

ADDENDUM

February 13, 2007

Addendum Number: 10

Contract Number: 04429

PR Number: 006374

Procurement Officer: Robert J. Sachs
Telephone: 785-296-2770
E-Mail Address: robert.sachs@da.ks.gov

Item: SAS Software and Maintenance

Agency: Statewide

Period of Contract: December 1, 2006 through November 30, 2011

Contractor: Executive Information Systems, LLC
6610 Rockledge Drive, Suite 400A
Bethesda, MD 20827-0076
Toll Free: 877-393-2463 x1081
Local Telephone: 301-581-1098
Fax: 301-581-0406
FEIN: 52-2198860
Contact Person: Amy Kinsella
email: akinsella@execinfosys.com

Click on the icon below for revised pricing.



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BIDFILE\04429\Award

CONTRACT RENEWAL

Date of Renewal: December 5, 2006

Contract Number: 04429

PR Number: 006374

Procurement Officer: Robert J. Sachs
Telephone: 785-296-2770
E-Mail Address: robert.sachs@da.state.ks.us
Web Address: <http://da.state.ks.us/purch>

Item: Software and Maintenance, SAS

Agency: Statewide

Period of Contract: December 1, 2006 through November 30, 2011

Contractor: Executive Information Systems, LLC
6901 Rockledge Drive, Suite 600
Bethesda, MD 20817
Toll Free: 877-393-2463 x1081
Local Telephone: 301-581-1098
Fax: 301-581-0406
FEIN: 52-2198860
Contact Person: Amy Kinsella
email: akinsella@execinfosys.com

Prices: see attached

Political Subdivisions: Pricing **is** available to the political subdivisions of the State of Kansas.

Procurement Cards: Agencies **may** use State of Kansas Business Procurement Card for purchases from this contract.

Administrative Fee: Administrative Fees have been incorporated into the unit prices of this contract.

Conditions:

This renewal is made in accordance with the "Renewal Clause" contained in the original contract dated December 19, 2001 and any addenda issued thereafter. Approval of this renewal has been expressed by the contractor and the Director of Purchases for the State of Kansas.

All terms, prices and conditions of the original contract as amended shall remain in effect.

State Credit Card: Presently, the State is implementing a program for agencies to use a State of Kansas Business Procurement Card (Visa) to pay for some of its purchases. At this time, the use of the card is limited to a few agencies and a selected group of commodities. No additional charges will be allowed for using the card.

Political Subdivisions: Political Subdivisions (City, County, School Districts and etc.) are permitted to utilize contracts administered by the Division of Purchases. Conditions included in this contract shall be the same for political subdivisions. The State has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision.

Quarterly Reports: The vendor is required to submit quarterly, to the Division of Purchases, all acquisitions made by the state from this contract. This report should include as a minimum the agency name, quantity, description, and amount.

Contract Price: Statewide contracts are awarded by the Division of Purchases to take advantage of volume discount pricing for goods and services that have a recurring demand from one or more agencies. However, if a state agency locates a vendor that can provide the **identical item** at a **lower price**, a waiver to "buy off state contract" may be granted by the Division of Purchases.

Administrative Fee: Vendor(s) must pay a 1/2% Administrative Fee on all purchases (including political subdivisions) made against this contract. **The fee is to be included in the cost (bid price) of the goods or services.** The Administrative Fee is to be based upon the total dollars invoiced under the contract. The Administrative Fee shall be made in check form, payable to the "State of Kansas - Division of Purchases" and must be paid within 30 days following the end of each quarter.

Conditions of Contract: The following terms and conditions of award are incorporated by reference and include: State of Kansas DA-45/146a; specifications and conditions of the proposal including any addenda; vendors response including any addenda, appendices and exhibits.

Order of Preference: Any conflict to the provisions of this contract and the documents incorporated by reference shall be determined by the following priority order:

- a. State of Kansas Contract Provisions Attachment DA-45/146a;
- b. Written modifications and addenda to the executed contract;
- c. This contract document.;
- d. The above referenced Request for Proposal (RFP) including any addenda;
- e. Contractors response including any addenda, appendices and exhibits.

**TERMS AND CONDITIONS APPLICABLE TO
PERPETUAL SOFTWARE LICENSES AND
MAINTENANCE OF SAS SOFTWARE FOR THE STATE OF KANSAS**

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity 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 State of Kansas 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 State of Kansas 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 ordering activity, 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 includes maintenance at no additional charge. 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.

5. PERIODS OF MAINTENANCE (132-34)

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 ordering activity on thirty (30) calendar days written notice to the Contractor.
 - c. Ordering activities 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 - (132-33 AND 132-34)
- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
 - b. When acquired by the ordering activity, commercial computer software and related documentation so legend 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 ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, 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 ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity 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 ordering activity'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 ordering activity.
 - (3) Except as is provided in paragraph 8.b(2) above, the ordering activity 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 ordering activity who have the ordering activity'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 ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.
 - (4) The ordering activity 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 ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity 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 - (132-33)

Full monetary credit will be allowed to the ordering activity 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 (132-33), 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 this Section supersede and replace any additional or conflicting terms and conditions the purchase order issued to license the Software.

Each purchase order to this Agreement ("PO") identifies the specific State of Kansas 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 a term of 12 months.
- (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. 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 Federal Supply Schedule.

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) 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) 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. 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) 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.
- I. 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. **Licenses for Additional SAS Software**
Customer may license additional Software, other than those contained in the Price List, which the parties mutually desire to make available under this Agreement, in accordance with fees to be mutually agreed upon by the parties.
- u. **Termination**
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.
- v. **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.
- w. **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.
- x. **Except as herein modified, all terms and conditions of the Agreement remain in full force and effect and are hereby ratified and confirmed.**
- y. **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), and SAS® Enterprise Miner for Desktop 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, SASTM 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), and SAS® Enterprise Miner for Desktop 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 these terms.
- (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. 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.
- c. **DISCLAIMER OF WARRANTY. THE THIRD PARTY SOFTWARE IS PROVIDED TO CUSTOMER "AS IS" WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SAS' LICENSOR(S) DISCLAIM ANY LIABILITY CONNECTED WITH USE OF THE THIRD PARTY SOFTWARE.**
- d. **LIMITATION OF LIABILITY. SAS' LICENSOR(S) ARE NOT LIABLE FOR (a) DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY SORT, WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE, EVEN IF SAS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH 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
15. 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.

14. 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.
15. 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.

16. 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 for 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.

17. 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).

18. 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.
- 19. 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.

20 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) server or personal computer with respect to each of the dfPower Customize and dfPower Profile Software, whichever is greater in each case.

PRICING PAGE

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State of Kansas
 Department of Administration
 DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."