

## AMENDMENT

**Amendment Date:** December 17, 2019

**Amendment Number:** 10  
**Contract ID:** 04429

**Procurement Officer:** Neal Farron  
**Telephone:** 785/296-3122  
**E-Mail Address:** [neal.farron@ks.gov](mailto:neal.farron@ks.gov)  
**Web Address:** <http://admin.ks.gov/offices/procurement-and-contracts>

**Item:** Software and Maintenance, SAS

**Agency:** Statewide

**Period of Contract:** January 1, 2020 through March 4, 2023

**Contractor:** EXECUTIVE INFORMATION SYSTEMS LLC  
6901 Rockledge Drive, Suite 600  
PO Box 34076  
Bethesda, MD 20827-0076  
Local Telephone: 301-581-8594  
Fax: 301-581-2573  
FEIN: 52-2198860  
SMART Supplier ID: 0000147231

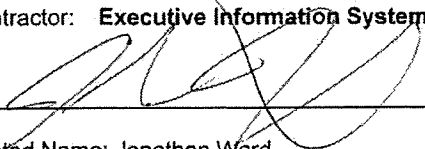
**Contact Person:** Jonathan Ward  
**Telephone:** 301-581-1097  
**Email:** [jward@execinfosys.com](mailto:jward@execinfosys.com)  
**Sales:** [sales@execinfosys.com](mailto:sales@execinfosys.com)

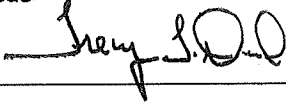
**Conditions:** By mutual agreement of both parties:

1. This contract is renewed for the period January 1, 2020 through March 4, 2023.
2. The master agreement has been updated to mirror the Federal GSA Contract # 47QTCA18D0081. The effective date for this change is January 1, 2020.
3. The parties agree that whenever the Federal GSA Contract # 47QTCA18D0081 is updated, changed, amended, or offerings deleted or added those items shall automatically be applicable to this Agreement.
4. A list of SAS products and prices are available at <http://www.execinfosys.com/State%20Contracts.htm>  
Click on State Contracts, Click on Kansas on the map, The following options are available:  
[Terms and Conditions](#)  
[Ordering Information](#)  
[SAS Pricing](#)

Contractor: **Executive Information Systems**

State of Kansas

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

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

Printed Name: Jonathan Ward \_\_\_\_\_

Tracy Diel

Title: Contracts Manager \_\_\_\_\_

Director of Purchases

## CONTRACT AWARD

**Date of Renewal:** December 5, 2006

**Contract Number:** 04429

**Procurement Officer:** Neal Farron  
**Telephone:** 785-296-3122  
**E-Mail Address:** [neal.farron@ks.gov](mailto:neal.farron@ks.gov)  
**Web Address:** <http://admin.ks.gov/offices/procurement-and-contracts>

**Item:** Software and Maintenance, SAS

**Agency:** Statewide

**Period of Contract:** December 1, 2006 through December 31, 2019

**Contractor:** EXECUTIVE INFORMATION SYSTEMS LLC  
6901 Rockledge Drive, Suite 600  
PO Box 34076  
Bethesda, MD 20827-0076  
Local Telephone: 301-581-8594  
Fax: 301-581-2573  
FEIN: 52-2198860  
SMART Supplier ID: 0000147231

Contact Person: Jonathan Ward  
Telephone: 301-581-1097  
Email: [jward@execinfosys.com](mailto:jward@execinfosys.com)  
Sales: [sales@execinfosys.com](mailto:sales@execinfosys.com)

**Amendments:** Amendment 9—Extend contract through December 31, 2019  
Amendment 8—Extend contract through December 31, 2017  
Amendment 7—Extend contract through December 31, 2016 with new Terms and Conditions  
Amendment 6—Extend contract through December 31, 2015  
Amendment 5—Extend contract through December 31, 2014  
Amendment 4—Extend contract through December 31, 2013  
Amendment 3—Extend contract through December 31, 2012  
Amendment 2—Extend contract through May 31, 2012.  
Amendment 1—Created in error.

**Prices:** A list of SAS products and prices are available at  
<http://www.execinfosys.com/State%20Contracts.htm>  
Click on State Contracts  
Click on Kansas on the map  
The following options are available:  
[Terms and Conditions](#)  
[Ordering Information](#)  
[SAS Pricing](#)

**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.

**Terms and Conditions:**

**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 contractor must deal directly with the political subdivision.


**Quarterly Reports:** The contractor 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:** Contractor(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; contractor's 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.
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**TERMS AND CONDITIONS APPLICABLE TO  
PERPETUAL SOFTWARE LICENSE (SPECIAL ITEM NUMBER 132-33) OF GENERAL PURPOSE  
COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE FOR THE STATE OF KANSAS  
EFFECTIVE 1-1-16**

**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 post acceptance 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**

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.

The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. By way of clarification, since the Software is general purpose software, the purpose of Software is as described in its applicable documentation. 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 warranty law remedy for breach of this warranty.

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 and its licensors are 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 and its licensors are 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 are 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' and its licensors' total liability for any claim relating to matters covered by this 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. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**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**

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a

software package. These examples are considered software maintenance as a service under SIN 132.34 Software Maintenance as a Service.

Software Maintenance as a product is billed at the time of purchase and is non-refundable.

5. **INTENTIONALLY OMITTED**

6. **UTILIZATION LIMITATIONS - (132-33)**

- 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 shall be subject to the following:
  - (1) Title to and ownership of the software and documentation shall remain with the Contractor or its licensors at all times notwithstanding any other term hereof or any term in any purchase order or other ordering documents, including, without limitation, any attachment included in any purchase order or other ordering documents.
  - (2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity as identified on each quotation issued or order placed hereunder. Subject to the license restrictions set forth herein and in any order, 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 the State of Kansas's data within such public domain databases. 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 6.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 ordering activity's 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 combine it with other software.
  - (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.

- (6) FAR 52.227-1 (Authorization and Consent) and FAR 52.227-2 (Notice and Assistance Regarding Patent and Copyright Infringement) apply to any licenses granted hereunder.

## 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. This Section is subject to the terms of Section 9.n. below.

## 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 hereunder of software products ("Software") of SAS Institute Inc. (the "Institute" or "SAS").

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 State of Kansas 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 or its licensors, 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 30<sup>th</sup>. 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 (i.e. the authorized hardware). 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.
- (5) Certain Software is licensed by "processor cores" or "processor core count" (or similar language referring to a number of processor cores) as identified in the applicable quotation and/or order (See applicable Part Number on Price List). In such event, the Software license fee is based on



the total number of processor cores allocated to the partition of the server hardware on which the Software is installed. The partition must be established and maintained using software or other technological means, as specified by the server hardware manufacturer, to isolate, at all times, use of the Software to the licensed number of processor cores. A separate license is required for each partition. Authorized hardware is defined as the licensed partition identified by Customer by name in the order or otherwise in writing to THE INSTITUTE.

- (6) The following terms apply to any license for Software that is identified in any applicable order hereunder as for “virtual client use” or use in a virtualized personal computer environment or virtualized client environment (or such similar identification).

