

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
EXECUTIVE INFORMATION SYSTEMS, LLC.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Executive Information Systems, LLC (hereinafter “Vendor”), with its principal place of business at 6901 Rockledge Drive, Suite 600, Bethesda, MD 20817.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Texas Building and Procurement Commission’s Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-076A, on August 31, 2006, for Enterprise Architecture / Business-IT Governance Software Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-076A shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, SAS Software License and Services Agreement; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-076A, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-076A, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to SAS Institute Inc. software that was proposed by Vendor pursuant to Exhibit 1. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above.

B. Services

Services available under this Contract are limited to SAS Institute Inc. services that were proposed by Vendor pursuant to Exhibit 1. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. GSA Contract Price

“GSA Contract Price” is defined as the product sales price available to customers pursuant to GSA Contract No. GS-35F-0170K (“GSA Contract”) held by Vendor.

B. Customer Discount

The minimum Customer discount for all products and services will be the GSA Contract Price in effect at the time of order.

Customer Price includes the DIR Administrative Fee specified in Section 5.

C. Customer Price

1) The price to the Customer shall be the then-current GSA Contract Price. Vendor shall provide updates to Texas DIR of any changes to the GSA Contract Price.

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided by Vendor at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This Contract shall be amended within ten (10) business days to reflect the lower price.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any Product or Service at any time, based upon changes to the applicable GSA Contract Price. GSA Contract Price decreases shall take effect automatically during the term of this Contract for new Orders received on or after the date such decreases become effective pursuant to the GSA Contract.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

Vendor Contract No. _____

If sent to the State:

Sherri Parks, Director
Contracting and Procurement Services Division
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Pat Krause
Vice President
Executive Information Systems, LLC
6901 Rockledge Drive, Suite 600
Bethesda, MD 20817
Phone: (301) 581-1099
Facsimile: (301) 581-2573
Email: pkrause@execinfosys.com

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the SAS Software License and Services Agreement set forth in Appendix C of this Contract. No changes to the SAS Software License and Services Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix C. Order Fulfiller shall make the SAS Software License and Services Agreement terms and conditions available to all Customers at all times.

2) Compliance with the SAS Software License and Services Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the SAS Software License and Services Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the SAS Software License and Services Agreement terms and conditions.

B. Service Agreement

Services provided under this Contract shall be in accordance with the SAS Software License and Services Agreement as set forth in Appendix C of this Contract. No changes to the SAS Software License and Services Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. All references to Catalog Information System Vendors (CISV) are hereby deleted.

B. All references to Texas Building and Procurement Commission (TBPC) are hereby revised and replaced with Texas Comptroller of Public Accounts (CPA).

C. Section 4. General Provisions. D. Assignment is hereby replaced in its entirety as follows:

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party, and acceptance by the assignee in which the assignee agrees to abide by the terms of the assigned Contract. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

D. Section 5. Product Terms and Conditions. A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only) is hereby replaced in its entirety as follows:

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide DIR with the URL to SAS Institute Inc.'s external website that contains SAS' Federal Government Electronic Information Technology Accessibility Statement which includes contact information for DIR or any Customer to request completed Voluntary Product Accessibility Template (VPAT) for products or services in order to review compliance with the State of Texas Accessibility requirements (based on the Federal standards established under Section 508 of the Rehabilitation Act), or shall indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>).

E. Section 9. Vendor Responsibilities. A. Indemnification. 1) Acts or Omissions is hereby replaced in its entirety as follows:

Provided that (a) Vendor is furnished with prompt written notice by DIR or the applicable Customer of any claim made against DIR or such Customer for bodily injury, death or damage to tangible property (excluding damage to software or data) arising solely from actions for which Vendor is legally responsible, (b) Vendor is allowed by DIR or such Customer, as applicable, to control the litigation or settlement of any such claim, and (c) DIR or such Customer shall cooperate with Vendor in the investigation, defense and settlement thereof, Vendor shall defend and indemnify DIR or such Customer, as applicable, for such claim by paying the costs

and attorney's fees, if any, DIR or such Customer incurs at Vendor's direction, and any judgment finally awarded against DIR or such Customer with respect to such claim or any settlement of such claim approved by Vendor. The Vendor agrees to coordinate such defense with the Texas Office of Attorney General as reasonably requested by DIR.

F. Section 9. Vendor Responsibilities. A. Indemnification. 2) Infringements is hereby replaced in its entirety as follows:

If a claim of copyright, patent, trade secret, or other intellectual property rights violation is made against Customer relating to the Software, Customer agrees to immediately notify SAS Institute Inc. (Institute), allow the Institute to control the litigation or settlement of such claim to the greatest extent allowed by law, and cooperate with the Institute in the investigation, defense, and/or settlement thereof. The Institute shall take control of the litigation and indemnify the Customer by paying any settlement approved by the Institute, or any judgment, costs, or attorneys' fees finally awarded against the Customer for such claim. Customer may participate at Customer's own expense. This indemnification obligation does not apply to the extent the claim is based on a combination of Institute Software with other software or a Customer modification to the Software if such claim would not have been made but for the combination or modification.

If such a claim is made or, in the Institute's opinion, is likely to be made, the Institute, at its option, may modify the Software, obtain rights for the Customer to continue using the Software, or terminate the license for the Software product at issue and refund the current license fee paid by Customer. Customer agrees to abide by the Institute's decision and, if appropriate, install a different version of the Software or stop using the Software.

G. Section 9. Vendor Responsibilities. E. Use of Subcontractors is hereby replaced in its entirety as follows:

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract. Vendor may subcontract to SAS Institute Inc. performance of Vendor's obligations to supply any software provided hereunder or any services purchases hereunder by any Customer, including DIR, and SAS Institute Inc. may further subcontract to its subcontractors in connection therewith.

H. Section 9. Vendor Responsibilities. G. Confidentiality is hereby replaced in its entirety as follows:

1) Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner, provided that Vendor may provide such information to SAS Institute Inc. (including SAS Institute Inc.'s employees and subcontractors) with a need to know such information in connection with performance of Vendor's obligations under the Contract or any Purchase Order.

I. Section 9. Vendor Responsibilities. H. Security of Premises, Equipment, Data and Personnel is hereby replaced in its entirety as follows:

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their commercially reasonable efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the commercially reasonable instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's tangible property, including equipment, workplace, and its contents as set forth in Section 9.A.(1) of Appendix A when such damage is caused by the actions of Vendor's employees or subcontractors for which Vendor is legally responsible.

J. Section 9. Vendor Responsibilities. I. Background and/or Criminal History Investigation is hereby replaced in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Any such requirements shall be specified in the Customer Purchase Order for the applicable services or otherwise provided in writing to the Vendor prior to or concurrent with delivery of the Order to the Vendor. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

K. Section 9. Vendor Responsibilities. J. Limitation of Liability is hereby replaced in its entirety as follows:

Except as otherwise provided by an express or implied warranty, the Vendor will not be liable to the Customer for consequential damages resulting from any defect or deficiencies in accepted items. For SAS software, SAS Institute Inc. (Institute) is not liable for (1) special, incidental, indirect, consequential, punitive, or reliance damages (arising on contract or tort), or (2) any claim against the Customer by a third party. The Institute's total liability for any claim relating to matters covered by the Agreement or use of the Software is limited to the license fees received from Customer for the Software product(s) at issue during the then-current license period.

L. Section 10. Contract Enforcement. A. Enforcement of Contract and Dispute Resolution is hereby replaced in its entirety as follows:

- 1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.
- 2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above, provided that such process is agreed upon in writing in the Customer's Purchase Order for the product or service as to which the dispute arises. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

M. Section 10. Contract Enforcement. B. Termination. 1) Termination for Non-Appropriation is hereby replaced in its entirety as follows:

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated by the governing body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services.

N. Section 10. Contract Enforcement. B. Termination. 3) Termination for Convenience is hereby replaced in its entirety as follows:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in accordance with the applicable Purchase Order requirements in a timely manner, provided that the Customer shall have requested and

the Order Fulfiller shall have failed to provide, adequate assurances of such timely delivery.

O. Section 10. Contract Enforcement. B. Termination. 4) Termination for Cause is hereby replaced in its entirety as follows:

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available (subject to any limitations thereon in the Contract), cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available (subject to any limitations thereon in the Contract), cancel and terminate the Purchase Order.

P. Section 10. Contract Enforcement. B. Termination. 6) Vendor or Order Fulfiller Rights Under Termination is hereby replaced in its entirety as follows:

In the event a Purchase Order is terminated or the Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and with respect to which payment is due pursuant to the terms of Appendix C of the Contract.

Q. Section 10. Contract Enforcement. C. Force Majeure is hereby replaced in its entirety as follows:

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when

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commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is reasonably determined by the Customer that Order Fulfiller will not be able to deliver product or services pursuant to the requirements of the applicable Purchase Order in a timely manner.

This Contract is executed to be effective as of the date of last signature.

Executive Information Systems, LLC.

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: Signature on File

Authorized By: Signature on File

Name: R. Patrick Krause

Name: Cindy Reed

Title: Vice President

Title: Deputy Executive Director
Operations & Statewide Technology Sourcing

Date: 11/02/07

Date: 11/09/07

Legal: Signature on File 11/08/07

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

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Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

The following terms and conditions shall govern the conduct of DIR and Vendor during the term of the Contract.

1. Contract Scope

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in this document shall have the meanings set forth below in Section 3.

2. No Quantity Guarantees

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

3. Definitions

A. Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.

B. Contract – the document executed between DIR and Vendor into which this Appendix A is incorporated.

C. Day - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

D. Order Fulfiller – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract.

E. Purchase Order - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).

F. State – refers to the State of Texas.

G. TBPC – refers to the Texas Building and Procurement Commission.

4. General Provisions

A. Entire Agreement

The Contract and its Appendices constitute the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract or its Appendices shall be binding or valid.

B. Modification of Contract Terms and/or Amendments

1) The terms and conditions of the Contract shall govern all transactions by

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Standard Terms and Conditions For Product and Related Services Contracts

Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.

2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Order Fulfiller may be added in a Purchase Order and given effect. No additional term or condition added in a Purchase Order issued by a Customer can weaken a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

C. Invalid Term or Condition

1) To the extent any term or condition in the Contract conflicts with the applicable Texas and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, DIR makes no representations or warranties regarding the enforceability of such term or condition and DIR does not waive the applicable Texas and/or United States law or regulation which conflicts with the Contract term or condition.

2) If one or more term or condition in the Contract, or the application of any term or condition to any party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to other parties or circumstances shall remain valid and in full force and effect.

D. Assignment

DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

E. Survival

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

F. Choice of Law

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

Appendix A
Standard Terms and Conditions For Product and Related Services Contracts

5. Product Terms and Conditions

A. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Vendors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

B. Purchase of Commodity Items (Applicable to State Agency Purchases Only)

1) Texas Government Code, §2157.068 requires State agencies to buy commodity items, as defined in 5.B.2 below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR.

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 5.B.

