invoices to GEHC, or (ii) refund such payment to GEHC by wire transfer or check within ten (10) business days of receiving GEHC's notification.

## **14. Spare Parts and Service**

For each Product available under this Agreement, Supplier will maintain for ten (10) years from the last shipment of the Product the capability to: (i) repair, and supply Parts for, the Product; (ii) make such repair services and Parts available to GEHC and its customers; and (iii) furnish all Documentation, Parts, service tools, and instruments necessary to effectively service the Product.

## **15. Service Capability**

Supplier will test all Parts and repaired Products using the test plans and procedures described in the Purchased Material Quality Requirements, as set forth in Attachment B of this Agreement.

## **16. GEHC Proposed Product Changes**

GEHC may propose changes to any of the Products by submitting such changes to Supplier. GEHC will identify those changes that it deems mandatory in order to make the Product suitable for GEHC's intended use. Unless otherwise agreed to in writing by GEHC, Supplier will respond in writing to GEHC within ten (10) days after receipt of such proposed or mandatory changes with the following information, as applicable: (i) lead time required to implement the changes; (ii) impact of changes on Price(s) of Product, including, but not limited to, any Parts, tooling, and testing; (iii) impact of changes on scrap material and work in process; (iv) any non-recurring engineering charges to implement the changes; and (v) impact of changes on the lead time of the Product. Within ten (10) days after GEHC receives Supplier's response to GEHC's changes, the parties will begin discussions with respect to any modifications to be made to applicable Sections of this Agreement. If the parties fail to agree upon proposed modifications to this Agreement, the terms in effect prior to the commencement of the negotiations will remain in full force and effect, and GEHC may elect to remove the Product(s) at issue from this Agreement.

## **17. Supplier Proposed Changes**

Supplier may propose changes to the Products or the manufacturing process in accordance with the Purchased Material Quality Requirements set forth in Attachment B of this Agreement. Notwithstanding anything to the contrary, Supplier will make no changes to the Products absent GEHC's prior written approval.

## **18. Business Contingency Planning**

Supplier will provide GEHC with a written business contingency plan that outlines Supplier's internal contingency arrangements to ensure GEHC's continuity of Product supply if Supplier or any of Supplier's suppliers are unable to provide any of the Products to GEHC.

## **19. Insurance**

Without limiting its liability under this Agreement, Supplier agrees to maintain worldwide general liability and property damage liability insurance coverage underwritten by a Best A-rated insurance carrier during the Term and for five (5) years after the Term. Such insurance will have policy limits of no less than ten million dollars (\$10,000,000) per occurrence for death or personal injury and ten million dollars (\$10,000,000) per occurrence for real and personal property damage. Such policy will name GEHC as an additional insured. There will be a provision requiring the insurance carrier to notify GEHC in writing at least thirty (30) days prior to any cancellation, termination, or amendment of such insurance coverage. In addition, Supplier will maintain workers' compensation insurance in the amounts no less than that which is required by applicable law. Within ten (10) days following the Effective Date and upon GEHC's request, Supplier will deliver to GEHC an insurance carrier-provided written certificate of insurance verifying the existence of the foregoing insurance coverage.

## **20. Work on GEHC's and GEHC Customer Premises**

Supplier, which includes its employees, agents, representatives, and subcontractors ("Personnel"), will be subject to and will conform to GEHC's applicable site regulations, requirements and rules governing conduct of personnel while on GEHC's premises or the premises of a GEHC customer, including safety and security requirements. Supplier is responsible at all times for its, as well as its Personnel's, compliance with all of the foregoing. When Supplier's Personnel are on GEHC's or GEHC's customer's premises, GEHC or its customers will have the right to remove Supplier, including any Personnel, from its premises. At no cost to GEHC or GEHC's customers, Supplier will immediately replace any and all Personnel that are removed or violate any of the foregoing regulations, rules, and/or requirements with Personnel possessing equivalent skills and experience.

## **21. Publicity**

Supplier will not: (i) disclose (including, but not limited to, issuing any press release or announcement) the existence or terms of this Agreement; or (ii) reference any of GEHC's products, or use GEHC's name, trademarks, service marks, or trade names, in any promotional activity or other communications, without first obtaining GEHC's prior written consent on a case-by-case basis.

## **22. New Products**

Supplier will notify GEHC of other product offerings it has. If GEHC is interested in adding such products to this Agreement, and the parties are able to agree upon pricing terms, such products will be added to this Agreement by written amendment to be signed by both parties.

### **23. New Technology**

If during the Term, Supplier develops and markets a product that is a replacement or upgrade for any Product, Supplier agrees to sell said product to GEHC (at GEHC's written option) for a price to be mutually agreed upon in writing by Supplier and GEHC. Both parties also agree that all applicable provisions of this Agreement will apply to any such replacement or upgraded product. Except as may otherwise be expressly provided in this Agreement, Supplier agrees to continue to make the original Product available to GEHC through the end of the Term.

### **24. Notice**

Any notice required under this Agreement will be sent by a nationally recognized overnight courier, or transmitted electronically pursuant to the terms of this Agreement. Notices will be deemed given on the date delivered to the recipient if sent by overnight courier, or when accessible electronically if transmitted electronically pursuant to the terms of this Agreement (it being agreed that the sender will retain proof of delivery or transmission, as applicable). Notices will be sent to the persons identified (or as otherwise directed in writing by a party):

If to GE Healthcare

Address: 3000 N Grandview Blvd  
City/State/Zip: Waukesha, WI 53188  
Attention: Sourcing E&M GSL

If to Supplier

Address: 9016 58<sup>th</sup> Place, Suite 100  
City/State/Zip: Kenosha, WI 53144  
Attention: Jeff Sexton

With a copy to:

Address: 3000 N. Grandview Blvd, W-400  
City/State/Zip: Waukesha, WI 53188  
Attention: Senior Counsel, Sourcing

### **25. No Exclusivity or Minimum Purchase Obligations**

Notwithstanding anything to the contrary, it is expressly understood that GEHC has no obligation to purchase: (i) Products exclusively from Supplier; or (ii) any minimum amount of Products from Supplier. Without limitation to the foregoing, GEHC may use other suppliers for any or all Products or similar products. GEHC's commitment to purchase Products from Supplier is limited to those Products specified in Purchase Orders (if any) issued by GEHC, which are subject to the terms of this Agreement.

