

## STATE TERM CONTRACT

**THIS CONTRACT** ("Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, Office of Information Technology, at 30 East Broad Street, 40<sup>th</sup> Floor, Columbus, Ohio, 43215 and Executive Information Systems, LLC ("Contractor"), with offices at 6901 Rockledge Drive, Suite 600, Bethesda, MD 20817.

### BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program or SmartBuy program. If the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract, the State may accept the prices that the manufacturer offers to its most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

However, if the Contractor is not the manufacturer of the products or services under this Contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor is an authorized dealer in the manufacturer's products or services. The letter also must assure the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract to meet the State's needs under the Contract during the initial term and any extensions. Further, the letter must identify each of the manufacturer's product and service that the Contractor will supply under this Contract. The letter also must contain an assurance of the availability through the dealer of repair services and spare parts for products covered by this Contract for five years from the date of purchase. It also must contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than \$10,000.00 per copy.) The dealer must submit the letter, signed by an authorized representative of the manufacturer, with the executed copies of this Contract.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services. Only commercially available SAS Institute Inc. software products are available for license and maintenance under this Contract, as specified in Exhibit I. Nothing in this Contract shall be construed as a commitment by Contractor or its licensors to undertake any customized research and development with respect to such products.

### TERMS AND CONDITIONS

#### 1 - TERM

- 1.1 TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until [March 5, 2023](#). Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.
- 1.2 CONTRACT RENEWAL.** The State may renew this Contract by issuing written notice to the Contractor of the decision to do so. Renewals will be initiated by the State in writing at least 30 days before the expiration of the then current term. This expiration and renewal procedure will also apply to the end of any subsequent contract term.

#### 2 - PRICING AND PAYMENT

- 2.1 CERTIFICATION OF ACCURACY.** By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:
- The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;
  - The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or

- The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

If the Contractor is offering prices based on its most favored customer prices, the Contractor represents that it does not have a GSA Multiple Award Schedule or SmartBuy contract.

If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor represents that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further certifies that the above representations will apply and be true with respect to all future pricing information submitted to revise this Contract.

- 2.2 PRICE ADJUSTMENTS.** If the Contractor has relied on its GSA Multiple Award Schedule pricing or its GSA SmartBuy pricing, the State will be entitled to any price decreases that the Contractor offers to the GSA for any of its products and services during the term of this Contract. The Contractor must notify the State of any reduction in its GSA Multiple Award Schedule or SmartBuy pricing within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

If the Contractor has relied on its most favored customer pricing, the State will be entitled to a price decrease any time the Contractor or any of its dealers or distributors under this Contract sells a product or a service to any of its customers for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its dealers or distributors under Section 3.1 of this Contract sells a product or provides a service to any customer for less than it is then available to the State under this Contract, the Contractor must notify the State of that event within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

The Contractor also must notify the State within 30 days of any general reduction in the price of any product or service covered by this Contract, even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction. If the State believes it is appropriate, the State may ask to renegotiate the Contract price for the products and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, then on written notice to the Contractor, the State may immediately remove the affected products and services from this Contract.

- 2.3 PRICELIST.** The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. For avoidance of doubt, Contractor does not provide custom materials. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's products and services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist:

[EIS GSA Schedule Pricelist, current as of 05/19/2020](#)

The Contractor will not sell to the State any notebook computers with less than a 1.60 GHz internal clock speed. Additionally, the Contractor will not sell to the State any PCs or servers using CPUs with less than a 3.0 GHz internal clock speed. Additionally, unless otherwise mutually agreed, the Contractor will not sell to the State any term software licenses. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any stand-alone Microsoft software to the State. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract.

- 2.4 NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, the Contractor must notify the State and any affected State agencies of the increase at least 60 days before the effective date of the price increase. The Contractor must notify affected State agencies at their purchase order "bill to" address contained in the applicable purchase orders. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

- 2.5 PAYMENT DUE DATE AND PROCESS.** In accordance with Section 126.30 of the Ohio Revised Code ("R.C."), payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date payment is issued by the State will be considered the date payment is made. Payment of an invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. At the time of Contract award, Contractor must be able to accept all forms of payment from the State.

**2.6 INVOICE REQUIREMENTS.** The Contractor must submit an original invoice to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

- (a) Name and address of the Contractor as designated in this Contract;
- (b) State of Ohio Contract Number;
- (c) The Contractor's unique invoice number;
- (d) The Contractor's invoice remittance address as designated in this Contract;
- (e) The purchase order number authorizing the delivery of the Deliverables;
- (f) The State agency name and billing address;
- (g) Delivery location of the Deliverables;
- (h) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables;
- (i) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36);
- (j) For time and material services, the invoice must reflect labor hours actually worked and if applicable supplies used; and
- (k) Clear statement of total payment expected.

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase, the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

**2.7 NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.

**2.8 OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.

**2.9 CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.

**2.10 TRAVEL EXPENSES.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule 126-1-02 of the Ohio Administrative Code (the "Administrative Code").

**2.11 TAXES.** The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.

**2.12 OFFSET.** The State may set off any amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

### 3 - CONTRACT ADMINISTRATION

**3.1 DEALERS AND DISTRIBUTORS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy State Chief Information Officer, Office of Information Technology. In doing so, the Contractor warrants that:

- (a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
- (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.

- (c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.
- (d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.
- (e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

Section 125.081 of the Ohio Revised Code requires state agencies to set-aside purchases for MBE and Executive Order 2008-13S encourages use of EDGE businesses. Therefore the state encourages the Contractor to purchase goods and services from Ohio certified Minority Business Enterprises (MBE) and Encouraging Diversity, Growth and Equity (EDGE) vendors.

- 3.2 AUDITS.** During the term of this Contract and for three years after termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Deliverables and to the pricing representations that the Contractor has made to acquire this Contract. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Deliverable.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principle place of business or the facilities where the Contractor substantially performed under this Contract. If this is not practical, the Contractor must assume the cost of collecting, organizing, and relocating the records, along with any technology needed for accessing the records, to its office nearest Columbus, Ohio whenever the State or any entity with audit rights requests access to the records. The Contractor must do so within 15 days of receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation or overcharge to the State, the State will be entitled to recover its damages, including the cost of the audit.

- 3.3 INSURANCE.** Until all obligations under this Contract are satisfied, and without limiting Contractor's indemnification obligations herein, Contractor shall procure and maintain for the duration of the Contract the insurance policies set forth below. Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees. Contractor shall also procure and maintain insurance for claims arising out of their services including, but not limited to, loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. All commercial insurance required shall be provided by insurers with a rating of not less than A-VII from A.M. Best or a comparable rating agency.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold the State harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this Contract.

The Insurance obligations under this Contract shall be the minimum Insurance coverage requirements and/or limits shown in this Contract. Any insurance proceeds in excess of or broader than the minimum required coverage and/or

minimum required limits, which are applicable to a given loss, shall be available to the State of Ohio. No representation is made that the minimum Insurance requirements of this Contract are sufficient to cover the obligations of the Contractor under this Contract.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

**1. Additional Insured Status**

Except for Workers' Compensation and Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor's insurance.

**2. Primary Coverage**

For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with it.

**3. Umbrella or Excess Insurance Policies**

Umbrella or excess commercial liability policies may be used in combination with primary policies to satisfy the limit requirements above. Such Umbrella or excess commercial liability policies shall apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.

**4. Notice of Cancellation**

Contractor shall provide State of Ohio with 30 days written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Contract shall be a breach of this Contract.

**5. Waiver of Subrogation**

Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

**6. Deductibles and Self-Insured Retentions**

Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State.

**7. Claims Made Policies**

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

**Verification of Coverage.** Contractor shall furnish the State of Ohio with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State of Ohio reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that State of Ohio is an additional insured on insurance required from subcontractors.

**Special Risks or Circumstances.** State of Ohio reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- 3.4 CONTRACT COMPLIANCE.** Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for immediate correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor form to help resolve the issue. Should the State determine that the form identifies an uncured breach of this Contract, the State may terminate this Contract and seek such other remedies as may be available to it.
- 3.5 POLITICAL SUBDIVISIONS.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.
- 3.6 RECALLS.** If a Deliverable is recalled, seized, or embargoed, or if the Contractor, a manufacturer, packer, processor, or regulatory body finds that a Deliverable has been misbranded, adulterated, or is unsafe, the Contractor must notify the State, through the Department of Administrative Services, Office of State Purchasing, as well as all agencies that have ordered the Deliverable, within ten business days after the Contractor learns of any of the above events. At the option of the State, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove and replace all affected Deliverables within a reasonable time, as determined by the State. Further, at the option of the State, the Contractor may be required to reimburse the State for storage costs and handling fees, which the State may calculate from the time of delivery of each affected Deliverable to the Deliverable's actual removal. Furthermore, the Contractor must bear all costs associated with the removal and proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time, not to exceed 30 days, as a default.
- 3.7 TERMINATION.** The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to timely cure its default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation while performing under this Contract or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In all of the foregoing cases, the termination will be for cause.

On written notice, the Contractor will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract, the applicable orders, or both immediately upon written notice to the Contractor. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State also may terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations two times. After the second such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The two defaults do not have to relate to the same obligation or type of failure.

The State also may terminate this Contract or any order under this Contract for its convenience and without cause. And the State may terminate this Contract or any order under it if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the State also may terminate this Contract or any order under it should that third party fail to release any funds related to this Contract or an order under it.

Any notice of termination will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor

also must immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. The Contractor will be liable to the State for all costs, related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount the State determines that it owes the Contractor.

- 3.8 INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this Contract is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in R.C. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business"), Contractor shall have any individual performing services under this Contract complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link:

<https://www.opers.org/forms-archive/2018-10-PED-ACKN-Independent-Contractor-Worker-Acknowledgment-Form-fillable.pdf>.

Contractor's failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable provided under this Contract shall serve as Contractor's certification that it is a "business entity" as the term is defined in R.C. 145.037.

- 3.9 EXCUSABLE DELAY.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it is taking to remove the cause. The delayed party must not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.

#### **4 - DELIVERY AND ACCEPTANCE**

- 4.1 ACCEPTANCE.** The acceptance procedure for professional services Deliverables is set forth in Exhibit IV.
- 4.2 TITLE AND SOURCE CODE.** Title to and ownership of the Deliverables 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. Source code from which the Deliverable object code is derived ("Source Code") is not being provided and is a SAS Institute trade secret to which access is not authorized. Except to the extent allowed by law, neither the State nor any other user may reverse assemble or decompile the Deliverables or otherwise attempt to recreate the Source Code.
- 4.3 DELIVERIES.** The Contractor must make all deliveries F.O.B. destination. The place of destination will be specified on the purchase order or other ordering document. Cost of freight must be paid by the Contractor unless otherwise stated.