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6. Contract Fulfillment and Promotion

A. Service, Sales and Support of the Contract

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

B. Use of Order Fulfillers

DIR agrees to permit Vendor to utilize designated Order Fulfillers to provide service, sales and support resources to Customers. Such participation is subject to the following conditions:

1) Designation of Order Fulfillers

a) Vendor may designate Order Fulfillers to act as the distributors for products and services available under the Contract. In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses. In addition to the required Subcontracting Plan, Vendor shall provide DIR with the following Order Fulfiller information: Order Fulfiller name, Order Fulfiller business address, Order Fulfiller TBPC Identification Number, Order Fulfiller contact person email address and phone number.

b) DIR reserves the right to require the Vendor to rescind any such Order Fulfiller participation or request that Vendor name additional Order Fulfillers should DIR determine it is in the best interest of the State.

c) Vendor shall be fully liable for its Order Fulfillers' performance under and compliance with the terms and conditions of the Contract. Vendor shall enter into contracts with Order Fulfillers and use terms and conditions that are consistent with the terms and conditions of the Contract.

d) Vendor shall have the right to qualify Order Fulfillers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Order Fulfillers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.

e) Vendor shall not prohibit Order Fulfiller from participating in other procurement opportunities offered through DIR.

2) Changes in Order Fulfiller List

Vendor may add or delete Order Fulfillers throughout the term of the Contract upon written authorization by DIR. Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. Vendor shall provide DIR with its updated Subcontracting Plan and the Order Fulfiller information listed in Section 6.B.1.a above.

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3) Conditions of Order Fulfiller Participation

All participating Order Fulfillers must be approved Catalog Information Systems Vendors with the State of Texas. DIR and Vendor will agree on the number of Order Fulfillers that are Historically Underutilized Businesses as defined by the TBPC.

4) Order Fulfiller Pricing to Customer

Order Fulfiller pricing to the Customer shall comply with the Customer price as stated within Section 4 of the Contract. This pricing shall only be offered by Order Fulfillers to Customers for sales that pass through the Contract.

C. Product Warranty and Return Policies

Order Fulfiller will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

D. Customer Site Preparation

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

E. Internet Access to Contract and Pricing Information

1) Vendor Website

Vendor will maintain a website specific to the product and service offerings under the Contract which is clearly distinguishable from other, non-DIR Contract offerings at Vendor's website. The website must include: the product and services offered, product and service specifications, Contract pricing, designated Order Fulfillers, contact information for Vendor and designated Order Fulfillers, instructions for obtaining quotes and placing Purchase Orders, and warranty and return policies. The Vendor's website shall list the DIR Contract number, reference the DIR Go DIRect program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

2) Accurate and Timely Contract Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

3) Website Compliance Checks

Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as stated in Section 4 of the Contract.

4) Website Changes

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to Contract information. The establishment of the link is provided

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solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

5) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

6) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

F. DIR Logo

Order Fulfiller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Order Fulfiller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

G. Vendor and Order Fulfiller Logo

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller.

H. Trade Show Participation

At DIR's discretion, Vendor and Order Fulfillers may be required to participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's and Order Fulfiller's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor and Order Fulfillers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or

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disapprove of the location or the use of the DIR logo in or on the Vendor's or Order Fulfiller's booth.

I. Orientation Meeting

Upon thirty (30) calendar days from execution of the Contract, Vendor and Order Fulfillers will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor or Order Fulfillers for attendance at the meeting.

J. Performance Review Meetings

DIR will require the Vendor to attend periodic meetings to review the Vendor's performance under the Contract. The meetings will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Vendor. DIR shall bear no cost for the time and travel of the Vendor for attendance at the meeting.

K. DIR Cost Avoidance

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product part number, product description, list price, price to Customer under the Contract, and pricing from three (3) alternative sources under which DIR customers can procure the products.

7. Purchase Orders, Invoices, and Payments

A. Purchase Orders

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

B. Invoices

1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the Customer to the Order Fulfiller.

2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer.

C. Payments

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. Payment under the Contract shall not foreclose the right to recover wrongful payments.

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8. Contract Administration

A. Contract Administrators

DIR and the Vendor will each provide a Contract Administrator to support the Contract. Information regarding the Contract Administrators will be posted on the Internet website designated for the Contract.

1) State Contract Administrator

DIR shall provide a Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) advising DIR of Vendor's performance under the terms and conditions of the Contract, and iii) periodic verification of product pricing and monthly reports submitted by Vendor.

2) Vendor Contract Administrator

Vendor shall provide a dedicated Contract Administrator whose duties shall include but not be limited to: i) supporting the marketing and management of the Contract, ii) facilitating dispute resolution between a Order Fulfiller and a Customer, and iii) advising DIR of Order Fulfillers performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator if the assigned Contract Administrator is not, in the opinion of DIR, adequately serving the needs of the State.

B. Reporting and Administrative Fees

1) Reporting Responsibility

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Vendor's applicable Contract books at DIR's expense.

2) Detailed Monthly Report

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect Coordinator. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

3) Historically Underutilized Businesses Subcontract Reports

a) Vendor shall electronically provide each Customer with their relevant

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b) Reports shall be due in accordance with the TBPC rules.

4) DIR Administrative Fee

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The administrative fee is specified in Section 5 of the Contract. Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period.

b) Vendor shall reference the DIR Contract number on any remittance instruments.

5) Accurate and Timely Submission of Reports

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within three (3) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within three (3) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within three (3) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

C. Records and Audit

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all

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Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to DIR, including the compliance checks designated by DIR, the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to DIR staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

D. Contract Administration Notification

1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.

2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Go DIRect Coordinator name and contact information.

9. Vendor Responsibilities

A. Indemnification

1) Acts or Omissions

Vendor shall defend, indemnify and hold harmless the State of Texas and Customers, their officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising

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out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as requested by DIR.

2) Infringements

a) Vendor shall defend, indemnify and hold harmless the State of Texas and Customers, their officers, agents and employees, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied under the Contract. Vendor agrees to defend against any and all third party claims at Vendor's expense, whether or not such claims become the subject of litigation provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) grants Vendor control over the defense and settlement thereof, and (iii) reasonably cooperates in response to Vendor's requests for assistance. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

b) Vendor shall have no liability if the alleged infringement is caused in whole or part by: (i) use of the product or service in combination with product or services not provided under the Contract, (ii) use of the product or service for a purpose or in a manner for which the product or service was not designed, (iii) any modification made to the product without Vendor's written approval, (iv) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (v) any intellectual property right owned by or licensed to Customer, or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

B. Vendor Certifications

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State

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of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate, (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract, (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration, and (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

C. Ability to Conduct Business in Texas

Order Fulfiller shall be an entity authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas. Order Fulfiller shall be a "Catalog Information Systems Vendor" approved by TBPC. All products and services offered to Customers under the Contract are listed in Order Fulfiller's catalog on file with TBPC.

D. Equal Opportunity Compliance

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

E. Use of Subcontractors

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional

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subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

F. Responsibility for Actions

Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

G. Confidentiality

- 1) Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

H. Security of Premises, Equipment, Data and Personnel

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors.

I. Background and/or Criminal History Investigation

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Service Agreement or request replacement of the employee or subcontractor in question.

J. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action.

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K. Overcharges

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

L. Prohibited Conduct

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Order Fulfiller, subcontractor, firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such Order Fulfiller, subcontractor, firm, corporation or institution has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

10. Contract Enforcement

A. Enforcement of Contract and Dispute Resolution

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

B. Termination

1) Termination for Non-Appropriation

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated by the governing body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers.

2) Absolute Right

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by

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Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control, or ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 4.B.2 above. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

5) Customer Rights Under Termination

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination date.

6) Vendor or Order Fulfiller Rights Under Termination

In the event a Purchase Order is terminated or the Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract

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for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

11. Notification

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile.

12. Captions

The captions contained in the Contract and its Appendices are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

HUB SUBCONTRACTING PLAN (HSP)

In accordance with Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB goals defined in 1 TAC §111.13 are: *11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.*

- - Agency Special Instructions/Additional Requirements - -

SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: Executive Information Systems, LLC State of Texas VID #: 15221988601
 Point of Contact: David Gray Phone #: 301-581-4363
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Solicitation #: DIR-SDD-TMP-076

SECTION 2 - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 1 TAC §111.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- Yes, I will be subcontracting portion(s) of the contract.
 (If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.
 (If No, complete SECTION 9 and 10.)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
(#1) SAS Consulting Services	(#11) -
(#2) SAS Training	(#12) -
(#3) SAS Maintenance	(#13) -
(#4) SAS Software	(#14) -
(#5)	(#15) -
(#6)	(#16) -
(#7)	(#17) -
(#8)	(#18) -
(#9) -	(#19) -
(#10) -	(#20) -

*If you have more than twenty subcontracting opportunities, a continuation page is available at http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont1.doc.

Enter your company's name here: Executive Information Systems, LLC

Solicitation #: DIR-SDD-TMP-076A

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc.

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # 1 Description: SAS Consulting Services

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, and provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
<u>SAS Institute, Inc.</u>	<u>1561133017400</u>	<u>10%</u>	<u>\$150,000</u>	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
_____	_____	<u>%</u>	<u>\$</u>	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*

*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

SAS Institute, Inc. is the sole source for SAS consulting services listed in the price list. SAS is the developer of the software and therefore is the best suited for working on SAS consulting projects due to their high level of expertise in the subject area.

Enter your company's name here: Executive Information Systems, LLC

Solicitation #: DIR-SDD-TMP-076A

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc.

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # 2 Description: SAS Training

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than **five (5) working days** from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than **five (5) working days** prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
<u>SAS Institute, Inc.</u>	<u>1561133017400</u>	<u>10%</u>	<u>\$150,000</u>	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
_____	_____	<u>%</u>	<u>\$</u>	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*

*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

SAS Institute, Inc. is the sole source for SAS training programs listed in the price list. SAS is the developer of the software and therefore is the best suited for the training of SAS users due to their high level of expertise in the subject area.

Enter your company's name here: Executive Information Systems, LLC

Solicitation #: DIR-SDD-TMP-076A

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc.

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # 3 Description: SAS Maintenance

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, and provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
<u>SAS Institute, Inc.</u>	<u>1561133017400</u>	<u>10%</u>	<u>\$150,000</u>	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
_____	_____	<u>%</u>	<u>\$</u>	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*

*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

SAS Institute, Inc. is the sole source for SAS software maintenance as listed in the price list. SAS maintenance covers technical support, version

Upgrades, patches and fixes for the software. Due to SAS' position of manufacturer/publisher of the software, they are best suited to provide these maintenance services to license holders throughout Texas.

Enter your company's name here: Executive Information Systems, LLC

Solicitation #: DIR-SDD-TMP-076A

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc.

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # 4 Description: SAS Software

SECTION 4 - MENTOR-PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

SECTION 5 - PROFESSIONAL SERVICES CONTRACTS ONLY

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

- Yes (If Yes, complete SECTION 8 and 10.) - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Gov't Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

SECTION 6 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.tbpc.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.tbpc.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.tbpc.state.tx.us/hub/minoritywomenbuslinks.html>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than **five (5) working days** from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than **five (5) working days** prior to the submission of your response to the contracting agency.