### **26. GE Supply Management Portal (GESMP) and GEHC Supplier Portal (Portal)**

26.1 The GESMP is the GEHC web-based portal through which GEHC will send written Product purchase forecasts and Purchase Orders to Supplier. The forecasts, as well as Product lead times and fixed lot ordering quantities ("FLOQ"), will be communicated via the GESMP's forecast download tool ("FDT"). Purchase Orders (including blanket releases) will be communicated via the GESMP's marketplace requirements application ("MRA") or such other written GEHC-issued communications. GEHC will provide initial training on the use of the GESMP, including the FDT and MRA. GEHC and Supplier will mutually agree in writing on the FLOQ and lead time requirements. Agreed to values for individual Products and the forecast will be posted by GEHC on the FDT. Supplier shall access the MRA on a daily basis in order to: (i) determine whether GEHC has issued any new Purchase Orders that day; and (ii) provide the written acknowledgement of Purchase Order receipt as described in Section 5.3 above. Supplier shall access the GESMP: (a) when Supplier is ready to ship Product; and (b) to process an advanced shipping notice and bar code for every Product shipment. GEHC will provide written GESMP instructions, information and links to Supplier upon request.

26.2 The Portal is a web-based system for GEHC supplier registration and profile maintenance that optimizes GEHC communications with its suppliers. The Portal also contains the primary database in which GEHC maintains its supplier information. Within ten (10) business days of the Effective Date, Supplier will register and ensure that complete, current, and accurate information (including, but not limited to, Supplier's capabilities, compliance certification status, headquarters information, facility addresses, and functional facility contacts for all Supplier facilities engaged directly or indirectly in any activities pertaining to any of the Products, including, but not limited to, the design, production, storage and/or supply thereof) is entered into the Portal. Supplier agrees to

annually review and update Supplier's information on the Portal to assure completeness and accuracy, and promptly update as needed throughout the Term when changes occur within Supplier's organization that result in the then-current Supplier-related information accessible on the Portal no longer being current, complete, or accurate. GEHC will provide written Portal instructions, information and links to Supplier upon request.

## 27. Attachments and Order of Precedence

This Agreement includes the following Attachments. In the event of a conflict between the terms of:

- (a) Attachment H (General Terms) and any other terms of this Agreement, including the other Attachments to this Agreement listed below in (c), Attachment H will prevail;
- (b) this Agreement and any of the Attachments (excluding Attachment H), this Agreement will prevail; and
- (c) the Attachments (excluding Attachment H), the order of precedence is as follows:
  - i. Attachment A (Products, Pricing, and Specifications),
  - ii. Attachment B (Purchased Material Quality Requirements),
  - iii. Attachment C (Supplier Integrity, Business Conduct, and Compliance Requirements),
  - iv. Attachment D (Personal Data Protection),
  - v. Attachment E (Transportation Guidelines),
  - vi. Attachment F (Packaging Specifications), and
  - vii. Attachment G (Business Associate Addendum).

This Agreement constitutes the complete and exclusive agreement between GEHC and Supplier with respect to the subject matter hereof, and supersedes all previous verbal and/or written communications, representations, understandings, proposals, quotations, statements, forecasts, and agreements between GEHC and Supplier concerning the same. Only a written document signed by both parties can modify this Agreement.

Fastenal Company ("Supplier")

By: 

Signature: 

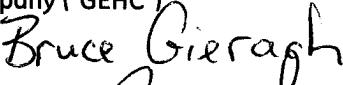
Printed Name:

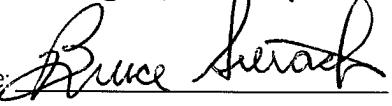
Title: VP Nat'l Accts-Western US Title: Sourcing Leader

Date: 3/15/10

GE Healthcare, a division of the General Electric

Company ("GEHC")

By: 

Signature: 

Printed Name:

Date: 3/18/10



**ATTACHMENT B**  
**(Purchased Material Quality Requirements)**

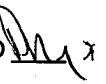
**ATTACHMENT C**  
**(Supplier Integrity, Business Conduct, and Compliance Requirements)**

Provided  x

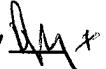
**ATTACHMENT D**  
**(Personal Data Protection)**

Provided MM X

ATTACHMENT E  
(Transportation Guidelines)

PROVIDED 

**ATTACHMENT F**  
**(Packaging Specifications)**

Provided Electronically 

**ATTACHMENT G**  
**(Business Associate Addendum)**

**N/A**

**ATTACHMENT H**  
**(General Terms)**

**1. Termination**

1.1

(a) If GEHC breaches any material term of this Agreement and GEHC fails to correct such breach within thirty (30) days after receiving written notice of such breach from Supplier, Supplier may terminate this Agreement at any time thereafter upon written notice to GEHC. Supplier's obligations with respect to Products delivered to GEHC, or to Purchase Orders that GEHC has issued, will not be affected by such termination.