## 5 - INTELLECTUAL PROPERTY

**5.1 COMMERCIAL MATERIAL.** As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense and that is commercially available in the marketplace, subject to intellectual property rights, and readily susceptible to copying through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, source code, and documentation.

Any Commercial Material that the Contractor intends to deliver under this Contract will have the scope of the license granted in such material set forth in Exhibit II to this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials. Exhibit II is attached to and incorporated into this Contract as if fully rewritten herein. Any Services, as defined in Exhibit IV, delivered hereunder are subject to the additional terms set forth in Exhibit IV attached to and incorporated into this Contract as if fully rewritten herein

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

For Commercial Software, the State will have the following rights subject to the next paragraph and Exhibit II. The State may:

- (1) Use and copy the Commercial Software for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;
- (2) Use or copy the Commercial Software for use with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
- (3) Reproduce the Commercial Software for archival, image management, and backup purposes;
- (4) Modify, adapt, and combine the Commercial Software with other computer software, provided that the modified, combined, and adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use;
- (5) Disclose to and reproduce the Commercial Software for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
- (6) Use or copy the Commercial Software for use with a replacement computer.

In the case of any other scope of license (e.g., MIPs, tier, concurrent users, enterprise, site, or otherwise), the foregoing will apply except as expressly modified by the applicable license description, which must be incorporated as part of Exhibit II. If the Contractor provides greater license rights in an item included in Exhibit I to its general customer base for the Software's list price, those additional license rights also will be provided to the State without additional cost or obligation. No license description may reduce the rights in items 1 through 6 above; it may only define the extent of use, if the use is other than a CPU license.

The State will treat any Commercial Software as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract .

**5.2 RESERVED.**

**5.3 CONFIDENTIALITY.** The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Contract.

If any Deliverables contain data, documentation, or other written information that is confidential in nature and properly labeled as such, then it also will be Confidential Information for purposes of this section. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Contract. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

If one party discloses Confidential Information ("Disclosing Party") to the other party to this Contract ("Receiving Party"), the Receiving Party's obligation to maintain the confidentiality of the Confidential Information will not apply where such:



- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- (3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Contract;
- (4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- (5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- (6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:
  - (a) Notifies the Disclosing Party of the order immediately upon receipt of it; and
  - (b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to temporary and permanent injunctive relief to enforce the provisions of this Contract without the necessity of proving actual damages. However, provision does not diminish or alter any right to claim and recover damages.

This Contract is not Confidential Information. All its terms and conditions, including pricing and any attachments, represent public information.

**5.4 CONFIDENTIALITY AGREEMENTS.** When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidential agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor's and its subcontractors' personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed. For the avoidance of doubt, Contractor may sign a confidentiality agreement or acknowledgment on behalf of its personnel to satisfy the requirements of this Section. In such case, Contractor shall be fully responsible for all actions or omissions of its personnel under the confidentiality agreement(s) which it signs on their behalf.

**5.5 PUBLICITY.** The Contractor shall not do the following without prior, written consent from the State:

1. Advertise or publicize that the Contractor is doing business with the State;
2. Use this Contract as a marketing or sales tool; or
3. Affix any advertisement or endorsement, including any logo, graphic, text, sound, video, and company name, to any State-owned property, application, or website, including any website hosted by Contractor or a third party.

## 6 – TRANSACTION REPORTING

**6.1 Contractor's SALES REPORT.** The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Political Subdivisions for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Department of Administrative Services, OIT vendor portal, <https://cm.ohio.gov>. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. The Contract expires on the physical completion of the last, outstanding task or delivery order of the Contract. The closeout report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all Contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero sales in the closeout report.

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

**6.2 Contractor's REVENUE SHARE.** The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the Department of Administrative Services, Office of State Purchasing. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

Department of Administrative Services  
L-3686  
Columbus, OH 43260-3686

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may setoff any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

## 7 - WARRANTIES AND LIABILITIES

**7.1 WARRANTIES.** The Contractor warrants that:

- (a) The recommendations, guidance, and performance of the Contractor and all Deliverables under this Contract will be in accordance with the industry's professional standards and the requirements of this Contract and without any material defects;
- (b) No Deliverable will infringe on the intellectual property rights of any third party;
- (c) All work is the work solely of the Contractor, unless otherwise provided in this Contract; and
- (d) The Deliverables are merchantable and fit for the particular purpose for which the Deliverables were acquired and will perform substantially in accordance with its user manuals, technical materials, and related writings;
- (e) The Deliverables comply with all governmental, environmental and safety standards;
- (f) The Contractor has the right to enter into this Contract;
- (g) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;
- (h) The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control;
- (i) The Contractor has good and marketable title to any products delivered under this Contract and in which title passes to the State; and
- (j) The Contractor has the right and ability to grant the license provided in any Deliverable in which title does not pass to the State.

The Contractor must notify the State in writing immediately upon the discovery of any breach of the warranties given above, or if any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed, or refund the amount of the compensation paid for the Deliverable. The Contractor also must indemnify the State for any direct damages and any claims by third parties based on any breach of these warranties in accordance with this Section and the terms of Exhibit II

**7.2 SOFTWARE WARRANTY.** If Exhibit I includes work to develop custom software as a Deliverable, then on delivery and for one year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

- (a) The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation;
- (b) The software will be free of material defects;
- (c) The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code;
- (d) The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
- (e) The software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software developed by the Contractor or licensed from a third party, the Contractor represents and warrants that it either has the right or has obtained a binding commitment from the third party licensor to make the following warranties and commit to the following maintenance obligations. During the warranty period described in the next paragraph, the Contractor must:

- (a) Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation;
- (b) Supply technical bulletins and updated user guides;
- (c) Supply the State with all updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code;
- (d) Correct or replace the software and remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
- (e) Maintain or obtain a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment for which it was designed.

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers and costing more than \$10,000.00 per license or per copy, the warranty period will be the longer of one year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than \$10,000.00 per license or per copy, the warranty period will be the longer of three months after acceptance or the licensor's standard warranty period. For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation, if such are not provided as part of the licensor's standard warranty or license fee.

Software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation must provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions. The Contractor must provide the source code in the language in which it was written and must include such commentary or annotations as would allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

**7.3 EQUIPMENT WARRANTY.** If any computer hardware or other type of electrical equipment ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that the State modifies or damages after title passes to it. The warranty period for all Equipment will be the longer of one year after the State accepts the Equipment or the Contractor's standard warranty period.

If any Equipment does not meet the above warranties during the applicable warranty period, the Contractor must fix the nonconforming Equipment so it performs substantially in accordance with its user manuals, technical materials, and related publications, replace the Equipment, or grant the State a refund equal to the amount it paid for the Equipment. The Contractor must either fix or replace the Equipment or refund the purchase price to the State with all due speed, not to exceed seven days in the case of a fix or a replacement or 30 days in the case of a refund. The Contractor will be responsible for all shipping costs associate with fixing, replacing, or returning any defective equipment.

**7.4 INDEMNITY.** The Contractor must indemnify the State for all liability and expense resulting from bodily injury to any person (including injury resulting in death), damage to tangible or real property, or disclosure of State data including personally identifiable information and State sensitive information arising out of the performance of this Contract,

provided that such bodily injury, property damage, or disclosure is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, other contractors, or agents. Notwithstanding the foregoing, the State shall not provide any personally identifiable information or State sensitive information under this Contract: (1) unless it is required for the performance of services under this Contract, or (2) without the prior written approval of EIS.

The Contractor also must indemnify the State against any claim of infringement of a copyright, patent, trade secret, or other intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement is based on the modification. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things:

- (a) Modify the Deliverable so that it is no longer infringing;
- (b) Replace the Deliverable with an equivalent or better item;
- (c) Acquire the right for the State to use the Deliverable as it was intended for the State to use under this Contract; or
- (d) Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

**7.5 LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) THE CONTRACTOR WILL BE LIABLE FOR DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT.

Contractor's and its licensors' total liability for any claim relating to matters covered by this Contract or use of a Deliverable is limited to the license or maintenance fees received from the State for the Deliverable(s) at issue during the then-current annual period of the license, provided, however, Contractor acknowledges and understands that under Ohio State law, the State cannot be required to indemnify Contractor for damages in excess of the limitation of liability stated herein and Contractor agrees that, if required by applicable law, Contractor shall be liable for all direct damages due to the fault or negligence of Contractor. The foregoing exclusion/limitation of liability shall not apply to (1) the indemnification obligations set forth in Section 7.4; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## **8 - MAINTENANCE**

**8.1 SOFTWARE MAINTENANCE.** If this Contract involves any custom software as a Deliverable, then during the warranty period, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable time, provided the State notifies the Contractor, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. The Contractor's response to a programming error will depend upon the severity of the problem. In the case of programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the System inoperable or unstable, or require users or administrations to employ workarounds to fully use the software, the Contractor must respond to requests for resolution within four business hours and begin working on a proper solution within one business day, dedicating the resources of one qualified programmer full-time to fixing the problem. In the case of any defects with more significant consequences, including those that render key functions of the software inoperable or significantly slow data processing, the Contractor must respond within two business hours of notification and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

Notwithstanding anything contained in the remainder of this section to the contrary, the parties agree that the Contractor shall provide maintenance for the Deliverables at no additional charge for the first year after the State purchases a license, in accordance with Section 6(f) of Exhibit II. For Commercial Software other than PC or PC-based server software costing less than \$10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period at no cost to the State. At a minimum, that maintenance must be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. That maintenance program must include all new releases, updates, patches, and fixes to the Commercial Software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function and a commitment to promptly correct all material defects in the software.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the software for at least five years after the warranty period. The Contractor will limit or obtain a commitment from the third-party licensor, if applicable, to limit increases in the annual fee for maintenance to no more than five percent annually. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one of the following things: (a) give the State a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining any copies of the software for which the State has a proper license. The State will treat the source code as Confidential Information under the Confidentiality Section of this Contract. In the case of third-party Commercial Software, the Contractor warrants that it has legally bound the third-party licensor to the obligations of this Contract or that the Contractor has the right to make these commitments directly to the State.

For Commercial Software designed for PC or PC-based server platforms and costing less than \$10,000.00 per copy or license, the Contractor must provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers.

**8.2 SOFTWARE UPGRADES.** After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform for the Commercial Software. When the Contractor or third-party licensor makes the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that generally available broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the generally available broader license or other version of the Commercial Software in exchange for a license fee that is based on the lesser of the following:

- (a) The Contractor's (or third party licensor's) standard upgrade or migration fee;
- (b) The upgrade or migration fee in Exhibit I; or
- (c) The difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire, plus any increase in annual maintenance fees that may apply to the upgraded Commercial Software.