SECTION 7 - HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

SECTION 8 - SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
<u>SAS Institute, Inc.</u>	<u>1561133017400</u>	<u>10%</u>	<u>\$150,000</u>	<input type="checkbox"/> - Yes <input checked="" type="checkbox"/> - No*
_____	_____	<u>%</u>	<u>\$</u>	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*

*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:

SAS Institute, Inc. is the sole publisher of all of the software products listed in the pricelist. Therefore, SAS is the subcontractor able to provide the software.

SECTION 9 - SELF PERFORMANCE JUSTIFICATION

(If you responded "No" to SECTION 2, you must complete SECTION 9 and 10.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

- Yes If Yes, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.
- No If No, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

SECTION 10 - AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying their compliance with the HSP, including the use/expenditures they have made to subcontractors. (The PAR is available at <http://www.tbpc.state.tx.us/communities/procurement/prog/hub/hub-forms/progressassessmentrpt>).
- The respondent must seek approval from the contracting agency prior to making any modifications to their HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to debarment pursuant to Gov't Code §2161.253(d).
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are to be performed and must provide documents regarding staff and other resources.

Signature on File

Signature

R. Patrick Krause

Printed Name

Vice President

Title

10/11/06

Date

Executive Information Systems, LLC

6901 Rockledge Drive, Suite 600

Bethesda, MD 20817

(301) 581-8594

FAX (301) 581-2573

www.execinfosys.com

**APPENDIX C TO DIR CONTRACT NO. DIR-SDD-588
SAS SOFTWARE LICENSE AND SERVICES AGREEMENT**

300.50.JPD050b

INFORMATION FOR ORDERING ACTIVITIES (applicable to Appendix C)

1. Contractor's Ordering Address and Payment Information:

Executive Information Systems, LLC
Attn: Sales
 6901 Rockledge Drive, Suite 600
 P.O. Box 34076
 Bethesda, MD 20817-0076

Contractor's Payment Information:
 Executive Information Systems, LLC
Attn: Accounting
 P.O. Box 34076
 Bethesda, MD 20827-0076

2. The following telephone number(s) can be used by Customers to obtain technical and/or ordering assistance:

(301) 581-8594

3. FOB Destination

4. DELIVERY SCHEDULE

a. TIME OF DELIVERY: The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

SPECIAL ITEM NUMBER	DELIVERY TIME (Days ARO)
Perpetual Software License	30 Days
Maintenance of Software	30 Days
Training Courses	30 Days
Information Technology Professional Services	As negotiated between the Customer and the contractor

b. URGENT REQUIREMENTS: When the contract delivery period does not meet the bona fide urgent delivery requirements of a Customer, Customers are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the Customer, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

5. Discounts: Prices shown are NET Prices; Basic Discounts have been deducted.

- a. Prompt Payment: Payment shall be made in accordance with Section 7.C. of Appendix A of the DIR Contract No. DIR-SDD-588.
- b. Quantity: Discount already deducted.
- c. Dollar Volume:

\$200,000 to \$349,000	1%
\$350,000 to \$499,000	2%

\$500,000 to \$749,000	3%
\$750,000 and up	4%

Note: The dollar volume discounts apply on a per purchase order basis for software and/or software maintenance . The purchase order must include a single site for a server, mainframe or desktop package and cannot be used in combination with additional discounts/concessions from current DIR pricing.

- d. Government Educational Institutions are offered the same discounts as all other Agency customers

6. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

- a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:
 - (1) Time of delivery/installation quotations for individual orders;
 - (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.
 - (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.
- b. The above is not intended to encompass items not currently covered by the DIR contract.

7. SECTION 508 COMPLIANCE.

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following:

www.execinfosys.com

The EIT standard can be found at: www.Section508.gov/.

Appendix C

TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES AND MAINTENANCE OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Customer reserves the right to inspect or test any software that has been tendered for acceptance. The Customer may require repair or replacement of nonconforming software at no increase in contract price. The Customer must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract. All SAS software will substantially conform to its then-current user documentation, provided the DIR Customer has paid and continues to pay the specified license fees. If the Software does not substantially conform, the Institute will choose to make it conform, replace it with conforming Software or refund the current license fee paid. This is the exclusive remedy for breach of this warranty.
- b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the DIR Customer for consequential damages resulting from any defect or deficiencies in accepted items.

For SAS software, the Institute is not liable for (1) special, incidental, indirect, consequential, punitive, or reliance damages (arising on contract or tort), or (2) any claim against the customer by a third party. The Institute is not required to provide the product authorization code if Customer is in breach of this Agreement or if all amounts due under this Agreement are not paid and is not liable for damages caused by the resulting Software interruption. Customer is responsible for implementing procedures to verify accuracy of data input and output. The Institute's total liability for any claim relating to matters covered by the Agreement or use of the Software is limited to the license fees received from Customer for the Software product(s) at issue during the then-current license period.

3. TECHNICAL SERVICES

The Contractor, without additional charge to the Customer, shall provide a hot line technical support number (919) 677-8000 for the purpose of providing user assistance and guidance in the implementation of

the software. The technical support number is available from Monday through Friday 9:00 AM to 6:00 PM EST exclusive of holidays.

4. SOFTWARE MAINTENANCE

- a. Software maintenance service shall include the following: Maintenance for SAS software includes technical support conducted over the telephone, in writing or electronically to help solve specific problems with installation or use of the Software, and updates, new releases, and fixes which the Institute makes available on supported operating systems to its general customer base for the version of the Software licensed. The first 12 months of the license for server or user based software (other than software identified as DataFlux software in the Product Description of the applicable software) includes maintenance at no additional charge.
- b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

5. PERIODS OF MAINTENANCE

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Maintenance may be discontinued by the Customer on thirty (30) calendar days written notice to the Contractor.
- c. Customers should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the maintenance is to be continued during the subsequent period.

6. UTILIZATION LIMITATIONS

When acquired by the Customer, commercial computer software and related documentation shall be subject to the following:

- (1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
- (2) Software licenses are by site and by Customer. Customer is defined in Section 3.A. of Appendix A of the DIR Contract No. DIR-SDD-588. The software may be used by any subdivision of the Customer (service, bureau, division, command, department, office, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one Customer's site. This would allow other agencies access to one Customer's database. For Customer public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user Customer will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user Customer's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user Customer.
- (3) The Customer shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the Customer who have the Customer's permission to use

the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Customer to use software, documentation, or information therein, which the Customer may already have or obtains without restrictions.

- (4) The Customer shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the Customer has the right to transfer the software to another site if the Customer site for which it is acquired is deemed to be unsafe for Customer personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
- (5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

For SAS software, the license is for use only by those employees of the agency licensing the software and any short-term on-site contractors while doing work for such agency.

7. SOFTWARE CONVERSIONS -

Full monetary credit will be allowed to the Customer when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license, the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version.

8. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

9. TERMS AND CONDITIONS APPLICABLE TO THE PURCHASE OF SAS INSTITUTE SOFTWARE

The terms and conditions of this Section, along with the applicable purchase order govern the license of software products ("Software") from SAS Institute Inc. (the "Institute"). The terms and conditions of the DIR Contract No. DIR-SDD-588 and this Appendix C supersede and replace any additional or conflicting terms and conditions in the purchase order issued to license the Software.

Each purchase order to this Agreement ("PO") identifies the specific government entity ("Customer") authorized to use the Software listed on that purchase order. Each PO is a separate agreement, which incorporates the terms of this Agreement.

a. License Grant

- (1) The Software products and versions available under this Agreement are set forth in Price List. Upon receipt of an acceptable order, the Institute will provide to the Government entity placing the order the production release for the Software identified on the purchase order for the applicable operating system and hardware. For desktop and server based

Software, the version of the Software will be specified.

- (2) The desktop and server based Software provided under this Agreement will be authorized to operate for fifty (50) years. The utility contained in the Software that will authorize it to operate for fifty years is confidential and a trade secret of the Institute, which is not discernible or disclosed during authorized use, to which access is not authorized by anyone who receives or uses the Software under this Agreement.
- (3) The mainframe software licensed under this Agreement is on an annual basis. The mainframe software may be renewed at the mutual agreement of the parties. The first license period will be for 12 months. The first renewal period will be from the expiration of the first period through the following September 30th. Thereafter, renewal periods will be from each October 1 through September 30.
- (4) The Software is licensed (1) on a per server basis for use with the supported operating system designated on the order; (2) for an unlimited number of users or on a user increment basis for a specified number of users, or (3) on a per mainframe basis for use with the supported operating system designated on the order. The order will specify if the Software is licensed on a per-server, user increment basis or per mainframe. If the Software is licensed on a per-server or per mainframe basis, each copy of Software must only be installed on individual CPUs. If the Software is licensed on a user-increment basis, the total number of individuals who access the Software during the license period must be counted and included in the user increment licensed.

b. Indemnification

If a claim of copyright, patent, trade secret, or other intellectual property rights violation is made against Customer relating to the Software, Customer agrees to immediately notify the Institute, allow the Institute to control the litigation or settlement of such claim to the greatest extent allowed by law, and cooperate with the Institute in the investigation, defense, and/or settlement thereof; and in each case in which a Texas State Agency is involved, EIS agrees to coordinate defense and settlement matters with the Office of the Attorney General. The Institute agrees to take control of the litigation and indemnify the Customer by paying any settlement approved by the Institute, or any judgment, costs, or attorneys' fees finally awarded against the Customer for such claim. Customer may participate at Customer's own expense. This indemnification obligation does not apply to the extent the claim is based on a combination of Institute Software with other software or a Customer modification to the Software if such claim would not have been made but for the combination or modification.