(b) If Supplier breaches any material term of this Agreement and/or any Purchase Order(s) issued hereunder, and Supplier fails to correct such breach within thirty (30) days after receiving written notice of such breach from GEHC, GEHC may at anytime thereafter upon written notice terminate: (i) this Agreement; or (ii) the Purchase Order(s) at issue in whole or in part. In the event that GEHC elects to terminate this Agreement, such termination will also terminate as of the Agreement's effective date of termination (unless GEHC elects otherwise as specified in Section 1.1(d) of this Attachment) all unfilled Purchase Orders without any liability to GEHC and without need for additional notice.

(c) GEHC may terminate this Agreement, or any unfilled Purchased Order(s) issued hereunder in whole or in part, without cause with ninety (90) days prior written notice to Supplier. In the event that GEHC terminates this Agreement without cause, all unfilled Purchase Orders will be deemed terminated as of the Agreement's effective date of termination (unless GEHC elects otherwise as specified in Section 1.1(d) of this Attachment) without need for additional notice. Notwithstanding anything to the contrary, GEHC's liability and Supplier's exclusive remedy for such termination by GEHC is limited to GEHC's payment for Products delivered and accepted in writing by GEHC prior to the effective date of said termination.

(d) GEHC may elect to specify in writing to Supplier that certain unfilled Purchase Orders survive termination of this Agreement ("Surviving Purchase Orders"). In such event, the terms of this Agreement will govern Surviving Purchase Orders, and Supplier will fulfill its obligations under the Surviving Purchase Orders notwithstanding said termination of this Agreement. GEHC may terminate Surviving Purchase Orders in accordance with Sections 1.1(b) and/or (c) of this Attachment.

1.2 **Termination Due to Insolvency.** Either party may terminate this Agreement, including all unfilled Purchase Orders issued hereunder, upon thirty (30) days prior written notice to the other party if: (a) any proceeding under the bankruptcy or insolvency laws is brought against such other party; (b) a receiver is appointed for such other party; or (c) such other party makes an assignment for the benefit of creditors.

**2. Title and Risk of Loss**

Title and risk of loss to Products will pass to GEHC when the Products are delivered to: (i) GEHC's designated carrier; or (ii) if GEHC's designated carrier is not utilized, GEHC's receiving docks.

**3. Taxes**

Unless prohibited by law, Supplier will separately indicate on its invoices any applicable sales tax that is required at law to be imposed on the sale of Products, unless GEHC has provided Supplier with valid exemption or resale certification/documentation. Notwithstanding anything to the contrary, Supplier is responsible for all taxes based upon its real and personal property, gross receipts, business and occupation, and environmental tax fees, as well as those taxes based on Supplier's gross and/or net income.

**4. Health and Safety**

Supplier will ensure that all information held by or reasonably available to it regarding any potential hazards known or believed to exist in the transport, handling, or use of any Products and/or performance of any services ("Product/Services Concerns") will be received by GEHC in writing prior to delivery of the Products and/or performance of the services. In the event that Supplier becomes aware of any Product/Services Concerns any time after the delivery of Products or commencement of services, Supplier will immediately: (i) notify GEHC in writing; and (ii) provide such additional information and documentation as GEHC may require.

**5. Documentation License**

Supplier hereby grants GEHC an irrevocable, perpetual, worldwide, nonexclusive, paid-up, royalty-free right and license to use, reproduce, modify, distribute, perform, display, and prepare derivative works of, any Documentation (in whole or in part, including excerpts thereof), as well as to authorize others to do any or all of the foregoing.

## **6. Software License**

If Supplier delivers Software to GEHC, Supplier hereby grants GEHC an irrevocable, perpetual, worldwide, non-exclusive, paid-up, royalty-free right and license to use, execute, reproduce, modify, license, distribute, perform, display, prepare derivative works of, and sub-license the Software in the marketing, distribution, sale, operation, maintenance and repair of the Products, as well as to authorize others to do any or all of the foregoing. Such distribution will be performed in accordance with written agreements between GEHC and its respective distributors, resellers and customers. Supplier shall promptly make available to GEHC (and at least simultaneously to the time it makes similar updates available to other customers or distributors of its products that use the same or similar Software) all error corrections and bug fixes, as well as all new versions, releases, updates, and upgrades pertaining thereto.

## **7. Packaged License**

If the Software contains any form of license agreement when delivered to GEHC, including, without limitation, a break-the-seal, shrink-wrap, or click-to-accept license, ("Packaged License") GEHC may elect to instead transfer such Software to its resellers, distributors, and customers, and the Package License will be solely between Supplier or Supplier's licensor and such customers. Under no circumstances will: (i) GEHC be a party to any Package License, and (ii) the terms of Package Licenses govern GEHC's use (including distribution) of the Software. Such GEHC use is instead subject to Section 6 of this Attachment.

## **8. Marks**

Supplier hereby grants to GEHC a non-exclusive, perpetual, irrevocable, worldwide, paid-up, royalty-free license to use Supplier's trademarks, service marks, and trade names (collectively, "Marks") on, or in connection with, GEHC's direct and/or indirect marketing, sale, maintenance, repair, licensing, operation, and distribution of Products. Such use of Marks includes, but is not limited to, use: (i) in any advertising, (ii) on GEHC's websites, and (iii) in any documentation or marketing materials for the Product(s) or any GEHC product that incorporates the Product. Nothing in this Agreement will be construed to grant Supplier any right or license to GEHC's trademarks, service marks, or trade names, and no such right or license will be implied.