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$10,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee on which such are made available to other most favored customers or dealers, as appropriate.

**8.3 EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor must provide maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance also must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications. The Contractor must use its best efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

- (a) Maintenance to bring the Equipment into compliance with any law, rule, or regulation, if such law, rule, or regulation was not in effect on the acceptance date;
- (b) Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse, if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe in the Equipment's documentation, or causes other than ordinary use of Equipment;
- (c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
- (d) Maintenance or increased maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment;
- (e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.

**8.4 EQUIPMENT MAINTENANCE STANDARDS.** Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

**8.5 EQUIPMENT MAINTENANCE CONTINUITY.** If the Contractor is unable to provide Equipment maintenance to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State will also be entitled to the following items from the Contractor:

- (a) All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals, and system and unit schematics, with all changes noted;
- (b) A listing of suppliers capable of supplying necessary spare parts;
- (c) Adequate information to permit the State to have spare parts manufactured elsewhere; and
- (d) A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (d) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

**8.6 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.

**8.7 MAINTENANCE ACCESS (GENERAL).** For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

## **9 - ASSIGNMENT AND SUBCONTRACTING**

**9.1 ASSIGNMENT.** The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide.

**9.2 SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor. Notwithstanding the foregoing, Contractor shall be responsible for the acts and omissions of subcontractors engaged to provide software or services under this Contract.

## **10 – CONSTRUCTION**

**10.1 HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.

**10.2 ENTIRE DOCUMENT.** This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.

- 10.3 BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.
- 10.4 AMENDMENTS – WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party. No “click-through,” “shrink-wrap,” “browse-wrap,” or other terms that have not been specifically negotiated by the Contractor and the State, whether before, on, or after the date of this Contract, will be effective to add or modify the terms of this Contract, regardless of any party’s “acceptance” of those terms by electronic means. No State employee has the authority to modify, amend, or supplement this Contract through electronic means.
- 10.5 SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.
- 10.6 CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- 10.7 NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.
- 10.8 CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State’s right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State’s right to receive maintenance, warranty work, or other services for which the State has paid.
- 10.9 PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail. In the event of a conflict between this Contract and Exhibit II, the terms of Exhibit II shall prevail solely with respect to the scope of the license and the ownership rights regarding the Commercial Material (whether products or services) set forth therein. For any other conflict between this Contract and Exhibit II, this Contract will prevail. In the event of a conflict between this Contract and Exhibit IV, the terms of Exhibit IV shall prevail solely with respect to the scope of the license and the ownership rights regarding the Commercial Material (whether products or services) set forth therein. For any other conflict between this Contract and Exhibit IV, this Contract will prevail.
- 10.10 DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

## 11 - LAW AND COURTS

- 11.1 EQUAL EMPLOYMENT OPPORTUNITY,** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including R.C. 125.111 and all related Executive Orders.
- Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the Department of Administrative Services Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Ohio Business Gateway at: <http://business.ohio.gov/efiling/>
- 11.2 DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.
- 11.3 OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor hereby certifies that all applicable parties listed in R.C. 3517.13 are in full compliance with R.C. 3517.13.
- 11.4 SECURITY AND SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

- 11.5 LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio, provided that venue for all disputes regarding violations of either parties' federal intellectual property rights shall be with the appropriate federal court.
- 11.6 UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under R.C. 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.
- 11.7 ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- 11.8 PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.** No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure Form attached to this Contract as Exhibit III affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, if the Contractor changes the location(s) disclosed on the Affirmation and Disclosure Form, Contractor must complete and submit a revised Affirmation and Disclosure Form reflecting such changes.

- 11.9 REGISTRATION WITH THE SECRETARY OF STATE.** Contractor certifies that it is one of the following:
1. A company that is properly registered with the Ohio Secretary of State; or
  2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
  3. Exempt from registration requirements of the Ohio Secretary of State.
- 11.10 IRS 1075 REQUIREMENTS.** In order to protect risk of loss, breach, or misuse of Federal Tax Information ("FTI") held by government agencies, the Internal Revenue Service issued Publication 1075 which includes specific language to include in any State contract in which FTI may be disclosed. The below will apply to any order where Contractor will handle or process FTI

## I. PERFORMANCE

in performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (4) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment



must provide for the managerial, operations, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

- (7) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (8) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (9) The agency will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

## II. CRIMINAL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (See Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

## III. INSPECTION

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

**11.11 BOYCOTTING.** Pursuant to R.C. 9.76(B), Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.

To SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

**CONTRACTOR**

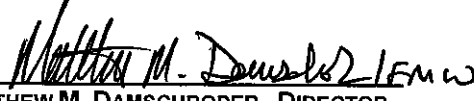


Digitally signed by Jonathan Ward  
DN: cn=Jonathan Ward,  
o=Executive Information Systems,  
LLC, ou,  
email=jward@execinfosys.com,  
c=US  
Date: 2020.12.14 12:06:56 -0500

BY: \_\_\_\_\_  
Jonathan Ward, Contracts Manager  
Executive Information Systems, LLC

DATE: 12/14/2020

**STATE OF OHIO,  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF STATE PURCHASING**



BY: \_\_\_\_\_  
MATTHEW M. DAMSCHRODER, DIRECTOR,  
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 12/23/2020

## **Exhibit I**

Pricelist too large to insert as Exhibit I. Original pricelist, dated 5/19/2020, was received and recorded by the Department of Administrative Services, and is posted on the State of Ohio Procurement website with this Contract.

## Exhibit II

### SAS Enterprise User License Agreement

This SAS Enterprise User License Agreement (“EULA”) is made by and between EIS (“Licensor”) and the State of Ohio through its Department of Administrative Services (“Licensee”) to purchase a license to Software Product(s) and Maintenance Support Services.

The following terms apply to the Software (as defined below) licensed pursuant to the State of Ohio State Term Schedule Contract Number 534611 (the “STS”) held by Executive Information Systems, LLC (“EIS”). In the event of a conflict between specific terms and conditions in this EULA and those in the STS, the terms and conditions in the STS shall prevail. The EULA and the STS contract shall collectively be defined as the “Agreement.” Any initially capitalized terms not defined herein shall be as defined in the STS.

#### 1. Warranties.

All SAS Software will substantially conform to its then-current user documentation. 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, EIS 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.

#### 2. Disclaimer.

EIS and its licensors are not required to provide the product authorization code if Ordering Activity is in breach of this Agreement or if all amounts due to EIS are not paid and are not liable for damages caused by the resulting Software interruption. Ordering Activity is responsible for implementing procedures to verify accuracy of data input and output.

#### 3. Ownership.

Title to and ownership of the Software and documentation shall remain with EIS 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.

#### 4. Ordering Activity.

- a. Software licenses are by site and by Ordering Activity. An Ordering Activity is an eligible entity authorized to use the STS under Ohio law. For clarification, the Licensee may also be an Ordering Activity.

Subject to the license restrictions set forth herein and in any order, the Software may also 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 government's data within such public domain databases. The Ordering Activity will take appropriate action by instruction, agreement, or otherwise, to protect EIS' proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the Ordering Activity's permitted use of the computer programs and documentation.

b. Except as is provided in paragraph 4.a 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 EIS. Third parties do not include prime contractors, subcontractors and agents of the Ordering Activity who have the Ordering Activity's permission to use the Software and documentation at the Ordering Activity's facility, and who have agreed to use the 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.

c. The Ordering Activity shall have the right to use the 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 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.

d. "Commercial Computer Software," as defined in section 2.101 of the Federal Acquisition Regulation, may be marked with EIS' standard commercial restricted rights legend, but the STS contract and STS price list, 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 restricted rights legend.

e. 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.

#### 5. Self-Examination.

Ordering Activity agrees to conduct a self-examination promptly following EIS' reasonable request, not to exceed once annually, by using its own process and EIS' agreed examination method, application and tools to verify its compliance with the terms and conditions of the license grant (i.e. all the information that may affect the pricing metric and license scope, including but not limited to any third party usage, hardware and operating system information, usage territory, pricing metric related information, installation location and installed copies, number of users accessing PC software, etc.). Ordering Activity shall also explain to EIS its examination process.

Such examination results shall be signed by an authorized official of Ordering Activity. If the examination reveals that the Ordering Activity owes additional license fees, Ordering Activity shall pay the amounts owed upon receipt of a proper invoice for such additional fees from EIS.

6. License Terms.

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

i. The Software available under this Agreement is set forth in the STS price List. Upon receipt of an acceptable order, EIS will provide to the Ordering Activity 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.

ii. The desktop and server based Software provided under this Agreement and categorized under SIN 132-33 will be authorized to operate for fifty (50) years; desktop and server based Software categorized under SIN 132-32 will be preauthorized to operate for one (1) year. The utility contained in the Software that will authorize it to operate for fifty years is confidential and a trade secret of EIS 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.

iii. The desktop and server-based Software provided under this Agreement and categorized under SIN 132-32 shall be licensed to the Ordering Activity on a term basis consisting of 12 months from the date of delivery. After expiration of the initial 12-month period, the Ordering Activity may purchase a new license at the then current contract awarded price or the parties' mutually agreed upon negotiated price which shall cover the new annual term.

iv. 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.

b. Pricing Metrics

i. Certain Software is licensed by “processor cores,” “total cores,” “processor core based,” “total 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 contained within a single item of authorized hardware. Ordering Activity shall not exceed the licensed number of processor cores.

ii. Certain Software is licensed by “distributed capacity,” “total distributed capacity,” “distributed processor cores,” “distributed processor core based,” “total distributed processor cores,” “total distributed capacity processor cores,” or “distributed processor core count” (or similar language referring to a number of distributed 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 full processing capacity of the computer hardware architecture where distributed Software computation and processing occurs (“Distributed Environment”). Full processing capacity is defined as the total number of physical processor cores, including each physical processor core on each chip, and/or virtual processor cores contained within the Distributed Environment. For the purposes of this Agreement, “authorized hardware” is defined as the Distributed Environment. Ordering Activity shall not exceed the licensed number of processor cores.

iii. 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 EIS, each Virtual Machine is limited to a maximum of four (4) virtual processor cores.

iv. 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).

1. 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 EIS), 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 the Ordering Activity in writing to EIS. Ordering Activity may change the name of the licensed Virtual Machine upon prior written notice to EIS.

2. 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. Ordering Activity 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 Ordering Activity’s premises.