If such a claim is made or, in the Institute's opinion, is likely to be made, the Institute, at its option, may modify the Software, obtain rights for the Customer to continue using the Software, or terminate the license for the Software product at issue and refund the current license fee paid by Customer. Customer agrees to abide by the Institute's decision and, if appropriate, install a different version of the Software or stop using the Software.

c. Customer Responsibilities

- (1) So the Customer can properly update and distribute information needed to keep the Software functioning properly and account for authorized hardware, the Customer will define in each order the hardware on which the Software is installed and the business addresses and points of contact of those locations.
- (2) If the Customer believes the Software is being used in violation of this Agreement, Customer will promptly notify the Institute in writing and will cooperate in the Institute's investigation and resolution of the situation.
- (3) The Customer will not permit anyone having access to the Software to:

- a. Reverse assemble or decompile the Software; or
 - b. Mask, modify, or suppress any copyright notices or other proprietary rights notices, or fail to properly label any authorized copy; or
 - c. Time-share, rent, outsource, or otherwise use the Software except as specifically permitted in this Agreement.
- d. **Authorized Use**
Subject exclusively to the terms of this Agreement, authorized use is restricted to Customer's employees and Customer's authorized short-term on-site contractors who receive the Software under the DIR Contract.
- e. **Licensing Provisions Specific to IT Service Vision™ or Enterprise Miner™ Software**
 - (1) Customer is not authorized to use IT Service Vision or Enterprise Miner with third party data for the benefit of a third party unless the licensing documents are amended and additional fees paid. A third party is any government department, agency, contractor or any other third party that is not a part of the licensed government department, agency or contractor.
 - (2) The client component of IT Service Vision or Enterprise Miner is licensed on a Total User basis. "Total Users" is defined as the total number of individuals who access the client component during the license period.
- f. **Licensing Provisions Specific to SAS/TOOLKIT® Software.**
 - (1) Customer may use SAS/TOOLKIT software to develop executable images, which may be distributed to third parties. No portion of SAS/TOOLKIT software shall be distributed by Customer to any third party except as linked into the executable image.
 - (2) To the extent authorized by Texas law and constitution, Customer agrees that it will indemnify and hold the Institute harmless for all damages and for any liability incurred by the Institute arising from or related to use of Customer developed executable images, or any portion thereof, by Customer or any third party. The foregoing indemnification and hold harmless shall include but not be limited to damages and liability arising from any claim of violation of import or export regulations, or copyright, patent, trade secret, or other proprietary rights infringements.
- g. **Licensing Provisions Specific to SAS/IntrNet™ Software**
 - (1) These terms also modify the license terms, which apply to the SAS software licensed on the same hardware for which the SAS/IntrNet software is licensed ("Application Server").
 - (2) Customer may allow Customer's employees ("Employees") and third parties ("End Users") to use SAS/IntrNet software to access and use applications written in SAS software ("Applications") which are resident on Customer's Application Server(s). Subject to the restrictions set forth below, such access may be from anywhere in the world. Customer must configure its Applications such that End Users do not have access to program editing or to any other capability for free form programming in SAS software.
 - (3) Unless Customer receives prior written consent from the Institute, Customer may not allow Applications accessed through SAS/IntrNet software to access SAS software resident on other hardware unless that other hardware is also licensed for SAS/IntrNet software.
 - (4) To the extent authorized by Texas law and constitution, Customer is responsible for and will hold the Institute harmless from any damages suffered by the Institute and any liability incurred by the Institute as a result of End User access to SAS software.
 - (5) Customer may not use SAS/IntrNet software in any outsourcing, facilities management or service bureau arrangement or any data or information technology management operation by or for third parties. The terms of this Section do not expand authorization to access SAS software except to the limited extent set forth in Section 2 above.
 - (6) Customer may not download or otherwise export or re-export any software or any

underlying information or technology except in full compliance with all laws and regulations of the United States of America and any other applicable laws and regulations. The United Nations Convention on Contracts for the International Sale of Goods is excluded from this agreement.

- (7) If Customer chooses to use the “SAS Powered” Logo (“Logo”), the terms in this Section 7 apply. Should Customer choose not to use the Logo, the terms in this Section 7 do not apply.
- a. The Logo may be used only in connection with applications written in SAS Programming Language.
 - b. The Logo may be used only on web pages, splash screens, packaging and marketing collateral (“Marketing Material”) that refer to applications written in SAS Programming Language. If Customer’s Marketing Material includes other applications or products, the Logo must be clearly associated only with the authorized applications.
 - c. The Logo may be used only in the official form provided by the Institute, and Customer must follow the Logo Guidelines, which are included with the SAS/IntrNet software media. Customer may not modify the Logo in any manner, including size, shape, proportions, color, etc.
 - d. Customer’s Marketing Material which contains the Logo must include the following legend: “SAS, the SAS Powered logo and all other SAS Institute Inc. product or service names are registered trademarks or trademarks of SAS Institute Inc., in the USA and other countries. ® indicates USA registration.”
 - e. SAS INSTITUTE INC. MAKES NO WARRANTIES OF ANY KIND RESPECTING THE SAS TRADEMARK OR THE LOGO, INCLUDING THE VALIDITY OF THE INSTITUTE’S RIGHTS IN THOSE MARKS IN ANY COUNTRY, AND DISCLAIMS ANY AND ALL WARRANTIES THAT MIGHT OTHERWISE BE IMPLIED BY APPLICABLE LAW, INCLUDING WARRANTIES AGAINST INFRINGEMENT OF THIRD PARTY TRADEMARKS. CUSTOMER USES THE LOGO AT CUSTOMER’S OWN RISK.
 - f. To the extent authorized by Texas law and constitution, Customer will indemnify the Institute against any claims, suits, awards, costs and damages incurred by the Institute as a result of Customer’s violation of any of these Terms and Conditions and/or the Logo Guidelines.
 - g. Customer agrees to assist the Institute in executing and recording any documents relating to this permission necessary to protect the SAS trademark or Logo in any country.
 - h. These terms and conditions apply only to the Logo. Customer is not granted permission to use any other SAS trademark or logo. Customer is not authorized to use any Institute trademark in the name of its company, products, or services.
 - i. The Institute may terminate Customer’s permission to use the Logo at any time, at the Institute’s sole discretion, if the Institute deems it necessary for protection of the SAS trademark or Logo.
- h. Licensing Provisions Specific to IT Charge Manager™ Software
- (1) Customer may not use IT Charge Manager with third party data for the benefit of a third party unless the licensing documents are amended and additional license fees paid. A third party is any separate Government department, agency, contractor, or any other third party that is not a part of the licensed Government department, agency or contractor.
 - (2) IT Charge Manager operates in conjunction with IT Service Vision software. IT Service Vision software consists of a client and a server component. Customer is authorized to use IT Charge Manager on all computer hardware on which Customer has licensed the client component of IT Service Vision software under this Agreement.
 - (3) Charge Manager will only operate after Customer has installed product authorization codes for the IT Service Vision software with which IT Charge Manager operates.
 - (4) If Customer’s license for IT Charge Manager is terminated or expires, Customer shall (i)

cease using, (ii) delete, and (iii) destroy or return to the Institute all copies of IT Charge Manager in its possession.

- i. Licensing Provisions Specific to JMP® Statistical Discovery Software and STATVIEW® Software
 - (1) The Software is licensed on a Total User basis. “Total Users” is defined as the total number of individuals who access the Software on each licensed operating system during the license period.
 - (2) The fee includes one (1) set of media, installation materials and one (1) set of documentation generally provided with the applicable Software.

- j. Licensing Provisions Specific to CFO Vision™ Software

CFO Vision and any additional products under CFO Vision available under this Agreement may be licensed by the government. CFO Vision may be licensed by a government department, agency or other organization within a department or agency (“Licensed Entity”). Each individual within a licensed entity who accesses CFO Vision is considered a user. A user may only access CFO Vision to support internal business operations and administrative processes of the Licensed Entity and may not use CFO Vision for the benefit of another government department, agency, contractor, or any third party, government or otherwise. Use of CFO Vision components, except in conjunction with the remainder of CFO Vision, is prohibited. The Licensed Entity agrees to be responsible for use of CFO Vision by its users.

- k. Licensing Provisions Specific to SAS/C® Compiler Software

If licensed on a mainframe, the SAS/C software is provided with a sixty-day free trial period. Otherwise, there is no trial period. The SAS/C software contains various programs and libraries, which may be redistributed subject to the restrictions set forth below. These programs and libraries are part of either Limited Distribution Libraries or the SAS/C Redistribution Package. Listings of the programs and libraries included under each of these headings are included within the SAS/C software and/or in the SAS/C software documentation provided by the Institute. Consult the SAS/C software documentation for information on how to access these listings.

 - (1) The Limited Distribution Libraries and the SAS/C Redistribution Package are copyrighted property of the Institute and shall be used by Customer only as follows:
 - a. Limited Distribution Libraries

Customer and successive third parties may copy and distribute the files included in the Limited Distribution Libraries and create derivative works based on these files. These files may be distributed worldwide.
 - b. SAS/C Redistribution Package

The SAS/C Redistribution Package files do not include a trial period. Customer's distribution of the SAS/C Redistribution Package files is subject to an annual license fee in addition to the license fee paid by Customer for the SAS/C software. SAS/C Redistribution Package files may only be distributed as a component of Customer's product created using the SAS/C software. In no event shall such files be distributed by Customer separate and apart from Customer's product nor shall Customer authorize third parties to redistribute such files in any manner. These files may be distributed worldwide.
 - (2) Customer shall not use the Institute's name, logo, or trademarks to market products Customer develops using the SAS/C software. The Institute has no support obligations to third parties.
 - (3) Customer is responsible for compliance with any applicable import and export regulations and for compliance with all applicable laws and regulations in the country of distribution and/or use.
 - (4) To the extent authorized by Texas law and constitution, Customer agrees to indemnify the Institute and hold the Institute harmless from any liability or damages related to Customer's use or distribution, in whole or in part, of the Limited Distribution Libraries or the SAS/C Redistribution Package. This indemnification obligation does not apply to

the extent the Agreement, as modified by these provisions, requires the Institute to indemnify Customer.

- l. **Licensing Provisions Specific to SAS/WAREHOUSE ADMINISTRATOR™ Software**
The SAS/Warehouse Administrator is licensed on a per named administrator basis. Upon licensing this Software, Customer must provide the Institute with the name(s) of the warehouse administrator(s). As those administrators change, Customer may call or write the Institute to update the Institute. The warehouse administrator must be a Customer employee.

- m. **Licensing Provisions Specific to Enterprise Reporter™ Software**
 - (1) The Enterprise Reporter software is licensed on a “Total User” basis. All individuals who have access to the Enterprise Reporter software during a license period must be counted in the number of Total Users.
 - (2) Enterprise Reporter will operate on both a server and personal computer and Customer will receive a product authorization code for each platform. As long as Customer does not exceed the number of Total Users licensed, Customer may install Enterprise Reporter on either or both platforms. It is Customer’s responsibility to ensure the correct product authorization code is applied.

- n. **Software Maintenance and Fees**
 - (1) Fees for particular versions or releases of the Software may differ depending upon previous versions or releases licensed by Customer. Fees for hardware changes or upgrades in users which result in additional license fees will be billed under the license fee schedule and will be effective and invoiced as of the date of change or upgrade.
 - (2) Maintenance is available for desktop and server based Software licensed under this Agreement. Maintenance beyond the first twelve months of the license will be made available for each designated server or user increment upon payment of the applicable yearly Maintenance fees contained in the Price List. Institute Maintenance in the form of updates, new releases, and fixes is cumulative. If at any time during the term of this Agreement Customer elects not to order Maintenance from the Institute for a server or user increment such that there is an interruption in Maintenance for that server or user increment for the licensed Software, reinstatement of such Maintenance will require payment for all preceding skipped annual periods of Maintenance for that server or user increment of the licensed Software.

- o. **Ordering**
To license the Software or order Maintenance, Customer will provide orders which contain complete product, pricing, hardware, operating system, software product, version, if applicable, and media information, and identification and location of the Government’s premises where the Software is shipped. This Agreement will be incorporated into Customer’s order. The Institute has the right to request and receive written clarification of any order, which does not contain complete information. Customer agrees that, except for the above information, all other terms of Customer’s orders are expressly deleted and rejected. Acceptance by the Institute of Customer's order does not constitute an amendment to this Agreement.