## **9. Warranty**

**9.1 Product Warranties.** Supplier represents and warrants that the Products:

- (i) are free of all liens, claims, or encumbrances when delivered;
- (ii) conform strictly to, and are manufactured in accordance with, all specifications (including, but not limited to, Specifications), drawings, plans, instructions, end-user documentation, samples, and other descriptions;
- (iii) are new upon shipment and merchantable;
- (iv) are free from defects in title, design, material, and workmanship, whether latent or otherwise;
- (v) have received all applicable regulatory certifications, including, without limitation, 510(k) clearances and CE mark, as required;
- (vi) are manufactured, processed, and assembled by Supplier or by a third party under Supplier's direction;
- (vii) are safe for their intended use, non-toxic, and present no abnormal hazards to persons or their environment;
- (viii) do not contain any software code distributed under, or subject to, the GNU Public License, the GNU Lesser General Public License, or any other license that requires in any instance that other software distributed with such software code be (a) disclosed or distributed in source code form; (b) licensed for purposes of making derivative works; and/or (c) redistributed at no charge;
- (ix) comply with the quality and delivery requirements set forth herein (including those set forth in Attachment A and the applicable Purchase Order);
- (x) (as well as the use and/or distribution of the Products as permitted under this Agreement) do not infringe any patent, copyright, trade secret, trademark, or other intellectual property right;
- (xi) do not use or contain any intellectual property of third parties without such parties' prior written consent, and that no other third party (including, without limitation, any local, state, federal, or foreign government) holds any property rights or security interests in any Products;
- (xii) do not contain any software, key function, virus, worm, code, routine, device, or other harmful code (whether intended or not) that may disable, damage, impair, erase, deactivate, or electronically repossess such Product, data, or other equipment or software (including, without limitation, other Products); and
- (xiii) conform to the Purchased Material Quality Requirements set forth in Attachment B.

**9.2 Services Warranty.** Supplier represents and warrants that all services provided directly or indirectly by Supplier shall: (i) be performed in a timely, professional, and workman-like manner; (ii) conform strictly to all GEHC-provided

requirements, specifications (including, but not limited to, Specifications), drawings, plans, instructions, end-user documentation, samples, and other descriptions; and (iii) do not infringe any patent, copyright, trade secret, trademark, or other intellectual property right.

9.3 *Execution and Performance of this Agreement.* Supplier and GEHC each respectively represents and warrants that: (i) it has the full right, power, and authority to enter into and perform its obligations under this Agreement; and (ii) the performance of its obligations under this Agreement will not result in a violation or breach of, and will not conflict with or constitute a default under, any agreement, contract, commitment, or obligation to which it is a party or by which it is bound. Supplier represents and warrants that it has not granted, and will not grant during the Term, any conflicting rights, license, consent, or privilege with respect to the rights and/or licenses granted GEHC herein.

9.4 *Survival of Warranties and Remedies.* The warranties set forth in Sections 9.1 and 9.2 of this Attachment: (i) survive the inspection, acceptance, and use of the Products and services by GEHC, its distributors, sub-distributors, channel partners, and customers; (ii) are for the benefit of GEHC and its successors, assigns, distributors, sub-distributors, channel partners, and customers; and (iii) are in addition to any warranties, rights, and/or remedies to which GEHC may otherwise agree to in writing or which are provided by law. Supplier agrees to extend to GEHC and GEHC's customers any additional warranties received from Supplier's suppliers. The term of those Supplier warranties set forth in Sections 9.1(ii) and (iv) of this Attachment will be for a period of thirty-six (36) months from GEHC's written acceptance in accordance with Section 9 (Inspection Period) of the Agreement, and may be longer for warranties pertaining to third party components that extend beyond thirty-six (36) months. All other warranties of Supplier set forth in this Agreement will survive in perpetuity. Supplier warrants Products and services only as set forth in this Agreement and disclaims all other warranties. Partial or total payment by GEHC for Products and services under this Agreement prior to, or after the conclusion of, the Inspection Period will not: (a) constitute its acceptance thereof; (b) affect Supplier's responsibilities, warranties, or representations under this Agreement, including those pertaining to any Nonconforming Products; or (c) operate to waive any rights or remedies available to GEHC at law or in equity.

9.5 *Product Returns.* GEHC may return or have returned to Supplier any Product that does not conform to the representations and warranties set forth in this Agreement ("Nonconforming Product") by using Supplier's return process, provided that Supplier requests such return process in writing to GEHC within the warranty period. Nonconforming Product will be returned to Supplier's facility with all transportation, insurance, and handling charges (including return shipment to GEHC or its customer) prepaid by Supplier. Risk of loss for Nonconforming Product will pass to Supplier when the Nonconforming Product is delivered to the carrier. Supplier will at its cost: (i) either replace or repair the Nonconforming Product to bring it in conformity with all representations and warranties (including all Specifications), and (ii) deliver the replacement or repaired Product to the address and entity specified by GEHC in writing within five (5) days after Supplier's receipt of the Nonconforming Product. If it will take longer than such five (5) day period to deliver the repaired or replacement Product, Supplier will promptly notify GEHC of such circumstance in writing prior to the lapse of said five (5) day period. If Supplier is unable to repair and return the Product within thirty (30) days, Supplier will (at GEHC's written direction) provide GEHC a complete refund in accordance with Section 9.6 of this Attachment.

9.6 *Credits/Refunds/Set-off/Remedies.* Within thirty (30) days of GEHC's written demand for a refund, Supplier will promptly refund GEHC by wire transfer or check for all payments GEHC made with respect to Nonconforming Products. GEHC may instead elect, at its sole discretion and at any time, to use the amount(s) that would otherwise be due as a refund hereunder, as a credit or set-off that GEHC may use on any amount(s) owed to Supplier under this Agreement or otherwise. The remedies contained in this Section 9 of this Attachment are in addition to all other remedies available to GEHC at law or in equity.