The Software license fee is based on the total number of users (not concurrent) authorized to access the Software via one or more Virtual Machines on the designated operating system. For purposes of this provision, a “Virtual Machine” is defined as a virtual environment, running a Windows workstation operating system, that is created within and managed by a centrally located host computer using commercially available virtualization software providing an interface to access the resources of the host computer. Unless otherwise authorized in writing by THE INSTITUTE, each Virtual Machine is limited to a maximum of four (4) virtual processor cores.

- (7) The following terms apply to any license for Software that is identified in any applicable order hereunder as for use in a virtualized server environment (or such similar identification).

a. The Software is licensed for use on the number of virtual processor cores listed in the applicable order. If the number of virtual processor cores is not identified, then the Software is licensed for four (4) virtual processor cores. Such Software shall be allocated to one (1) virtual machine in which the Software is installed. For purposes of this provision, a virtual machine is defined as an environment, identified by a unique name (to be specified by the Customer in writing to THE INSTITUTE), and created using commercially available virtualization software, in which use of the Software is isolated, at all times, to a specified number of virtual processor cores (“Virtual Machine”). A separate Software license is required for each Virtual Machine. For the purposes of this provision, authorized hardware is defined as the named Virtual Machine identified by Customer in writing to THE INSTITUTE. Customer may change the name of the licensed Virtual Machine upon prior written notice to THE INSTITUTE.

b. The Virtual Machine may run only on a single physical host machine at any given time but may be moved from one physical host machine to another so long as the named Virtual Machine and maximum number of virtual processor cores allocated to it remain unchanged. Customer will not combine virtual processor cores across multiple Virtual Machines. Unless otherwise authorized in the applicable order, the physical host machine must be located on Customer’s premises.

c. In order to be eligible for the Virtual Machine based license, Customer must install version 9.2 or higher of the Software.

- (8) With regard to Software licensed for desktop use (or use on personal computers or such similar designation), Customer may make one (1) additional copy of the Software for home use by each Customer employee who also uses the Software at work (“Home Use”) and such Home Use copies shall not count toward the total users or workstations licensed, provided: (i) each Home Use copy is installed on a personal computer or laptop located in the United States and owned by such Customer employee; (ii) Home Use is limited to use for Customer’s purposes by an employee who also uses the Software at work; (iii) the operating system of the hardware on which each Home Use copy is installed mirrors the operating system of Customer’s hardware on which the Software is installed; and (iv) the total number of Home Use copies does not exceed the total number of users or workstations, as applicable, licensed by Customer. If Customer wishes to increase the number of licensed users or workstations, Customer must contact THE INSTITUTE and pay to THE INSTITUTE the applicable fees for such additional licenses as set forth in the Price List. The identical copyright notice and any other proprietary rights notice found on the original Software media must be maintained on all Home Use copies. Customer will maintain records of the names of all employees using the Software for Home Use and will provide THE INSTITUTE with a copy of such records upon request. Subject to Government security

requirements. Customer will inform all persons authorized to use the Software pursuant to this provision of the relevant terms of the license for such Software and will be responsible for their adherence to such terms. The foregoing provisions do not apply to Software licensed for use in a virtualized environment.

- (9) Certain Software is licensed for use on a “grid,” by “grid processor cores” or “grid processor core count” (or similar language referring to a number of processor cores available in a “Grid” computing environment) as identified in the applicable quotation and/or order (See applicable Part Number on Price List). In such event, the Software license fee is based on the sum of all processor cores of all authorized hardware in the Grid on which the Software is installed. A “Grid” is a network of authorized hardware that uses the combined processing power of the authorized hardware to process and run applications initiated in the network. Software may be installed on authorized hardware in the Grid as specified in the applicable quotation and/or order. A license for SAS® Grid Manager Software is a prerequisite to licensing any other Software in a Grid. SAS® Grid Manager Software is the only software that may be used for Grid management and job scheduling purposes in conjunction with SAS software applications residing on authorized hardware included in the licensed Grid. Upon installation, Customer will provide THE INSTITUTE a statement identifying the configuration of the Grid, to include the total number of nodes in the Grid and the total number of grid processor cores per Software product per Grid node, as well as such other reasonably requested Grid configuration information. Customer will update the same from time to time and upon reasonable request.

**b. Indemnification**

If a claim of copyright, patent, trade secret, or other intellectual property rights violation is made against Customer relating to the Software, THE INSTITUTE (or its designee) agrees to indemnify the Customer by paying any settlement approved by THE INSTITUTE (or its designee), or any judgment, costs, or attorneys' fees finally awarded against the Customer for such claim. The parties agree to cooperate with each other in the investigation, defense and/or settlement thereof. This indemnification obligation shall not apply unless THE INSTITUTE has been informed as soon as practicable by Customer of the claim and THE INSTITUTE (or its designee) has been given such opportunity as is afforded by applicable law to participate in its defense, at its 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' (or its designee's) opinion, is likely to be made, THE INSTITUTE (or its designee), 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' (or its designee'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' 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 Enterprise Miner™ Software**

- (1) Customer is not authorized to use 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) If a client component is included with the Software, the client component is licensed on a PC Use basis. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order hereunder, the client component is limited to PC Use of five (5).

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.

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 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. THE INSTITUTE AND ITS LICENSORS MAKE NO WARRANTIES OF ANY KIND RESPECTING THE SAS TRADEMARK OR THE LOGO, INCLUDING THE VALIDITY OF THEIR 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 agrees to assist THE INSTITUTE and its licensors in executing and recording any documents relating to this permission necessary to protect the SAS trademark or Logo in any country.
- g. 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.
- h. THE INSTITUTE may terminate Customer’s permission to use the Logo at any time, at THE INSTITUTE’ 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) IT Charge Manager may be used, and its license fee is based, on one installation on the authorized hardware on which it is licensed and use within the United States during the license period. 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 Resource Management software. IT Resource Management 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 Resource Management software under this Agreement.
- (3) IT Charge Manager will only operate after Customer has installed product authorization codes for the IT Resource Management 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**

- (1) All JMP Software, including SAS Simulation Studio for JMP, is licensed on a Total User(s) basis. “Total Users” is defined as the total number of individuals (not concurrent) who access the Software on each licensed operating system during the license period. The license includes one operating

system of choice. The addition of a second operating system may be requested for additional fees. The license fee is calculated by the total number of users across all licensed operating systems. Without the payment of additional license fees that may apply, Customer may not exceed the licensed Total Users.

- (2) With regard to JMP Clinical and JMP Genomics, fees for Total Users are charged by the number of users on each operating system site. For example, 5 users on a 32-bit site and 5 users on a 64-bit site are charged separately.
- (3) The fee includes one (1) set of media, installation materials and one (1) set of documentation generally provided with the applicable Software.
- (4) SAS Simulation Studio for JMP requires an existing JMP license.

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 State of Kansas. 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.