- p. **Institute Distribution of the Software and Documentation**
Upon receipt of an acceptable order from Customer, the Institute will ship F.O.B. destination (using its best efforts to ship within ten business days) to the designated contact on the order the media for the Software being licensed. One copy of the applicable Software documentation for each Software product ordered will also be provided. For desktop and server based Software, the Software media shipped will be preauthorized to operate for fifty (50) years. If licensed for a server, the Software media shipped will be preauthorized to operate on the designated server for fifty (50) years. If licensed for a mainframe, the Software media shipped will be preauthorized to operate on the designated mainframe for the designated license period.

- q. **Hardware and Operating System Support**
During the term of this Agreement, the Software will operate on hardware and operating systems listed in the Price List (which may be modified) which are compatible with and supported by the licensed Version of the Software.
- r. **Upgrades Between User Increments**
Customer must notify the Institute within thirty (30) days of all upgrades in designated users between user increment licenses or upgrades between mainframes identified in Attachment A. Upgrade fees within the same operating system are calculated by the difference in the corresponding fees (and the difference in the corresponding Maintenance fees, when applicable) for the licensed Software. No upgrades are available for a move to a different operating system.
- s. **Source Code**
Source code from which the Software object code is derived (“Source Code”) is not being provided and is an Institute trade secret to which access is not authorized. Except to the extent allowed by law, neither Customer nor any other User may reverse assemble or decompile the Software or otherwise attempt to recreate the Source Code.
- t. **Termination**
To the extent consistent with Texas records retention laws, Upon termination of this Agreement, Customer agrees to delete or destroy all Software in its possession that is not currently paid for and certify the same to the Institute. Upon termination of any license, Customer agrees to reclaim, delete, and destroy the Software product at issue and certify the same to the Institute.
- u. **Late Shipment**
The Institute will use its best efforts to ship the Software within ten (10) days of receipt of an acceptable order. However, the Institute does not guarantee specific delivery dates. If the Institute fails to deliver the Software in the time frame required by the Customer, the Customer may cancel its order. The Institute will not be responsible for any losses incurred by the Customer in purchasing software elsewhere.
- v. **Continuing Obligation**
Obligations in this Agreement, which by their nature are continuing, survive termination or expiration. Upon termination or expiration of the license, or when a User is no longer authorized to access the Software, Customer agrees to reclaim, delete and destroy the Software product at issue.
- w. Except as herein modified, all terms and conditions of the Agreement remain in full force and effect and are hereby ratified and confirmed.
- x. **License Terms Specific to the following SOFTWARE SOLUTIONS AND SUITES:**
SAS® Human Capital Management Software, SAS® Consolidation and Reporting Software, SAS® Planning Software, SAS® Financial Management Adapter for SAP Software, Enterprise Integration Technology Software, SAS™ Integration Technologies Software, WebHound™, SAS® Text Miner Software, SAS® Human Capital Management Scorecard Software, SAS® Information Delivery Portal Software, SAS® Strategic Performance Management Software, SAS® Activity-Based Management Software (including SAS® Activity-Based Management Adapter for SAP), SAS® IT Resource Management Software (including SAS® IT Resource Management Adapter for SAP), SAS® Data Integration Server Software, SAS® Enterprise Data Integration Server Software, SAS® Intelligence Storage Software, SAS® Data Quality Solution Software, SAS® BI Server Software, SAS® Enterprise BI Server Software, SAS® Data Surveyor Software, SAS® IT Service Level Management Software, SAS® Financial Management for SAS® 9 Software (including SAS® Financial Management Adapter for SAP), Platform Suite for SAS Software, Restricted Use Infrastructure Server Software, SAS® Forecast Server Software, SAS® Spend Analysis Software, SAS® Sourcing Strategy Software, SAS® Sourcing Data Quality Software, SAS® Procurement Scorecard Software, SAS® Inventory Optimization

Software, JMP® Genomics Software (includes JMP® Genetics, JMP® Microarray, and JMP® Proteomics Software), SAS® Enterprise Miner for Desktop Software, SAS® Metadata Bridges Software, SAS® Model Manager Software, and SAS® Enterprise Model Management Software.

The following terms govern Customer's use of each of the following listed SAS Software offerings which consist of combinations of SAS software components or which include sub-components supplied by third parties and SAS (collectively, "Software Solutions and Suites," or singly, "Software Solution or Suite"): SAS® Human Capital Management Software, SAS® Consolidation and Reporting Software, SAS® Planning Software, SAS® Financial Management Adapter for SAP Software, Enterprise Integration Technology Software, SAS™ Integration Technologies Software, WebHound™, SAS® Text Miner Software, SAS® Human Capital Management Scorecard Software, SAS® Information Delivery Portal Software, SAS® Strategic Performance Management Software, SAS® Activity-Based Management Software (including SAS® Activity-Based Management Adapter for SAP), SAS® IT Resource Management Software (including SAS® IT Resource Management Adapter for SAP), SAS® Data Integration Server Software, SAS® Enterprise Data Integration Server Software, SAS® Intelligence Storage Software, SAS® Data Quality Solution Software, SAS® BI Server Software, SAS® Enterprise BI Server Software, SAS® Data Surveyor Software, SAS® IT Service Level Management Software, SAS® Financial Management for SAS® 9 Software (including SAS® Financial Management Adapter for SAP), Platform Suite for SAS Software, Restricted Use Infrastructure Server Software, SAS® Forecast Server Software, SAS® Spend Analysis Software, SAS® Sourcing Strategy Software, SAS® Sourcing Data Quality Software, SAS® Procurement Scorecard Software, SAS® Inventory Optimization Software, JMP® Genomics Software (includes JMP® Genetics, JMP® Microarray, and JMP® Proteomics Software), SAS® Enterprise Miner for Desktop Software, SAS® Metadata Bridges Software, SAS® Model Manager Software, and SAS® Software. The Institute shall be referred to as "SAS" herein.

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- (1) Software Solutions and Suites consist of bundled components. Customer may use such bundled components only through the application under which they are bundled, and may not use or deploy any individual component as a replacement for other SAS Software. Individual components may be provided to Customer on the same or different media as other components of the Software Solution or Suite. SAS may add, modify or delete individual components in new releases. All additional and modified component software shall be governed by the terms of this Agreement.
- (2) Specific usage or system requirements related to particular Software Solutions and Suites, if applicable, may be included in the price lists for such products. Software Solutions and Suites may only be used by Customer if Customer has a license to use the applicable SAS Software on appropriate hardware which is to be specified in Customers' orders for the licenses of such Software Solutions and Suites.
- (3) Subject to any specific requirements or restrictions applicable to a Software Solution or Suite, Customer's employees ("Employees") and any authorized third party end users ("Third Party End Users") may use Software Solutions and Suites to access static, web-based applications written in SAS software ("Applications") that reside on the same hardware for which the Software Solutions and Suites are licensed by Customer. Except with SAS' prior written consent, Customer shall not use or allow any Employees or Third Party End Users to use the Software Solutions or Suites, whether directly or through any Application, to process or permit to be processed any third party data or to access any SAS Software that resides on any other hardware unless the Software is also licensed for use on that other hardware. The Applications must be written such that Third Party End Users may not edit SAS programs or have access to any other capability for free form programming in SAS Software. Customer may not use any Software Solutions or Suites to download or otherwise export or re-export

any software or any underlying information or technology except in full compliance with all laws and regulations of the United States of America and any other applicable laws and regulations. To the extent authorized by Texas law and constitution, Customer is responsible for and will hold SAS harmless from any damages suffered by SAS and any liability incurred by SAS as a result of Third Party End User access to SAS software. The United Nations Convention on Contracts for the International Sale of Goods is excluded from this license.

- (4) The warehouse administration function of certain Software Solutions and Suites is licensed on a per named administrator basis. Upon licensing this Software, Customer must provide SAS with the name(s) of the warehouse administrator(s). As those administrators change, Customer may call or write SAS to update SAS. The warehouse administrator must be a Customer employee or other authorized user under the license.
- (5) Unless otherwise authorized by SAS, the AppDev Studio™ functionality of any Software Suite may only be used for development and testing purposes, and may not be used for production use (although the applications and/or applets created with AppDev Studio may be used in a production environment).
- (6) Customer may use Software Suites containing a "performance data warehouse" solely for the purpose of web log data reporting and analysis through a "performance data warehouse." A "performance data warehouse" is the data warehouse or structure created by certain Software Suites to house detailed and summarized performance data and other information necessary to manage the web log data Customer provides to such Software Suite. Customer may not modify such Software Suites to use elements of such Software Suites' functionality to analyze or report on data outside the performance data warehouse.
- (7) Customer acknowledges that certain Software Solutions and Suites include components which contain software licensed to SAS by Sun Microsystems, Inc. ("Sun Microsystems"), Microsoft Corporation ("Microsoft"), and certain other vendors (collectively, "Third Party Software"). The following additional terms shall apply to the Third Party Software and shall take precedence over any conflicting terms in the license:
 - a. Customer may not distribute the Third Party Software to any third party in any modified form. The Third Party Software may not be leased, assigned, or sublicensed, in whole or in part. The Third Party Software is not designed or intended for use in online control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility. Customer warrants that Customer will not use or redistribute the Third Party Software for such purposes. This license does not authorize Customer to use any of SAS' names, trademarks or logos or any of its licensors' names, trademarks and logos, including but not limited to Sun Microsystems' and Microsoft's trade names, trademarks or logos.
 - b. Use, duplication, or disclosure of the Third Party Software and related documentation by the US Government is subject to restrictions as set forth in Rights in Technical Data and Computer Software Clauses in DFARS 252.277-7013(c)(1)(ii) and FAR 52.227-19, Commercial Computer Software – Restricted Rights (June 1987) as applicable and the license.
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DAMAGES, OR (b) FOR ANY CLAIM BY ANY OTHER PARTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

- (8) If Netscape LDAP Directory Server or iPlanet™ Software (collectively "LDAP Software") is furnished to Customer as a component of a given Software Solution or Suite, the following additional terms shall apply and shall take precedence over any conflicting terms in the license:
- a. Customer acknowledges that the LDAP Software is being provided as a bundled product with certain Software Solutions and Suites and not as a separate, stand-alone product. Customer may not use the LDAP Software except in connection with Customer's use of the Software Solution or Suite with which it is bundled. Customer shall permit no more than seven hundred (700) Users in total to use or otherwise access the LDAP Software. For purposes of the above-referenced restriction to seven hundred (700) Users, any individual who has an entry in the directory server shall be considered a User (this does not include resources such as printers or other servers). Such Users shall include all individuals who have access to the LDAP Software's services and not just to the number of individuals who may access those services concurrently. Customer may use the LDAP Software only for directory services for the Software Solution or Suite with which the LDAP Software is bundled, and shall not use the LDAP Software to provide directory services for any other software products or to provide stand-alone directory services.
 - b. SAS may terminate Customer's rights with respect to the LDAP Software immediately in the event of any breach by Customer of SAS' or SAS' licensors' intellectual property rights in the LDAP Software.
 - c. Title, ownership rights, and intellectual property rights in the LDAP Software shall remain in SAS' licensors and suppliers. Customer acknowledges such ownership and intellectual property rights, and will not take any action to jeopardize, limit or interfere in any manner with such rights.
 - d. Customer shall not (a) modify any header files or class libraries in the LDAP Software, (b) create or alter tables or reports relating to the database portion of the LDAP Software (except as necessary for operating the LDAP Software), (c) publish any results of benchmark tests run on the LDAP Software to a third party without SAS' consent, or (d) use the database provided for use with the LDAP Software with any other product. Customer may copy and use the header files contained in the LDAP Software solely to create and distribute programs to interface with the server application programming interfaces (APIs).