9.7 *Field Replacements.* Supplier will promptly reimburse GEHC for those costs and expenses associated with warranty-related field replacements of Products or Parts, including, without limitation, those costs associated with GEHC shipping and packaging Nonconforming Products to Supplier, and Supplier's return shipment of repaired or replacement Products or Parts to GEHC (or if directed by GEHC in writing, to its customers, distributors, and/or resellers). Supplier will pay such GEHC invoices for said costs and expenses by wire transfer or check within thirty (30) days of Supplier receiving such invoice.

## **10. Indemnification**

10.1 *Indemnity.* Supplier agrees to defend, indemnify, protect, and hold harmless GEHC and GEHC's customers, affiliates, employees, agents, distributors, resellers, contractors, and representatives from and against any and all claims, suits, and/or proceedings, as well as all damages, losses, liabilities, and expenses (including reasonable attorneys' fees and costs), of whatever nature resulting from, arising out of, or relating to: (i) the breach by Supplier of any covenant, representation, or warranty contained in this Agreement; (ii) any negligent or willful act or omission of Supplier or its suppliers, agents, employees, contractors or subcontractors; or (iii) any Products and/or services. GEHC will notify Supplier of

any such claim, suit, or proceeding, and will reasonably cooperate with Supplier (at Supplier's expense) in the defense of the same.

10.2 Intellectual Property Indemnity. Supplier agrees to defend, indemnify, and hold harmless GEHC and GEHC's customers, affiliates, employees, agents, contractors, distributors, resellers, and representatives from and against any and all claims, suits, and/or proceedings (including any assertion of an intellectual property right, whether or not defenses to the assertion exist and regardless of whether the assertion has been or will be adjudicated), as well as all damages, losses, liabilities, and expenses (including reasonable attorneys' fees and costs), of whatever nature resulting from, arising out of, or relating to a claim or allegation that the use, reproduction, distribution, licensing and/or sale of a Product, or any part thereof, infringes, misappropriates, or otherwise violates a patent, copyright, trade secret, trademark or other intellectual property right of any third party. If GEHC has reason to believe that the use, reproduction, distribution, licensing and/or sale of a Product or any part thereof is likely to be enjoined by a court, Supplier will use best efforts to either procure for GEHC the right to continue using the Product, or replace the Product with an equivalent non-infringing Product. If after using best efforts, the first two options are not commercially reasonable, Supplier may (in addition to performing its obligations under this Section 10.2 of this Attachment) remove the Product with GEHC's prior written consent (which will not be unreasonably withheld or delayed), refund to GEHC the purchase price of the Product, and reimburse GEHC for any related costs.

10.3 Terms With Suppliers. Supplier represents and warrants that substantially similar indemnification terms are contained in Supplier's contracts with its Product and service-related suppliers and subcontractors, and that Supplier agrees to enforce such terms on its behalf and for the benefit of GEHC. If Supplier fails to enforce its terms with such suppliers or subcontractors, GEHC is hereby deemed a third-party beneficiary of Supplier's contract(s) with such suppliers and subcontractors, and is hereby assigned the rights to enforce such terms in lieu of Supplier. Supplier will reimburse GEHC for all costs and expenses incurred in the context of such enforcement.

10.4 Additional Obligations. Notwithstanding anything to the contrary, Supplier will: (i) keep GEHC fully informed on a timely basis of the progress of the claim(s), suit(s), and proceeding(s) covered by this Section 10 of this Attachment, and will confer with GEHC in advance on strategies for the defense and settlement of thereof; and (ii) not (absent GEHC's prior written consent) enter into any agreement or settlement that: (a) assesses or implies blame or liability against GEHC; and/or (b) requires any payments by GEHC. Nothing in this Agreement restricts or prohibits GEHC's ability to appoint legal counsel of its own choosing.

## **11. Compliance**

11.1 Applicable Laws. Supplier represents, warrants, certifies, and covenants that its performance under this Agreement, including the Products and services provided hereunder, will comply with all applicable and then-current laws, ordinances, rules, regulations, conventions, and standards of each and all countries, as well as with the provisions of Attachments C, D, and G. Without limitation to the foregoing, Supplier represents, warrants, certifies, and covenants that the Products and their manufacture will comply with all applicable drug and medical device laws and regulations, including regulations promulgated by the Food and Drug Administration (FDA), the Nuclear Regulatory Commission (NRC), the quality system regulations as set forth in 21 CFR part 820, and any other relevant state and federal laws and regulations, and any comparable international laws and regulations in countries where the Products are sold.

11.2 Personal Data Protection. Supplier represents and warrants that it will comply with the Personal Data Protection requirements set forth in Attachment D of this Agreement.

11.3 WEEE, RoHS, and Equivalent Directives. Supplier represents and warrants that it complies with EU Directive 2002/95/EC (27 January 2003), as amended, ("RoHS Directive") and EU Directive 2002/96/EC (27 January 2003), as amended, ("WEEE Directive"), as well as any and all directives or regulations that are equivalent or similar to the RoHS Directive and/or WEEE Directive. As such, Supplier: (i) shall conform to and comply with the then-current version of the "GE Healthcare RoHS Requirements for Suppliers" document, which GEHC will provide to Supplier upon request; (ii) agrees that if any of the Products listed in Attachment A constitute "electrical or electronic equipment" under the WEEE Directive, Supplier represents, warrants, and certifies for said Products, that (a) where Supplier is the design owner, Supplier has appropriate waste equipment collection and disposal programs in place, and (b) where GEHC is the design owner, Supplier will provide sufficient substance content information, upon request, to allow GEHC to comply with the WEEE Directive; (iii) agrees to provide GEHC with a Supplier-prepared declaration of conformity and material declaration for the Product content and assembly operations where Supplier specifies the source, to the extent required by GEHC or at law; (iv) will obtain (to the extent possible) and provide to GEHC written declarations of conformity and material declarations from its suppliers; (v) agrees to notify GEHC immediately and in writing should any of its suppliers be unable or unwilling to provide the declaration of conformity and material declaration; and (vi) will have appropriate controls and processes in place to ensure the accuracy of such declarations.