**l. Licensing Provisions Specific to SAS/WAREHOUSE ADMINISTRATOR™ Software**

- (1) 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 "PC Use" basis. All individuals who have access to the Enterprise Reporter software during a license period must be counted in the number of total users. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system.
- (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 users or personal computer installs 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 consistent with the Price List and billed under the license fee schedule and will be effective and invoiced as of the date of change or upgrade. With regard to hardware changes, applicable fees are generally based on the total processing power of the hardware on which the Software is installed. With respect to server hardware, processing power includes each processor on each chip. With respect to mainframe hardware, processing power is based on Millions of Instructions Per Second ("MIPS"). Customer must notify Contractor prior to making any hardware change. License and maintenance fees are nonrefundable.
- (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 of a maintenance reinstatement fee equal to the amount of all preceding skipped annual periods of Maintenance (back to the last annual period paid in full) for that server or user increment of the licensed Software. 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, then Customer's license rights shall continue with regard to such Software for the remainder of the license period applicable to such Software, subject to the license terms applicable to such Software on the last day for which Maintenance was purchased. Without limiting the foregoing sentence, without the payment of applicable fees consistent with the Price List, Customer may not change authorized hardware, add additional users, change operating systems, acquire additional Product Authorization Codes or license additional software products for use with such 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 State of Kansas'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. If the

entity issuing a purchase order hereunder is a non-government entity authorized to order under this contract, such Customer agrees that, unless specifically agreed to in writing by THE INSTITUTE, without any requirement to expressly reject such terms, purchase order terms and conditions received by THE INSTITUTE from such entity issuing a purchase order hereunder that conflict with or are in addition to the terms hereof are expressly deleted and rejected. Acceptance by THE INSTITUTE of any 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**

Customer must notify THE INSTITUTE within thirty (30) days of all upgrades in designated users between user increment licenses or upgrades between mainframes or servers as classified by SAS and identified in the Price List. 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. This provision applies to open market transactions per applicable open market regulations.

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.

Except as herein modified, all terms and conditions of the Agreement remain in full force and effect and are hereby ratified and confirmed.

y. The following terms govern Customer's use of each of the SAS Software offerings noted in the following provisions 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"). The Institute shall be referred to as "SAS" herein.

- (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. THE INSTITUTE may add, modify or delete individual components in new releases. All additional and modified component software shall be governed by these terms and the terms of GSA Schedule Contract No. GS-35F-0170K.
- (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 THE INSTITUTE' 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 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 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 or other authorized user under the license.
- (5) Unless otherwise authorized by THE INSTITUTE, 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 THE INSTITUTE' licensors 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. THE INSTITUTE' 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 THE INSTITUTE 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.**
  - e. With regard to SAS/ACCESS Software that contains subcomponents licensed to THE INSTITUTE' licensors by DataDirect Technologies or Progress Software Corporation, the following terms are included herein: This product is a "commercial component," as this term is defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "computer software documentation," as such terms are defined in 48 C.F.R. §252.227-7014(a)(1) and 48 C.F.R. §252.227-7014(a)(5), respectively, and used in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government entities acquire this product only with those rights set forth in the license agreement accompanying this product.
- (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. THE INSTITUTE may terminate Customer's rights with respect to the LDAP Software immediately in the event of any breach by Customer of THE INSTITUTE' or THE INSTITUTE' licensors' intellectual property rights in the LDAP Software.
- c. Title, ownership rights, and intellectual property rights in the LDAP Software shall remain in THE INSTITUTE' 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 THE INSTITUTE' 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, THE INSTITUTE and its licensors and suppliers specifically disclaim any express or implied warranty of fitness for High-Risk Activities. Customer agrees that THE INSTITUTE 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) SAS® Financial Management Software is subject to the following additional terms and conditions:
  - a. SAS® Financial Management Software is licensed for use by the Customer on a single Customer server except as specified in this section with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS® Financial Management Software and the Metadata Server component of that Software will be installed. In addition, the Customer's license of SAS® Financial Management 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 Software may be purchased are as follows:
    - (i) System Administrator – System Administrators are users who access the SAS® Financial Management Software to perform installation of and set and maintain parameters around the use of, applications running the SAS® Financial Management Software.
    - (ii) Finance Power Users – Finance Power Users are users who may access the SAS® Financial Management Software to use the full functionality of that Software.
    - (iii) Planning and Business Users – Planning and Business Users are users who may access the SAS® Financial Management Software solely to utilize applications created by Power Users to enter, validate, and manage data.

- (iv) Interactive Reporting and Dashboard Users – Interactive Reporting and Dashboard Users are users who access the SAS® Financial Management 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 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 Software with respect to such annual maintenance).
  - b. The Customer’s license of the SAS® Financial Management Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Financial 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 THE INSTITUTE) of the SAS® Financial 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® Financial Management Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS® Financial Management Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.
    - (ii) AppDev Studio PC Use – The AppDev Studio Software component of the SAS® Financial Management Software may only be used for development purposes.
  - c. The license of SAS® Financial Management Software also includes a license of a SAS/Access Software product chosen by the Customer.
- (10) SAS® Financial Management Adapter for SAP Software is licensed for use by Customer only with Customer’s use of SAS® Financial Management 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 Finance Power Users with respect to such SAS® Financial Management Software.
- (11) Platform Suite for SAS Software is licensed for use by Customer only with Customer’s concurrent use of Base SAS® 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. Platform Suite for SAS Software is licensed based on the total processing power of the authorized hardware on which the Software is installed. Processing power includes each processor – on each chip. Platform Suite for SAS Software, including all of its components, may be used solely for job scheduling purposes in conjunction with the other SAS software applications residing on the one authorized hardware for which it was licensed and may not be used to schedule jobs across multiple pieces of hardware.
- (12) 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.

**(13) SAS® Strategy Management Software is subject to the following additional terms and conditions:**

- a. SAS® Strategy Management Software is licensed for use by the Customer on a single Customer computer 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 Software and the Metadata Server component of that Software will be installed. The Software is licensed on a Total User basis. "Total Users" is defined as the total number of individuals (not concurrent) who access the Software on each licensed operating system during the license period. Without the payment of additional license fees that may apply, Customer may not exceed the licensed Total Users.
- b. The Customer's license of the SAS® Strategy 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® Strategy 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 THE INSTITUTE) of the SAS® Strategy 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® Strategy Management Software is installed, solely for the purpose of deploying the Strategic Performance Management Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.
  - (ii) AppDev Studio PC Use – The AppDev Studio Software component of the SAS® Strategy Management for SAS® 9 Software may only be used for development purposes.

**(14) SAS® Strategy Management for Enterprise BI Software is subject to the following additional terms and conditions:**

- a. SAS® Strategy Management for Enterprise BI Software is licensed for use by the Customer on a single Customer computer 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 Software and the Metadata Server component of that Software will be installed.
- b. The Customer's license of the SAS® Strategy Management for Enterprise BI 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® Strategy Management for Enterprise BI Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:
  - (1) Metadata Server – The Customer may install the Base SAS component (along with any other component authorized by THE INSTITUTE) of the SAS® Strategy Management for Enterprise BI 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® Strategy Management for Enterprise BI Software is installed, solely for the purpose of deploying the Strategic Performance Management Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.

- (ii) AppDev Studio PC Use – The AppDev Studio Software component of the SAS® Strategy Management for Enterprise BI Software may only be used for development purposes.

**(13) 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. The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. With respect to server hardware, processing power includes each processor on each chip. With respect to mainframe hardware, processing power is based on Millions of Instructions Per Second. The Software is licensed as a bundle of technology and not an "integrated solution." Accordingly, the Software components in the Software may be used alone or with the other components bundled with the Software.
- 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 THE INSTITUTE) 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. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.