The LDAP Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life-support machines or weapons systems, in which the failure of the LDAP Software could lead directly to death, personal injury, or severe physical or environmental damage ("High-Risk Activities"). Accordingly, SAS and its licensors and suppliers specifically disclaim any express or implied warranty of fitness for High-Risk Activities. Customer agrees that SAS and its licensors and suppliers will not be liable for any claims or damages arising from the use of the LDAP Software in such applications.

- (9) Unless otherwise authorized by SAS, the Enterprise Guide® functionality of any Software Solution or Suite may not be used to access a distributed server implementation of SAS software or SAS data on a server unless Customer has also licensed SAS/IntrNet® software, SAS® Information Delivery Portal software, or SAS® Integration Technologies software for that server.

- (10) SAS® Financial Management for SAS® 9 Software is subject to the following additional terms and conditions:
- a. SAS® Financial Management for SAS® 9 Software is licensed for use by the Customer on a single Customer server except as specified in this section with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS® Financial Management for SAS® 9 Software and the Metadata Server component of that Software will be installed. In addition, the Customer's license of SAS® Financial Management for SAS® 9 Software is limited to and the license and maintenance fees payable by Customer for the Software are based on the quantities of each type of user for which the license and subsequent maintenance have been purchased by the Customer. The types of users for which a license and maintenance of the SAS® Financial Management for SAS® 9 Software may be purchased are as follows:
 - (i) Administrative Users – Administrative Users are users who access the SAS® Financial Management for SAS® 9 Software to perform installation of and set and maintain parameters around the use of, applications running the SAS® Financial Management for SAS® 9 Software.
 - (ii) Power Users – Power Users are users who may access the SAS® Financial Management for SAS® 9 Software to use the full functionality of that Software.
 - (iii) Business Users – Business Users are users who may access the SAS® Financial Management for SAS® 9 Software solely to utilize applications created by Power Users to enter, validate, and manage data.
 - (iv) Dashboard Users – Dashboard Users are users who access the SAS® Financial Management for SAS® 9 Software in the Dashboard. The “Dashboard” is a web-based interface component of the Software which allows users to view and analyze content.
 - (v) For each of the foregoing user types, the quantity licensed by the Customer is the total number of such users (not concurrent users) accessing the SAS® Financial Management for SAS® 9 Software during the initial 12 months of the license, or during any subsequent annual maintenance period (whether or not the Customer purchases maintenance for the SAS® Financial Management for SAS® 9 Software with respect to such annual maintenance).
 - b. The Customer's license of the SAS® Financial Management for SAS® 9 Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Financial Management for SAS® 9 Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:
 - (i) Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS® Financial Management for SAS® 9 Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS' classification of the Customer server on which the licensed SAS® Financial Management for SAS® 9 Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS® Financial Management for SAS® 9 Software environment.
 - (ii) AppDev Studio PC Use – The AppDev Studio Software component of the SAS® Financial Management for SAS® 9 Software is licensed for use by the greater of (A) the number of users authorized to access the AppDev

Studio Software component, or (B) the number of personal computers on which such AppDev Studio Software component will be installed and available for processing on the designated operating system provided that such quantity of users shall be the total number of users (not concurrent users) accessing the AppDev Studio Software component and such quantity of personal computers shall be the total number of personal computers on which the AppDev Studio Software component is installed and available for processing during the initial 12 month license period or during any subsequent annual maintenance period (whether or not the Customer purchases maintenance for the SAS® Financial Management for SAS® 9 Software with respect to such annual maintenance) and provided further that the number of such users or the number of such personal computers shall not be greater than a quantity of two (2) such users or personal computers, whichever is greater. The AppDev Studio Software component may only be used for development purposes.

- c. The license of SAS® Financial Management for SAS® 9 Software also includes a license of a SAS/Access Software product chosen by the Customer.
- (11) SAS® Financial Management Adapter for SAP Software is licensed for use by Customer only with Customer's use of SAS® Financial Management for SAS® 9 Software that is also licensed by Customer. SAS® Financial Management Adapter for SAP Software must be licensed for the same number of Customer's licensed Power Users with respect to such SAS® Financial Management for SAS® 9 Software.
 - (12) Platform Suite for SAS Software is licensed for use by Customer only with Customer's use of SAS® BI Server Software or SAS® Enterprise BI Server Software that is also licensed by the Customer. Platform Suite for SAS Software may not be used by Customer with any other product of SAS or any third party
 - (13) Restricted Use Infrastructure Server Software ("RUIS Software") is licensed subject to the following:
 - a. RUIS Software is licensed for use by Customer only with Customer's use of a SAS software solution in which the RUIS Software is embedded by SAS ("SAS Solution") and which the Customer has also licensed. RUIS Software may not be used by Customer with any other product of SAS or any third party.
 - b. RUIS Software is licensed for use on the hardware for which the applicable SAS Solution has also been licensed by the Customer. The license and maintenance fees payable by the Customer with respect to the RUIS Software are based on the number of processors of Customer's server on which the RUIS Software resides.
 - c. RUIS Software includes README files with additional terms and conditions which govern the license of the use of the RUIS Software in connection with Customer's license of the applicable SAS Solution
 - (14) SAS® Strategic Performance Management Software is subject to the following additional terms and conditions:
 - a. The Customer's license of the SAS® Strategic Performance Management Software commencing with Release 2.0 of the Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Strategic Performance Management Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:

- (i) Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS® Strategic Performance Management Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS’ classification of the Customer server on which the licensed SAS® Strategic Performance Management Software is installed, solely for the purpose of deploying the Strategic Performance Management Software environment.
 - (ii) AppDev Studio PC Use – The AppDev Studio Software component of the SAS® Strategic Performance Management Software is licensed for use by the greater of (A) the total number of users (not concurrent) authorized to access the AppDev Studio Software component, or (B) the total number of personal computers on which such AppDev Studio Software component will be installed and available for processing on the designated operating system, respectively, during the initial 12 month license period or during any subsequent annual maintenance period (whether or not the Customer purchases maintenance for the SAS® Strategic Performance Management Software with respect to such annual maintenance), provided that the number of such users or the number of such personal computers shall not be greater than a quantity of two (2) such users or personal computers, whichever is greater. The AppDev Studio Software component may only be used for development purposes.
- (15) SAS® Forecast Server Software is subject to the following additional terms and conditions:
- a. SAS® Forecast Server Software is licensed for use by the Customer on a single Customer server except as specified in this section with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS® Forecast Server Software and the Metadata Server component of that Software will be installed.
 - b. The Customer’s license of the SAS® Forecast Server Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Forecast Server Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:
 - i. Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS® Forecast Server Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS’ classification of the Customer server on which the licensed SAS® Forecast Server Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS® Forecast Server Software environment.
- (16) SAS® Spend Analysis Software is subject to the following additional terms and conditions:
- a. SAS® Spend Analysis Software is licensed for use by the Customer on a single Customer server except as specified in this sections with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS Spend Analysis Software and the Metadata Server component of that Software will be installed. In addition, the Customer’s license of SAS® Spend Analysis Software is limited to and the license and maintenance fees payable by

Customer for the Software are based on the Customer's "Spend". As used herein "Spend" shall mean the total of all funds that are available and allocated to Customer with respect to (i) the Customer's fiscal year ending immediately preceding the date of Customer's order for the initial license or maintenance renewal, as applicable, of the Software and (ii) the procurement (whether by purchase, lease, license, or otherwise) of any and all goods and services for use directly or indirectly in any of Customer's operations or activities. Customer shall annually report in writing to Contractor and to SAS any changes to Customer's Spend for each succeeding Customer fiscal year at least sixty (60) days prior to the end of the initial twelve (12) months of the Customer's license of, or the end of the then-current annual maintenance period with respect to, as applicable, the SAS® Spend Analysis Software.

b. The Customer's license of the SAS® Spend Analysis Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Spend Analysis Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:

i. Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS® Spend Analysis Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS' classification of the Customer server on which the licensed SAS® Spend Analysis Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS® Spend Analysis Software environment.

ii. AppDev Studio PC Use – The AppDev Studio Software component of the SAS Spend Analysis Software is licensed for use by the greater of (A) the number of users authorized to access the AppDev Studio Software component, or (B) the number of personal computers on which such AppDev Studio Software component will be installed and available for processing on the designated operating system provided that such quantity of users shall be the total number of users (not concurrent users) accessing the AppDev Studio Software component and such quantity of personal computers shall be the total of personal computers on which the AppDev Studio Software component is installed and available for processing during the initial 12 month license period or during any subsequent annual maintenance period (whether or not the Customer purchases maintenance for the SAS® Spend Analysis Software with respect to such annual maintenance) and provided further that the number of such users or the number of such personal computers shall not be greater than a quantity of two (2) such users or personal computers, whichever is greater. The AppDev Studio Software component may only be used for development purposes.

c. The license of SAS® Spend Analysis Software also includes a license of a SAS/Access® Software product chosen by the Customer.

(17) SAS® Sourcing Strategy Software is subject to the following additional terms and conditions:

a. SAS® Sourcing Strategy Software is licensed for use by the Customer on a single Customer server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on

which the SAS® Sourcing Strategy Software will be installed. In addition, the Customer's license of SAS® Sourcing Strategy Software is limited to and the license and maintenance fees payable by Customer for the Software are based on the Customer's "Spend". As used herein "Spend" shall mean the total of all funds that are available and allocated to Customer with respect to (i) the Customer's fiscal year ending immediately preceding the date of Customer's order for the initial license or maintenance renewal, as applicable, of the Software and (ii) the procurement (whether by purchase, lease, license, or otherwise) of any and all goods and services for use directly or indirectly in any of Customer's operations or activities. Customer shall annually report in writing to Contractor and to SAS any changes to Customer's Spend for each succeeding Customer fiscal year at least sixty (60) days prior to the end of the initial twelve (12) months of the Customer's license of, or the end of the then-current annual maintenance period with respect to, as applicable, the SAS® Sourcing Strategy Software.

- b. As a prerequisite to purchasing an initial license or annual maintenance of SAS® Sourcing Strategy Software, Customer is required to have also licensed SAS Spend Analysis Software and, if applicable to have purchased current annual maintenance for such SAS® Spend Analysis Software. The applicable amount of Customer's Spend with respect to its license or annual maintenance fees, as applicable for SAS® Sourcing Strategy Software shall be the same as the amount of Customer's Spend with respect to Customer's license or then-current annual maintenance, as applicable of such SAS® Spend Analysis Software.