11.4 Seller Certification. Supplier will notify GEHC in writing if Supplier is qualified as a small business, small disadvantaged business, or women-owned small business concern as defined in 48 CFR 52.219-8. If GEHC's purchases

under this Agreement exceed, or are expected to exceed, \$500,000 during any consecutive twelve (12) month period, Supplier will adopt and implement a small business and small disadvantaged business subcontracting plan that complies with 48 CFR 52.219-9.

## **12. Independent Contractor**

The relationship of the parties hereunder is that of independent contractors. Nothing in this Agreement will be deemed to create a partnership, joint venture, or similar relationship between the parties, and neither party will be deemed to be an agent of the other party. Without limitation to the foregoing, neither party has any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

## **13. Governing Law**

This Agreement will be governed and construed in accordance with the laws of the State of New York, as applied to contracts entered into and performed entirely in that State, excluding its rules on conflicts of law. The United Nations Convention on Contracts for International Sales of Goods does not apply to this Agreement.

## **14. Limitation of Liability**

IN NO EVENT WILL GEHC BE LIABLE TO SUPPLIER FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REVENUE, AND BUSINESS), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, EQUITY, PRODUCT LIABILITY, FUNDAMENTAL BREACH, OR OTHERWISE ARISING OUT OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER OR NOT GEHC HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

## **15. Force Majeure**

15.1 Definition and Requirements. Except as otherwise provided in Section 15.2 of this Attachment, any delay or failure of a party hereto to perform its obligations hereunder will be excused if and to the extent that it was caused by an event or occurrence beyond such party's reasonable control and without its fault or negligence ("Force Majeure"). Force Majeure includes, but is not limited to, acts of God, actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, acts of terrorism, or court injunction or order. A party claiming Force Majeure must provide the other party with written notice of such delay (including the anticipated duration of the delay) within ten (10) days of the occurrence of Force Majeure. During the period of such delay or failure to perform by Supplier, GEHC may acquire substitute or replacement items from one or more alternative sources, and in such event, there may be a proportionate reduction of the quantity of Products required from Supplier and GEHC will not be liable in any way for such reductions. If the delay lasts more than thirty (30) days, or if Supplier does not provide adequate assurances that the delay will cease within thirty (30) days, GEHC may terminate this Agreement, including any or all unfilled Purchase Orders, upon written notice and any funds pre-paid by GEHC will be refunded by Supplier within ten (10) business days of said termination.

15.2 Labor and Supply Problems Not Force Majeure. Notwithstanding anything in this Agreement to the contrary, no delay or failure of Supplier to perform its obligations hereunder will be excused if and to the extent that it is caused by: (i) labor problems of Supplier, its subcontractors, and/or its suppliers such as, by way of example and not by way of limitation, lockouts, strikes, and slowdowns, or (ii) the inability of Supplier, its subcontractors, and/or suppliers to obtain power, materials, labor, equipment, or transportation. Items (i) and (ii) above in this Section 15.2 of this Attachment do not constitute Force Majeure for purposes of this Agreement.

## **16. Assignment**

This Agreement is personal to the parties and will not be assignable by either party without the prior written consent of the other party. Any such assignment in contravention of the foregoing is hereby declared null and void. Notwithstanding the foregoing, GEHC may assign its rights and obligations under this Agreement without Supplier's consent: (i) to an affiliate; or (ii) incident to the transfer of all or substantially all of its business. This Agreement will be binding upon and will inure to the benefit of the Supplier and GEHC, as well as their respective heirs, successors, and permitted assigns.

## **17. Waiver and Survival**

Any failure to enforce any provision of this Agreement is not a waiver of that provision or of either party's right to later enforce each and every provision. The terms of this Agreement that by their nature are intended to survive expiration or termination of this Agreement will continue in full force and effect after such expiration or termination, including, without limitation, the terms contained in this Attachment H.

## **18. Severability**

If any provision of this Agreement is determined to be legally unenforceable or invalid, it will not affect the validity or enforceability of the remainder of this Agreement, and the remaining provisions will continue in full force and effect. The parties

will substitute a provision that most closely approximates the economic intent of the invalid provision; such provision will be mutually agreed upon and set forth in a written amendment to this Agreement signed by Supplier and GEHC.

**19. Audit Rights**

At GEHC's written request, Supplier will allow GEHC (directly or through third parties) to audit and inspect Supplier's facilities, as well as copy any documents that Supplier has relating to the performance of its obligations under this Agreement or other applicable legal requirements. Each of the parties will bear their own respective costs and expenses associated with any of the foregoing. GEHC will also be allowed to audit and inspect Supplier under the terms set forth in the Purchased Material Quality Requirements as set forth in Attachment B.

**20. Battle of Forms**

ANY PRE-PRINTED TERMS, AS WELL AS TERMS THAT ARE DIFFERENT, IN CONFLICT, OR SUPPLEMENTAL TO THOSE CONTAINED IN THIS AGREEMENT, IN ANY PURCHASE ORDER, ACKNOWLEDGEMENT, ORDER ACCEPTANCE, WARRANTY STATEMENT, OR INVOICE ARE HEREBY DEEMED NULL AND VOID AND OF NO EFFECT.