**(16). 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. The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. With respect to server hardware, processing power includes each processor on each chip. With respect to mainframe hardware, processing power is based on Millions of Instructions Per Second. The Software is licensed as a bundle of technology and not an "integrated solution." Accordingly, the Software components in the Software may be used alone or with the other components bundled with the Software.

- 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 THE INSTITUTE) 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. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.
- 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/IntNet 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);
  - (iii) SAS® Metadata Bridge for General Industry Standards and three (3) additional SAS Metadata Bridges of choice (which may be requested at any time as long as the maintenance is maintained);
  - (iv) PC licenses of DataFlux Data Management Studio Platform for SAS, DataFlux Data Management Studio Profile, DataFlux Data Management Studio Entity Resolution, DataFlux Data Management Studio Integration, DataFlux Data Management Studio Quality, DataFlux Data Management Studio Customize, and DataFlux Data Management Studio Exploration (collectively the “DF PC Components”), provided that each of the DF PC 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 DF PC 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 DF PC Component and such quantity of personal computers shall be the total number of personal computers on which such DF PC 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). Unless additional are licensed, the number of such users or the number of such personal computers with respect to the DF PC Components shall not exceed one (1) such user or personal computer with respect to each of the DF PC Components; and

- (v) one DataFlux Data Management Quality Knowledge Base Locale of choice; provided that the chosen DataFlux Data Management Quality Knowledge Base Locale must be a then commercially-available product. The DataFlux Data Management Quality Knowledge Base Locale is licensed on a Site License basis. "Site License" means Customer's use of the Software is dependent upon Customer's licensing SAS Enterprise Data Integration Server Software ("Prerequisite Software"). Customer may install the Software on, and/or access the Software from, any authorized hardware, located at a single physical site, for which Customer has licensed the Prerequisite Software.

(17). **SAS® Enterprise Model Management Software is subject to the following additional terms and conditions:**

- a. SAS® Enterprise Model Management Software is licensed for use by the Customer on a single Customer server except as specified in this section with respect to the Metadata Server. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the SAS® Enterprise Model Management Software and the Metadata Server component of that Software will be installed. The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. With respect to server hardware, processing power includes each processor on each chip. With respect to mainframe hardware, processing power is based on Millions of Instructions Per Second.
- b. The Customer's license of the SAS® Enterprise Model Management Software also includes and is limited to, and the license and maintenance fees payable by the Customer with respect to that Software are respectively based on, the following components of the SAS® Enterprise Model Management Software and the quantities of such types of components for which the license or maintenance has been purchased by the Customer:
  - (i) The Customer may install the Base SAS component (along with any other component authorized by THE INSTITUTE) of the SAS® Enterprise Model Management Software on one additional Customer server which has a classification by SAS that is equal to or lower than SAS' classification of the Customer server on which the licensed SAS® Enterprise Model Management Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS® Enterprise Model Management Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.
  - (ii) The license of SAS® Enterprise Model Management Software also includes a license of SAS® Enterprise Model Management Client Software ("EMM Client Component"), provided that the EMM Client Component is licensed for use by the greater of (A) the number of users authorized to access EMM Client Component and (B) the total number of personal computers on which the Software will be installed and available for processing on the designated

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

(18). **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. The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. With respect to server hardware, processing power includes each processor on each chip. With respect to mainframe hardware, processing power is based on Millions of Instructions Per Second. The Software is licensed as a bundle of technology and not an "integrated solution." Accordingly, the Software components in the Software may be used alone or with the other components bundled with the Software.
- 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 THE INSTITUTE) 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.

(19). **SAS® Human Capital Management Software is subject to the following additional terms and conditions:**

- a. SAS® Human Capital Management Software is licensed for use by the Customer on a single Customer computer 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 computer on which the Software and the Metadata Server component of that Software will be installed. In addition, the Customer's license of the Software is limited to use to process, and the license and maintenance fees payable by Customer for the Software are based on, records relating to the total number of Customer's employees (both active and inactive) located within the United States and tracked in the Software ("Employee Records"). To renew this license, Customer must report the total number of employees to THE INSTITUTE at least sixty (60) days prior to the anniversary date of the license.
- b. The Software requires SAS Consulting Services perform the installation. SAS Consulting Services are licensed and charged separately.
- c. If licensed, SAS Talent Scorecard Software is licensed as follows: Customer may install the SAS Talent Scorecard Software on, and/or access the Software from, any authorized hardware, located at a single physical site, for which Customer has licensed the Prerequisite Software. Customer's use of the Software is dependent upon Customer licensing SAS® Human Capital Management Software ("Prerequisite Software").



Customer may not license SAS Talent Scorecard Software without licensing SAS® Human Capital Management Software..

- d. The Customer's license 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 component of the Software and the quantity of such component 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 THE INSTITUTE) of the 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 Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.
  - (ii) The license of the Software also includes a license of a SAS/Access Software product chosen by the Customer.
  - (iii) The license of the Software also includes a license of SAS® Metadata Bridge for General Industry Standards and three (3) additional SAS Metadata Bridges of choice (which may be requested at any time as long as the maintenance is maintained).

(20). **SAS® IT Resource Management Software is subject to the following additional terms and conditions:**

- a. The Software is licensed for use by the Customer on a single Customer computer 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 computer on which the Software and the Metadata Server component of that Software will be installed. In addition, the Customer's license of the Software is limited to, and the license and maintenance fees payable by Customer for the Software are based on, use on the type of network for which the Software is licensed by Customer (as noted in the CLIN licensed) as follows:
- (i) Network Based (Single Site or Mixed) - The Software license fee is based on the total processing capacity of Customer's IT infrastructure managed by the Software in the United States. With respect to IT infrastructure consisting of server hardware, total processing capacity includes each processor on each chip of each server. With respect to IT infrastructure consisting of mainframe hardware, total processing capacity is based on the Millions of Instructions per Second ("MIPS") rating of each mainframe.
  - (ii) Enterprise (Mainframe, Server or Mixed) – Mainframe: The Software license fee is based on a single installation of the Software in the United States used to manage Customer's mainframe hardware IT infrastructure in the United States. Server: The Software license fee is based on a single installation of the Software in the United States used to manage Customer's server hardware IT infrastructure in the United States. Mixed: The Software license fee is based on a single installation of the Software in the United States used to manage Customer's server hardware and mainframe hardware IT infrastructure in the United States.
- b. The Customer's license 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 component of the Software and the quantity of such component 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 THE INSTITUTE) of the 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 Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.
    - (ii) Use of the client component of the Software is limited to the greater of either (i) the total number of users (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system.
  - c. The license of the Software also includes a license of SAS® Metadata Bridge for General Industry Standards and three (3) additional SAS Metadata Bridges of choice (which may be requested at any time as long as the maintenance is maintained).
  - d. Upon Customer's request, if Customer's maintenance is fully paid and current, Customer's license of SAS® IT Resource Management Software includes a license of SAS Financial Management Adapter for SAP.
- (21). **SAS® Content Categorization Software is subject to the following additional terms and conditions:**
  - a. The Software is licensed for use by the Customer on a single Customer computer. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the server on which the Software will be installed. The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. With respect to server hardware, processing power includes each processor on each chip. With respect to mainframe hardware, processing power is based on Millions of Instructions Per Second. The license fee includes use of the SAS Content Categorization Client subcomponent of the Software by the number of users (not concurrent) who may access the Software during the applicable license period to use the full functionality of the Software, which number of users shall not exceed one (1).
  - b. Customer may not disclose to third parties the results of Software performance benchmarks, conducted by THE INSTITUTE, SAS or by Customer, without THE INSTITUTE' prior written authorization. Customer shall not use or permit any user or third party to use any application program interface ("API") provided with the Software to read in bulk or "harvest" the contents of any data files licensed to Customer by THE INSTITUTE and provided with the Software.
  - c. The license of the Software also includes a license of SAS Text Data Language Pack for English. Customer's use of the SAS Text Data Language Pack for English Software is dependent upon Customer licensing SAS® Content Categorization Software ("Prerequisite Software") and may not be used with other software products. Customer may install the SAS Text Data Language Pack for English Software on, and/or access the SAS Text Data Language Pack for English Software from, any authorized hardware, located at a single physical site, for which Customer has licensed the Prerequisite Software.
- (22). **SAS® Activity-Based Management Software and ® Activity-Based Management Select Software is subject to the following additional terms and conditions:**
  - a. The Software is licensed for use by the Customer on a single Customer computer 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 Software and the Metadata Server component of that Software