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

v. With regard to Software licensed for desktop use (or use on personal computers or such similar designation), Ordering Activity may make one (1) additional copy of the Software for home use by each Ordering Activity 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 Ordering Activity employee; (ii) Home Use is limited to use for Ordering Activity’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 Ordering Activity’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 Ordering Activity. If Ordering Activity wishes to increase the number of licensed users or workstations, Ordering Activity must contact EIS and pay to EIS 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. Ordering Activity will maintain records of the names of all employees using the Software for Home Use and will provide EIS with a copy of such records upon request, subject to Government security requirements. Ordering Activity 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.

vi. 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, Ordering Activity will provide EIS 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. Ordering Activity will update the same from time to time and upon reasonable request.

vii. In addition to any other pricing metrics that may apply to the Software, the language set forth in this subsection (vii) shall apply to any Software that, as identified in the applicable quotation and/or order, is to be deployed in a Public Cloud.

Ordering Activity represents that it has established and currently maintains a private online account, (“Cloud Account”) with a third-party provider (“Provider”) of public Internet- based computing resources (“Public Cloud”). Upon issuance of an order and as such information is updated from time to time, Ordering Activity will provide Ordering Activity’s Cloud Account number and any other information reasonably required by EIS to enable Ordering Activity’s use of the Software within Ordering Activity’s Cloud Account.

Notwithstanding anything to the contrary contained herein, Ordering Activity may install and store an image of the Software in a single Ordering Activity -controlled Cloud Account. Ordering Activity shall use the Public Cloud facilities to structure its Cloud Account such that (i) installation and storage of the Software image is restricted at all times to Ordering Activity’s Cloud Account and (ii) access to the Software image is restricted at all times to authorized Users. Ordering Activity shall not apply an active product authorization code to a Software image. Ordering Activity shall install within its Cloud Account only Software designated by SAS as version 9.3 maintenance release 2, or later.

Ordering Activity may use the Software image to create a running instance and shall apply product authorization codes provided by EIS only to a running instance. If the licensed Software is designed for deployment across multiple hardware tiers, an instance shall be defined as a single virtual machine within the deployment and such deployment may include multiple instances corresponding to the multiple hardware tiers. If the Software is designed for deployment on a single hardware tier, an instance is defined as a single virtual machine and such deployment shall include only a single instance. Notwithstanding anything to the contrary contained in the STS, “Authorized Hardware” shall mean the virtual machine(s) associated with a single deployment.

Unless otherwise authorized herein, Ordering Activity shall not create instances for more than a single deployment of the Software at any given time. A separate license is required for each concurrent Software deployment in use by Ordering Activity.

If the Software license fee is based on the capacity of the Authorized Hardware or if the Software license otherwise restricts the maximum capacity of the Authorized Hardware, capacity shall not exceed the licensed number of virtual Processor Cores set forth in the quotation unless Ordering Activity notifies EIS and pays additional license fees.

Ordering Activity may use Public Cloud features to clone and/or save Ordering Activity's instance(s) of the Software only to the extent required to enable Ordering Activity to use the Software as authorized hereunder. Ordering Activity shall not use Public Cloud features to make the Software available to other Public Cloud accounts or for local deployment of the Software outside of Ordering Activity's Cloud Account.

EIS is not responsible for any fees charged to Ordering Activity by the Public Cloud Provider; for maintenance and support of any Public Cloud software or resources; for management, back-up and/or restoration of Ordering Activity content or data; or for any loss of content or productivity resulting from issues associated with the Public Cloud.

Technical support is limited to assistance with issues related to Software functionality. EIS makes no representations or warranties with respect to Software performance in a Public Cloud. Information regarding technical support policies, including support for Software installed in a Public Cloud, can be found at [support.sas.com](http://support.sas.com).

viii. The following terms apply to any license for Software that is identified in any applicable order hereunder as for "CAS Capacity" (or such similar identification): The Software license fee is based on Ordering Activity's CAS Capacity which is defined as the aggregated capacity of all SAS cloud analytics services ("CAS") runtime instances (collectively, "CAS Runtime") where aggregated capacity is calculated as the total number of physical and/or virtual cores used for computation and processing. Ordering Activity may install the Software on any quantity of physical and/or virtual authorized hardware, including virtual authorized hardware within a Ordering Activity -controlled public cloud account ("Public Cloud Account"), provided that neither the aggregated capacity of the CAS Runtime nor the aggregated capacity of the SAS programming runtime engine ("Non-CAS Runtime") exceeds the licensed CAS Capacity. If CAS Runtime or Non-CAS Runtime exceeds CAS Capacity at any time, additional fees will apply in accordance with the STS Pricelist. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount. With respect to Software installed within a public cloud, Ordering Activity will ensure that the Software is restricted at all times to Ordering Activity's Public Cloud Account and will be responsible for any use of the Software or Product Authorization Code by any party in any manner that is inconsistent with the terms and conditions herein or SAS' intellectual property rights.

ix. The following terms apply to any license for Software that is identified in any applicable order hereunder as for “Licensed Configuration” (or such similar identification). Software functionality is dependent on the functionality of other SAS software which Ordering Activity has previously licensed under the MLA or which Ordering Activity is licensing under this Supplement (“Prerequisite Software”). Ordering Activity may install the Software on, and/or access the Software from, any Authorized Hardware included as part of a single licensed configuration of the Prerequisite Software (“Licensed Configuration”). Ordering Activity may use the Software only in conjunction with a single Licensed Configuration of the Prerequisite Software. A separate Software license is required for each Licensed Configuration with which Ordering Activity uses the Software.

c. Indemnification.

If a claim of copyright, patent, trade secret, or other intellectual property rights violation is made against Ordering Activity relating to the Software, EIS (or its designee) agrees to indemnify the Ordering Activity by paying any settlement approved by EIS (or its designee), or any judgment, costs, or attorneys' fees finally awarded against the Ordering Activity 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 EIS has been informed as soon as practicable by Licensee of the claim and EIS (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 an Ordering Activity modification to the Software if such claim would not have been made but for the combination or modification. The foregoing exclusion does not apply to a claim based on Ordering Activity's combination of the Software with non-SAS technology that is: (a) authorized by SAS in a writing signed by an authorized signatory of SAS or authorized in the user documentation; or (b) generally required in order for the software to function in the manner contemplated by the user documentation.

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

d. Ordering Activity Responsibilities

i. So the Ordering Activity can properly update and distribute information needed to keep the Software functioning properly and account for authorized hardware, the Ordering Activity will define in each order the hardware on which the Software is installed and the business addresses and points of contact of those locations.

ii. If the Ordering Activity believes the Software is being used in violation of this Agreement, Ordering Activity will promptly notify EIS in writing and will cooperate in EIS' investigation and resolution of the situation.

- iii. The Ordering Activity will not permit anyone having access to the Software to:
  - 1. Reverse assemble or decompile the Software; or
  - 2. Mask, modify, or suppress any copyright notices or other proprietary rights notices, or fail to properly label any authorized copy; or
  - 3. Time-share, rent, outsource, or otherwise use the Software except as specifically permitted in this Agreement.

e. Authorized Use

Subject exclusively to the terms of this Agreement, authorized use is restricted to Ordering Activity's employees and Ordering Activity's authorized short-term on-site contractors who use the software solely on behalf of Ordering Activity.

f. Software Maintenance and Fees

Fees for particular versions or releases of the Software may differ depending upon previous versions or releases licensed by Ordering Activity. Fees for hardware changes or upgrades in users which result in additional license fees will be consistent with the approved Price List, billed under the same, 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"). Ordering Activity must notify EIS prior to making any hardware change. License and maintenance fees that have been applied and used in the performance of the Agreement are nonrefundable. Ordering Activity is not entitled to a pro-rata refund of any fees paid, unless this Agreement or an order placed under it is terminated for cause in which case fees will be prorated for the time remaining in the then-current annual license period and maintenance period.

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 Ordering Activity elects not to order Maintenance from EIS 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 fee equal to the amount of all preceding skipped periods of Maintenance for that server or user increment of the licensed Software. If at any time during the term of this Agreement Ordering Activity elects not to order Maintenance from EIS for a server or user increment, then Ordering Activity'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, Ordering Activity 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. Maintenance shall be provided in accordance with support as detailed in the below technical support terms, the latest version of which is at [support.sas.com](http://support.sas.com), terms of which may be updated from time to time. If SAS modifies its technical support policies during an annual period for which Ordering Activity has paid maintenance fees in a way that materially decreases the level of technical support available to Ordering Activity for the specific Software, EIS will notify Ordering Activity in writing of such material decrease. If Ordering Activity does not agree with such material decrease in the level of technical support, Ordering Activity may notify EIS. EIS, at its option, will either: (a) provide the prior level of technical support to Ordering Activity for the Software at issue through the end of the then-annual license period; or (b) allow Ordering Activity to terminate its license and maintenance and receive a refund of the license and maintenance fees paid for such Software, prorated for the time remaining in the then-current annual license period and maintenance period.

#### Technical Support.

SAS will use reasonable efforts, either by telephone or electronically, to help Ordering Activity solve specific problems with installation or use of the Software. Ordering Activity may obtain additional support services from EIS by ordering additional services and paying applicable additional fees. It may not be possible for SAS to solve all problems or correct all errors in the Software. From time to time, SAS may make available, and Ordering Activity agrees to use reasonable efforts to install, new releases, updates and corrective code. During ongoing Software development, SAS may add, change or delete individual components or functionality in new releases. Such Software modifications shall be subject to the terms herein. If Ordering Activity chooses not to install the most current release of the Software, the level of technical support may diminish over time. EIS' obligations in this section are subject to the following: Ordering Activity shall: (a) when requesting technical support, notify SAS of any modifications to the Software not made by SAS, or at the direction of SAS; and (b) establish technical contacts with knowledge about the Software and Ordering Activity's use of the Software who will be qualified to provide SAS with information necessary for SAS to diagnose and remedy any problems with the Software. Failure to comply with these terms may result in longer response and resolution times.

#### Technical Support Process.

The following describes how Technical Support is currently provided at SAS' worldwide headquarters in Cary, North Carolina between the hours of 9:00 a.m. and 8:00 p.m. eastern time, Monday through Friday during normal business days.

- (a) Calls to Technical Support are answered by a Phone Support Operator, who determines the area of the user's problem and directs the call to a phone queue based on product or subject area. There are several queues, each having 1 to 4 Technical Support Analysts available at any given time.
- (b) The first available representative in the queue handles the call. To reduce hold times when callers are holding in the queue, a message is sent to representatives in the

subject group who are not "available"; they can make themselves available to receive calls as needed.

(c) When the representative receives a call, that representative obtains background information and a description of the problem, and attempts to answer the question. These first response representatives are able to resolve a majority of problems on primary contact.