**21. Disputes**

Any dispute, controversy, or claim relating to this Agreement (a "Dispute") will be resolved first through good faith negotiations between the parties. If the Dispute cannot be resolved through good faith negotiation, then the parties agree to submit the Dispute to mediation. The requirement of mediation and negotiation may be waived upon mutual written consent of Supplier and GEHC. If the Dispute is not otherwise resolved through negotiation or mediation within a reasonable time period (such time period not to exceed seventy-five (75) days), either party may, but is not required to, submit the Dispute to binding arbitration with the American Arbitration Association ("AAA") in accordance with the AAA's Commercial Arbitration Rules then in effect, as amended by this Agreement. If a party hereto submits a demand for arbitration, Supplier and GEHC agree that arbitration will be the exclusive forum for adjudication of the dispute, provided that such demand precedes the filing of a complaint in any court of competent jurisdiction. The cost of the arbitration (including the fees and expenses of the arbitrator(s)) will be shared equally by the parties; provided, however, that each party will pay its own attorney's fees. The arbitrator(s) will have the authority to apportion liability between the parties, but will not have the authority to award any damages or remedies not available under, or in excess of, the express terms of this Agreement. The arbitration award will be presented to the parties in writing, and upon the request of either party, will include findings of fact and conclusions of law. The award may be confirmed and enforced in any court of competent jurisdiction. With regards to any action for breach of confidentiality or intellectual property obligations, nothing in this Section shall preclude either party from seeking interim equitable relief in the form of a temporary restraining order or preliminary injunction. Any such request by a party of a court for interim equitable relief shall not be deemed a waiver of the obligation to arbitrate hereunder. THE PARTIES EXPRESSLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL.

**22. GEHC Property**

22.1 All tools, dies, layouts, models, drawings, plans, data, manufacturing aids, testing or other equipment or materials, inventions, technology, trade secrets, know how, all reproductions and replacements, or other proprietary information, and all intellectual property rights in the foregoing, which GEHC furnishes to Supplier, or which is developed or acquired at GEHC's expense or at its direction in the performance of work hereunder, (collectively and individually, "GEHC Property") is GEHC's property and is hereby deemed a bailment to Supplier. Supplier: (i) hereby assigns and agrees to assign to GEHC, all GEHC Property (including reasonably cooperating GEHC to secure any and all intellectual property rights developed under this Agreement by, for example, assisting in the filing and prosecution of patent applications, timely reviewing drafts, providing documentary evidence, and executing such documents as GEHC may reasonably request); (ii) bears the risk of loss and damage to all GEHC Property; (iii) will safely maintain GEHC Property separate from Supplier's property; (iv) will mark GEHC Property as "Property of General Electric Company"; (v) will not move GEHC Property from Supplier's premises without GEHC's prior written consent; (vi) will maintain sole control and possession over the GEHC Property; (vi) will ensure that only Supplier's employees use and have access to GEHC Property solely for purposes of fulfilling Supplier's obligations to GEHC under this Agreement; (vii) will not substitute any property for GEHC Property; (viii) will insure all GEHC Property consisting of tangible property at full replacement cost; such tangible property will also be held at Supplier's own risk; (ix) will return to GEHC all GEHC Property consisting of tangible property in the same condition as originally received by Supplier (except for normal wear and tear); and (x) shall promptly disclose to GEHC the creation or acquisition of any and all GEHC Property; and (xi) shall not take or allow any lien or other security interest against GEHC Property.

22.2 Supplier will return GEHC Property to GEHC upon the earliest to occur: (i) when any GEHC Property is no longer reasonably required by Supplier to fulfill its obligations to GEHC under this Agreement; (ii) when notified by GEHC (unless GEHC Property is consumed or otherwise disposed of with GEHC's prior written consent); or (iii) upon expiration or termination of this Agreement. In any such event, all GEHC Property will (at GEHC's election) either be immediately (a) released by Supplier to GEHC, or (b) delivered by Supplier to GEHC (or its designee) properly packaged and marked in accordance with instructions from GEHC, utilizing the carrier designated by GEHC, and delivered to the location designated by GEHC. If GEHC elects option (b) above, GEHC will reimburse Supplier for the actual and necessary incurred costs of any such transportation and

delivery to a designated location; provided, however, that Supplier will be responsible (and GEHC will not reimburse Supplier) for any such costs if GEHC terminates this Agreement with cause. Supplier hereby waives any lien or other rights it may have against or in any GEHC Property for work performed on any such GEHC Property or otherwise.

22.3 Notwithstanding anything to the contrary, no rights, title or licenses are granted to Supplier under any GEHC patents, copyrights, trade secrets, or other property (including intellectual property) rights, except as may be expressly stated herein or agreed to in a written document signed by GEHC. Under no circumstances will any such rights, title or licenses be implied.

22.4 Supplier shall reasonably cooperate with GEHC to secure any intellectual property rights developed under this Agreement by, for example, assisting in the filing and prosecution of patent applications, timely reviewing drafts, providing documentary evidence, and executing such documents as GEHC may reasonably require. Without limitation, Supplier is responsible for performing all of its obligations under this Section 22 (including, but not limited to, providing such reasonable cooperation under this Section 22.4) at Supplier's own expense.