will be installed. In addition, the Customer's license of the 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 Software may be purchased are as follows:

- (i) Analysts – Analysts are users who may access the Software to use the full functionality of that Software.
  - (ii) Business Users – Business Users are users who may access the Software solely to utilize applications created by Analysts to enter, validate, and manage data.
  - (iii) 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 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 Software with respect to such annual maintenance), all as set forth in the applicable order.
- b. The Customer's license 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 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 THE INSTITUTE) of the 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 Software is installed, solely for the purpose of deploying the Metadata Server component for use within the Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.
  - (ii) The license of the Software also includes a license of two (2) SAS/Access Software products chosen by the Customer.
- c. The license of the Software also includes a license of SAS® Metadata Bridge for General Industry Standards and three (3) additional SAS Metadata Bridges of choice (which may be requested at any time as long as the maintenance is maintained). (23). SAS® IT Service Level Management Software is subject to the following additional terms and conditions:
- a. The Software is licensed for use by the Customer on a single Customer computer 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 computer on which the Software and the Metadata Server component of that Software will be installed. In addition, the Customer's license of the Software is limited to, and the license and maintenance fees payable by Customer for the Software are based on, use on the type of network for which the Software is licensed by Customer (as noted in the CLIN licensed) as follows:
    - (i) Network Based (Single Site or Mixed) - The Software license fee is based on the total processing capacity of Customer's IT infrastructure managed by the Software in the United States. With respect to IT infrastructure consisting of server hardware, total processing capacity includes each processor on each chip of each server. With respect to IT infrastructure consisting of mainframe hardware, total processing capacity is based on the Millions of Instructions per Second ("MIPS") rating of each mainframe.

- b. A license of SAS® IT Resource Management Software for the same hardware is required to license this Software.

(24). **SAS® Data Surveyor Software is subject to the following additional terms and conditions:**

- a. The Software is licensed for use by the Customer on a single Customer computer except as specified in this section. The Customer shall identify the specific machine information (hardware, manufacturer, and operating system) of the computer on which the Software will be installed. In addition, the Customer's license of the Software is limited to, and the license and maintenance fees payable by Customer for the Software are based on, the capacity of the Customer computer on which the Software is installed (as noted in the CLIN licensed) as follows:
  - (i) SAS Data Surveyor for Oracle Applications Capacity Based - The Software license fee is based on the total processing power of the hardware on which the SAS Data Integration Server or SAS Enterprise Data Integration Server software is installed where processing power includes each processor on each chip. If prompted during Software installation, Customer may install certain Software subcomponents on separate hardware which may or may not run the same operating system as the authorized hardware. Notwithstanding anything to the contrary contained in this Agreement, such separate hardware may have a larger machine classification than the authorized hardware. Customer may use the Software, including its subcomponents, solely to access Oracle data in the licensed Oracle database. Customer may not use or deploy any individual Software subcomponent for any other purpose or as a replacement for other SAS software. The terms and conditions of this Agreement shall govern the license for the Software, including all subcomponents, notwithstanding any click-wrap agreement or other similar terms and conditions which may be surfaced during installation of the Software or any Software subcomponents.
  - (ii) SAS Data Surveyor for PeopleSoft Capacity Based - The Software license fee is based on the total processing power of the hardware on which the SAS Data Integration Server or SAS Enterprise Data Integration Server software is installed where processing power includes each processor on each chip. If prompted during Software installation, Customer may install certain Software subcomponents on separate hardware which may or may not run the same operating system as the authorized hardware. Notwithstanding anything to the contrary contained in this Agreement, such separate hardware may have a larger machine classification than the authorized hardware. Customer may use the Software, including its subcomponents, solely to access PeopleSoft data in the licensed ODBC, SQL, DB2 or Oracle database. Customer may not use or deploy any individual Software subcomponent for any other purpose or as a replacement for other SAS software. The terms and conditions of this Agreement shall govern the license for the Software, including all subcomponents, notwithstanding any click-wrap agreement or other similar terms and conditions which may be surfaced during installation of the Software or any Software subcomponents.
  - (iii) SAS Data Surveyor for SAP Capacity Based - The Software license fee is based on the total processing power of the hardware on which the Software is installed where processing power includes each processor on each chip. The Software, including all of its components, may be used solely to access SAP data in the licensed SAP database. Customer may not use or deploy any individual Software component for any other purpose or as a replacement for other SAS software.
  - (iv) SAS Data Surveyor for Seibel Capacity Based - The Software license fee is based on the total processing power of the hardware on which the SAS Data Integration Server or SAS Enterprise Data Integration Server software is installed where processing power includes each processor on each chip. If prompted during Software installation, Customer may install certain Software subcomponents on separate hardware which may or may not run the same

operating system as the authorized hardware. Notwithstanding anything to the contrary contained in this Agreement, such separate hardware may have a larger machine classification than the authorized hardware. Customer may use the Software, including its subcomponents, solely to access Siebel data in the licensed ODBC, SQL, DB2 or Oracle database. Customer may not use or deploy any individual Software subcomponent for any other purpose or as a replacement for other SAS software. The terms and conditions of this Agreement shall govern the license for the Software, including all subcomponents, notwithstanding any click-wrap agreement or other similar terms and conditions which may be surfaced during installation of the Software or any Software subcomponents.