(18) SAS® Sourcing Data Quality Software is subject to the following additional terms and conditions:

- a. SAS® Sourcing Data Quality Software is licensed for use by the Customer on a single Customer server except as specified in this sections with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS® Spend Analysis Software and the Metadata Server component of that Software will be installed. In addition, the Customer's license of SAS® Spend Analysis Software is limited to and the license and maintenance fees payable by Customer for the Software are based on the Customer's "Spend". As used herein "Spend" shall mean the total of all funds that are available and allocated to Customer with respect to (i) the Customer's fiscal year ending immediately preceding the date of Customer's order for the initial license or maintenance renewal, as applicable, of the Software and (ii) the procurement (whether by purchase, lease, license, or otherwise) of any and all goods and services for use directly or indirectly in any of Customer's operations or activities. Customer shall annually report in writing to Contractor and to SAS any changes to Customer's Spend for each succeeding Customer fiscal year at least sixty (60) days prior to the end of the initial twelve (12) months of the Customer's license of, or the end of the then-current annual maintenance period with respect to, as applicable, the SAS® Sourcing Data Quality Software.
- b. The Customer's license of the SAS® Sourcing Data Quality Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Sourcing Data Quality Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:

- i. Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS® Sourcing Data Quality Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS’ classification of the Customer server on which the licensed SAS® Sourcing Data Quality Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS® Sourcing Data Quality Software environment.
 - ii. Data Quality Client Components Total Use -- The Data Quality Client Components of the SAS® Sourcing Data Quality Software which consist of dfPower Quality, dfPower Customize, and dfPower Profile software are licensed for use based on the total number of users (not concurrent users) who access any of such Components during the initial twelve (12) month license period of the SAS® Sourcing Data Quality Software or during any subsequent annual maintenance period (whether or not the Customer purchases maintenance for SAS® Sourcing Data Quality Software with respect to such annual maintenance), and provided that the number of such users shall not be greater than a quantity of one (1) such user.
 - c. The license of SAS® Sourcing Data Quality Software also includes (i) a license of two (2) SAS/Access® Software product chosen by the Customer, and (ii) a license of SAS® Quality Knowledge Base Locale Software (the locale/language shall be US English, unless another available locale/language is chosen by Customer at the time the license of SAS® Sourcing Data Quality Software is ordered by Customer).
- (19) SAS® Procurement Scorecard Software is subject to the following additional terms and conditions
- a. SAS® Procurement Scorecard Software is licensed for use by the Customer on a single Customer server except as specified in this sections with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS® Procurement Scorecard Software and the Metadata Server component of that Software will be installed. In addition, the Customer’s license of SAS® Procurement Scorecard Software is limited to and the license and maintenance fees payable by Customer for the Software are based on the Customer’s “Spend”. As used herein “Spend” shall mean the total of all funds that are available and allocated to Customer with respect to (i) the Customer’s fiscal year ending immediately preceding the date of Customer’s order for the initial license or maintenance renewal, as applicable, of the Software and (ii) the procurement (whether by purchase, lease, license, or otherwise) of any and all goods and services for use directly or indirectly in any of Customer’s operations or activities. Customer shall annually report in writing to Contractor and to SAS any changes to Customer’s Spend for each succeeding Customer fiscal year at least sixty (60) days prior to the end of the initial twelve (12) months of the Customer’s license of, or the end of the then-current annual maintenance period with respect to, as applicable, the SAS® Procurement Scorecard Software.
 - b. The Customer’s license of the SAS® Procurement Scorecard Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Procurement Scorecard Software and the quantities of

such types of components for which the license or maintenance has been purchased by the Customer:

- i. Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS® Procurement Scorecard Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS’ classification of the Customer server on which the licensed SAS® Procurement Scorecard Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS® Procurement Scorecard Software environment.
 - ii. AppDev Studio PC Use – The AppDev Studio Software component of the SAS® Procurement Scorecard Software is licensed for use by the greater of (A) the number of users authorized to access the AppDev Studio Software component, or (B) the number of personal computers on which such AppDev Studio Software component will be installed and available for processing on the designated operating system provided that such quantity of users shall be the total number of users (not concurrent users) accessing the AppDev Studio Software component and such quantity of personal computers shall be the total of personal computers on which the AppDev Studio Software component is installed and available for processing during the initial 12 month license period or during any subsequent annual maintenance period (whether or not the Customer purchases maintenance for the SAS® Procurement Scorecard Software with respect to such annual maintenance) and provided further that the number of such users or the number of such personal computers shall not be greater than a quantity of two (2) such users or personal computers, whichever is greater. The AppDev Studio Software component may only be used for development purposes.
- c. The license of SAS® Procurement Scorecard Software also includes a license of SAS/Access® Software product chosen by the Customer.
- (20) SAS Data Integration Server Software is subject to the following additional terms and conditions:
- a. SAS Data Integration Server Software is licensed for use by the Customer on a single Customer server except as specified in this section with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS Data Integration Server Software and the Metadata Server component of that Software will be installed.
 - b. The Customer’s license of the SAS Data Integration Server Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS Data Integration Server Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:
 - i. Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS Data Integration Server Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS’ classification of the Customer server on which the licensed SAS Data Integration Server Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS Data Integration Server Software environment.
 - c. If the Customer has previously licensed the Enterprise Integration Technologies bundle of SAS software (“EIT Software”) for used on the same Customer hardware

and with the same operating system with respect to which Customer has licensed the SAS Data Integration Server Software and the Customer's annual license or annual maintenance, as applicable, with respect to that EIT Software is current as of the commencement date ("DILB Date") of Customer's license of the SAS Data Integration Server Software, then as of the DILB Date Customer's license of the EIT Software shall be cancelled and superseded as follows:

- i. The SAS/Connect and SAS Integration Technologies Software that are components of the EIT Software are included in Customer's license of the SAS Data Integration Server Software and the license and maintenance, as applicable, of such SAS/Connect and SAS Integration Technologies Software, shall be included in the fees payable by Customer for the license and maintenance, as applicable, of the SAS Data Integration Server Software;
- ii. Customer's license of SAS/IntrNet Software through the license of the EIT Software shall be converted to a license of such SAS/IntrNet Software on a stand-alone basis for the same license term as Customer's license of such EIT Software (prior to the cancellation of the license of the EIT Software as provided above). If applicable, the current annual maintenance period with respect to such EIT Software (prior to cancellation of the license as provided herein) shall apply to such SAS/IntrNet Software.

(21) SAS Enterprise Data Integration Server Software is subject to the following additional terms and conditions:

- a. SAS Enterprise Data Integration Server Software is licensed for use by the Customer on a single Customer server except as specified in this section with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS Enterprise Data Integration Server Software and the Metadata Server component of that Software will be installed.
- b. The Customer's license of the SAS Enterprise Data Integration Server Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS Enterprise Data Integration Server Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:
 - i. Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS Enterprise Data Integration Server Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS classification of the Customer server on which the licensed SAS Enterprise Data Integration Server is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS Enterprise Data Integration Server Software environment.
- c. If the Customer has previously licensed the Enterprise Integration Technologies bundle of SAS Software ("EIT Software") for use on the same Customer hardware and with the same operating system with respect to which Customer has licensed the SAS Enterprise Data Integration Server Software and the Customer's annual license or annual maintenance, as applicable, with respect to that EIT Software is current as of the commencement date ("EDILB Date") of Customer's license of the SAS Enterprise Data Integration Server Software, then as of the EDILB Date Customer's license of the EIT Software shall be cancelled and superseded as follows:
 - i. The SAS/Connect and SAS Integration Technologies Software that are components of the EIT Software are included in Customer's license of the SAS Enterprise Data Integration Server Software and the license and maintenance, as applicable, of such SAS/Connect and SAS Integration Technologies Software,

- shall be included in the fees payable by Customer for license and maintenance, as applicable, of the SAS Enterprise Data Integration Server Software;
- ii. Customer's license of SAS IntrNet Software through the license of the EIT Software shall be converted to a license of such SAS/IntrNet Software on a stand-alone basis for the same license term as Customer's license of such EIT Software (prior to the cancellation of the license of the EIT Software as provided above). If applicable, the current annual maintenance period with respect to such EIT Software (prior to the cancellation of the license as provided herein) shall apply to such SAS/IntrNet Software.
- d. The license SAS Enterprise Data Integration Server Software also includes a license of (i) two (2) SAS/Access Software products chosen by the Customer, (ii) SAS Quality Knowledge Base Locale Software (the locale/language chosen by Customer), and (iii) dfPower Quality Software, dfPower Customize Software, and dfPower Profile Software (collectively the "dfPower Components"), provided that each of the dfPower Components is licensed for use by the greater of (A) the number of users authorized to access the applicable dfPower Component, or (B) the number of personal computers on which such dfPower Component will be installed and available for processing on the designated operating system. Such quantity of users shall be the total number of users (not concurrent users) accessing the applicable dfPower Component and such quantity of personal computers shall be the total number of personal computers on which such dfPower Component is installed and available for processing during the initial 12 month license period or during any subsequent annual maintenance period (whether or not the Customer purchases maintenance for the SAS Enterprise Data Integration Server Software with respect to such annual maintenance) the number of such users or the number of such personal computers with respect to the dfPower Quality Software, whichever is greater, or of one (1) such user or personal computer with respect to each of the dfPower Customize and dfPower Profile Software, whichever is greater in each case.
- (22) SAS® Enterprise Model Management Software is subject to the following additional terms and conditions:
- a. SAS® Enterprise Model Management Software is licensed for use by the Customer on a single Customer server except as specified in this section with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS® Enterprise Model Management Software and the Metadata Server component of that Software will be installed.
 - b. The Customer's license of the SAS® Enterprise Model Management Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Enterprise Model Management Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:
 - i. Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by SAS) of the SAS® Enterprise Model Management Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS' classification of the Customer server on which the licensed SAS® Enterprise Model Management Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS® Enterprise Model Management Software environment.
 - ii. The license of SAS® Enterprise Model Management Software also includes a license of SAS® Enterprise Model Management Client Software ("EMM Client

Component”), provided that the EMM Client Component is licensed for use by the greater of (A) the number of users authorized to access EMM Client Component will be installed and available for processing on the designated operating system. Such quantity of users shall be the total number of users (not concurrent users) accessing the EMM Client Component and such quantity of personal computers shall be the total number of personal computers on which such EMM Client Component is installed and available for processing during the initial 12 month license period or during any subsequent annual maintenance period (whether or not the Customer purchases maintenance for the SAS® Enterprise Model Management Software with respect to such annual maintenance). The number of such users or the number of such personal computers shall not be greater than a quantity of five (5) such users or personal computers whichever is greater.

Appendix C

TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES

1. SCOPE

- a. The Contractor shall provide training courses normally available to commercial customers, which will permit Customer users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's facility and/or at the Customer's location, as agreed to by the Contractor and the Customer.
- c. As used herein the "SAS Training Services" shall mean the following:
 - SAS Public Training -Tier 1 Course Per/Day Per/Student
 - SAS Public Training -Tier 2 Course Per/Day Per/Student
 - SAS Onsite Training -Tier 1 Course Per/Day
 - SAS Onsite Training -Tier 2 Course Per/Day
 - SAS Onsite Training – Additional student per day for each student over the class limit
 - SAS Enterprise Professional Training Offer-30 Day
 - SAS Enterprise Professional Training Offer-45 Day
 - SAS Enterprise Professional Training Offer-60 Day
 - SAS Enterprise Professional Training Offer-90 Day
 - SAS Enterprise Professional Training Offer-120 Day

Note: SAS Onsite Training is provided at the Customer site or, if agreed by the Customer and SAS, at a SAS training facility.