### **23. On-line Access to GEHC Resources and Electronic Data Interchange**

23.1 Access to GEHC Resources. GEHC, in its sole discretion, may permit Supplier to have on-line access to GEHC-designated networks and computer systems of GEHC, including GESMP, Portal, FDT and MRA, ("GEHC Resources") in order to facilitate Supplier's ability to perform its obligations to GEHC under this Agreement. The term "GEHC Resources" also includes all information obtained, stored, or accessible on such networks and systems. If such access is granted, Supplier will promptly give GEHC in writing the names of Supplier's employees who have a legitimate business need for such access to GEHC Resources ("Authorized Personnel"), and GEHC will provide a separate user identification code for each person ("Password"). Only Authorized Personnel may access and use GEHC Resources. Authorized Personnel will access and use GEHC Resources solely for the purpose of fulfilling Supplier's obligations to GEHC under this Agreement ("Permitted Use"). Passwords and GEHC Resources are provided on an "**AS-IS**" basis and constitute GEHC's Confidential Information. Supplier is responsible for all costs and expenses it incurs in accessing GEHC Resources, including the cost of any hardware, telecommunications services, network connections, and software not furnished by GEHC. GEHC, in its sole discretion, may terminate with or without cause Supplier's and/or any Authorized Personnel's access to GEHC Resources at any time. Supplier agrees that Supplier (including the Authorized Personnel) have no expectation of privacy when using or accessing GEHC Resources, and that GEHC may access, review, copy or delete any messages and files for any purpose and disclose them to any party that GEHC deems appropriate. Supplier, including Authorized Personnel, will: (i) comply with all instructions GEHC provides concerning access to GEHC Resources; (ii) not access or attempt to access those GEHC Resources that GEHC has not authorized in writing Supplier to access; (iii) not modify, copy, store, transfer, install, delete or obtain programs or data from GEHC Resources, unless GEHC has expressly authorized Supplier to do so in advance and in writing; (iv) not cause GEHC to incur fees or service charges; and (v) not change the configuration or topology of GEHC Resources. Supplier will immediately notify GEHC verbally and in writing should Supplier become aware of any prohibited use or unauthorized access involving GEHC Resources. Supplier, including Authorized Personnel, will immediately cease accessing all GEHC Resources upon the earliest to occur: (a) when no longer required to perform work under this Agreement; (b) when notified by GEHC; or (c) when this Agreement terminates or expires. Supplier will promptly notify GEHC if it becomes aware of any unauthorized access to or use of GEHC Resources, and will instruct Authorized Personnel to do the same.

23.2 Legal Effect of Electronic Data Interchange. Any document properly transmitted by computer access will be considered a "writing" delivered in connection with this Agreement. Electronic documents will be considered signed by a party if they contain an agreed upon electronic identification symbol or code as required by law. Electronic documents will be deemed received by a party when accessible by the recipient on the computer system.

### **24. Confidentiality**

24.1 Confidential Information. During the Term, each party (the "Recipient") may receive or have access to certain information of the other party (the "Discloser") that is Confidential Information of the Discloser. For purposes of this Agreement, "Confidential Information" means any information disclosed by the Discloser to the Recipient, whether technology-related or business-related, whether furnished before or after the Effective Date and irrespective of the form of communication, that is considered competitive, confidential or proprietary in nature; provided, however, that in order for oral information to be treated as Confidential Information, it must be identified as confidential and proprietary at the time of disclosure, and the substance of the disclosure must be provided in writing within thirty (30) days of the oral disclosure of such information. All written information must be conspicuously marked using words such as "confidential" or "proprietary" in order to be treated as Confidential Information. The Recipient will protect all Confidential Information against unauthorized disclosure to third parties with the same degree of care as the Recipient uses for its own similar information, but no less than a reasonable degree of care. Only those employees of the Recipient who have a need to know such information for purposes related to this Agreement may use Confidential Information, and the Recipient will inform such employees of the confidential nature of such Confidential Information and the obligations of the Recipient hereunder. The Recipient will be responsible for any breach of this Agreement by it or its employees to the same extent as though such

employees were parties hereto. The parties acknowledge that all intellectual property rights are deemed Confidential Information to be protected indefinitely. The parties also agree that all other information, including but not limited to technical information (which is not intellectual property rights) and forecasts disclosed during the Term or prior to the formation of this Agreement are deemed Confidential Information to be protected for a term of ten (10) years from the date of disclosure.

24.2 *Exclusions*. The foregoing confidentiality obligations will not apply to any information that is (a) already known by the Recipient prior to disclosure, (b) independently developed by or for the Recipient prior to or independent of the disclosure and can be so proven, (c) publicly available through no fault of the Recipient, (d) rightfully received from a third party with no duty of confidentiality, (e) disclosed by the Recipient with the Discloser's prior written approval, or (f) required to be disclosed pursuant to any final and non-appealable order of a court or agency of competent jurisdiction served on either party, provided that the Recipient gives the Disclosing Party written notice within two (2) days of receipt of such order and at least thirty (30) days prior to the production or disclosure of such Confidential Information.

24.3 *Return of Confidential Information*. Within fourteen (14) days after termination or expiration of this Agreement, each party will return all Confidential Information of the other party and all copies thereof (in any media) unless a party is required to retain such material under applicable laws or regulations. All information consisting of documents, notes and other writings prepared by one party based on non-public data of the other party will be destroyed.

24.4 *Development*. The confidentiality terms in this Section 24 of this Attachment will not be construed to limit GEHC's right to independently develop or acquire products without use of Supplier's Confidential Information in tangible form.

24.5 *Restrictions on Use of Design Materials and Know How*. During and after the Term, Supplier is prohibited from selling to any third party any Product or substantially similar product that is either (i) developed for GEHC under this Agreement, (ii) incorporates any Confidential Information (as defined in this Section 24 of this Attachment) of GEHC's or GEHC Property, or (iii) is specifically designed or configured for use with GEHC's products using Confidential Information of GEHC's, GEHC Property or information received or know how developed in connection with this Agreement.