- (25). SAS® Metadata Bridge Software is licensed based on the total number of physical computers and/or Virtual Machines on which the Software is installed during the applicable license period and may be installed.
- (26). SAS® Enterprise Guide Software is licensed on a Total User basis. "Total Users" is defined as the total number of individuals (not concurrent) who access the Software on each licensed operating system during the license period. Without the payment of additional license fees that may apply, Customer may not exceed the licensed Total Users.
- (27). DataFlux Software is subject to the following additional terms and conditions:
- a. DataFlux Software that is licensed for use by Customer on personal computers is subject to the following additional terms and conditions.
    - (i) The license fees applicable to the Software are based on the greater of either (1) the total number of individuals (not concurrent) authorized to access the Software or (2) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Without the payment of additional license fees that may apply, Customer may not exceed such number of individuals or installations.
  - b. DataFlux Software that is licensed for use by Customer on servers is subject to the following additional terms and conditions.
    - (i) The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. Processing power includes each processor on each chip. Without the payment of additional license fees that may apply, Customer may not install the Software on hardware other than that for which the Software was specifically licensed.
  - c. DataFlux Quality Knowledge Based Locales (also known as DataFlux LocalePacks) are subject to the following additional terms and conditions.
    - (i) The Software license fee is based on one (1) installation of the Software on the authorized hardware and use for Customer's internal business purposes only within the United States during the license period. Customer may not exceed the number of installations of locale of use.
  - d. All DataFlux Software is subject to the following additional terms and conditions: All data necessary to use the Software (collectively, the "Verify Data") is licensed to Customer on an annual, non-exclusive, revocable basis. THE INSTITUTE makes no representation or warranty as to the availability of updates to the Verify Data. The license for all or any part of the Verify Data is subject to termination by THE INSTITUTE on thirty (30) days prior written notice to Customer in the event THE INSTITUTE' licensor terminates the license for such Verify Data ("Verify Data Termination"). In the event of a Verify Data Termination, Customer must (i) terminate its use of, and delete and destroy, the affected Verify Data on or before the date provided by THE INSTITUTE in such written notice and (ii) upon request from THE INSTITUTE, provide THE INSTITUTE with a certification of the deletion and destruction of the affected Verify Data signed by an authorized officer of

Customer. In the event of a Verify Data Termination, provided Customer has complied with its obligations hereunder, THE INSTITUTE will refund to Customer a prorated portion of the license fees paid by Customer for the then-current term for the affected Verify Data. The Verify Data may be used only in conjunction with, and under the same terms and conditions as, the corresponding Software. Customer must terminate its use of, and delete and destroy, all Verify Data if the license therefore is not renewed for any reason. THE SOFTWARE MAY CONTAIN OR PROVIDE ACCESS TO DATA LICENSED TO THE INSTITUTE BY THIRD PARTY VENDORS ("THIRD PARTY DATA") AND PROVIDE ACCESS TO SERVICES AND DATA PROVIDED BY THIRD PARTIES (COLLECTIVELY, "THIRD PARTY SERVICES"). THIRD PARTY DATA, THIRD PARTY SERVICES, AND ACCESS THERETO ARE PROVIDED TO CUSTOMER "AS IS" WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR ARISING AS A RESULT OF CUSTOM OR USAGE IN THE TRADE OR BY COURSE OF DEALING. THE INSTITUTE DISCLAIMS ANY WARRANTY AS TO (A) THE CONTINUED CERTIFICATION OF THE SOFTWARE BY ANY THIRD PARTY OR (B) THE CONTINUED AVAILABILITY OF ANY DISCOUNT PROVIDED FROM USE OF THE SOFTWARE. THE INSTITUTE DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION WITH CUSTOMER'S USE OF THE THIRD PARTY DATA AND THIRD PARTY SERVICES. THE DISCLAIMERS HEREIN DO NOT APPLY TO ANY THIRD PARTY SOFTWARE ACTUALLY EMBEDDED WITHIN THE SOFTWARE, BUT APPLY IN ALL RESPECTS TO ANY DATA SUPPLIED WITH, CONTAINED IN, OR ACCESSED THROUGH THE SOFTWARE.

- e. In order to fully function, DataFlux "Verify" or "Enrichment" products require a DataFlux DataPack that must be separately licensed by Customer.

(28). **SAS® for Sustainability Reporting and SAS® Energy and Emissions Management are subject to the following additional terms and conditions:**

- a. The 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 Software and the Metadata Server component of that Software will be installed. The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. With respect to server hardware, processing power includes each processor on each chip. With respect to mainframe hardware, processing power is based on Millions of Instructions Per Second.
- b. Customer's license 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 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 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 Software is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Customer may not install any additional SAS software products on such additional server on which Customer installs the Base SAS component.
- c. The license of the Software also includes a license of a SAS/Access® Software product chosen by the Customer. The Software requires a Microsoft SQL Server or Oracle database, which third party software must be separately licensed by the Customer.

(29). **Teragram Software is subject to the following additional terms and conditions:**

- a. Teragram TK240 Software, Teragram TK240 Categorization Software, Teragram TK240 Concepts Extraction Software, Teragram Information Workbench Software, Teragram Semantic Term Manager Software and Teragram Linguistic Support Software are subject to the following additional terms and conditions.
    - (i) The Software license fee is based on the number of individuals (not concurrent) who may access the Software during the applicable license period to use the full functionality of the Software. Without the payment of additional license fees that may apply, Customer may not exceed such number of individuals accessing the Software. The Software supports the English language and additional available languages must be licensed separately hereunder.
  - b. Teragram TK240 Collaborative Server Software, Teragram Crawler Software, Teragram Search and Indexing Software, Teragram CATCON Automatic Categorizer Software and CATCON Concepts Extraction Software are subject to the following additional terms and conditions.
    - (i) The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. Processing power includes each processor on each chip. Without the payment of additional license fees that may apply, Customer may not install the Software on hardware other than that for which the Software was specifically licensed.
  - c. Teragram CATCON Server Software is subject to the following additional terms and conditions.
    - (i) The Software license fee is based on the total processing power of the authorized hardware on which the Software is installed. Processing power includes each processor on each chip. Without the payment of additional license fees that may apply, Customer may not install the Software on hardware other than that for which the Software was specifically licensed. The Software is licensed as a bundle of technology and not an "integrated solution." Accordingly, the server-based Software components in the bundle may be used alone or with the other components bundled with the Software.
  - d. Teragram Linguistic Suite Software, Teragram Fast Pattern Matching Software, Teragram Direct Answers Software, Teragram Document Duplication Detection Software, Teragram Email Alerts Software, Teragram IPTC Rules Software, Teragram Language Identification and Character Encoding Software, Teragram MeSH Rules Software, Teragram Semantic Term Manager Server Software, Teragram Spelling Correction Software, Teragram Summarization Software and Teragram Taxonomy Discovery Software are subject to the following additional terms and conditions.
    - (i) The Software license fee is based on the total number of computers on which the Software is installed. Without the payment of additional license fees that may apply, Customer may not exceed such licensed number of installs.
  - e. All Teragram Software is subject to the following additional terms and conditions: Customer may not disclose to third parties the results of Software performance benchmarks, conducted by THE INSTITUTE (or its licensors) or by Customer, without THE INSTITUTE' prior written authorization. Customer shall not use or permit any user or third party to use any application program interface ("API") provided with the Software to read in bulk or "harvest" the contents of any data files licensed to Customer by THE INSTITUTE and provided with the Software.
- (30). SAS® Visual Data Discovery Software licensed for use on a server includes a license for Customer's users to install and use JMP® for SAS Visual Data Discovery. Such use of JMP® for SAS Visual Data Discovery is limited by total number of users based on the size of the authorized hardware on which the Software is licensed as follows:
- o Group A (1 core) =5 users

- o Group B (2 cores)=25 users
- o Group 1 (up to 4 cores) =50 users
- o Group 2 (5 to 12 cores) =75 users
- o Group 3 (13 to 24 cores)=100 users
- o Group 4 (25 to 48 cores)=125 users
- o Group 5 (49 to 96 cores)=150 users
- o Group 6 (97 to 144 cores)=175 users
- o Group 7 (145 to 192 cores)=200 users
- o Group 8 (193 cores or more)=250 users

Customer may not allow use of JMP® for SAS Visual Data Discovery by more than the allotted number of users identified above.

