

State of Kansas Contract# 04429 Terms and Conditions

TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34) 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 Government reserves the right to inspect or test any software that has been tendered for acceptance. The Government may require repair or replacement of nonconforming software at no increase in contract price. The Government 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 Government 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 Government 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 Government, 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 9:00 AM to 6:00 PM EST.

4. SOFTWARE MAINTENANCE

- a. Software maintenance service shall include the following:
Please see attachment to SIN 132-34 for this information.

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.

- b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

SAS software will be invoiced on an annual basis at the beginning of each period.

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 Government on thirty (30) calendar days written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for maintenance, the period of the maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the maintenance orders citing the new appropriation shall be required, if the maintenance is to be continued during any remainder of the contract period.
- d. Cross-Year Funding Within Contract Period. Where an ordering office's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering office may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- e. Ordering offices 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 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 to be:

COMMERCIAL COMPUTER SOFTWARE – Computer software, which is used regularly for other than Government purposes is sold, licensed or leased in significant quantities to the general public at established catalog prices.
- b. When acquired by the Government, 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 agency. An agency is defined as a cabinet level or independent agency. The software may be used by any subdivision of the agency (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 agency's site. This would allow other agencies access to one agency's database. For Government public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user agency 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 agency'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 agency.

- (3) Except as is provided in paragraph 8.b(2) above, the Government 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 government who have the Government'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 Government to use software, documentation, or information therein, which the Government may already have or obtains without restrictions.
- (4) The Government 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 Government has the right to transfer the software to another site if the Government site for which it is acquired is deemed to be unsafe for Government 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 Government 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 in this Federal Supply Schedule or 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. 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.

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. 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.