(d) If the representative cannot answer the question on primary contact, the problem is placed in the "outstanding problem" list, additional details are included, and the user is provided with a tracking number. Notification of the tracked problem may be sent to a representative who has expertise in the subject area.

(e) A representative with subject area expertise who is informed of a new problem will accept the problem into a "working" file, and contact the user. Technical Support's goal for contacting users on tracked problems depends on the severity of the problem: a 2-hour callback for severe problems, up to a maximum of 24 hours for low-priority problems.

(f) The consultant is responsible for the problem until its resolution. Developers may be involved in the process, but the consultant still retains ownership of the problem. The consultant updates the problem whenever the user is contacted or additional information is required, enabling a complete audit trail of all problems. Resolved problems are moved to a "resolved" file, and then archived.

(g) The tracking system contains various signals to indicate "red flag" conditions, such as callbacks that have not been made, notifications from users, high-priority problems, or problems that have not been updated within a certain amount of time. Consultants may designate "backup" consultants to handle problems when they are out of the office.

(h) Problems submitted through e-mail or the WWW interface immediately go to the "outstanding problem" file, and are handled as problems called in by phone, but the representative can respond by phone or e-mail.

g. Ordering

To license the Software or order Maintenance, Ordering Activity will provide orders which contain complete product, pricing, hardware, operating system, software product, version, if applicable, and media information, and identification and location of its premises where the Software is shipped. The Agreement will be incorporated into Ordering Activity's order. EIS 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 Agreement, such Ordering Activity agrees that, unless specifically agreed to in writing by EIS, without any requirement to expressly reject such terms, purchase order terms and conditions received by EIS from such entity issuing a purchase order hereunder that conflict with or are in addition to the terms hereof are expressly deleted and rejected, unless the terms and conditions to be modified are not material in nature and are

evidenced by the parties' signed written agreement. Acceptance by EIS of any order does not constitute an amendment to this Agreement.

h. Institute Distribution of the Software and Documentation

Upon receipt of an acceptable order from Ordering Activity, EIS 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 categorized under SIN 132-33, the Software media shipped will be preauthorized to operate for fifty (50) years; for desktop and server based Software categorized under SIN 132-32, the Software media shipped will be preauthorized to operate for one (1) year. If licensed for a server, the Software media shipped will be preauthorized to operate on the designated server. If licensed for a mainframe, the Software media shipped will be preauthorized to operate on the designated mainframe or distributed server for the designated license period.

i. 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.

j. Upgrades

Ordering Activity must notify EIS 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.

k. 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 Ordering Activity nor any other user may reverse assemble or decompile the Software or otherwise attempt to recreate the Source Code.

l. Reserved

m. Termination

Upon termination of this Agreement, Ordering Activity agrees to delete or destroy all Software in its possession that is not currently paid for and certify the same to EIS. Upon termination of any license, Ordering Activity agrees to reclaim, delete, and destroy the Software product at issue and certify the same to EIS.

n. Late Shipment

EIS will use its best efforts to ship the Software within ten (10) days of receipt of an acceptable order. However, EIS does not guarantee specific delivery dates. If EIS fails to deliver the Software in the time frame required by the Ordering Activity, the Ordering Activity may cancel its order and be reimbursed of any advanced payment(s) the Ordering Activity made. EIS will not be responsible for any losses incurred by the Ordering Activity in purchasing software elsewhere.

o. 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, Ordering Activity agrees to reclaim, delete and destroy the Software product at issue.

p. Bundled Components

Software Solutions and Suites consist of bundled components. Ordering Activity 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 Ordering Activity on the same or different media as other components of the Software Solution or Suite. EIS 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 the STS.

q. Usage Requirements

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 Ordering Activity if Ordering Activity has a license to use the applicable SAS Software on appropriate hardware which is to be specified in Ordering Activity's orders for the licenses of such Software Solutions and Suites.

r. Third Parties

Subject to any specific requirements or restrictions applicable to a Software Solution or Suite, Ordering Activity'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 Ordering Activity. Except with EIS' prior written consent, Ordering Activity 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. Ordering Activity 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.



Ordering Activity 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.

s. Warehouse Administration

The warehouse administration function of certain Software Solutions and Suites is licensed on a per named administrator basis. Upon licensing this Software, Ordering Activity must provide EIS with the name(s) of the warehouse administrator(s). As those administrators change, Ordering Activity may call or write EIS to update EIS. The warehouse administrator must be an Ordering Activity employee or other authorized user under the license.

t. AppDev Studio

Unless otherwise authorized by EIS, 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).

u. Performance Data Warehouse

Ordering Activity 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 Ordering Activity provides to such Software Suite. Ordering Activity 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.

v. Third Party Software

Customer acknowledges that certain Software Solutions and Suites include components which contain software licensed to EIS' 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:

- i. Ordering Activity 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. Ordering Activity agrees not to use or redistribute the Third Party Software for such purposes. This license does not authorize Ordering Activity 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.

ii. 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).

iii. DISCLAIMER OF WARRANTY. THE THIRD PARTY SOFTWARE IS PROVIDED TO ORDERING ACTIVITY "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.

w. LIMITATION OF LIABILITY.

EIS' 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 LICENSOR 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 ORDERING ACTIVITY.

x. DataDirect Technologies

With regard to SAS/ACCESS Software that contains subcomponents licensed to EIS' 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.

y. Free and Open Source Software

Solely as a convenience to Ordering Activity, the Software may be shipped along with certain free and open source software ("FOSS") identified in the Software documentation and/or the applicable quotation. EIS does not license the FOSS to Ordering Activity. FOSS is merely provided as a convenience. If Ordering Activity determines to use the FOSS, Ordering Activity's right to use such FOSS shall be governed by the applicable FOSS license agreement instead of the terms hereof.

z. Conversion

If, as permitted by EIS, an Ordering Activity desires to convert an existing Software license (the "Prior Software") to different Software (the "Converted Software"), EIS' quotation to the Ordering Activity will describe the conversion. In such event, Ordering Activity's license for the Converted Software identified on the applicable quotation will switch to the Converted Software

upon EIS' receipt of Ordering Activity's purchase order to the applicable quotation and the terms and conditions herein applicable to the Converted Software shall apply. Additionally, upon EIS' receipt of Ordering Activity's purchase order to the applicable quotation, Ordering Activity's license to the Prior Software will automatically terminate without further action by either party and Ordering Activity shall cease use of the Prior Software, delete such software from any authorized hardware on which it is installed, and destroy such software. Upon request, Ordering Activity will certify that it has completed such deletion and destruction.

7. Software Specific Pricing Metrics.

The following terms govern Ordering Activity'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.

a. Licensing Provisions Specific to Enterprise Miner™ Software

i. Ordering Activity 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.

ii. 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).

b. Licensing Provisions Specific to SAS/TOOLKIT® Software.

i. Ordering Activity 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 Ordering Activity to any third party except as linked into the executable image.

c. Licensing Provisions Specific to SAS/IntrNet™ Software

i. 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").

ii. Ordering Activity may allow Ordering Activity'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 Ordering Activity's Application Server(s). Subject to the restrictions set forth below, such access may be from anywhere in the world. Ordering Activity 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.

iii. Unless Ordering Activity receives prior written consent from EIS, Ordering Activity 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.

iv. Ordering Activity is responsible for End User access to SAS software.

v. Ordering Activity 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.

vi. Ordering Activity 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.

vii. If Ordering Activity chooses to use the "SAS Powered" Logo ("Logo"), the terms in this Section (vii) apply. Should Ordering Activity choose not to use the Logo, the terms in this Section do not apply.

1. The Logo may be used only in connection with applications written in SAS Programming Language.

2. 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 Ordering Activity's Marketing Material includes other applications or products, the Logo must be clearly associated only with the authorized applications. The Logo may be used only in the official form provided by the Institute, and Ordering Activity must follow the Logo Guidelines, which are included with the SAS/IntrNet software media. Ordering Activity may not modify the Logo in any manner, including size, shape, proportions, color, etc.

3. Ordering Activity'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."

4. EIS 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. ORDERING ACTIVITY USES THE LOGO AT ORDERING ACTIVITY'S OWN RISK.

5. Ordering Activity agrees to assist EIS and its licensors in executing and recording any documents relating to this permission necessary to protect the SAS trademark or Logo in any country.

6. These terms and conditions apply only to the Logo. Ordering Activity is not granted permission to use any other SAS trademark or logo. Ordering Activity is not authorized to use any Institute trademark in the name of its company, products, or services.

7. EIS may terminate Ordering Activity's permission to use the Logo at any time, at EIS' sole discretion, if EIS deems it necessary for protection of the SAS trademark or Logo.

d. Licensing Provisions Specific to IT Charge Manager™ Software

i. 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. Ordering Activity 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.

ii. IT Charge Manager operates in conjunction with IT Resource Management software. IT Resource Management software consists of a client and a server component. Ordering Activity 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.

iii. IT Charge Manager will only operate after Ordering Activity has installed product authorization codes for the IT Resource Management software with which IT Charge Manager operates.

iv. If Ordering Activity's license for IT Charge Manager is terminated or expires, Ordering Activity shall (i) cease using, (ii) delete, and (iii) destroy or return to EIS all copies of IT Charge Manager in its possession.

e. Licensing Provisions Specific to JMP® Statistical Discovery Software.

i. 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, Ordering Activity may not exceed the licensed Total Users.

- ii. 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.
- iii. The fee includes one (1) set of media, installation materials and one (1) set of documentation generally provided with the applicable Software.
- iv. SAS Simulation Studio for JMP requires an existing JMP license.

f. 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 EIS. Consult the SAS/C software documentation for information on how to access these listings.

The Limited Distribution Libraries and the SAS/C Redistribution Package are copyrighted property of the Institute and shall be used by Ordering Activity only as follows:

i. Limited Distribution Libraries

Ordering Activity 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.

ii. SAS/C Redistribution Package

The SAS/C Redistribution Package files do not include a trial period. Ordering Activity's distribution of the SAS/C Redistribution Package files is subject to an annual license fee in addition to the license fee paid by Ordering Activity for the SAS/C software. SAS/C Redistribution Package files may only be distributed as a component of Ordering Activity's product created using the SAS/C software. In no event shall such files be distributed by Ordering Activity separate and apart from Ordering Activity's product nor shall Ordering Activity authorize third parties to redistribute such files in any manner. These files may be distributed worldwide.

Ordering Activity shall not use the Institute's name, logo, or trademarks to market products Ordering Activity develops using the SAS/C software. EIS has no support obligations to third parties.