The license of the Software also includes a license of any one (1) SAS®/ACCESS product of Customer's choice otherwise available under this Agreement (which may be requested at any time as long as the maintenance is maintained).

- (31). **SAS® e-Learning offerings are subject to the following additional terms and conditions:**
- a. The Software is licensed on a Total User basis. "Total Users" is defined as the total number of users (not concurrent) who access the Software. Without the payment of additional license fees that may apply, Customer may not exceed the licensed Total Users.
  - b. Customer must notify THE INSTITUTE in writing prior to receiving Software as to whether the Software will be downloaded by the Customer or if the Customer will access the Software on the SAS website. If the Customer accesses the Software on the SAS website, SAS agrees that notwithstanding any "clickwrap" or "clickthrough" license terms that the Customer must approve to download or access the Software, the terms and conditions of this Agreement shall control and the "clickwrap" or "clickthrough" license terms shall be of no force or effect. Customer specifically agrees that it will not disclose, distribute or make available the download/access codes to the Software other than to authorized users.
- (32). SAS® Enterprise Case Management for Tax Authorities is subject to the following additional terms and conditions: The Software license fee is based on the total number of individuals within Customer's jurisdiction who are required by law to file annual income tax returns ("Tax Filers"). Customer may not use the Software to process records of Tax Filers that exceed the number of Tax Filers licensed.
- (33). SAS® Enterprise Miner Desktop is licensed on a PC Use basis. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system.(34). SAS® Text Miner is subject to the following additional terms and conditions: If a client component is included with the Software, the client component of is licensed on a PC Use basis. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order hereunder, the client component is limited to PC Use of five (5).
- (35). SAS® Text Miner Desktop for Windows Workstations is subject to the following additional terms and conditions: SAS® Text Miner Desktop for Windows Workstations is licensed on a PC Use basis. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Without the payment of additional license fees that may apply, Customer may not exceed the licensed number of users or installs.(36). SAS® Data Governance is subject to the following additional terms and conditions:
- a. The Software is licensed on a "Bundle Capacity" basis. "Bundle Capacity" means that



the Software is licensed on a per server basis as identified in Subsection 9.a. above, provided that the Software is also licensed as a bundle of technology and not an "integrated solution" such that the server-based Software components in the bundle may be used alone or with the other components bundled with the Software.

- b. If a client component is included with the Software, the client component of is licensed on a PC Use basis. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order hereunder, the client component is limited to PC Use of five (5).

(37). **SAS® Data Management Advanced is subject to the following additional terms and conditions:**

- a. The Software is licensed on a "Bundle Capacity" basis.
- b. If a client component is included with the Software, the client component of is licensed on a PC Use basis. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order hereunder, the client component is limited to PC Use of five (5).
- c. The license of the Software also includes a license of:
  - (i) two (2) SAS/Access Software products chosen by the Customer (which may be requested at any time as long as the maintenance is maintained); and
  - (ii) three (3) SAS Metadata Bridge products chosen by the Customer (which may be requested at any time as long as the maintenance is maintained).

(38). **SAS® Data Management Standard is subject to the following additional terms and conditions:**

- a. The Software is licensed on a "Bundle Capacity" basis.
- b. If a client component is included with the Software, the client component of is licensed on a PC Use basis. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order hereunder, the client component is limited to PC Use of five (5).
- c. The license of the Software also includes a license of:
  - (i) two (2) SAS/Access Software products chosen by the Customer (which may be requested at any time as long as the maintenance is maintained); and
  - (ii) three (3) SAS Metadata Bridge products chosen by the Customer (which may be requested at any time as long as the maintenance is maintained).

(39). **SAS® Data Quality Advanced is subject to the following additional terms and conditions:**

The Software is licensed on a "Bundle Capacity" basis. If a client component is included with the Software, the client component of is licensed on a PC Use basis. "PC Use" is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order hereunder, the client component is limited to PC Use of five (5).

(40). **SAS® Data Quality Desktop is subject to the following additional terms and conditions:**

The Software is licensed on a "Bundle Capacity" basis. If a client component is included with the Software, the client component of is licensed on a PC Use basis. "PC Use" is defined as the

greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order hereunder, the client component is limited to PC Use of five (5).

- (41). **SAS® Data Quality Standard is subject to the following additional terms and conditions:**  
The Software is licensed on a “Bundle Capacity” basis. If a client component is included with the Software, the client component of is licensed on a PC Use basis. “PC Use” is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system. Unless otherwise noted on the applicable order hereunder, the client component is limited to PC Use of five (5).
- (42). **SAS® MDM Advanced and SAS® MDM Standard software is subject to the following additional terms and conditions:**
- a. The license granted hereunder authorizes Customer to implement a single configured installation of the Software in one (1) production environment, one (1) test environment and one (1) development environment. Customer may use the Software installed in the production environment for Customer’s internal production purposes (“Production Environment”). Customer may use the Software installed in the test environment solely for the purpose of testing the Software and Software applications and code prior to installation in Customer’s Production Environment (“Test Environment”). Customer may use the Software installed in the development environment solely for the purposes of developing and creating applications and code with the Software for use in Customer’s Production Environment (“Development Environment”). Customer must identify in writing the authorized hardware for the Production Environment, the Test Environment and the Development Environment. The operating system for the Test Environment and the Development Environment must be the same as the operating system for the Production Environment. The Test Environment and Development Environment shall be used only for the test and development purposes described above and shall at no time be used for production purposes or as a fail-over system. An additional technical support program is required to be separately purchased as a prerequisite to licensing this Software and fees for such support are not included in the price of the Software.
  - b. The license granted hereunder authorizes Customer to install the subcomponent of the Software known as SAS MDM Standard DataFlux Server in the Production Environment as well as in a second, separate environment that supports the Prduction Environment. Such second install may be used solely as an extension of, and in support of, the Production Environment.
- (43). **SAS® Forecasting for Desktop is subject to the following additional terms and conditions:**
- a. SAS® Forecasting for Desktop software is licensed on a “PC Use” basis. All individuals who have access to the Software during a license period must be counted in the number of total users. “PC Use” is defined as the greater of either (i) the total number of individuals (not concurrent) authorized to access the Software or (ii) the total number of personal computers on which the Software will be installed and available for processing on the designated operating system.
  - b. In addition, SAS® Forecasting for Desktop is limited to installation on a personal computer(s) containing no more than eight (8) processor cores. Customer may not use the Software on hardware that contains a number of processor cores that exceeds the number of processor cores licensed. If the Software is installed in a partition of the authorized hardware, Customer must use software or other technological means, as specified by the authorized hardware manufacturer, to limit, at all times, the partition to no more than the licensed number of processor cores.
- (44). **SAS® Grid Manager is subject to the following additional terms and conditions:**
- a. The Software is licensed pursuant to the terms of Subsection 9.a.(9) above. The Grid Manager Software, including all of its components, may be used solely for grid

management and job scheduling purposes in conjunction with SAS software applications residing on authorized hardware included in the licensed Grid. Base SAS and SAS/CONNECT must be licensed for each node in the Grid even if Customer is deploying a solution within the Grid and the solution package contains Base SAS and SAS/CONNECT.