2. ORDER

Written orders, credit card orders, and orders placed under purchase agreements (PAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course except as follows:

- a. For SAS Onsite Training which is sold for an initial increment of twenty students, orders are not required to include the name of the students attending the course, and
- b. For the SAS Enterprise Professional Training Offer (EPTO) this information will not be included on the order for the EPTO but will be required at the time the SAS Public Training or SAS Onsite Training is scheduled by the Customer, except that the name of the students attending the SAS Onsite Training is not required and the contracted dollar amount of the course would not apply to SAS Training Services scheduled under the EPTO.

3. TIME OF DELIVERY

The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the Customer.

4. CANCELLATION AND RESCHEDULING

a. This paragraph only applies to SAS Public Training courses. The Customer will notify the Contractor at least three (3) calendar days before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the Customer to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the Customer will modify its original training order to specify the time and date of the rescheduled training class. The applicable fee for SAS Public Training that is cancelled on less than three (3) calendar days notice by the Customer shall not be waived or reduced and shall remain due and payable by the Customer as ordered. However, substitutions (name changes) by the Customer with respect to SAS Public Training are accepted at anytime prior to the event as set forth in paragraph c below. In addition, the Contractor will permit the Customer to reschedule attendance of a student at a SAS Public Training course at no additional charge provided that notification of the rescheduling to a later availability date of the course is received at least twenty-four (24) hours prior to the start of the applicable SAS Public Training.

For cancellation and rescheduling with respect to EPTO orders, the cancellation policy set forth under the "Guidelines" under Section 10 below shall apply.

With respect to SAS Onsite Training courses, the Customer may cancel without charge if notification is received by SAS by phone or in writing no later than twenty-one (21) calendar days prior to the course start date. Cancellation or rescheduling of a SAS Onsite Training course on less than 21 calendar days notice prior to the course start date is considered a cancellation and a cancellation fee of \$500.00 will be charged and invoiced separately. In addition, if non-refundable airline tickets have been purchased by SAS personnel with the Customer's approval, the Customer will be responsible for payment of the cost of the non-refundable airline tickets and if less than 21 calendar days notice is provided.

b. In the event the Customer fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the Customer will be liable for the contracted dollar amount of the training course or as stated in paragraph a. above. The Contractor agrees to permit the Customer to reschedule a student who fails to attend a SAS Public Training class within ninety (90) days from the original course date, at no additional charge provided that twenty-four (24) hours notice of rescheduling is provided as set forth in paragraph a. above, and subject to availability of the course within such ninety (90) day period.

c. For SAS Public Training the Customer reserves the right to substitute one student for another up to the first day of class.

d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the Customer, the Contractor must notify the Customer at least seventy-two (72) hours before the scheduled training date. The requirement for 72 hours notice shall apply except where Contractor is unable to conduct training due to circumstances beyond Contractor's reasonable control, including any force majeure event; provided that in such cases Contractor shall provide the Customer with notice of cancellation as soon as reasonably possible. In addition, with respect to any SAS Public Training course, Contractor may cancel such training for Contractor's convenience provided that Contractor must notify the Customer at least fourteen (14) calendar days prior to the scheduled training date.

5. FOLLOW-UP SUPPORT

The Contractor agrees to provide each student with unlimited telephone support for a period of one (1) year from the completion of the training course. During this period, the student may contact the Contractor's instructors for refresher assistance and answers to related course curriculum questions.

6. PRICE FOR TRAINING

The price that the Customer will be charged will be the Customer training price in effect at the time of order placement, or the Customer price in effect at the time the training course is conducted, whichever is less. All pricing shall be in accordance with Section 4.C. of the DIR Contract No. DIR-SDD-588.

7. INVOICES AND PAYMENT

Invoicing and payment shall be in accordance with Sections 7.B and 7.C. of Appendix A of the DIR Contract No. DIR-SDD-588.

8. FORMAT AND CONTENT OF TRAINING

a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.

b. For hands-on training courses, there must be a one-to-one assignment of IT equipment to students, except that with respect to any SAS Onsite Training, due to the nature of Onsite (Customer Site) Training the Customer is responsible for providing IT equipment to the students.

c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course. With respect to SAS Training, Contractor will provide each student with a Certificate of Training provided that the Customer furnishes to the Contractor a roster of the students attending the SAS Onsite Training.

d. The Contractor shall provide the following information for each training course offered:

- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
- (2) The length of the course;
- (3) Mandatory and desirable prerequisites for student enrollment;
- (4) The minimum and maximum number of students per class;
- (5) The locations where the course is offered;
- (6) Class schedules; and
- (7) Price (per student, per class (if applicable)).

The foregoing information is currently provided through the website referenced in subparagraph b of the first paragraph of Section 10 below.

e. For those courses conducted at the Customer's location, instructor travel charges (if applicable), including mileage and daily living expenses, must be indicated below. Rates paid as a result of travel must comply with the State of Texas Travel Regulations, as applicable, in effect on the date(s) the travel is performed.

Roundtrip coach airfare; rental car, including gas, or local transportation; hotel and per diem meal expenses; taxes; subject to State of Texas reimbursement limits.

9. "NO CHARGE" TRAINING

The Contractor shall describe any training provided with equipment and/or software provided under this contract, free of charge, in the space provided below.

NOT APPLICABLE

10. SUPPLEMENTAL TERMS

With respect to SAS Training Services identified as “SAS Public Training” or “SAS Onsite Training” the following additional terms shall apply:

- a) With respect to SAS Training Services identified as “SAS Onsite Training,” the maximum number of students that may attend an Onsite training course shall be twenty (20) students. Additional charges shall apply for each additional student in excess of twenty (20) students attending any such on-site training course to be a maximum of five (5) additional students.
- b) Only standard SAS Institute publicly available training courses are included in SAS Training Services. SAS Training Services do not include any customized content for any training. The fees for on-site training do not include fees for presenting an on-site course at a SAS training facility. Currently a listing of such courses is available at <http://support.sas.com/training/us/gsa.html>

With respect to SAS Training Services identified as “SAS Enterprise Professional Training Offer” the following additional terms shall apply:

Guidelines

The Customer must designate a representative to serve as the contact to register employees for public courses, on-site courses, Business Knowledge Series (BKS) courses, Live Web classes, the SAS Data Mining Certificate (DMC) program, SAS training center rental fees, or selected conferences.

The EPTO offer applies only to courses and events scheduled in the United States.

The Customer can choose any number of 30, 45, 60, 90, or 120 training units or a combination of the options.

EPTO units can be used to register for public courses, on-site courses, BKS courses, Live Web classes, the SAS DMC program, SAS training center rental fees, or selected conferences (“Training Events”). (These events will have varying EPTO units assigned to them according to their registration fees, e.g., 1 EPTO unit is required for one person per one public course day; 6.5 EPTO units are required for one on-site course day; 15 EPTO units are required per one SAS DMC program registration; 2 EPTO units are required for a SAS training center rental fee per one day. EPTO unit requirements vary for BKS courses, Live Web classes and selected conferences.)

EPTO units may not be used to satisfy partial billing for a registration.

Class and conference sizes are limited and space is not guaranteed. Onsite classes are limited to 20 students per class. An additional fee per student per day will be charged for each student over 20, not to exceed 25 students in total in the class.

The EPTO Administrator will issue an account number to the designated contact upon receipt of an EPTO order. The contact may begin using its EPTO units as soon as it receives an account number, but not before then.

No other discounts are applicable.

For on-site courses, travel expenses for SAS staff are additional. Expenses include roundtrip coach airfare; rental car, including gas or local transportation; taxes; hotel and per diem meal expenses. Travel reimbursement shall be in accordance with Section 4.G. of DIR Contract No. DIR-SDD-588.

CANCELLATION POLICY

EPTO training units may be reinstated to the account if cancellations are received by phone, mail or e-mail at least 3 (three) calendar days prior to the scheduled start date of an event; after that (2 calendar days or less), EPTO accounts will be charged and invoiced for the full number of corresponding EPTO training units. Substitutions (name changes) are accepted at any time prior to the event. Transfers are accepted, but they must be received no later than 24 hours from the start date of the event.

The Customer may cancel on-site courses without charge if notification is received by SAS by phone or in writing no later than 21 days prior to the course start date. Rescheduling a course less than 21 calendar days prior to course start date is considered a cancellation, and a cancellation fee of \$500 will be charged and invoiced separately. In addition, if non-refundable airline tickets have been purchased for SAS personnel with the Customer's approval, the Customer will be responsible for the cost of these tickets if less than 21 calendar days notice is provided.

Appendix C

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT)
PROFESSIONAL SERVICES**

1. SCOPE

- a. The prices, terms and conditions stated under Information Technology Professional Services apply exclusively to IT Services within the scope of this Information Technology Agreement.
- b. The Contractor shall provide services at the Contractor's facility and/or at the Customer location, as agreed to by the Contractor and the Customer.

2. ORDER

- a. Agencies may use written orders, individual purchase orders, or task orders for ordering services under this contract.
- b. All task orders are subject to the terms and conditions of the DIR contract. In the event of conflict between a task order and the DIR contract, the DIR contract will take precedence.

3. PERFORMANCE OF SERVICES

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the Customer.
- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the Customer.
- c. The Customer should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of IT Services must comply with the State of Texas Travel Regulations, as applicable, in effect on the date(s) the travel is performed.

4. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character:

If the end product of a task order is documentation, computer code or other materials delivered by SAS in connection with the Services, including any intellectual property embodied therein (collectively, "Work Product"), SAS grants Customer a nonexclusive, royalty-free license to use the Work Product for as long as Customer maintains a license for the Software with which the Work Product operates. SAS has no obligation to provide continued support or maintenance for any Work Product. Ownership of the Work Product and any techniques, skills, concepts, or know-how that are utilized or developed while performing the Services remains with SAS.

5. RESPONSIBILITIES OF THE CUSTOMER

Subject to security regulations, the Customer shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

6. INDEPENDENT CONTRACTOR

All IT Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the Customer.

7. INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for IT services. Progress payments may be authorized by the Customer on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

8. PAYMENTS

For firm-fixed price orders the Customer shall pay the Contractor, in accordance with Section 7.C. of Appendix A of the DIR Contract No. DIR-SDD-588, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the purchase order. For time-and-materials orders, fees and expenses will be invoiced monthly unless otherwise specified in the purchase orders. Properly invoiced amounts shall be paid in accordance with Section 7.C. of Appendix A of the DIR Contract No. DIR-SDD-588.

9. RESUMES

Resumes shall be provided to the Customer upon request.

10. APPROVAL OF SUBCONTRACTS

The Customer may require that the Contractor receive, from the Customer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

11. SUBSTITUTIONS

Executive Information Systems, LLC reserves the right to make the following substitutions in the education and/or experience requirements of any of the service skill categories.

1. One year of experience is the equivalent of one year of education.
2. One year of education is the equivalent of one year of experience.
3. Certification related to the technology is equivalent to two years of experience or education requirement.