Ordering Activity 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.

g. Licensing Provisions Specific to Enterprise Reporter™ Software

i. 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.

ii. Enterprise Reporter will operate on both a server and personal computer and Ordering Activity will receive a product authorization code for each platform. As long as Ordering Activity does not exceed the number of users or personal computer installs licensed, Ordering Activity may install Enterprise Reporter on either or both platforms. It is Ordering Activity’s responsibility to ensure the correct product authorization code is applied

h. SAS® Financial Management Software is subject to the following additional terms and conditions:

(i) SAS® Financial Management Software is licensed for use by the Ordering Activity on a single Ordering Activity server except as specified in this section with respect to the Metadata Server. The Ordering Activity 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 Ordering Activity’s license of SAS® Financial Management Software is limited to and the license and maintenance fees payable by Ordering Activity 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 Ordering Activity. The types of users for which a license and maintenance of the SAS® Financial Management Software may be purchased are as follows:

1. 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.

2. Finance Power Users – Finance Power Users are users who may access the SAS® Financial Management Software to use the full functionality of that Software.

3. 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.

4. 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.

(ii) For each of the foregoing user types, the quantity licensed by the Ordering Activity 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 Ordering Activity purchases maintenance for the SAS® Financial Management Software with respect to such annual maintenance).

(iii) The Ordering Activity’s license of the SAS® Financial Management Software also includes and is limited to, and the license and maintenance fees payable by the Ordering Activity 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 Ordering Activity.

(iv) Metadata Server – The Ordering Activity may install the Base SAS component (along with any other component authorized by EIS) of the SAS® Financial Management Software on one additional Ordering Activity server which has a classification by SAS that is equal to or lower than SAS’ classification of the Ordering Activity 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), Ordering Activity may not install any additional SAS software products on such additional server on which Ordering Activity installs the Base SAS component.

(v) AppDev Studio PC Use – The AppDev Studio Software component of the SAS® Financial Management Software may only be used for development purposes.

(vi) The license of SAS® Financial Management Software also includes a license of a SAS/Access Software product chosen by the Ordering Activity.

i. Licensing Provisions Specific to Platform Suite for SAS Software:

Platform Suite for SAS Software is licensed for use by Ordering Activity only with Ordering Activity’s concurrent use of Base SAS® that is also licensed by the Ordering Activity. Platform Suite for SAS Software may not be used by Ordering Activity 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.

j. Restricted Use Infrastructure Server Software (“RUIS Software”) is licensed subject to the following:

i. RUIS Software is licensed for use by Ordering Activity only with Ordering Activity’s use of a SAS software solution in which the RUIS Software is embedded by SAS (“SAS Solution”) and which the Ordering Activity has also licensed. RUIS Software may not be used by Ordering Activity with any other product of SAS or any third party.

ii. RUIS Software is licensed for use on the hardware for which the applicable SAS Solution has also been licensed by the Ordering Activity. The license and maintenance fees payable by the Ordering Activity with respect to the RUIS Software are based on the number of processors of Ordering Activity’s server on which the RUIS Software resides.

iii. RUIS Software includes README files with additional terms and conditions which govern the license of the use of the RUIS Software in connection with Ordering Activity’s license of the applicable SAS Solution.

k. SAS® Strategy Management Software is subject to the following additional terms and conditions:

i. SAS® Strategy Management Software is licensed for use by the Ordering Activity on a single Ordering Activity computer except as specified in this section with respect to the Metadata Server. The Ordering Activity 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, Ordering Activity may not exceed the licensed Total Users.

ii. The Ordering Activity’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 Ordering Activity 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 Ordering Activity:

- (i) Metadata Server – The Ordering Activity may install the Base SAS component (along with any other component authorized by EIS) of the SAS® Strategy Management Software on one additional Ordering Activity server which has a classification by SAS that is equal to or lower than SAS’ classification of the Ordering Activity 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), Ordering Activity may not install any additional SAS software products on such additional server on which Ordering Activity installs the Base SAS component.
- (ii) AppDev Studio PC Use – The AppDev Studio Software component of the SAS® Strategy Management Software may only be used for development purposes.

I. SAS® Forecast Server Software is subject to the following additional terms and conditions:

- i. SAS® Forecast Server Software is licensed for use by the Ordering Activity on a single Ordering Activity server except as specified in this section with respect to the Metadata Server. The Ordering Activity 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.
- ii. The Ordering Activity’s license of the SAS® Forecast Server Software also includes and is limited to, and the license and maintenance fees payable by the Ordering Activity 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 Ordering Activity:

- 1. Metadata Server – The Ordering Activity may install the Base SAS component (along with any other component authorized by EIS) of the SAS® Forecast Server Software on one additional Ordering Activity server which has a classification by SAS that is equal to or lower than SAS’ classification of the Ordering Activity

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), Ordering Activity may not install any additional SAS software products on such additional server on which Ordering Activity installs the Base SAS component.

m. SAS Enterprise Data Integration Server Software is subject to the following additional terms and conditions:

i. SAS Enterprise Data Integration Server Software is licensed for use by the Ordering Activity on a single Ordering Activity server except as specified in this section with respect to the Metadata Server. The Ordering Activity 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.

ii. The Ordering Activity'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 Ordering Activity 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 Ordering Activity:

Metadata Server – The Ordering Activity may install the Base SAS component (along with any other component authorized by EIS) of the SAS Enterprise Data Integration Server Software on one additional Ordering Activity server which has a classification by SAS that is equal to or lower than SAS classification of the Ordering Activity 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), Ordering Activity may not install any additional SAS software products on such additional server on which Ordering Activity installs the Base SAS component.

iii. If the Ordering Activity has previously licensed the Enterprise Integration Technologies bundle of SAS Software ("EIT Software") for use on the same Ordering Activity hardware and with the same operating system with respect to which Ordering Activity has licensed the SAS Enterprise Data Integration Server Software and the

Ordering Activity's annual license or annual maintenance, as applicable, with respect to that EIT Software is current as of the commencement date ("EDILB Date") of Ordering Activity's license of the SAS Enterprise Data Integration Server Software, then as of the EDILB Date Ordering Activity's license of the EIT Software shall be cancelled and superseded as follows:

1. The SAS/Connect and SAS Integration Technologies Software that are components of the EIT Software are included in Ordering Activity'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 Ordering Activity for license and maintenance, as applicable, of the SAS Enterprise Data Integration Server Software;

2. Ordering Activity'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 Ordering Activity'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.

iv. The license of SAS Enterprise Data Integration Server Software also includes a license of

1. two (2) SAS/Access Software products chosen by the Ordering Activity;

2. SAS Quality Knowledge Base Locale Software (the locale/language chosen by Ordering Activity);

3. 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);

4. 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 Ordering Activity 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

5. one (1) 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 Ordering Activity's use of the Software is dependent upon Ordering Activity's licensing SAS Enterprise Data Integration Server Software ("Prerequisite Software"). Ordering Activity may install the Software on, and/or access the Software from, any authorized hardware, located at a single physical site, for which Ordering Activity has licensed the Prerequisite Software.

n. SAS® Enterprise Model Management Software is subject to the following additional terms and conditions:

i. SAS® Enterprise Model Management Software is licensed for use by the Ordering Activity on a single Ordering Activity server except as specified in this section with respect to the Metadata Server. The Ordering Activity 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.

ii. The Ordering Activity's license of the SAS® Enterprise Model Management Software also includes and is limited to, and the license and maintenance fees payable by the Ordering Activity 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 Ordering Activity:

1. The Ordering Activity may install the Base SAS component (along with any other component authorized by EIS) of the SAS® Enterprise Model Management Software on one additional Ordering Activity server which has a classification by SAS that is equal to or lower than SAS' classification of the Ordering Activity 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), Ordering Activity may not install any additional SAS software products on such additional server on which Ordering Activity installs the Base SAS component.

2. 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 Ordering Activity 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.

o. SAS Data Integration Server Software is subject to the following additional terms and conditions:

i. SAS Data Integration Server Software is licensed for use by the Ordering Activity on a single Ordering Activity server except as specified in this section with respect to the Metadata Server. The Ordering Activity 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.

ii. The Ordering Activity’s license of the SAS Data Integration Server Software also includes and is limited to, and the license and maintenance fees payable by the Ordering Activity 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 Ordering Activity:

Metadata Server – The Ordering Activity may install the Base SAS component (along with any other component authorized by EIS) of the SAS Data Integration Server Software on one additional Ordering Activity server which has a classification by SAS that is equal to or lower than SAS classification of the Ordering Activity server on which the licensed SAS Data Integration Server is installed, solely for the purpose of deploying the Metadata Server component for use within the licensed SAS Data Integration Server Software environment. Without first paying then-current applicable additional license fees (including an additional license of the Base SAS component), Ordering Activity may not install any additional SAS software products on such additional server on which Ordering Activity installs the Base SAS component.

p. SAS® IT Resource Management Software is subject to the following additional terms and conditions:

i. The Software is licensed for use by the Ordering Activity on a single Ordering Activity computer except as specified in this section with respect to the Metadata Server. The Ordering Activity 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 Ordering Activity's license of the Software is limited to, and the license and maintenance fees payable by Ordering Activity for the Software are based on, use on the type of network for which the Software is licensed by Ordering Activity (as noted in the CLIN licensed) as follows:

1. Network Based (Single Site or Mixed) - The Software license fee is based on the total processing capacity of Ordering Activity'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.

2. 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 Ordering Activity'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 Ordering Activity'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 Ordering Activity's server hardware and mainframe hardware IT infrastructure in the United States.

ii. The Ordering Activity's license of the Software also includes and is limited to, and the license and maintenance fees payable by the Ordering Activity 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 Ordering Activity:

1. Metadata Server – The Ordering Activity may install the Base SAS component (along with any other component authorized by EIS) of the Software on one additional Ordering Activity server which has a classification by SAS that is equal to or lower than SAS' classification of the Ordering Activity 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), Ordering Activity may not install any additional SAS software products on such additional server on which Ordering Activity installs the Base SAS component.
  2. 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.
  - 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).
  - iv. Upon Ordering Activity's request, if Ordering Activity's maintenance is fully paid and current, Ordering Activity's license of SAS® IT Resource Management Software includes a license of SAS Financial Management Adapter for SAP.
- q. SAS® IT Service Level Management Software is subject to the following additional terms and conditions:
- i. The Software is licensed for use by the Ordering Activity on a single Ordering Activity computer except as specified in this section with respect to the Metadata Server. The Ordering Activity 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 Ordering Activity's license of the Software is limited to, and the license and maintenance fees payable by Ordering Activity for the Software are based on, use on the type of network for which the Software is licensed by Ordering Activity (as noted in the CLIN licensed) as follows:
    1. Network Based (Single Site or Mixed) - The Software license fee is based on the total processing capacity of Ordering Activity'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. A license of SAS® IT Resource Management Software for the same hardware is required to license this Software.
- r. SAS® Data Surveyor Software is subject to the following additional terms and conditions:
  - i. The Software is licensed for use by the Ordering Activity on a single Ordering Activity computer except as specified in this section. The Ordering Activity shall identify the specific machine information (hardware, manufacturer, and operating system) of the computer on which the Software will be installed. In addition, the Ordering Activity's license of the Software is limited to, and the license and maintenance fees payable by Ordering Activity for the Software are based on, the capacity of the Ordering Activity computer on which the Software is installed (as noted in the CLIN licensed) as follows:
    - 1. 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, Ordering Activity 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. Ordering Activity may use the Software, including its subcomponents, solely to access Oracle data in the licensed Oracle database. Ordering Activity 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, Ordering Activity 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. Ordering Activity may use the Software, including its subcomponents, solely to access PeopleSoft data in the licensed ODBC, SQL, DB2 or Oracle database. Ordering Activity 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. Ordering Activity 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 Siebel 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, Ordering Activity 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. Ordering Activity may use the Software, including its subcomponents, solely to access Siebel data in the licensed ODBC, SQL, DB2 or Oracle database. Ordering Activity 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.

s. 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.

t. 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, Ordering Activity may not exceed the licensed Total Users.

u. DataFlux Software is subject to the following additional terms and conditions:

i. DataFlux Software that is licensed for use by Ordering Activity on personal computers is subject to the following additional terms and conditions.