- (45). **SAS® Visual Analytics is subject to the following additional terms and conditions:**
- a. If the Software is licensed for use in an environment that is distributed across more than one computer (i.e. a distributed environment), the Software license fee is based on the total number of physical and/or virtual processor cores included within the computer hardware architecture containing the database or data file system, as applicable, with which the Software operates. Without the payment of additional license fees that may apply, Customer may not exceed such licensed number of processor cores. The Software is comprised of subcomponents. Each Software subcomponent may be used only in conjunction with the Software and may not be used or deployed for any other purpose. Further, the Software may not be installed in a virtual distributed environment.
  - b. If the Software is licensed for use on a single server (i.e. a non-distributed environment), the Software license fee is based on the number of physical processor cores or virtual processor cores, as applicable, contained within the authorized hardware. If the authorized hardware is a physical server, the license fee is based on the total number of physical processor cores contained within the physical server. If the authorized hardware is a partition of a physical server, the Software license fee is based on the total number of physical processor cores contained within the physical server partition and Customer must use software or other technological means, as specified by the server manufacturer, to limit, at all times, the partition to no more than the licensed number of physical processor cores. If the authorized hardware is a Virtual Machine, the Software license fee is based on the total number of virtual processor cores allocated to the Virtual Machine. A "Virtual Machine" is a single virtual environment, identified by a unique name as specified to THE INSTITUTE in writing by Customer, created using commercially available virtualization software, in which use of the Software is isolated, at all times, to a specified maximum number of virtual processor cores. The Virtual Machine may run only on a single physical host machine at any given time but may be moved from one physical host machine to another so long as the Virtual Machine name, operating system, and maximum number of virtual processor cores allocated to it remain unchanged. Unless otherwise authorized in the applicable order, the physical host machine must be located on Customer's premises. The Software is comprised of subcomponents. Each Software subcomponent may be used only in conjunction with the Software and may not be used or deployed for any other purpose. In all cases, without the payment of additional license fees that may apply, Customer may not exceed such licensed number of processor cores.
- (46). **SAS® Office Analytics is subject to the following additional terms and conditions:** The Software is licensed based on a "Bundle Capacity" basis.
- (47). **SAS® Analytics Pro is subject to the following additional terms and conditions:**
- a. If licensed for use on servers, the Software is licensed on a "Bundle Capacity" basis.
- (48). **SAS®/Access to SQL Server Software is subject to the following additional terms and conditions:** This product is a "commercial component," as this term is defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "computer software documentation," as such terms are defined in 48 C.F.R. §252.227-7014(a)(1) and 48 C.F.R. §252.227-7014(a)(5), respectively, and used in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government entities acquire this product only with those rights set forth in the license agreement accompanying this product.
- (49). The following terms apply to any license for Software that is identified as for test purposes only ("Test Software") in any applicable order for the license of Software arising hereunder. In order to

license Test Software, Customer must have already licensed (or is simultaneously licensing) for production use, licenses for the same SAS software product(s) that make up the Test Software ("Production Software"),

- a. Customer's license to use the Test Software is solely to verify the quality and accuracy of data output on the hardware and operating system ("Test Environment") with respect to which the applicable Test Software is licensed, subject to the following.
    - (i) Customer shall not change the operating systems under which the Production Software ("Production Environment") and Test Software are currently licensed unless Customer notifies THE INSTITUTE in writing that Customer desires to change such operating system(s) and THE INSTITUTE approves such change; and
    - (ii) The hardware on which the Test Software that is licensed by hardware capacity (as applicable) is installed in accordance with Customer's license of such Test Software and must have the same or lower machine classification rating by SAS ("MCR") as the MCR of the hardware on which the corresponding Production Software is installed in the Production Environment in accordance with Customer's license of such Production Software; and
    - (iii) The number of each type of licensed user of the Test Software that is licensed by quantity of such users (as applicable) and for which annual maintenance is subsequently purchased by Customer must be the same as the number of licensed users of the corresponding Production Software and for which annual maintenance is subsequently purchased by Customer.
  - b. The Test Software may at no time be used by or for Customer (i) in a production environment or as a fail-over system, (ii) to create applications or code or (iii) for any software development.
  - c. Customer must maintain a separate license for the Production Software under the same operating system as the Test Environment. Customer's license to use the Test Software shall automatically terminate upon expiration or termination of Customer's license of the corresponding Production Software or upon failure of Customer to purchase maintenance renewal for such Production Software or the corresponding applicable Test Software for the next maintenance renewal period following the expiration of any then current maintenance period with respect to such Production Software or applicable Test Software.
- (50). The following terms apply to any license for Software that is identified as for development purposes only ("Development Software") in any applicable order for the license of Software arising hereunder, which order for such Development Software is also discounted from the full price set forth in the Price List. In order to license Development Software, Customer must have already licensed (or is simultaneously licensing) for production use, licenses for the same SAS software product(s) that make up the Development Software ("Production Software"),
- a. Customer's license to use the Development Software is solely for development purposes to create applications and code on the Customer hardware running the operating system with respect to which the Development Software is licensed ("Development Environment"), subject to the following.
    - (i) Customer shall not change the operating systems applicable to the Production Environment or the Development Environment unless Customer notifies THE INSTITUTE in writing that Customer desires to change such environments and THE INSTITUTE approves such change ("Production Environment" means the Customer hardware running the operating system with respect to which the Production Software is licensed); and
    - (ii) The hardware on which the Development Software that is licensed by hardware capacity (as applicable) is installed in accordance with Customer's license of

such Development Software and must have the same or lower machine classification rating by SAS ("MCR") as the MCR of the hardware on which the corresponding Production Software is installed in the Production Environment in accordance with Customer's license of such Production Software; and

- (iii) The number of each type of licensed user of the Development Software that is licensed by quantity of such users (as applicable) and for which annual maintenance is subsequently purchased by Customer shall be the same as (or fewer than) the number of licensed users of the corresponding Production Software and for which annual maintenance is subsequently purchased by Customer.
- b. The Development Software shall at no time be used by or for Customer (i) in a production environment or as a fail-over system or (ii) in a test environment.
- c. Customer must maintain a separate license for the Production Software under the same operating system as the Development Environment. Customer's license to use the Development Software shall automatically terminate upon expiration or termination of Customer's license of the corresponding Production Software or upon failure of Customer to purchase maintenance renewal pursuant to the GSA Contract for such Production Software and the corresponding applicable Development Software for the next maintenance renewal period following the expiration of any then current maintenance period with respect to such Production Software or applicable Development Software.

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."