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, Ordering Activity may not exceed such number of individuals or installations.

ii. DataFlux Software that is licensed for use by Ordering Activity on servers is subject to the following additional terms and conditions.

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, Ordering Activity may not install the Software on hardware other than that for which the Software was specifically licensed.

iii. DataFlux Quality Knowledge Based Locales (also known as DataFlux LocalePacks) are subject to the following additional terms and conditions.

The Software license fee is based on one (1) installation of the Software on the authorized hardware and use for Ordering Activity's internal business purposes only within the United States during the license period. Ordering Activity may not exceed the number of installations of locale of use.

iv. 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 Ordering Activity on an annual, non-exclusive, revocable basis. EIS 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 EIS on thirty (30) days prior written notice to Ordering Activity in the event EIS' licensor terminates the license for such Verify Data ("Verify Data Termination"). In the event of a Verify Data Termination, Ordering Activity must (i) terminate its use of, and delete and destroy, the affected Verify Data on or before the date provided by EIS in such written notice and (ii) upon request from EIS, provide EIS with a certification of the deletion and destruction of the affected Verify Data signed by an authorized officer of Ordering Activity. In the event of a Verify Data Termination, provided Ordering Activity has complied with its obligations hereunder, EIS will refund to Ordering Activity a prorated portion of the license fees paid by Ordering Activity 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. Ordering Activity 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 EIS 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 ORDERING ACTIVITY "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. EIS 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. EIS DISCLAIMS ANY AND ALL LIABILITY IN CONNECTION WITH ORDERING ACTIVITY'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.

- v. In order to fully function, DataFlux “Verify” or “Enrichment” products require a DataFlux DataPack that must be separately licensed by Ordering Activity.
- v. Teragram Software is subject to the following additional terms and conditions:
  - i. 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.
    - 1. 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, Ordering Activity 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.
  - ii. 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.
    - 1. 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, Ordering Activity may not install the Software on hardware other than that for which the Software was specifically licensed.
  - iii. Teragram CATCON Server Software is subject to the following additional terms and conditions.
    - 1. 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, Ordering Activity 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.
  - iv. 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.

1. 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, Ordering Activity may not exceed such licensed number of installs.
  
- v. All Teragram Software is subject to the following additional terms and conditions: Ordering Activity may not disclose to third parties the results of Software performance benchmarks, conducted by EIS (or its licensors) or by Ordering Activity, without EIS' prior written authorization. Ordering Activity 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 Ordering Activity by EIS and provided with the Software.
  
- w. SAS® Visual Data Discovery Software licensed for use on a server includes a license for Ordering Activity'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

Ordering Activity 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 Ordering Activity's choice otherwise available under this Agreement (which may be requested at any time as long as the maintenance is maintained).

- x. SAS® e-Learning offerings are subject to the following additional terms and conditions:
  - i. 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, Ordering Activity may not exceed the licensed Total Users.

ii. Ordering Activity must notify EIS in writing prior to receiving Software as to whether the Software will be downloaded by the Ordering Activity or if the Ordering Activity will access the Software on the SAS website. If the Ordering Activity accesses the Software on the SAS website, SAS agrees that notwithstanding any “clickwrap” or “clickthrough” license terms that the Ordering Activity 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. Ordering Activity specifically agrees that it will not disclose, distribute or make available the download/access codes to the Software other than to authorized users.

y. 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.

z. 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).

aa. 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, Ordering Activity may not exceed the licensed number of users or installs.

bb. SAS® Data Governance is subject to the following additional terms and conditions:

i. 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 6.b. 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.

ii. 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).

cc. SAS® Data Management Advanced is subject to the following additional terms and conditions:

- i. The Software is licensed on a “Bundle Capacity” basis.
- ii. 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).
- iii. The license of the Software also includes a license of:
  1. two (2) SAS/Access Software products chosen by the Ordering Activity (which may be requested at any time as long as the maintenance is maintained); and
  2. three (3) SAS Metadata Bridge products chosen by the Ordering Activity (which may be requested at any time as long as the maintenance is maintained).

dd. SAS® Data Management Standard is subject to the following additional terms and conditions:

- i. The Software is licensed on a “Bundle Capacity” basis.
- ii. 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).
- iii. The license of the Software also includes a license of:
  1. two (2) SAS/Access Software products chosen by the Ordering Activity (which may be requested at any time as long as the maintenance is maintained); and
  2. three (3) SAS Metadata Bridge products chosen by the Ordering Activity (which may be requested at any time as long as the maintenance is maintained).

ee. 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).

ff. 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).

gg. 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).

hh. SAS® Forecasting for Desktop is subject to the following additional terms and conditions:

i. 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.

ii. In addition, SAS® Forecasting for Desktop is limited to installation on a personal computer(s) containing no more than eight (8) processor cores. Ordering Activity 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, Ordering Activity 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.

ii. SAS® Grid Manager is subject to the following additional terms and conditions:

i. The Software is licensed pursuant to the terms of Subsection 6.b.vi 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 Ordering Activity is deploying a solution within the Grid and the solution package contains Base SAS and SAS/CONNECT.

ii. SAS® Office Analytics is subject to the following additional terms and conditions: The Software is licensed based on a “Bundle Capacity” basis.



- jj. SAS® Analytics Pro is subject to the following additional terms and conditions:
  - i. If licensed for use on servers, the Software is licensed on a “Bundle Capacity” basis.
- kk. 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.
- ll. 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, Ordering Activity 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”):
  - i. Ordering Activity’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.
    1. Ordering Activity shall not change the operating systems under which the Production Software (“Production Environment”) and Test Software are currently licensed unless Ordering Activity notifies EIS in writing that Ordering Activity desires to change such operating system(s) and EIS approves such change; and
    2. The hardware on which the Test Software that is licensed by hardware capacity (as applicable) is installed in accordance with Ordering Activity’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 Ordering Activity’s license of such Production Software; and
    3. 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 Ordering Activity must be the same as the number of licensed users of the corresponding Production Software and for which annual maintenance is subsequently purchased by Ordering Activity.
  - ii. The Test Software may at no time be used by or for Ordering Activity (i) in a production environment or as a fail-over system, (ii) to create applications or code or (iii) for any software development.

iii. Ordering Activity must maintain a separate license for the Production Software under the same operating system as the Test Environment. Ordering Activity's license to use the Test Software shall automatically terminate upon expiration or termination of Ordering Activity's license of the corresponding Production Software or upon failure of Ordering Activity 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.

mm. 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, Ordering Activity 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"),

i. Ordering Activity's license to use the Development Software is solely for development purposes to create applications and code on the Ordering Activity hardware running the operating system with respect to which the Development Software is licensed ("Development Environment"), subject to the following.

1. Ordering Activity shall not change the operating systems applicable to the Production Environment or the Development Environment unless Ordering Activity notifies EIS in writing that Ordering Activity desires to change such environments and EIS approves such change ("Production Environment" means the Ordering Activity hardware running the operating system with respect to which the Production Software is licensed); and

2. The hardware on which the Development Software that is licensed by hardware capacity (as applicable) is installed in accordance with Ordering Activity'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 Ordering Activity's license of such Production Software; and

3. 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 Ordering Activity 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 Ordering Activity.

ii. The Development Software shall at no time be used by or for Ordering Activity (i) in a production environment or as a fail-over system or (ii) in a test environment.

- iii. Ordering Activity must maintain a separate license for the Production Software under the same operating system as the Development Environment. Ordering Activity's license to use the Development Software shall automatically terminate upon expiration or termination of Ordering Activity's license of the corresponding Production Software or upon failure of Ordering Activity 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.
- nn. SAS® Cost and Profitability Management Standard and SAS® Cost and Profitability Management Advanced Software is subject to the following additional terms and conditions:
  - i. If the Software is licensed for use by Power Users, the Software license fee is based on the number of users (not concurrent) who may access the Software during the applicable license period to use the full functionality of the Software. Ordering Activity may not exceed such licensed number of Power Users.
  - ii. If the Software is licensed for use by Business Users, the Software license fee is based on the number of users (not concurrent) who may access the Software during the applicable license period, solely to utilize applications created by Power Users to enter, validate and manage data. Ordering Activity may not exceed such licensed number of Business Users.
  - iii. The Software, including all of its subcomponents, may be used solely for the benefit of Ordering Activity for activity-based costing and profitability modeling and analysis.
- oo. SAS® Contextual Analysis is subject to the following additional terms and conditions:
  - i. The Software is licensed as a technology bundle such that Ordering Activity may use the Software subcomponents alone or with the other subcomponents bundled with the Software. The Software license entitles Ordering Activity to implement a single configured installation of the Software. If the Software is designed for operation across multiple hardware tiers as described in its documentation, the term "single configured installation" includes installation of subcomponents of the Software on multiple hardware tiers which operate together as a single configuration. All computer hardware within the multiple hardware tier environment is considered authorized hardware for the purposes of the Agreement. Authorized hardware for the server-tier Software subcomponents is listed on the purchase order or by reference to the part number. Otherwise, "single configured installation" includes installation of the Software on a single item of authorized hardware or on the number of items of authorized hardware authorized in the purchase order.
- pp. SAS® Marketing Optimization and SAS® Marketing Automation is subject to the following additional terms and conditions:

- i. The Software license fee is based on the total number of Client Equivalent Records contained within the Data Mart used with the Software. A "Client Equivalent Record" is a unique record in the Data Mart that relates to a Client or Prospect of Ordering Activity where a "Client" is a person or entity identified in the Data Mart that has received a product or service from Ordering Activity within the last twelve (12) months or has an active account status and a "Prospect" is a person or entity identified in the Data Mart that is not a Client. For the purposes of counting Client Equivalent Records, each Client record shall be counted as one (1) Client Equivalent Record and each five (5) Prospect records shall be counted as one (1) Client Equivalent Record. A "Data Mart" is a single data environment that may be spread over a number of physical hardware and software platforms that has a consistent data design and data tables, table joins and columns, naming conventions and structure. Ordering Activity shall not exceed the licensed number of Client Equivalent Records.
  - ii. SAS® Marketing Optimization Software, including all of its subcomponents, may be used solely for the benefit of Ordering Activity in connection with optimizing Ordering Activity's marketing campaigns.
  - iii. SAS® Marketing Automation Software, including all of its subcomponents, may be used solely for the benefit of Ordering Activity in connection with automating Ordering Activity's marketing campaigns.
- qq. SAS® Text Analytics Languages for SAS Text Miner is subject to the following additional terms and conditions:
- i. Ordering Activity may choose languages from then generally, commercially-available language options.
  - ii. Ordering Activity's use of the Software is dependent upon Ordering Activity's licensing, hereunder, certain other SAS software ("Prerequisite Software"). Ordering Activity may install the Software on, and/or access the Software from, any authorized hardware included as part of a single configured installation of the Prerequisite Software.
- rr. SAS® Event Stream Manager is subject to the following additional terms and conditions:
- i. The Software license fee is based on the total number of Managed Installs administered by the Software during each annual period of the license where a "Managed Install" is a single installation of a SAS software offering licensed by Ordering Activity hereunder that Ordering Activity monitors and manages using the Software. Ordering Activity may not exceed such licensed number of Managed Installs.
- ss. SAS® Data Quality Standard for SAS Marketing Automation is subject to the following additional terms and conditions:
- i. The Software license fee is based on the total number of Client Equivalent Records contained within the Data Mart used with the Software. A "Client Equivalent Record" is a unique record in the Data Mart that relates to a Client or Prospect of

Ordering Activity where a “Client” is a person or entity identified in the Data Mart that has received a product or service from Ordering Activity within the last twelve (12) months or has an active account status and a “Prospect” is a person or entity identified in the Data Mart that is not a Client. For the purposes of counting Client Equivalent Records, each Client record shall be counted as one (1) Client Equivalent Record and each five (5) Prospect records shall be counted as one (1) Client Equivalent Record. A "Data Mart" is a single data environment that may be spread over a number of physical hardware and software platforms that has a consistent data design and data tables, table joins and columns, naming conventions and structure. Ordering Activity shall not exceed the licensed number of Client Equivalent Records.

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

tt. SAS® Intelligence and Investigation Management is subject to the following additional terms and conditions: SAS® Intelligence and Investigation Management, including all of its subcomponents, may be used by Users solely for the benefit of Ordering Activity to manage investigations. When Ordering Activity licenses SAS® Intelligence and Investigation Management it must license on both a Total Distributed Processor Core metric and Total User metric.

uu. SAS® Visual Investigator subject to the following additional terms and conditions: When Ordering Activity licenses SAS® Visual Investigator it must license on both a Total Distributed Processor Core metric and Total User metric.

vv. SAS® Event Stream Processing (SAS Viya Enabled) is subject to the following additional terms and conditions:

i. Events. The Software license fee is based on the total number of Events which are published to the Software and can be acted upon by the Software during an annual license period. An “Event” is defined as (i) a single record of data consisting of metadata and field data that is generated by an external system or asset (such as, but not limited to, a machine or sensor) and (ii) a single record of data derived from the transformation of one or more Events by the Software through aggregation, projection, pattern matching or other methods which will be counted in addition to the Event or Events from which the transformed Event is derived.

ii. Users may use the Software solely for the benefit of Ordering Activity to process and act upon Events as defined above. Ordering Activity may install the Software on any number of items of Authorized Hardware located in the United States. Events ingested by development and/or test environments do not count toward the licensed quantity of Events. Ordering Activity will ensure that any Software metering functionality, as defined in the Software documentation, is enabled when the Software is installed and will not subsequently disable or otherwise circumvent such metering functionality.

Exhibit III

AFFIRMATION AND DISCLOSURE FORM

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By the signature affixed hereto, the Contractor affirms and understands that if awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States, nor allow State data to be sent, taken, accessed, tested, maintained, backed-up, stored or made available remotely (located) outside of the United States unless a duly signed waiver from the State has been attained.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed and where data is located in the spaces provided below or by attachment. Failure to provide this information may result in no award. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

6901 Rockledge Drive, Suite 600  
(Address)

Bethesda, MD 20817  
(City, State, Zip)

Name/Principal location of business of subcontractor(s):

SAS Institute, Inc.  
(Name)

100 Campus Drive, Cary, NC 27513  
(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

6901 Rockledge Drive, Suite 600  
(Address)

Bethesda, MD 20817  
(City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

SAS Institute, Inc.  
(Name)

100 Campus Drive, Cary, NC 27513  
(Address, City, State, Zip)

Services may also be performed on State facilities.

3. Location where state data will be located, by Contractor:

N/A

Name/Location(s) where state data will be located by subcontractor(s):

N/A

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure Form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: Executive Information Systems, LLC  
Contractor

Print Name: Jonathan Ward

Signature  Digitally signed by Jonathan Ward  
DN: cn=Jonathan Ward, o=Executive Information Systems,  
LLC, ou, email=jward@execinfosys.com, c=US  
Date: 2020.12.14 12:11:29 -0500

Title: Contracts Manager

Date: 12/14/2020

**Exhibit IV**  
**PROFESSIONAL SERVICES TERMS**

The following additional terms shall apply to the provision of fixed price ("Fixed Price") or time and materials ("T&M") services (in either case, "Services") as may be specified on a valid order. A final scope of services and applicable fees will be specified on a statement of work attached to an order.

1. Contractor grants the State a nonexclusive, nontransferable, non-assignable, royalty-free license to use any documentation, computer code, deliverables (if specifically identified in a statement of work) or other materials delivered in connection with the Services ("Work Product") only for the Software with which the Work Product operates and only for as long as the State maintains a license for such Software. Contractor has no obligation to provide continued support or maintenance for any Work Product. Ownership of the Work Product, including any intellectual property embodied therein, and any techniques, skills, concepts or know-how that are utilized or developed while performing the Services remains with Contractor or its licensors. Contractor shall subcontract delivery of Services to SAS Institute Inc..

2. In addition to the warranties set forth in Section 7 of the Contract, Contractor makes the following additional warranties regarding Services which may be provided to the State: (a) Contractor warrants that the Services will be performed by qualified personnel in a workmanlike manner. The exclusive remedy for breach of this warranty is a refund of fees paid for the Services at issue; (b) Contractor warrants that it has the right to license the Work Product to the State. The exclusive remedy for breach of this warranty is to (i) modify the Work Product, (ii) obtain rights for State to continue to using the Work Product, or (iii) terminate the license for the Work Product at issue and refund the fees paid for the Services at issue. Contractor disclaims all other warranties, express or implied, with respect to the Services and Work Product provided hereunder or the results obtained.

3. With respect to any T&M Services specified on an order, the following apply: Contractor will provide (a) the Services described in an order (including any statement of work or attachment thereto), and (b) a limited license in relation to any Work Product. As used herein, the term "Time and Materials" means a consultative model where Contractor provides Services on a T&M basis at the hourly rates set forth in Exhibit I. Contractor's time and a limited license to any Work Product resulting from performance of any T&M Services are the only deliverables to be provided.

4. With respect to any Fixed Price Services specified on an order, the following terms apply:

a. Contractor will provide (a) the services described in an applicable order (including any statement of work or attachment thereto), (b) the deliverables, if any, described in the applicable statement of work ("Deliverables"), and (c) a limited license to any Work Product. As used herein, the term "Fixed Price" means a pre-defined project model where Contractor provides Fixed Price Services for a set fee calculated using the hourly rates set forth in Exhibit I.

b. Each party agrees to respond to the other in a timely fashion when acceptance of a Deliverable is pending. After delivery, State shall accept or reject a Deliverable within ten (10) business days. Failure to reject a Deliverable within this timeframe shall constitute acceptance of the Deliverable. Notice of a State's rejection of the Deliverable shall be provided to Contractor in writing and shall specify the nature and scope of the deficiencies. In the case of rejection of the Deliverable, the parties agree to adhere to the following timeframes whenever reasonably possible in order to meet the schedule set forth above: Contractor shall use reasonable efforts to respond to State within five (5) business days after receipt of the rejection notice describing the manner and timeframe in which Contractor proposes to correct any deficiencies, or by actually correcting the deficiencies. In the former case, State shall use reasonable efforts to accept Contractor's proposal for correcting any deficiencies within five (5) business days after receipt of Contractor's proposal. Upon Contractor's delivery of the corrected Deliverable, State shall use reasonable efforts to accept the Deliverable within five (5) business days. State's failure to accept a corrected Deliverable within ten (10) business days or to accept Contractor's proposal for correcting any deficiencies within ten (10) business days gives Contractor the right to terminate the applicable Fixed Price Services and refund the fees paid for all Work Product State returns to Contractor.

5. "Change Management" refers to a process for the parties to agree on a change or modification to the scope of Services, and "Change Order" refers to the document reflecting the change or modification. Requests by State or Contractor for such changes will be made in writing to the other party. Contractor, or its subcontractor, will prepare the Change Order, which will contain the following information:

- a. A description of any additional work and/or deletions of work to be performed and/or any changes to the performance required of either party.
- b. A statement of the impact of the work or changes on the Services and the project schedule.
- c. The estimated timetable to complete the work specified in the Change Order.
- d. The estimated time and cost of any additional work and/or deletions of work associated with the Change Order.

Contractor will provide the proposed Change Order to State's project manager for review, and if additional fees will be charged, the parties will agree on a proposed modification to the original order or the issuance of a new order. State's project manager will respond in writing to the proposed Change Order within five (5) business days. Each party must agree in writing to the Change Order, and any additional agreed-upon changes are subject to the ordering and payment provisions in this Contract. Pending such written agreement (and if additional fees will be charged, execution of the associated amendment and purchase order), Contractor will cause its subcontractor to continue to perform as if such Change Order had not been requested or recommended. If State provides its acceptance of the proposed Change Order in writing and, if applicable, issues a purchase order, the applicable project manager will update the project plan to reflect the change(s).